



International Tax Agreements Amendment Bill (No. 1) 2008

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Glossary

<i>Abbreviation</i>	<i>Definition</i>
Agreements Act 1953	<i>International Tax Agreements Act 1953 (Cth)</i>
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
GST	goods and services tax
ITAA 1936	<i>Income Tax Assessment Act 1936 (Cth)</i>
ITAA 1997	<i>Income Tax Assessment Act 1997 (Cth)</i>
OECD	Organisation for Economic Co-operation and Development
OECD Model	OECD Model Tax Convention on Income and on Capital
the 1969 Japanese agreement (the existing Agreement)	the Agreement between the Commonwealth of Australia and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and its associated Protocol, that were signed in Canberra on 20 March 1969 – existing Schedule 6 to the Agreements Act 1953
the 2008 Japanese convention	the Convention between Australia and Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and its associated Protocol and Exchange of Notes, which were signed in Tokyo on 31 January 2008 – proposed Schedule 6 to be inserted into the Agreements Act 1953 in place of existing Schedule 6 by this Bill

International Tax Agreements Amendment Bill (No. 1) 2008

Date introduced: 27 August 2008

House: House of Representatives

Portfolio: Treasury

Commencement: The Act commences on Royal Assent. (The application of the 2008 Japanese convention is dealt with in the Main provisions section of the Bills Digest.)

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To amend the *International Tax Agreements Act 1953* (Cth) (the Agreements Act 1953) to incorporate into Australian law the 2008 Japanese convention between Australia and Japan for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income.

Background

The Australia-Japan relationship

The Australia-Japan relationship is based upon solid foundations that are the result of shared interests and long-term complementarity. This includes:

- **economic complementarity:** Japan is Australia's largest export market and has played a central role in Australia's post-war economic development.¹ While China could soon overtake Japan's position as the primary export market, the complementary nature of the Australia-Japan relationship will remain vital to both economies long into the future.
- **shared regional aims:** Australia and Japan as 'odd men out' in the region share similar views on emerging East Asian regionalism. For socio-historical reasons, Japan finds regional integration difficult. Similarly, as a predominantly European society in the extreme southern periphery of East Asia, Australia finds regional integration difficult. Both states share a common view on the importance of a US presence in the

1. Department of Foreign Affairs and Trade, 'Japan country brief', http://www.dfat.gov.au/geo/japan/japan_brief.html, accessed on 29 August 2008.

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region. Accordingly, they share similar views on the direction that East Asian regionalism should take as it becomes a more viable option in the long term.

- **shared strategic outlook:** Japan and Australia share a similar strategic outlook based upon their status as market-based liberal democracies. The two countries share strategic interest in the maintenance of a rules-based international order, freedom of navigation, the continued involvement of the US in the region *and* the maintenance of a strong alliance relationship, and an interest in accommodating China into the existing regional strategic architecture. Importantly, the two states also share similar levels of military technology and hardware as a result of long-established inter-operability with the US under respective alliance relationships.

Despite these shared interests and long-term complementarity, media reports in both Australia and Japan highlighted a relative decline in the relationship in early 2008. These reports were based upon a series of unrelated incidents, including:

- Australian diplomatic efforts to end Japanese whaling in the Southern Ocean
- the fact that Prime Minister Kevin Rudd undertook a state visit to China prior to visiting Japan, and
- shelving of the quadrilateral security dialogue between the United States, Japan, India and Australia.

Underlying these concerns in Japan was the misperception that Australia may tilt towards China under its new Mandarin-speaking Prime Minister.² While similar concerns were raised in the United States, they were dismissed at an early stage. Prime Minister Rudd made several statements highlighting the importance of continuity in the Australia-United States relationship and several statements regarding the centrality of the alliance to Australia's national security.³ Prime Minister Rudd also indicated that the withdrawal of Australian forces from Iraq would not be undertaken in a manner that undermines coalition efforts.

