

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

## TAX CONVENTIONS

### **Announcement 2021-5, page 965.**

The competent authorities of the United States of America and Japan have entered into an arrangement regarding

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the implementation of the arbitration process provided for in paragraphs 5, 6, and 7 of Article 25 of the Convention between the Government of Japan and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

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Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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# Part IV

## U.S.-Japan Competent Authority Arrangement Regarding Treaty Arbitration Clause

### Announcement 2021-5

The following is a copy of the Competent Authority Arrangement entered into by the competent authorities of the United States of America and Japan, with respect to the implementation of the arbitration process provided for in paragraphs 5, 6, and 7 of Article 25 of the Convention between the Government of Japan and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Washington on November 6, 2003, as amended by the Protocol signed at Washington on January 24, 2013 (the “Convention”) and paragraph 14 of the Protocol signed at Washington on November 6, 2003, as amended by the Protocol signed at Washington on January 24, 2013 (the “Protocol of 2003”).

The text of the Competent Authority Arrangement is as follows:

#### **Implementing Arrangement regarding Paragraphs 5, 6 and 7 of Article 25 of the Convention between the Government of Japan and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income**

The competent authorities of Japan and the United States of America have established this arrangement (hereinafter referred to as the “Arrangement”) to implement the arbitration process provided for in paragraphs 5, 6 and 7 of Article 25 of the Convention between the Government of Japan and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Washington

on 6 November 2003 as amended by the Protocol signed at Washington on 24 January 2013 (hereinafter referred to as “the Convention”) and paragraph 14 of the Protocol signed at Washington on 6 November 2003 as amended by the Protocol signed at Washington on 24 January 2013 (hereinafter referred to as “the Protocol of 2003”).

Subject to certain exceptions described in paragraph III, this arbitration process applies to cases that the competent authorities of Japan and the United States have determined are suitable for assistance under the mutual agreement procedure of paragraphs 1, 2, 3 and 4 of Article 25 of the Convention in accordance with published guidance, in the case of Japan, the Commissioner’s Directive on the Mutual Agreement Procedure issued on 25 June 2001 or any amendment or successor provisions thereof, and in the case of the United States, Revenue Procedure 2015-40 or any amendment or successor provisions thereof.

This Arrangement is adopted in accordance with subparagraph (i) of paragraph 7 of Article 25 of the Convention.

Both competent authorities will follow the procedures in this Arrangement in good faith, and will ensure that the presenter of the case and the arbitrators will follow the procedures in this Arrangement in good faith.

#### **I. Definitions and General Matters**

A. “MAP” is the abbreviation for the Mutual Agreement Procedure, which are proceedings of the competent authorities under Article 25 of the Convention.

B. The term “Concerned Person” means the presenter of a case to a competent authority for consideration under Article 25 of the Convention and all other persons, if any, whose tax liability to either Contracting State may be directly affected by a mutual agreement arising from that consideration.

C. The “Commencement Date” for a case is the earliest date on which the information necessary to undertake substantive consideration for a mutual agreement has been received by both competent authori-

ties. The Commencement Date will be determined in accordance with paragraph IV.

D. Each competent authority will identify an individual or individuals within the competent authority’s office to carry on administrative coordination of arbitration matters. Actions identified in this Arrangement which are to be taken by a competent authority may be accomplished by these individuals on behalf of the competent authority.

E. If a competent authority does not accept a MAP request for assistance from a taxpayer, or ceases providing MAP assistance, the competent authority will notify, and consult, with the other competent authority whether the case is not suitable for assistance.

#### **II. Cases Eligible for Arbitration**

A. According to paragraphs 5, 6, and 7 of Article 25 of the Convention, arbitration will be available where:

1. the case was presented to the competent authority of the Contracting State of which the presenter is a resident or, if his case comes under paragraph 1 of Article 24 of the Convention, to that of the Contracting State of which he is a national, on the basis that the actions of one or both of the Contracting States have resulted for him in taxation not in accordance with the provisions of the Convention, and the competent authorities are unable to reach an agreement to resolve the case; and

2. a request for arbitration was presented in accordance with subparagraphs B and C of paragraph V.

B. In determining whether arbitration is available for a case, it is understood that:

1. taxation will be considered to have resulted for the purpose of paragraph 5 of Article 25 of the Convention from the actions of one or both of the Contracting States as soon as tax has been paid, assessed or otherwise determined (for example, a notification of correction, determination or deficiency of a tax liability has been issued), or in cases where the taxpayer is officially notified by the tax authorities that they intend to tax him on a certain element of income (for example,

a notice of proposed adjustment has been issued).

2. the fact that tax collection procedures may have been suspended will not affect a determination that taxation has resulted from the actions of one or both Contracting States.

C. An unresolved case that is the subject of a request for an advance pricing arrangement (hereinafter referred to as “APA”) will be subject to arbitration procedures in accordance with paragraph XVII.

### III. Cases Not Eligible for Arbitration

Notwithstanding paragraph II, as provided in paragraphs 5, 6 and 7 of Article 25 of the Convention, arbitration will not be available, for example:

1. for non-taxpayer-specific cases;
2. for a case if a decision with respect to such case has already been rendered by a court or administrative tribunal of either Contracting State;
3. for a case for which both competent authorities have decided that the case is not suitable for resolution through arbitration and have notified the presenter of the case of such decision no later than two years after the Commencement Date; or
4. for a case that is the subject only of the provisions set forth in the final sentence of paragraph 3 of Article 25 of the Convention (i.e., for the elimination of double taxation in cases not provided for in the Convention).

### IV. Commencement Date

A. The term “information necessary to undertake substantive consideration for a mutual agreement” in subparagraph (b) of paragraph 7 of Article 25 of the Convention, except as described in subparagraph C of paragraph XVII with respect to a case that is the subject of request for an APA, means:

1. the full name and address of the presenter of the case for consideration by both competent authorities;
2. the full name and address of any other Concerned Person than the presenter of the case;
3. the taxable years of the Concerned Person which are the subject of the case;

4. the nature and date of the actions giving rise to the case, including any amounts of income, expense or tax in dispute in the currencies of both Contracting States;

5. an explanation of the reason for the MAP request, and the nature of the relief sought or the action requested in the Contracting States with respect to the issues raised in the case;

6. the relationship, situation or structure of the transactions and related parties involved in the case;

7. a statement indicating whether a Concerned Person has filed a notice of objection, notice of appeal, or comparable documentation with respect to the case in either of the Contracting States;

8. a copy of any documents issued by the tax authority of either or both Contracting States with regard to the actions giving rise to the case; and

9. any specific additional information necessary for initial consideration of the case and requested by the competent authority within 45 days after the receipt (from either a Concerned Person or the other competent authority) of the MAP request. This period may be extended up to 90 days with the concurrence of the other competent authority. Where the MAP request is provided to only one competent authority by the Concerned Person(s), that competent authority will inform the Concerned Person of the date on which it transmits the MAP request to the other competent authority.

