

STRATEGIC M&A TAX ADVICE**Protocol Amending Tax Convention with the United States
Executed****September 27, 2019****Introduction**

On August 30, 2019, the Protocol amending 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 No. 8) (Ministry of Foreign Affairs) entered into force.

Key Points

Article 2 of the Protocol states that Paragraph 4 of Article 4 of the Convention shall be deleted and replaced with the following: “4. Where a person other than an individual is a resident of both Contracting States (Japan and the United States), such person shall not be considered a resident of either Contracting State for the purposes of its claiming any benefits provided by this Convention.”

Articles 3 and 4 of the Protocol stipulate the enlargement of the subject of exemption of taxes withheld at source. The subject of exemption of taxes withheld at source on investment income (dividends and interest) will be enlarged as follows:

	Before	After
Dividends	Exemption (Shareholding: more than 50%, Holding period: 12 months or longer)	Exemption (Shareholding: at least 50%, Holding period: 6 months or longer)
Interest	10% in principle Exemption (Interest received by financial institutions, etc.)	Exemption in principle

According to Article 5 of the Protocol, Paragraph 2 of Article 13 of the Convention shall be deleted and replaced with the following: “2. For the purposes of this Article the term

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“real property situated in the other Contracting State” shall include:

- (a) real property referred to in Article 6;
- (b) where that other Contracting State is Japan, shares or interests in a company, partnership or trust deriving the value of its property directly or indirectly principally from real property referred to in Article 6 and situated in Japan; and
- (c) where that other Contracting State is the United States, a United States real property interest.”

Article 11 of the Protocol introduces the Arbitration System to Mutual Agreement Procedure. With respect to the mutual agreement procedure concerning the taxation which is not in accordance with the provisions of the Convention, the Protocol introduces an arbitration system to resolve the dispute by the decision of an arbitration panel composed of third parties at the request of a tax payer in the case where a dispute has not been resolved by the consultation between the tax authorities of the two countries within two years.

According to Article 12 of the Protocol, Article 26 of the Convention shall be revised to provide for the exchange of information in accordance with the OECD Model Tax Convention, which is the international standard.

Article 13 of the Protocol reinforces assistance in the collection of taxes. While the scope of application of the system to lend assistance to each other in the collection of revenue claims of the other country (assistance in the collection of taxes) is limited to cases of abuse of the Convention in the current Convention, the scope will be expanded after its amendment so that the system will apply to delinquent general revenue claims. With regard to the taxes of Japan, the income tax, the corporation tax, the special income tax for reconstruction, the special corporation tax for reconstruction, the consumption tax, the inheritance tax and the gift tax are covered under the assistance in the collection of taxes.

Finally, Article 15 of the Protocol states, “The Protocol shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible. It shall enter into force on the date of the exchange of instruments of ratification”.

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