However, in Japan, concerns regarding the potential tendency for Canberra to tilt towards China never subsided. In part, this reflects the Japanese sense of vulnerability that has grown commensurate with the economic growth of China. Japan is aware that the potential tendency of Australia to incline towards China is more likely to be seen in the context of second-tier diplomatic relations, such as between Australia and Japan, than in the context of first-tier diplomatic relations, such as between Australia and the United States.⁴

2. E. O'Keefe, 'Will Rudd cool relations with Japan?' *Japan Times* (Kyodo News), 26 November 2007.

3. Oxford Analytica, 'Government turnovers test relations', *Daily Brief*, 21 January 2008.

4. *ibid.*

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The Australian Government failed to address these concerns with Japan at an early stage.⁵ This was compounded by misperceptions regarding diplomatic signalling. On 5 February 2008, during a visit by Chinese Foreign Minister Yang Jiechi, Foreign Minister Stephen Smith announced the decision to place on hold quadrilateral strategic dialogue between the United States, Japan, India and Australia. In Japan, the decision to publicly announce an end to the quadrilaterals during the visit of Yang was perceived as indicative of an Australian tilt towards China.⁶

Economic relationship

In 2007, Japan was the world's second-largest economy measured in US dollars and the third largest economy measured in purchasing power parity (PPP) terms.⁷ Economic growth is expected to continue at a rate of 1.5 to 2.0 per cent over the next two years.⁸ The economy is driven by strong business investment and export growth, with strong regional demand providing a considerable input. Challenges faced by the economy over the medium-term include controlling deflation and the growing public debt, as well as strengthening the lagging services sector. Underpinning these challenges is the problem of an ageing population, which requires both a political and an economic solution.

Japan became Australia's primary export market in 1969 and continues in the number one position to this day. In 2007, total two-way trade between Australia and Japan was valued at \$54.5 billion, accounting for a 0.9 per cent decrease on 2006.⁹ Trade between the two countries is largely stable, as a result of domination by multinationals in the resources sector using long-term supply contracts. Japan is Australia's third largest source of investment, which in 2006 was valued at \$51 billion.¹⁰ Japanese investment has played a central role in Australia's post-war economic development, particularly in the resources, manufacturing (auto) and tourism sectors.

The Australia-Japan economic relationship is significant due to its historical and contemporary importance. The two economies have enjoyed a highly complementary trade relationship and relative geographic proximity, which has provided a solid foundation for both countries' growth and as an impetus to the wider relationship.

5. B. Nicholson, 'Japan jittery over closer ties between Australia and China', *The Age*, 6 February 2008, p. 1.

6. G. Sheridan, 'Region notices bias for Beijing', *The Australian*, 3 May 2008, p. 20.

7. Department of Foreign Affairs and Trade, 'Japan country brief', http://www.dfat.gov.au/geo/japan/japan_brief.html, accessed on 29 August 2008.

8. OECD, 'Economic survey of Japan, 2008', *Policy Brief*, OECD, Paris, April 2008.

9. Department of Foreign Affairs and Trade, *Composition of Trade 2007*, Commonwealth of Australia, Canberra, May 2008.

10. Department of Foreign Affairs and Trade, 'Japan country brief', op. cit.

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However, the economic downturn in Japan during the 1990s and the contemporaneous economic growth in neighbouring China reduced the importance of Japan to the Australian economy, in relative terms. Reflecting this, the Australian and Japanese governments have worked to broaden and strengthen the economic relationship. This includes negotiations towards a bilateral Free Trade Agreement (FTA), which commenced in April 2007. The key aims of the Australia-Japan FTA include:

- addressing tariff and non-tariff barriers facing Australian companies
- expansion of export opportunities in Japan's agricultural market
- promotion of two-way investment, and
- reducing discrimination resulting from Japan's FTAs with other countries.¹¹

Japan has indicated that it would like a FTA with Australia to address Japan's situation of food security and high primary resource dependency. Resource diplomacy has recently become a more important issue across Asia as energy and non-energy resource demand increases. An FTA could potentially increase levels of bilateral investment and access to government procurement, which could have a significant strategic impact. Naturally, a FTA would also result in closer and more regular government-to-government consultation and benefit the wider relationship.