B. Both competent authorities will confirm to each other the date on which all the information described in subparagraph A was received by both competent authorities, i.e., the Commencement Date of a case.

C. Once the Commencement Date of a case has been confirmed by both competent authorities under subparagraph B, the competent authority to whom that case has been presented under paragraph 1 of Article 25 of the Convention will notify the presenter of the case of that date.

### V. Request for Submission of Case to Arbitration

A. An arbitration proceeding with respect to a case will begin on a date (hereinafter referred to as the “Date Arbitration Proceedings Begin”) as identified accord-

ing to subparagraph (c) or (d) of paragraph 7 of Article 25 of the Convention. Except as otherwise described in paragraph XVII with respect to a case that is the subject of a request for an APA, according to subparagraph (c) of paragraph 7 of Article 25 of the Convention, the Date Arbitration Proceedings Begin with respect to a case is the later of:

1. two years after the Commencement Date of that case, unless both competent authorities have decided on a different date and notified the presenter of the case of such agreement (as provided in subparagraphs E and F); and

2. where there is at least one Concerned Person involved in the case in each Contracting State, the earliest date on which both competent authorities have received, and where there is only one Concerned Person involved in the case, the date on which the competent authority has received, a request for arbitration as described in subparagraph B accompanied with all necessary attachments as described in subparagraph C regarding a case eligible for arbitration.

B. A request for arbitration will be made in writing, and sent to the competent authority of which the presenter of the case is a resident or, if his or her case comes under paragraph 1 of Article 24 of the Convention, to that of the Contracting State of which he or she is a national through:

(in Japan): Office of Mutual Agreement Procedures, National Tax Agency; and

(in the United States): the United States Competent Authority, according to section 10 (Arbitration) of Revenue Procedure 2015-40 (or any applicable subsequent guidance).

C. A request for arbitration will be accompanied with:

1. sufficient information to identify the case;
2. a written statement that no decision with respect to such case has already been rendered by a court or administrative tribunal of either Contracting State; and
3. a written statement regarding confidentiality in subparagraph A of paragraph VI from all the Concerned Persons and their authorized representatives or agents according to formats specified by both competent authorities.

D. After the receipt of a request for arbitration, the competent authority who received it will immediately inform the other competent authority of the fact that the request was submitted, and send a copy of the request and the accompanying information and statements within 10 days to the other competent authority.

E. According to clause (i) of subparagraph (c) or clause (i) of subparagraph (d) of paragraph 7 of Article 25 of the Convention, both competent authorities may decide in appropriate situations that the Date Arbitration Proceedings Begin with respect to a MAP case will be later than what it would have been without such decision. Such appropriate situations could be, for example, where the competent authorities are close to reaching a mutual agreement to resolve the case, where there has been a delay by a Concerned Person in providing information in the MAP case, where MAP is suspended by a request from the presenter of the case, or where a Concerned Person has provided significant new information after the Commencement Date of the case. Unless otherwise agreed between the competent authorities and the relevant Concerned Person, the competent authorities will make the decision by the later date of:

1. two years after the Commencement Date of the MAP case; or

2. the date when the request for arbitration is submitted.

F. If both competent authorities decide the Date Arbitration Proceedings Begin with respect to a case under subparagraph E, then the competent authority to whom that case has been presented will immediately notify the presenter of the case of the date so decided.

G. If both competent authorities determine that the case is not suitable for resolution through arbitration, the competent authority to whom that case has been presented will immediately notify the presenter of the case of that determination.

## VI. Confidentiality

According to subparagraph (b) of paragraph 5 and subparagraphs (f), (g) and (h) of paragraph 7 of Article 25 of the Convention, the confidentiality of a case will be maintained in the following manner:

A. All Concerned Persons and their authorized representatives or agents will

agree, when the request for arbitration is submitted, not to disclose to any person (except other Concerned Persons) any information received during the course of the arbitration proceeding from either competent authority or the arbitration panel, other than the determination of the panel.

B. No information relating to an arbitration proceeding (including the determination of the arbitration panel) will be disclosed by the competent authorities, except as permitted by the Convention and the laws of the Contracting States. In addition, all material prepared in the course of, or relating to, an arbitration proceeding will be considered to be information exchanged between the competent authorities pursuant to Article 26 of the Convention.

C. For the purposes of an arbitration proceeding under paragraphs 5 and 7 of Article 25 of the Convention, the members of the arbitration panel (hereinafter referred to as “arbitrators”) and their staff will be considered to be “persons or authorities” to whom information may be disclosed under Article 26 of the Convention.

D. Both competent authorities will ensure that all arbitrators (and any of their staff which will assist them in carrying on the arbitration), prior to their acting in an arbitration proceeding, agree in the forms specified by both competent authorities not to disclose any information relating to an arbitration proceeding (including the determination of the arbitration panel), and to abide by and be subject to the confidentiality and nondisclosure provisions of Article 26 of the Convention and similar provisions of relevant laws of the Contracting States. However, the arbitrators or their staff will disclose the determination of the arbitration panel to the competent authorities.

## VII. Eligibility of Arbitrators

A. According to subparagraph (b) of paragraph 14 of the Protocol of 2003, in order for an individual to be eligible as an arbitrator:

1. the individual is not an employee nor has been an employee within the twelve-month period prior to the Date Arbitration Proceedings Begin of the tax administration, the Treasury Department, or the Min-

istry of Finance of the Contracting State which identifies him or her;

2. the individual does not have any prior involvement with the specific matters at issue in the arbitration proceeding for which he or she is being considered as an arbitrator; and

3. in addition, the individual who will serve as the chair of the arbitration panel (hereinafter referred to as “the Chair”) is not a national or lawful permanent resident of either Contracting State.

B. Both competent authorities will each prepare and exchange a list of individuals who may be eligible and are willing to serve as the Chair. The competent authorities will prepare and exchange such list every two years, or more often as necessary.

C. Both competent authorities will ensure that the staff of an arbitrator will meet the same requirements described in subparagraph A.

## VIII. Appointment of Arbitrators

A. According to subparagraph (b) of paragraph 14 of the Protocol of 2003, the arbitration panel will consist of three individual members.

B. Each competent authority will select one arbitrator to the arbitration panel by sending a copy of the forms identified in subparagraph D of paragraph VI, signed by the arbitrator, to the other competent authority within 60 days after the Date Arbitration Proceedings Begin.

C. In the event that the competent authority fails to make such selection in the manner and within the time period in subparagraph B, the other competent authority will select a second arbitrator within 90 days after the Date Arbitration Proceedings Begin.

