

No. 55547*

**Austria
and
Japan**

Convention between the Republic of Austria and Japan for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance (with protocol). Vienna, 30 January 2017

Entry into force: 27 October 2018, in accordance with article 30

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**Autriche
et
Japon**

Convention entre la République d'Autriche et le Japon portant sur l'élimination de la double imposition en matière d'impôts sur le revenu et sur la prévention de l'évasion et la fraude fiscales (avec protocole). Vienne, 30 janvier 2017

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[ENGLISH TEXT – TEXTE ANGLAIS]

**CONVENTION BETWEEN
THE REPUBLIC OF AUSTRIA AND JAPAN
FOR THE ELIMINATION OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME
AND THE PREVENTION OF TAX EVASION AND AVOIDANCE**

The Republic of Austria and Japan,

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States),

Have agreed as follows:

**ARTICLE 1
PERSONS COVERED**

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that Contracting State, as the income of a resident of that Contracting State. For the purposes of this paragraph, the term "fiscally transparent" means situations where, under the tax law of a Contracting State, income or part thereof of an entity or arrangement is taxed not at the level of the entity or arrangement but at the level of the persons who have an interest in that entity or arrangement as if that income or part thereof were directly derived by such persons at the time when that income or part thereof is realised whether or not that income or part thereof is distributed by that entity or arrangement to such persons.
3. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under Articles 9, 18, 19, 23, 24, 25 and 28.

**ARTICLE 2
TAXES COVERED**

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of any property and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are:
- (a) in the case of Austria:
 - (i) the income tax; and
 - (ii) the corporation tax(hereinafter referred to as "Austrian tax");
 - (b) in the case of Japan:
 - (i) the income tax;
 - (ii) the corporation tax;
 - (iii) the special income tax for reconstruction;
 - (iv) the local corporation tax; and
 - (v) the local inhabitant taxes(hereinafter referred to as "Japanese tax").
4. This Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
- (a) the term "Austria" means the Republic of Austria;
 - (b) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Austria or Japan, as the context requires;
 - (d) the term "person" includes an individual, a company and any other body of persons;
 - (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (f) the term "enterprise" applies to the carrying on of any business;

- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term "competent authority" means:
 - (i) in the case of Austria, the Federal Minister of Finance or his authorised representative; and
 - (ii) in the case of Japan, the Minister of Finance or his authorised representative;
- (j) the term "national", in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- (k) the term "business" includes the performance of professional services and of other activities of an independent character; and
- (l) the term "pension fund" means any person that:
 - (i) is established under the laws of a Contracting State;
 - (ii) is operated principally to administer or provide pensions, retirement benefits or other similar remuneration or to earn income for the benefit of one or more persons operated principally to administer or provide pensions, retirement benefits or other similar remuneration; and
 - (iii) is exempt from tax in that Contracting State with respect to income derived from the activities described in clause (ii).

2. As regards the application of this Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that Contracting State prevailing over a meaning given to the term under other laws of that Contracting State.

**ARTICLE 4
RESIDENT**

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of management, place of head or main office or any other criterion of a similar nature, and also includes that Contracting State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of this Convention, having regard to its place of effective management, its place of head or main office, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Convention.

**ARTICLE 5
PERMANENT ESTABLISHMENT**

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;