A joint study of the benefits from an Australia-Japan FTA conducted in 2006 estimated a net gain in present value terms over 20 years of \$39 billion for Australia, and \$27 billion for Japan.¹² The fifth round of negotiations towards an Australia-Japan FTA was held in Canberra from 28 April to 1 May 2008. It is estimated that a deal could be concluded by the end of 2009, largely dependent upon the political situation in Japan.

The current Bill, which gives force to a new tax treaty with Japan could be viewed in the context of efforts to develop and strengthen the economic relationship. The facilitation of trade and investment between the two countries will allow the maintenance of a strong foundation upon which the wider relationship can continue to grow.

How tax treaties operate

Tax treaties generally serve three main functions:

- (1) They reduce or eliminate double taxation which arises by two tax jurisdictions exercising the right to tax based on source of income and residence of the recipient of income when that income flows across borders.

11. Department of Foreign Affairs and Trade, 'Japan country brief', op. cit.

12. Department of Foreign Affairs and Trade, 'Joint study for enhancing economic relations between Japan and Australia, including the feasibility or pros and cons of a free trade agreement', Final Report, December 2006.

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- (2) They set out the means of resolving transfer pricing issues by setting out an agreed basis for allocating profits within a multinational company operating in both jurisdictions.
- (3) They provide provisions for the exchange of information between the revenue authorities of two jurisdictions and in consequence would assist in preventing fiscal evasion.

What is the model of bilateral tax treaties generally followed by Australia?

Australia generally follows the Organisation for Economic Co-operation and Development (OECD) *Model Tax Convention on Income and on Capital* (OECD Model) in negotiating bilateral tax treaties. The OECD Model generally favours the residence approach to the allocation of taxing rights, although there are instances where Australia has adopted the source country taxing rights approach.

The key differences between the 1969 Japanese Tax Treaty and the 2008 Japanese convention

The current tax treaty with Japan was signed on 20 March 1969 and has been effective from the income year commencing from 1 July 1970.

The *Convention between Australia and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* and its associated Protocol and Exchange of Notes (together referred to as ‘the 2008 Japanese convention’) were signed in Tokyo on 31 January 2008.

The Joint Standing Committee on Treaties (JSCOT) in Report 91 tabled on 12 March 2008, summarised the key differences between the 1969 Japanese Tax Treaty and the 2008 Japanese convention in paragraphs 4.4 to 4.7 of Chapter 4 titled [*Double Tax Convention with Japan*](#). The contents of these paragraphs are set out below:

4.4 The Committee was advised that the proposed treaty is generally consistent with recent tax treaties concluded by Australia and includes a number of changes from the existing treaty. The key differences are reduced rates of withholding taxes (WHT) on dividends, interest and royalties, and improved integrity measures, particularly relating to rules for the exchange of information on tax matters. The treaty also introduces rules for real property which align the Capital Gains Tax treatment closely with that of the Organisation for Economic Cooperation and Development (OECD).

4.5 Treasury advised that it sought greater clarity in the revised agreement. The organisations that would be subject to exemptions for interests to withholding taxes have been expanded to include the Australian Export Finance and Insurance Corporation, the public authority that manages the investments of Australia’s Future Fund, the Japan Bank for International Cooperation, and Nippon Export and Investment Insurance.

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4.6 Treasury summarised the other key changes to the agreement as:

- The inclusion of anti-treaty shopping provisions in relation to withholding tax rates on dividends, interest and royalties;
- The inclusion of a comprehensive limitation on the benefits clause to ensure treaty benefits pass only to qualified persons;
- Rules to prevent tax discrimination;
- Updated provisions for the taxation of business profits from natural resource activities, building sites and the operation of substantial equipment;
- New rules to deal with the taxation of income derived through business trusts; and
- Provisions preventing double exemption of income derived by temporary residence.

4.7 The treaty will also reduce tax impediments to the cross-border movement of people, capital and technology between Australia and Japan and facilitate cooperation between the taxation authorities to reduce fiscal evasion.