D. The procedure in subparagraph C will not apply, where the failure of such selection within the time period in subparagraph B is due to the fact that an individual who had agreed to serve as an arbitrator becomes unable to serve because of circumstances outside of his or her control (for example, death, serious illness or natural disaster). Both competent authorities will determine the appropriate time period for the selection of an arbitrator in such a case.

E. Within 60 days after the latter selection of the two initial arbitrators who were selected by the competent authorities un-



der subparagraphs B, C and D (hereinafter referred to as “two initial arbitrators”), the two initial arbitrators so selected will select a third arbitrator, who will serve as the Chair. The third arbitrator so selected will inform both competent authorities of his or her appointment as soon as possible. In order to help the two initial arbitrators make that selection, the competent authorities will provide the two initial arbitrators with a consensus list of individuals derived from the list described in subparagraph B of paragraph VII (that is, candidates to be the Chair) who appear to be best qualified to decide the case under consideration.

F. If the two initial arbitrators fail to select the third arbitrator in the manner and within the time period in subparagraph E, the two initial arbitrators will be dismissed, and each competent authority will select a new arbitrator of the arbitration panel.

G. The procedure in subparagraph F will not apply, where the failure of such selection within the time period in subparagraph E is due to the fact that the individual selected to serve as the Chair becomes unable to serve because of circumstances outside of his or her control (for example, death, serious illness or natural disaster). In such a case, unless otherwise decided, both competent authorities will provide the two initial arbitrators with a revised consensus list of candidates to be the Chair within 20 days after the end of the period in subparagraph E. The two initial arbitrators will select a third arbitrator from among the candidates so proposed within 10 days after the receipt of the list of candidates.

H. The arbitrators will be selected from individuals who:

1. satisfy the eligibility requirements identified in subparagraph A of paragraph VII at the time of accepting an appointment to serve, and are reasonably expected to remain so during the entire Arbitration Proceeding and for a reasonable time thereafter; and

2. have significant experience in international tax matters (he or she need not, however, have experience as either a judge or arbitrator).

- I. An arbitrator will be deemed selected on the date on which he or she signs the agreements (Statement, Declaration)

required by subparagraph D of paragraph VI.

J. Where one of the two initial arbitrators becomes ineligible for service as an arbitrator or for any other reasons it is necessary to replace an arbitrator after the arbitrator was selected, the competent authority who had selected that individual will select a replacement as soon as possible and no later than 60 days after the position becomes vacant.

K. Where the Chair becomes ineligible for service as an arbitrator or for any other reasons it is necessary to replace the Chair after the arbitrator was selected, the two initial arbitrators will select a replacement as soon as possible and no later than 30 days after the position becomes vacant.

L. If any arbitrator is unable to fulfill his or her duties, the competent authorities will consult with the remaining panel members to determine a new timetable, if necessary.

M. The arbitrators will undertake to promptly disclose to both competent authorities, in writing, any new facts or circumstances that arise during or following the arbitration proceedings that might give rise to doubts with respect to their impartiality or independence.

## **IX. Procedures and Terms of Reference**

A. As soon as possible after the Date Arbitration Proceedings Begin, both competent authorities will develop a brief Statement of Information *which* will identify the Concerned Persons and contain a general description of the proposed adjustments or similar issues to be resolved in a case. The competent authority, or an arbitrator selected by the competent authority, may disclose the Statement of Information, if the confidentiality of the information is ensured and such disclosure is permitted by the law of the Contracting State, to a candidate to be an arbitrator of the case to check whether that candidate satisfies the eligibility requirements identified in subparagraph A of paragraph VII.

B. Both competent authorities undertake to develop, within 30 days after the Date Arbitration Proceedings Begin, an agreed “Terms of Reference” for a case to include:

1. a description of the relevant business activities of the Concerned Persons;

2. a description of the adjustments or similar issues in dispute in the case;

3. a description of the matters to be considered for the resolution of the case; including identification of all matters in the case previously agreed between the competent authorities; and

4. a description of the final position taken by each competent authority in the negotiation of the unresolved matters which prevent the mutual agreement between the competent authorities.

The competent authorities may also provide logistical or procedural information in the Terms of Reference.

C. The Terms of Reference will be communicated to the Chair on the date of his or her appointment, or as soon thereafter as possible.

D. If the Terms of Reference has not been completed by the date for submission of the proposed resolutions and position papers, both competent authorities will send to each other and to the Chair their most recent written proposals for the Terms of Reference along with their proposed resolutions and position papers. All the matters identified as unresolved in these draft Terms of References are treated as unresolved for the purpose of the subsequent proceedings.

E. According to subparagraph (d) of paragraph 14 of the Protocol of 2003, each of the competent authorities will be permitted to submit a proposed resolution, not to exceed five pages, addressing each adjustment or similar issue raised in a case. Such proposed resolution will be a resolution of the entire case, and will reflect, without modification, all matters in the case previously agreed between both competent authorities. Such proposed resolution will be limited to a disposition of specific monetary amounts (for example, of income, profit, gain or expense) or, where specified, the maximum rate of tax charged pursuant to the Convention, for each adjustment or similar issue in the case, based on the application of the Convention to the case. Each of the competent authorities will also be permitted to submit a supporting position paper, not to exceed 30 pages plus annexes, for consideration by the arbitration panel.

F. The submission of a proposed resolution and supporting position paper by the competent authority will be made by

posting it (or similarly sending it via express delivery service) to the Chair within 60 days after the appointment of the Chair. Unless alternative arrangements are made, the Chair will in turn send a copy of each competent authority's proposed resolution and supporting position paper to the other panel members and the other competent authority within 5 days after the receipt of the later submission.

G. In the event that only one of the competent authorities submits a proposed resolution within the allotted time, then that proposed resolution will be deemed to be the determination of the arbitration panel in that case.

H. According to subparagraph (g) of paragraph 14 of the Protocol of 2003, each of the competent authorities will be permitted to submit a reply submission, not to exceed 10 pages excluding annexes, to the arbitration panel in order to address any points raised by the proposed resolution or supporting position paper submitted by the other competent authority. In this reply submission, the competent authority may also comment upon any papers setting forth its analysis and views of the case (hereinafter referred to as a "Presenter Position Paper") submitted under the provisions of paragraph X. If the competent authority exercises its option to also comment upon a Presenter Position Paper, its reply submission will not exceed 20 pages excluding annexes. The submission of a reply submission by the competent authority will be made by posting it (or similarly sending it via express delivery service) to the Chair within 120 days after the appointment of the Chair. Unless alternative arrangements are made, the Chair will send a copy of each competent authority's reply submission to the other panel members and the other competent authority within 5 days after the receipt of the reply submission.

I. In a particular case, both competent authorities may decide to use a different presentation or page limitation for the proposed resolutions, supporting position papers or reply submissions, such as is provided in paragraphs XV and XVI.

J. Any annex to a supporting position paper or reply submission will be a document previously made available for both competent authorities to use in negotiation. Any factual information used

in a supporting position paper or reply submission will be what was contained in a document previously made available for both competent authorities to use in negotiation, or otherwise reflect information widely available to the general public.

K. Except with respect to the final position taken by the other competent authority as described above in clause 4 of subparagraph B of paragraph IX, the competent authority will only be permitted to refer to a proposal for resolution made by either competent authority during negotiations if that proposal is submitted to the arbitration panel for consideration as a proposed resolution.

L. Within 120 days after the receipt of the proposed resolutions from both competent authorities, the arbitration panel may ask both competent authorities in writing for additional information. Such additional information may be submitted to the arbitration panel only at its request, and will be provided within 30 days after the request. Copies of the arbitration panel's request and the competent authority's response will be provided to the other competent authority on the date on which the request or the response is submitted. If the panel requests information or analyses that have not previously been available or considered for purposes of the negotiation, the competent authorities will consult to determine how to respond to the panel's request. The panel will not request additional information from the presenter of the case.

M. Unless otherwise decided between both competent authorities and the Chair, the competent authorities will send to the Chair four copies of each document submitted to the arbitration panel, for distribution to the other arbitrators and the other competent authority.

N. Unless otherwise decided between both competent authorities, any information (including any information provided by the presenter of the case or his or her authorized representatives or agents in writing or orally) that was not available to both competent authorities before the Date Arbitration Proceedings Begin will not be taken into account for purposes of the arbitration decision. Furthermore, any reply submission or any additional information that was provided to the panel after

the deadlines specified in subparagraphs H and L respectively will not be taken into account for purposes of the arbitration decision.

O. To the extent needed, the arbitration panel may adopt any additional procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Article 25 of the Convention, paragraph 14 of the Protocol of 2003, or this Arrangement or any other procedural rules decided between both competent authorities. If the arbitration panel adopts any additional procedures, the Chair will provide a written copy of them to the competent authorities.

## **X. Participation of the Person Who Requested the Arbitration**

A. According to subparagraph (h) of paragraph 14 of the Protocol of 2003, the presenter of the case is permitted to submit for consideration by the arbitration panel Presenter Position Paper by transmitting it to the competent authority of which the presenter is resident or, if his or her case comes under paragraph 1 of Article 24 of the Convention, to that of the Contracting State of which he or she is a national within 30 days after a request for arbitration made in conformance with the provisions of paragraph V.

B. Both competent authorities will advise the presenter of the case that the Presenter Position Paper does not exceed 30 pages excluding annexes, and the Presenter Position Paper and annexes do not include any information (including positions, arguments, analyses and documents) not previously provided to the competent authorities during their negotiation. The competent authorities may decide a specific format, on a case by case basis, for the Presenter Position Paper.

C. The competent authority which receives the Presenter Position Paper will send a copy of the Presenter Position Paper to the Chair (if the Chair has not been appointed on the date on which the receipt of the Presenter Position Paper, immediately after the appointment of the Chair) and the other competent authority immediately (no later than 5 days after the receipt of the original Presenter Position Paper). That competent authority may ask

the presenter of the case to submit additional copies as necessary.

## **XI. Communication**

A. Before the Chair is selected, both competent authorities will send any correspondence concurrently to both arbitrators. After the Chair is selected, unless otherwise decided between the Chair and the competent authorities, the competent authorities will send any correspondence to the Chair. Similarly, the Chair will send any correspondence concurrently to the competent authorities.

B. Except for administrative or logistical matters, no competent authority will have any *ex parte* communications with an arbitrator.

C. All communication, except for logistical matters, between both competent authorities and the arbitration panel will be in writing. Written communication by facsimile or email is allowed, however, no information that may identify the taxpayer(s) may be included in an email unless other security precautions to protect taxpayer information are agreed upon by both competent authorities. Express mail or air mail will be used for all correspondence other than that sent via facsimile or email.

D. The arbitrators will communicate by telephone, facsimile or face-to-face meetings. Arbitrators will communicate by email; however they will not include any taxpayer information in the email.

E. No substantive discussion will be done, unless all arbitrators are present (physically or remotely).

F. No arbitrator will have communications regarding the issues or matters before the arbitration panel with the presenter of the case, the taxpayers involved in the case, or their representatives during or subsequent to the arbitration process.

## **XII. Costs and Logistical Arrangements**

A. According to subparagraph (k) of paragraph 14 of the Protocol of 2003, the fees and expenses of the arbitrators, as well as any costs incurred in connection with the proceeding by the Contracting States, will be borne equitably by the Contracting States in the following manner:

1. each competent authority will bear the cost of its selected arbitrator and its own expenses; and

2. the cost of the Chair and other expenses associated with the conduct of the proceedings will be borne by the competent authorities in equal shares. The term “other expenses associated with the conduct of the proceedings” does not include indirect costs incurred for the logistical arrangements described in subparagraph D.

B. The compensation of the arbitrators will be set as follows:

1. The fees and expenses of an arbitrator selected by the competent authority in accordance with paragraph VIII will be set at the amounts generally payable in the Contracting State on the Date Arbitration Proceedings Begin, provided that they do not exceed the amounts set by the International Centre for Settlement of Investment Disputes Schedule of Fees for arbitrators in effect on the same date. The competent authority may use this Schedule of Fees (subject to any necessary modifications as may relate to the maximum amount to be paid, payment methods or currency exchange) to determine the fees and expenses of its selected arbitrator. This applies in particular for hotel, meals, travel expenses, and incidental costs.

2. The fees and expenses of the Chair will be the amounts set by the International Centre for Settlement of Investment Disputes Schedule of Fees for arbitrators in effect on the Date Arbitration Proceedings Begin (subject to any necessary modifications as may relate to the maximum amount to be paid, payment methods or currency exchange).

C. Neither competent authority will charge any Concerned Person for costs associated with arbitration.

D. Unless otherwise decided by both competent authorities, the competent authority to which a case giving rise to the arbitration was initially presented will be responsible for the logistical arrangements for any face-to-face meetings of the arbitration panel and will provide the administrative personnel necessary for the support of such meetings. The administrative personnel so provided will report only to the Chair concerning any matter related to that process. In the event that both competent authorities have received a MAP request, the competent authority the

actions of which resulted in taxation not in accordance with the provisions of the Convention will carry out the logistical arrangements described in this subparagraph. The competent authority responsible for the logistical arrangements may arrange meeting facilities in a location that minimizes the panel’s travel time and expenses. The competent authority may arrange a meeting in the other’s meeting facilities, as needed.