(Note: the footnote references have been omitted)

Committee consideration

As mentioned above, the 2008 Japanese was considered by JSCOT in its Report 91, tabled on 26 June 2008. JSCOT recommended that binding treaty action be taken.

Financial implications

The Explanatory Memorandum to the Bill on page 5 sets out the financial impact of the new convention as follows.

Treasury has estimated the impact of the first round effects on forward estimates as \$345 million. The estimated distribution of the first round costs is shown in the table below:

<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>
-\$40m	-\$100m	-\$100m	-\$105m

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Indirect revenue benefits may arise from increased trade and investment between Australia and Japan and reduced tax credit obligations to Japan.

Main provisions

Structure of legislation to give effect to tax treaties

The Agreements Act 1953 gives the force of law to all the tax treaties entered into between Australia and other countries and which are listed in various Schedules to that Act. Schedule 6 sets out the terms of the 1969 Japanese agreement.

Section 4 of the Agreements Act 1953 incorporates the *Income Tax Assessment Act 1936* (ITAA 1936) and the *Income Tax Assessment Act 1997* (the ITAA 1997). Section 4AA of the Agreements Act 1953 incorporates the *Fringe Benefits Tax Assessment Act 1986* (the FBTAA 1986). Sections 4 and 4AA both provide that these Acts are to be read as one with the Agreements Act 1953, and that the Agreements Act 1953 takes precedence over these other Acts except for the anti-avoidance provisions in Part IVA of the ITAA 1936 and in section 67 of the FBTAA 1986.

Measures to incorporate the 2008 Japanese convention into domestic law

Item 9 of Schedule 1 to the Bill repeals existing Schedule 6 and substitutes a **new Schedule 6** to the Agreements Act 1953, setting out the terms of the 2008 Japanese convention.

Item 3 of Schedule 1 amends subsection 3(1) of the Agreements Act 1953 to insert the definition of the 1969 Japanese agreement:

the 1969 Japanese agreement means the Agreement between the Government of the Commonwealth of Australia and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the protocol to that agreement, being the agreement and protocol that was signed at Canberra on 20 March 1969.

Item 4 of Schedule 1 amends subsection 3(1) to insert the definition of the 2008 Japanese convention:

the 2008 Japanese convention means the Convention between Australia and Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the protocol to that convention, being the convention and protocol a copy of each of which in the English language is set out in Schedule 6.

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Key changes made by the 2008 Japanese convention

It is not within the scope of this Bills Digest to cover all the Articles of the 2008 Japanese convention. However, brief comments will be made on certain key Articles of the 2008 Japanese convention for which there is no equivalent in the 1969 Japanese agreement or where there has been a substantial modification of the provisions in the 1969 Japanese agreement.

The Explanatory Memorandum to the Bill (pages 12 to 16) sets out in a table a summary of key features of the new law and the current law citing various Articles of the 2008 Japanese convention. For ease of reference this table is included in Attachment A to this Bills Digest.

Article 6 dealing with taxation of income from real property

Paragraph 1 of Article 6 provides that the income of a resident of one country, from real property situated in the other country, may be taxed by the country where that property is situated. Thus the source country is allowed to tax income from ‘real property’.

Paragraph 2 of Article 6 defines the term ‘real property’ and allows the taxation of income from amongst other things, the right to explore for, and exploit natural resources. This definition excludes ships and aircraft. The taxation of income from shipping and air transport is dealt with by **Article 8**.

There is no equivalent to **Article 6** in the 1969 Japanese agreement.

Article 13 deals with the taxation of income, profits and gains from the alienation of real property referred to in **Article 6**. It provides that such income, profits and gains derived by a resident in one Contracting State from the alienation of real property situated in the other Contracting State may be taxed in the other Contracting State.

Limits to dividend withholding tax under Article 10

The dividend withholding tax on dividends paid by a company in one contracting state to a resident in another contracting state who has directly owned more than 80 per cent of the voting power of the company, is zero subject to certain conditions under **paragraph 3 of Article 10**.