E. In general, each arbitrator will be compensated for no more than seven days of work on the arbitration (e.g., five days of preparation and for two meeting days). If the arbitrators feel they require additional time to properly consider the case, the Chair will contact both competent authorities to request additional time. Both competent authorities anticipate that panel members will be able to perform their duties without the use of their staff. Both competent authorities will not compensate a staff member of an arbitrator.

F. As a general rule, both competent authorities will encourage the arbitration panel to complete their joint consideration of the case through telecommunications. The Chair will obtain approval from both competent authorities prior to incurring any expenses relating to a face-to-face meeting.

## **XIII. Arbitration Panel Determination**

A. Within 180 days after the appointment of the Chair (or, where subparagraph J or K of paragraph VIII applies, unless otherwise decided by both competent authorities, within 180 days after the selection of the new arbitrator), the Chair will transmit the written determination of the arbitration panel, concurrently to each competent authority. This period may be extended up to 270 days where subparagraph L of paragraph IX applies. Within 10 days after the receipt of the determination, the competent authority to which the request for arbitration was submitted will write to the presenter of the case to request whether that person accepts the determination.

B. In the event that the determination has not been communicated to both competent authorities within the period provided for in subparagraph A, the competent authorities will consult to determine



whether to extend the period for the arbitration panel to transmit a determination, or to dismiss the panel and select new arbitrators in accordance with paragraph VIII.

C. Issues will be decided by the arbitrators in accordance with the Convention and applicable rules of international law.

D. According to subparagraph (e) of paragraph 7 of Article 25 of the Convention, unless the presenter of the case does not accept the determination of the arbitration panel, such determination will constitute a resolution by mutual agreement of the entire case under Article 25 of the Convention at the time it is timely accepted by the presenter and be binding on both Contracting States.

E. The resolution resulting from the determination of the arbitration panel will be implemented notwithstanding any time limits or procedural limitations in the law of the Contracting States, except such limitations as apply for the purposes of giving effect to such a resolution.

F. The determination of the arbitration panel will be decided on the basis of a majority vote.

G. The arbitration panel will not determine the treatment of any associated interest or penalties; rather that treatment will be determined under the respective taxation laws of the Contracting States.

H. According to subparagraph (i) of paragraph 14 of the Protocol of 2003:

1. The arbitration panel will deliver a determination in writing to both competent authorities.

2. The determination of the arbitration panel will be limited to one of the proposed resolutions submitted by the competent authorities for each adjustment or similar issue and any threshold questions, and will not include a rationale or any other explanation of the determination.

3. The determination of the arbitration panel has no precedential value with respect to the application of the Convention in any other case.

I. According to subparagraph (j) of paragraph 14 of the Protocol of 2003:

1. Unless both competent authorities decide to provide a longer time period, the presenter of the case will have 45 days after receiving the determination of the arbitration panel to notify, in writing, the competent authority to whom the case was

presented, of his or her acceptance of the determination.

2. If the presenter of the case fails to so advise the relevant competent authority, the determination will be considered not to be accepted.

3. In the event the case is pending in litigation or appeal, the determination of the arbitration panel will be considered not to be accepted by the presenter of the case if any Concerned Person who is a party to the litigation or appeal does not advise, within the same time frame described above in clause 1, the relevant court or administrative tribunal of its intention to withdraw from consideration all issues resolved in the arbitration proceeding.

4. Where the determination of the arbitration panel is not accepted, the case will be closed and will not be eligible for any further consideration by the competent authorities.

#### **XIV. Terminating Proceedings**

A. According to subparagraph (c) of paragraph 14 of the Protocol of 2003, MAP, including the arbitration proceeding, with respect to a case will terminate if at any time before the arbitration panel delivers a determination to the competent authorities:

1. the competent authorities have reached a mutual agreement to resolve the case pursuant to paragraph 2 of Article 25 of the Convention;

2. the presenter of the case has withdrawn its request for arbitration;

3. a decision concerning the case is rendered by a court or administrative tribunal of one of the Contracting States during the arbitration proceeding; or

4. if any Concerned Person or their authorized representatives or agents willfully violates the written nondisclosure statement required by subparagraph (b) of paragraph 5 of Article 25 of the Convention, and both competent authorities decide that such violation will result in the termination of the arbitration proceeding.

B. If MAP, including the arbitration proceeding, with respect to the case is terminated under clause 2, 3 or 4 of subparagraph A, both competent authorities will exchange letters to close the case unagreed.

C. At the termination of any proceeding each arbitrator will immediately destroy all documents or other information received from either competent authority, or that otherwise reflect the considerations or discussions of the arbitration panel, and delete all information that may be stored on any computer, personal data assistant or other electronic device or media.

#### **XV. Multiple Adjustments**

A. According to subparagraph (f) of paragraph 14 of the Protocol of 2003, where an arbitration proceeding concerns a case comprising multiple adjustments or similar issues each requiring a disposition of specific monetary amounts (for example, of income, profit, gains or expense) or where specified, the maximum rate of tax charged pursuant to the Convention, the proposed resolution may propose a separate disposition for each adjustment or similar issue.

B. Unless both competent authorities decide upon a different presentation to the arbitration panel, the proposed resolution and supporting position paper in such a case will address each adjustment separately, within the overall page limitation.

C. The arbitration panel will make a determination on each adjustment or similar issue separately. Thus, the final determination of the arbitration panel may be comprised of a proposed resolution from the competent authority on one adjustment and a proposed resolution from the other competent authority on another adjustment.

#### **XVI. Permanent Establishment, Residency, and Other Threshold Questions**

A. According to subparagraph (e) of paragraph 14 of the Protocol of 2003, in the case of an arbitration proceeding concerning:

1. the taxation of an individual with respect to whom the competent authorities have been unable to reach an agreement regarding the Contracting State of which the individual is a resident;

2. the taxation of the business profits of an enterprise with respect to which the competent authorities have been unable to

reach an agreement on whether a permanent establishment exists; or

3. such other issues the determination of which are contingent on resolution of similar threshold questions;

then the competent authorities may submit proposed resolutions separately addressing the relevant threshold questions as described in clause 1, 2 or 3 above (for example, the question of whether a permanent establishment exists), and the contingent determinations (for example, the determination of the amount of profit attributable to such permanent establishment).

B. In such a case, the competent authority is allowed to submit a proposed resolution and supporting position paper which will address each issue separately, taking alternative positions as appropriate. For example, the competent authority is allowed to take a position that no permanent establishment exists in one proposed resolution, and to propose an amount of business profit to be attributable to a permanent establishment in another proposed resolution in case the arbitration panel determines that a permanent establishment exists.

C. The arbitration panel will make a determination on the threshold question and the contingent determination separately.