Where **paragraph 3 of Article 10** does not apply, and the beneficial owner of dividends is a company which owns directly shares representing at least 10 per cent of the voting power of the company paying the dividends, the rate of withholding tax is a maximum of 5 per cent under **paragraph 2(a) of Article 10**.

In other cases, the rate of withholding tax is 10 per cent under **paragraph 2(b) of Article 10**.

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Under the 1969 Japanese agreement the rate of dividend withholding tax is limited to 15 per cent.

Limits to withholding tax on distributions from Australian Real estate Investment Trusts

Paragraph 7 of Article 10 limits withholding tax from Australian Real Estate Investment Trusts (REITs) to 15 per cent of the gross amount of the distribution if the beneficial owner of the distributions is a resident of Japan subject to certain conditions.

Limits to interest withholding tax under Article 11

Paragraph 2 of Article 11 reduces the rate of interest withholding tax to a maximum of 10 per cent of the gross amount of the interest.

However, **paragraph 3 of Article 11** provides that the rate of interest withholding tax shall be zero where interest is paid to:

- (a) government bodies or the Bank of Japan or the Reserve Bank of Australia,
- (b) financial institutions, or
- (c) the Japan Bank for International Cooperation, Nippon Export and Investment Insurance, Australia's Export Finance and Insurance Corporation or any public authority that manages the investments of the Future Fund.

There is no equivalent to **Article 11** in the 1969 Japanese agreement.

Limits to royalty withholding tax under Article 12

Paragraph 2 of Article 12 reduces the rate of royalty withholding tax to a maximum of 5 per cent of the gross amount of royalties.

Under the 1969 Japanese agreement, the rate of royalty withholding tax is limited to 10 per cent of the gross amount of royalties.

Commencement and Application

Clause 2 of the Bill provides that the proposed Act commences on the day on which it receives Royal Assent.

Paragraph (1) of item 8 of Schedule 1 provides that on or after the date of entry into force of the 2008 Japanese convention, the provisions of the convention have the force of law.

Paragraph 1 of Article 31 of the 2008 Japanese convention provides that the convention shall be approved in accordance with the legal procedures of each of the Contracting States and shall enter into force on the thirtieth day after the date of exchange of

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diplomatic notes indicating such approval. The convention was tabled in both Houses of Parliament on 12 March 2008.¹³

In the case of Australia, the enactment of this Bill will be a prerequisite to such notification.

Application in Australia

Paragraph 2(b) of Article 31 provides that the convention will apply as follows:

- (i) with respect to withholding taxes on income that is derived by a resident of Japan, in relation to income derived on or after 1 January in the calendar year next following that in which the Convention enters into force; and
- (ii) with respect to other taxes, as regards any taxable year beginning on or after 1 July in the calendar year next following that in which the Convention enters into force.

Application in Japan

Paragraph 2(a) of Article 31 provides that the convention will apply as follows:

- (i) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the Convention enters into force;
- (ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the Convention enters into force; and
- (iii) with respect to other taxes, as regards taxes for any taxable year beginning on or after 1 January in the calendar year next following that in which the Convention enters into force ...

13. For details about the status of the 2008 Japanese convention, see:
<http://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/6717496B22961197CA2573E500826977> (accessed on 1 September 2008).

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Concluding comments

Difficulties in quantifying the impacts of tax treaties

It was noted in the section on 'Financial implications' in this Bills Digest that Treasury has estimated the impact of the first round effects on forward estimates as a cost to revenue of \$345 million. Treasury has also added a qualification that indirect revenue benefits 'may arise from increased trade and investment between Australia and Japan and reduced tax credit obligations to Japan'.

The Regulation Impact Statement (RIS) in paragraph 2.19 and 2.20 on page 101 of the Explanatory Memorandum succinctly highlights the difficulties of estimating which includes the estimation of cross-border behavioural responses to concessions in a tax treaty:

2.19 Only a partial analysis of costs and benefits can be provided because all the impacts of tax treaties cannot be quantified. While the direct cost to Australian revenue of withholding tax changes can be quantified relatively easily, other cost impacts such as compliance costs are inherently difficult to quantify. There are also efficiency and growth gains and losses to Australia that provide estimation problems. Analysis has been conducted to establish plausible impacts on Australian economic activity and consequent tax revenue flowing from implementation of the tax treaty. The tax revenue estimates are subject to more uncertainty than the estimates of costs but are best estimates given the technology of estimation, the availability of estimates of behavioural responses, and data.