### **XVII. Date Arbitration Proceedings Begin for Advance Pricing Arrangement (“APA”) Case**

A. According to subparagraph (d) of paragraph 7 of Article 25 of the Conven-

tion, the Date Arbitration Proceedings Begin with respect to a case that is the subject of a request for an APA is the later of:

1. six months after an official notification has been issued by the tax authority of either Contracting State of a correction of, or an intent to adjust, the pricing of a transaction or transfer covered by a request for an APA regarding a Concerned Person, unless both competent authorities have decided on a different date and notified the presenter of the case of such decision; and

2. the earliest date on which both competent authorities have received a request for arbitration in subparagraph B of paragraph V accompanied with all necessary attachments as described in subparagraph C of that paragraph.

B. However, the arbitration proceeding will not begin any earlier than two years after the date on which the information necessary to undertake substantive consideration for a mutual agreement on the APA has been received by both competent authorities.

C. The “date on which the information necessary to undertake substantive consideration for a mutual agreement on the APA has been received by both competent authorities” in subparagraph B means the date on which the first position papers regarding the APA case have been exchanged between the competent authorities.

### **XVIII. Timeframes**

A. Notwithstanding the above paragraphs, in an exceptional case both competent authorities may decide to utilize different procedural periods.

B. Both competent authorities will confirm the period so extended and notify the Concerned Person in each Contracting States of that extended period in writing.

### **XIX. Miscellaneous**

In computing the days necessary for an action in this Arrangement, the day when the event beginning this computation occurred will not be counted.

### **XX. Coordination with Protocol Entry into Force**

A. This Arrangement applies to any request for arbitration made pursuant to paragraph 5 of Article 25 of the Convention on or after August 30, 2019.

B. Notwithstanding subparagraphs A and B of paragraph IV, the Commencement Date for a MAP case that was already under consideration by the competent authorities as of August 30, 2019 will be August 30, 2019 (See paragraph 3 of Article XV of the Protocol amending the Convention signed at Washington on 24 January 2013).

C. Both competent authorities may modify or supplement this Arrangement by an exchange of letters between them.

For the Competent Authority of Japan

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KOMIYA Atsushi  
Deputy Commissioner  
International Affairs  
National Tax Agency

Date:

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For the Competent Authority of the United States of America

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Douglas W. O’Donnell  
Commissioner,  
Large Business and International Division  
Internal Revenue Service

Date:

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**Attachment 1 - Formats in the United States**

**1-1: Taxpayer Request for MAP Arbitration and Nondisclosure Statement**

**1-2: Nondisclosure Statement of Taxpayer's Authorized Representative**

**1-3: Taxpayer Authorization to Disclose Tax Information for Purposes of Treaty MAP Arbitration Proceedings**

**1-4: Declaration of Arbitrator**

**Attachment 2 - Formats in Japan**

**2-1: Nondisclosure Statement of Taxpayer and Taxpayer's Authorized Representative (English translation – Japanese text can be found at <https://www.irs.gov/pub/irs-utl/US-Japan%20Arbitration%20Implementation%20Arrangement%201.pdf>)**

**2-2: Sample Contract between the National Tax Agency and Arbitrator (Clauses Regarding Confidentiality) (Japanese text omitted and can be found at <https://www.irs.gov/pub/irs-utl/US-Japan%20Arbitration%20Implementation%20Arrangement%201.pdf>)**

Attachment 1-1

TAXPAYER [ ] REQUEST FOR MAP ARBITRATION AND [ ]<sup>1</sup> NONDISCLOSURE STATEMENT

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NAME OF TAXPAYER

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ADDRESS

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CITY	STATE	COUNTRY	POSTAL CODE (ZIP CODE)
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The above-named taxpayer hereby [requests and] consents to the competent authorities of the United States and Japan undertaking an arbitration proceeding described in paragraphs 5, 6 and 7 of Article 25 (Mutual Agreement Procedure) of the Convention between the Government of Japan and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Washington on 6 November 2003 as amended by the Protocol signed at Washington on 24 January 2013 and paragraph 14 of the Protocol signed at Washington on 6 November 2003 as amended by the Protocol signed at Washington on 24 January 2013, as necessary in order to reach a mutual agreement under Article 25 regarding the request filed with the [United States/Japanese] Competent Authority on  [date] .

This consent and nondisclosure statement also covers the following concerned persons<sup>2</sup> that the taxpayer has the legal authority to bind:

[Enter name and address of each such concerned person. If none, enter "Not Applicable."]

The following concerned persons, if any, are not covered by this consent and nondisclosure statement (and therefore must submit a separate consent and nondisclosure statement on their own behalf):

[Enter name and address of each such concerned person. If none, enter "Not Applicable."]

In making this consent, the taxpayer and, if applicable, each of the concerned persons covered by this consent and nondisclosure statement, agrees not to disclose to any person (other than the taxpayer's authorized representative or agent, another concerned person, its authorized representative or agent, or one of the competent authorities or its authorized representative<sup>3</sup>) any information received during the course of the arbitration proceeding from either Contracting State or the arbitration panel, other than the determination of such panel.

The following persons are all of the representatives or agents of the taxpayer or, if applicable, the specified concerned person, who have been authorized to assist the taxpayer or specified concerned person in the mutual agreement procedure to which this consent and nondisclosure statement applies. Attached to this consent and nondisclosure statement are the nondisclosure statements of each of these representatives and agents, as is required by paragraph 5 of Article 25 of the above-mentioned Convention.

[Enter name and address of each such representative or agent and the concerned person(s) for which each is acting. If none, enter "Not Applicable."]

The information, positions, arguments, or analyses contained in any position paper submitted for consideration of the arbitration panel will be previously presented, and any annexes to such position paper will be documents previously made available, to both competent authorities for their consideration during negotiations prior to the beginning of arbitration.

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<sup>1</sup> A taxpayer may make a request for MAP arbitration in a separate letter, but must make its nondisclosure statement in this form.

<sup>2</sup> As defined in the relevant treaty provisions, the term "concerned person" means the taxpayer requesting mutual agreement procedure assistance from a competent authority under Article 25 and any other person whose tax liability to either the United States or Japan may be directly affected by the mutual agreement arising from that request. A concerned person that has the legal authority to bind any other concerned person(s) on this matter may do so in a comprehensive statement.

<sup>3</sup> The U.S. Competent Authority has authorized the International Centre for Dispute Resolution (ICDR), a division of the American Arbitration Association, to act on its behalf with respect to certain designated matters concerning the arbitration proceeding.



[Under penalties of perjury]<sup>4</sup>, I declare that I have examined this consent and nondisclosure statement and any accompanying attachments and to the best of my knowledge and belief, they are true, correct, and complete. Furthermore, I certify that I have the legal authority to execute this consent and nondisclosure statement on behalf of each concerned person covered by it and to bind each concerned person to its terms.