2.20 Benefits that flow to business are generally equally difficult to quantify. The evidence from international consideration (eg, the OECD) and from consultation with business strongly indicates, however, that while the quantum of benefits is very difficult to assess, a modern tax treaty provides a clear positive benefit to trade and investment relationships. Tax treaties provide increased certainty and reduce complexity and compliance costs for business.

On the impact of the cost to revenue, the RIS also notes there may be some *additional* flow on effects that are not included in the \$345 million figure:

2.48 Treasury has estimated the impact of the first round effects on forward estimates as \$345 million, with the identifiable costs to revenue associated with the reductions in dividend, interest and royalty withholding tax rates. As Australia has a number of 'most favoured nation' clauses regarding dividend withholding tax rates in its existing treaties, Australia would be obliged to enter into negotiations with a view to offering similar withholding tax reductions to those countries (including the proposed 10 per cent rate limit for other dividends), **which may create an additional pressure on revenue cost**. Countries that offer bilateral treaty withholding tax reductions for distributions from real estate investment trusts would also be expected to seek the 15 per cent withholding tax rate limit for such payments proposed for Japan, **which may also create a pressure on revenue cost**. [emphasis added].

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Attachment A

Comparison of key features of the new and current law

(Extract from the Explanatory Memorandum, pages 12 to 16.)

<i>New law</i>	<i>Current law</i>
Updates all Articles, having regard to Australian, Japanese and the Organisation for Economic Co-operation and Development (OECD) tax treaty developments since the existing Agreement was entered into.	Not applicable.
Updates the definition of 'Australia' to cover Australia's 'Exclusive Economic Zone', the seabed and subsoil of the continental shelf.	Only territories specifically included.
<p>Extends the coverage of this Convention to Australian tax on capital gains and updates the list of taxes to which the new treaty arrangements apply. In the case of Australia, these taxes are:</p> <ul style="list-style-type: none"> • the income tax; • the petroleum resource rent tax; and • any identical or substantially similar taxes imposed under the federal law of Australia. <p>However, a broader range of taxes apply to certain Articles. In the case of Australia, the taxes are:</p> <ul style="list-style-type: none"> • taxes of every kind and description for Article 26 (<i>Non-Discrimination</i>); and • all taxes imposed under the federal tax laws administered by the Commissioner for Article 28 (<i>Exchange of Information</i>) 	<p>In the case of Australia, the taxes to which all Articles of the existing treaty apply are:</p> <ul style="list-style-type: none"> • the Commonwealth income tax (including the former additional tax upon the undistributed amount of the distributable income of a private company); and • any identical or substantially similar taxes imposed under the law of Australia.
Includes an Article setting out the basis on which the residential status of a person is to be determined for the purposes of this Convention. This Article includes tiebreaker rules for both individuals and corporations Article 4 (<i>Resident</i>).	No equivalent tie-breaker rules.