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Date

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Signature

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Printed Name

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Position

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<sup>4</sup>Only in the US.

**Attachment 1-2**

**NONDISCLOSURE STATEMENT OF TAXPAYER'S AUTHORIZED REPRESENTATIVE**

I hereby agree that neither I nor any member of my firm's office staff nor any other person who may assist me or the firm in the mutual agreement proceeding requested in the letter of [date] submitted by [name of taxpayer] to the competent authorities of the United States and Japan will disclose to any person (other than the taxpayer, another concerned person,<sup>5</sup> its authorized representative or agent, or one of the competent authorities or its authorized representative<sup>6</sup>) any information received during the course of the arbitration proceeding from either Contracting State or the arbitration panel, other than the determination of such panel.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Position

\_\_\_\_\_

<sup>5</sup>As defined in the relevant treaty provisions, the term "concerned person" means the taxpayer requesting mutual agreement procedure assistance from a competent authority under Article 25 of the Convention between the Government of Japan and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and any other person whose tax liability to either the United States or Japan may be directly affected by the mutual agreement arising from that request.

<sup>6</sup>The U.S. Competent Authority has authorized the International Centre for Dispute Resolution (ICDR), a division of the American Arbitration Association to act on its behalf with respect to certain designated matters concerning the arbitration proceeding.

Attachment 1-3

**TAXPAYER AUTHORIZATION TO DISCLOSE TAX INFORMATION FOR PURPOSES OF TREATY MAP  
ARBITRATION PROCEEDINGS**

NAME OF TAXPAYER

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U.S. TAX IDENTIFICATION NUMBER (e.g., EIN)

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ADDRESS

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CITY	STATE	COUNTRY	POSTAL CODE (ZIP CODE)
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The above-named taxpayer, in accordance with its request of [date], that the competent authorities of the United States and Japan undertake an arbitration proceeding described in paragraphs 5, 6 and 7 of Article 25 of the Convention between the Government of Japan and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Washington on 6 November 2003 as amended by the Protocol signed at Washington on 24 January 2013 and paragraph 14 of the Protocol signed at Washington on 6 November 2003 as amended by the Protocol signed at Washington on 24 January 2013, consents to the disclosure by the competent authorities of Japan and the United States of any and all returns and return information with respect to the taxpayer's mutual agreement procedure (MAP) request submitted to the competent authorities on [date], to the individuals appointed (or identified for potential appointment pending clearance) by the respective competent authorities to arbitrate the MAP case, the individual appointed (or identified for potential appointment pending clearance) as the Chair of the arbitration panel, and the following representatives, if any, of the respective competent authorities who are authorized by the competent authority to act on its behalf with respect to certain designated matters concerning the arbitration proceeding:

In the case of the United States: International Centre for Dispute Resolution (ICDR), a division of the American Arbitration Association

In the case of Japan: \_\_\_\_\_.

In the case of a consolidated group of U.S. corporations, this consent is made in regard to all such information concerning the following members of the consolidated group, who are the subjects of the mutual agreement request:

[Enter name and address of each consolidated group member, if any, who is a concerned person.<sup>7</sup> If none, enter "Not Applicable."]

I certify that I have the legal authority to execute a request for or consent to disclose a return or return information to disclose information to third parties (as described in Treas. Reg. §301.6103(c)-1(e)(4)) and I hereby make this consent on behalf of the taxpayer, including each of the members of the consolidated group listed above.<sup>8</sup>

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Position

<sup>7</sup>As defined in the relevant treaty provisions, the term "concerned person" means the taxpayer requesting mutual agreement procedure assistance from a competent authority under Article 25 and any other person whose tax liability to either the United States or Japan may be directly affected by the mutual agreement arising from that request.

<sup>8</sup>Each taxpayer or concerned person (as defined in footnote 1) whose U.S. tax liability may be directly affected by the mutual agreement procedure request must sign a consent. In the case of a consolidated group (as defined in Treas. Reg. 1.1502-1(h)), a person authorized by law to act for the common parent should execute the consent on behalf of the group. See Treas. Reg. §1.1502-77(a).

**Attachment 1-4**

**Declaration of Arbitrator**

In the matter of the Mutual Agreement Procedure case under Article 25 of the Convention between the Government of Japan and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (“Convention”) involving the following Concerned Persons:

[Names and Addresses of taxpayers that will be directly affected by the decision]

Paragraphs 5, 6 and 7 of Article 25 (Mutual Agreement Procedure) of the Convention, paragraph 14 of the Protocol of 2003 to that Convention, and the Implementing Arrangement between the Competent Authorities of Japan and The United States (Implementing Arrangement), provide rules and procedures under which the Japan – U.S. arbitration process (the Proceeding) will operate.

I certify that I can serve impartially in this case, meet the conditions of paragraph VII.A of the Implementing Arrangement at this time, and shall remain independent of the Contracting States and Concerned Persons during the entire arbitration proceeding and for a reasonable period of time thereafter.

Past or existing facts or circumstances that might be likely to give rise to justifiable doubts as to my impartiality or independence, if any, are identified in an Attachment to this Declaration.

Notwithstanding such relationships and interests, if any, I believe that I can be impartial and can exercise independent judgment in making my decisions in the Proceeding and thus to the best of my knowledge and belief, there is no reason why I should not serve as an Arbitrator with respect to the above-noted case. If, at any stage during the Proceeding, any new fact or circumstance arises that might give rise to such doubts, I shall promptly disclose such fact or circumstance to both competent authorities.

I understand that with regard to any information received from International Centre for Dispute Resolution, a division of the American Arbitration Association, the Japan National Tax Agency, and the U.S. Internal Revenue Service in connection with the Proceeding, I and my staff, if any, are considered to be among the “persons or authorities” involved in the administration of taxes covered by Article 26 (Exchange of Information) of the Convention. I and my staff agree to abide by and be subject to the confidentiality and nondisclosure provisions of Articles 25[MAP] and 26[EIOI] of the Convention and the applicable domestic laws of Japan and the United States concerning the confidentiality of tax information. In the event those provisions conflict, the most restrictive condition shall apply. I confirm that I have the legal authority to bind my staff in this matter and will ensure they are aware of their obligations regarding confidentiality and nondisclosure. In particular, I agree that I may not disclose any information relating to the Proceeding, except as permitted by the Convention and the domestic laws of Japan and the United States. In addition, all material received and prepared in the course of, or relating to the Proceeding shall be considered to be information exchanged between Japan and the United States and shall be destroyed in accordance with paragraph XIV.C of the Implementing Arrangement referenced above.