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<p>Updates the meaning of 'permanent establishment' in Article 5. In particular, under this Convention a building site or construction or installation project constitutes a permanent establishment only where it lasts for more than 12 months. An enterprise is deemed to have a 'permanent establishment' if:</p> <ul style="list-style-type: none"> • it carries on supervisory or consultancy activities connected with a building site or construction or installation project for a period exceeding 12 months; • it carries on activities (including the operation of substantial equipment) in the exploration for, or exploitation of, natural resources for a period or periods exceeding in the aggregate 90 days in any 12-month period; or • it operates substantial equipment (other than in natural resource activities) for a period or periods exceeding in the aggregate 183 days in any 12-month period. <p>Integrity provisions are included to prevent related parties from circumventing the permanent establishment time thresholds by splitting contracts.</p>	<p>A building site or construction, installation or assembly project which exists for more than six months is included in the list of examples of a permanent establishment. In addition, an enterprise is deemed to have a 'permanent establishment' if:</p> <ul style="list-style-type: none"> • it carries on supervisory activities for more than six months in connection with a building site, or construction, installation or assembly project. <p>No equivalent for activities in the exploration for, or exploitation of, natural resources. No equivalent for substantial equipment.</p>
<p>Includes an Article dealing with the taxation of real property. This Article allows source country taxation of income from real property, including from the exploration for, and exploitation of, natural resources; permanent establishment assets and interests in land rich entities. This is broadly consistent with the scope of Australia's domestic law treatment of capital gains.</p>	<p>No equivalent.</p>
<p>Aligns the treatment of income from independent personal services to that of business profits under Article 7. It also clarifies the application of the <i>Business Profits</i> Article to business trusts.</p>	<p>Income from independent personal services is treated under the previous international standard in Article 10 of the existing Agreement.</p>
<p>Limits the time for the tax authorities to initiate transfer-pricing adjustments to seven years, except in the case of fraud or wilful default where there remains no time limit.</p>	<p>No limit specified in the treaty. No limit in domestic law.</p>

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<p>Dividend withholding tax is limited to:</p> <ul style="list-style-type: none"> • zero for intercorporate dividends on non-portfolio holdings of more than 80 per cent, subject to certain conditions; • five per cent for intercorporate dividends on other non-portfolio holdings; and • ten per cent in all other cases. 	<p>The rate of dividend withholding tax is limited to 15 per cent.</p>
<p>Limits withholding tax on distributions from Australian real estate investment trusts and dividends which are paid by a Japanese company which is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income in Japan to 15 per cent where the distribution is made up of predominantly rental income.</p>	<p>No equivalent.</p>
<p>Reduces the rate of interest withholding tax from a maximum of 10 per cent to zero where interest is paid to:</p> <ul style="list-style-type: none"> • government bodies and the Bank of Japan or the Reserve Bank of Australia; • financial institutions; or • the Japan Bank for International Cooperation, Nippon Export and Investment Insurance, Australia's Export Finance and Insurance Corporation and any public authority that manages the investments of the Future Fund. 	<p>No equivalent.</p>
<p>Reduces the rate of royalty withholding tax to 5 per cent of the gross royalty payment and extends the meaning of royalty to include forbearance. Leasing of industrial, commercial or scientific equipment will no longer constitute a royalty.</p>	<p>The rate of royalty withholding tax is limited to 10 per cent of the gross payment. Definition of 'royalties' includes payments for use of industrial, commercial and scientific equipment.</p>
<p>Includes a comprehensive <i>Alienation of Property</i> Article which allocates taxing rights over capital gains and prevents double non-taxation of certain capital gains.</p>	<p>No equivalent.</p>
<p>Includes a <i>Directors' Fees</i> Article.</p>	<p>No equivalent.</p>
<p>Includes a new Article dealing specifically with a Japanese 'sleeping partnership-Tokumei Kumiai'.</p>	<p>No equivalent.</p>

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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Includes a comprehensive <i>Limitation on Benefits</i> Article, which is broadly consistent with that agreed in the Australia-United States treaty.	No equivalent.
Includes a new <i>Limitation of Relief</i> Article that: <ul style="list-style-type: none"> • limits the treaty benefits that a country is obliged to provide where income, profits or gains of temporary resident individuals are exempted from tax; and • limits the relief a Contracting State must provide where an individual is taxed in the other Contracting State only on income, profits or gains that are remitted or received in that other state. 	No equivalent.
Includes a comprehensive Article preventing discrimination in relation to tax laws (Article 26 (<i>Non-Discrimination</i>)).	No equivalent.
Closely aligns Article 28 (<i>Exchange of Information</i>) to the 2005 OECD standard. The effect of the changes is to expand the range of taxes to which the Article applies and to clarify that bank secrecy laws do not limit the exchange of information.	The existing rules apply to a narrower range of taxes.

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