[Under penalties of perjury<sup>9</sup>], I hereby accept appointment as an Arbitrator in this case, and will fairly decide the matters in controversy between the Competent Authorities of Japan and the United States in accordance with the Convention and the related agreements referred to above. I declare that these statements and any accompanying attachments are, to the best of my knowledge and belief, true, correct, and complete.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Address

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_

<sup>9</sup>Only in US.



**Attachment 2-1 (English Translation)**

\* This is the English translation of the original Japanese Nondisclosure Statement. This English translation is provided for information purpose only.

NONDISCLOSURE STATEMENT

I hereby promise not to disclose to any person (except other concerned persons that means the presenter of the case to a competent authority and all other persons, if any, whose tax liability to either Contracting State may be directly affected by a mutual agreement) any information received during the course of the arbitration proceeding from the either competent authorities or the arbitration panel, other than the determination of such panel.	
Signature of the Person Who Request for Arbitration	
Date	
Signature of the Representative of the Consolidated Subsidiary	
Date	
Signature of the Authorized Representative or Agent of above	
Date	

Instructions for Nondisclosure Statement

1. This form is used when the person who requested for mutual agreement procedure requests for arbitration and the person and his/her authorized representatives or agents are required not to disclose any information received during the course of the arbitration proceeding under the provision of the applicable Tax Convention.
2. Upon promising not to disclose any information, this form must be submitted with the Request for Arbitration to the Office of Mutual Agreement Procedures of the National Tax Agency.
3. After having read the printed contents of the statement, the person who signs this form must fill in each column as follows:
  - (1) The person who requests for arbitration (where the person is a corporation, the representative of the corporation) must sign his/her name in the column "Signature of the Person Who Request for Arbitration".
  - (2) Where the request for arbitration concerns transactions of the consolidated subsidiary of the person who requests for arbitration, the representative of the consolidated subsidiary must sign his/her name in the column "Signature of the Representative of the Consolidated Subsidiary".
  - (3) Where the person who requests for arbitration (if the request for arbitration concerns transactions of the consolidated subsidiary, the person who requests for arbitration or that consolidated subsidiary) has submitted Authorization of the Tax Representation for mutual agreement procedure, the authorized representative for mutual agreement procedure (where the authorized representative is a corporation, the representative of the corporation) must sign in the column "Signature of the Authorized Representative or Agent of above".
  - (4) Where there are two or more consolidated subsidiaries in (2) or authorized representatives in (3), please submit their statements with their signatures in a separate sheet.

## Attachment 2-2

[Japanese text omitted]

### Sample Contract between the National Tax Agency and Arbitrator (Clauses Regarding Confidentiality)

\_\_\_\_\_ (the responsible officer for this contract for the National Tax Agency, hereinafter referred to as “X”) and \_\_\_\_\_ (an arbitrator, hereinafter referred to as “Y”) enter into this contract regarding the duties of an arbitration panel for a mutual agreement procedure case under paragraph 5, 6 and 7 of Article 25 of the Convention between the Government of Japan and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as the “Duties of Arbitration Panel”) as follows.

#### Article...(Definitions)

The “Confidential Information” referred to in this contract means any information which X discloses to Y in connection with the Duties of Arbitration Panel regardless of the format of the medium through which it is disclosed.

#### Article... (Confidentiality)

1 Y shall keep Confidential Information confidential.

2 Y may not use Confidential Information for a purpose other than the Duties of Arbitration Panel, nor may Y disclose Confidential Information to, or allow it to be used by, a third party other than other arbitrators who belong to the arbitration panel or a person who helps Y perform the Duties of Arbitration Panel (hereinafter referred to as “Y’s Staff”).

3 Y may not make a copy of Confidential Information for a purpose other than the Duties of Arbitration Panel.

4 Y shall make Y’s Staff comply with the obligations prescribed in this article.

5 Where there arises a possibility of the leakage of the Confidential Information, regardless of the cause, Y shall immediately inform X of this fact and follow X’s instructions on how to deal with the situation.

6 Immediately after the completion of the Duties of Arbitration Panel or the termination of this contract, Y shall return all media containing Confidential Information (including any copy or reproduction of the media and any summary or excerpt of Confidential Information) that Y has received or created in connection with the Duties of Arbitration Panel and delete all information that may be stored on any computer, electronic device or media.

7 The provisions of this article shall survive after the termination of this contract.

#### Article...(Penalties for breach of contract and compensation for damages)

1 Where Y or Y’s Staff violates an obligation prescribed in this contract, X may file a claim against Y for the amount equal to the contract amount set forth in this contract, as a penalty for breach of contract.

2 Where damages are caused on X or the National Tax Agency which includes all or any organization that belongs to the body of the National Tax Agency such as regional taxation bureaus and tax offices (hereinafter collectively referred to as the “National Tax Agency”) by a cause to which Y or Y’s Staff is responsible, Y shall compensate X for all such damage, in addition to paying the penalty referred to in paragraph 1.

3 The damages referred to in paragraph 2 include any amount that the National Tax Agency is ordered to pay as a result of a claim, court proceedings, appeal, etc. (hereinafter collectively referred to as a “Claim”) initiated by a taxpayer or a related party of the taxpayer in connection with the mutual agreement procedure case subject to arbitration procedure and all expenses required in order for the National Tax Agency to respond to such Claim.

#### Article... (Cancellation of the contract)

X may cancel this contract at any time without any prior notice if Y violates the obligations prescribed in this contract or if X finds there is a significant obstacle for Y’s fulfillment of Y’s contractual obligations.

Article... (Prohibition against the transfer of rights and obligations)

Y may not transfer or assign the rights and obligations under this contract to a third party in a whole or in part, nor may Y make rights and obligations under this contract subject to the rights of a third party in whole or in part (including, but not limited to mortgaging such rights and obligations).

Article... (Prohibition against subcontracting and entrustment)

1 Y may not subcontract or entrust the Duties of Arbitration Panel to a third party in whole or in part.

2 With prior written consent from X, Y may use Y's Staff to perform the Duties of Arbitration Panel. In such a case, Y is fully liable to X for the conduct of Y's Staff.

Article... (Resolution of Disputes)

Any dispute arising out of or in relation to this contract goes before the Tokyo District Court as the court of exclusive jurisdiction in the first trial.

Article... (Applicable laws)

This contract is governed by, and is interpreted and executed in accordance with, Japanese laws.

Article... (Language)

The original copy of this contract means the original copy that has been drawn up in the Japanese language. Any translation of the original copy of this contract into another language is a duplicate, and is not legally binding.

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
FR—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.



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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2020–27 through 2020–52 is in Internal Revenue Bulletin 2020–52, dated December 27, 2020.

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# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at [www.irs.gov/irb/](http://www.irs.gov/irb/).

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