

Agreement
Between the Republic of Turkey and Japan
For the Avoidance of Double Taxation
and the Prevention of Fiscal Evasion
With Respect to Taxes on Income

The Government of the Republic of Turkey and the Government of Japan,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2

1. The taxes which are the subject of this Agreement are:

a) in the Republic of Turkey (hereinafter referred to as "Turkey"):

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the levy imposed on the income tax and the corporation tax.

b) in Japan :

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the local inhabitant taxes.

2. This Agreement shall apply also to any identical or substantially similar taxes, whether national or local, which are imposed after the date of signature of this Agreement in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 3

1. For the purposes of this Agreement, unless the context otherwise requires:

- a) the terms "a Contracting State" and "the other Contracting State" mean Turkey or Japan, as the context requires;
- b) the term "tax" means Turkish tax or Japanese tax, as the context requires;
- c) the terms "Turkish tax" and "Japanese tax" mean respectively any tax imposed in Turkey and Japan to which this Agreement applies in accordance with the provisions of paragraphs 1 and 2 of Article 2;

- 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 which is treated as a body corporate for tax purposes;
- f) 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;
- g) the term "nationals" means:
- (i) in relation to Turkey, all individuals possessing the Turkish nationality in accordance with the Turkish Nationality Code; and all legal persons or associations deriving their status as such from the law in force in Turkey;
 - (ii) in relation to Japan, all individuals possessing the nationality of Japan and all juridical persons created or organized under the laws of Japan and all organizations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organized under the laws of Japan;
- 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; and
- i) the term "competent authority" means :
- (i) in Turkey, the Minister of Finance and Customs or his authorised representative;
 - (ii) in Japan, the Minister of Finance or his authorised representative.

2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Agreement applies.

Article 4

1. For the purposes of this Agreement, 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, legal head office, place of head or main office or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:

- a) he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);
- b) if the Contracting State in which he has his centre of vital interests cannot be determined, he shall be deemed to be a resident 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 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, then the competent authorities of the Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Agreement .

Article 5

1. For the purposes of this Agreement, 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;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only if it lasts more than six months.

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that other Contracting State for more than six months in connection with a building site or construction, installation or assembly project which is being undertaken in that other Contracting State.

5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it furnishes in that other Contracting State services including consultancy services through employees or other personnel - other than an agent of an independent status to whom the provisions of paragraph 9 apply - provided that such activities continue (for the same project or two or more connected projects) for a period or periods aggregating more than six months within any twelve-month period.

6. Notwithstanding the provisions of the preceding paragraphs of this Article, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom the provisions of paragraph 8 apply - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

8. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

9. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "immovable property" shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in that other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

2. In respect of the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of Turkey, shall be exempt from the enterprise tax in Japan, and, if an enterprise of Japan, shall be exempt from any tax similar to the enterprise tax in Japan which may hereafter be imposed in Turkey.

3. The provisions of the preceding paragraphs of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

1. Where

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ

from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes, in accordance with the provisions of paragraph 1, in the profits of an enterprise of that Contracting State-and taxes accordingly-profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and where the competent authorities of the Contracting States agree, upon consultation, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement.

Article 10

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 per cent of the voting shares of the company paying the dividends during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place;

b) 15 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply:

a) if the beneficial owner of the dividends, being a resident of Turkey, carries on business in Japan of which the company paying the dividends is a resident, through a permanent establishment situated in Japan, or performs in Japan independent personal services from a fixed base situated in Japan, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

b) if the beneficial owner of the dividends, being a resident of Japan, carries on business in Turkey of which the company paying the dividends is a resident, through a permanent establishment situated in Turkey, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other Contracting State.

Article 11

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed:

- a) 10 per cent of the gross amount of the interest if it is received by any financial institution;
- b) 15 per cent of the gross amount of the interest in other cases.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, a local authority thereof or the Central Bank of that other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums attaching to such securities, bonds or debentures.

5. The provisions of paragraphs 1 and 2 shall not apply:

a) if the beneficial owner of the interest, being a resident of Turkey, carries on business in Japan in which the interest arises, through a permanent establishment situated in Japan, or performs in Japan independent personal services from a fixed base situated in Japan, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

b) if the beneficial owner of the interest, being a resident of Japan, carries on business in Turkey in which the interest arises, through a permanent establishment situated in Turkey, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, as well as receipts from a bare boat charter of ships or aircraft (other than those dealt with in Article 8).

4. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

5. The provisions of paragraphs 1, 2 and 4 shall likewise apply to proceeds arising from the alienation of any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, or secret formula or process, except when the provisions of paragraph 2 of Article 13 are applicable to the gains to be derived from such proceeds.

6. The provisions of paragraphs 1, 2 and 5 shall not apply:

a) if the beneficial owner of the royalties, being a resident of Turkey, carries on business in Japan in which the royalties arise, through a

permanent establishment situated in Japan, or performs in Japan independent personal services from a fixed base situated in Japan, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

b) if the beneficial owner of the royalties, being a resident of Japan, carries on business in Turkey in which the royalties arise, through a permanent establishment situated in Turkey, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of any property, other than immovable property, forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of any property, other than immovable property, pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in the preceding paragraphs of this Article and arising in the other Contracting State may be taxed in that other Contracting State.

Article 14

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days in any consecutive twelve-month period. If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid period or periods.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:

- a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

Article 16

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 17

1. Notwithstanding the provisions of Articles 14 and 15, income derived by an individual who is a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised by an individual who is a resident of the first-mentioned Contracting State pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person who is a resident of the other Contracting State, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the first-mentioned Contracting State.

Such income shall, however, be exempt from tax in the first-mentioned Contracting State if such activities are exercised pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

Article 18

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and annuities paid to such a resident shall be taxable only in that Contracting State.

Article 19

1. a) Remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that Contracting State or local authority thereof in the discharge of functions of a governmental nature shall be taxable only in that Contracting State.

b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that other Contracting State who:

- (i) is a national of that other Contracting State; or
- (ii) did not become a resident of that other Contracting State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds to which contributions are made by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that Contracting State or local authority thereof shall be taxable only in that Contracting State.

b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

Article 20

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax in the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State. The same shall apply to remuneration which such student or business apprentice derives from an employment which he exercises in the first-mentioned Contracting State for a period or periods not exceeding 183 days in a calendar year, in order to obtain practical experience related to his education or training.

Article 21

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the

recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in that other Contracting State.

Article 22

1. Double taxation for the residents of Turkey shall be eliminated as follows:

Where a resident of Turkey derives income which, in accordance with the provisions of this Agreement, may be taxed in Japan, Turkey shall, subject to the provisions of Turkish taxation laws regarding credit for foreign taxes, allow as a deduction from the tax on income of that resident an amount equal to the tax on income paid in Japan.

Such deduction shall not, however, exceed that part of the Turkish tax, as computed in Turkey before the deduction is given, which is appropriate to the income which may be taxed in Japan.

2. Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan:

a) Where a resident of Japan derives income from Turkey which may be taxed in Turkey in accordance with the provisions of this Agreement, the amount of Turkish tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

b) Where the income derived from Turkey is a dividend paid by a company which is a resident of Turkey to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares of the company paying the dividend, or of the total shares issued by that company, the credit shall take into account the Turkish tax payable by the company paying the dividend in respect of its income.

3. For the purposes of the credit referred to in sub-paragraphs a) and b) of paragraph 2, there shall be deemed to have been paid by the taxpayer the amount which would have been paid as Turkish tax under the laws of Turkey and in accordance with this Agreement if the Turkish tax had not been reduced or relieved in accordance with the special incentive measures designed to promote economic development in Turkey, effective on the date of signature of this Agreement or which may be introduced in the future in the Turkish tax laws in modification of or in addition to the existing measures, provided that an agreement is made between the two Governments in respect of the scope of the benefit accorded to the taxpayer by the said measures.

4. The provisions of paragraph 3 shall cease to have effect after ten years from the first day of January of the calendar year next following that in which this Agreement enters into force.

Article 23

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Contracting State are or may be subjected.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

Article 24

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

Article 25

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to the provisions of this Agreement, or for the prevention of fiscal evasion with respect to such taxes. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities, including courts, involved in the assessment or collection of the taxes covered by this Agreement or the determination of appeals in relation thereto.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation :

- a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State ;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 26

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 27

1. Each of the Contracting States shall endeavour to collect such taxes imposed by the other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Agreement by that other Contracting State shall not be enjoyed by persons not entitled to such benefits. The Contracting State making such collections shall be responsible to the other Contracting State for the sums thus collected.

2. In no case shall the provisions of paragraph 1 be construed so as to impose upon either of the Contracting State the obligation to carry out administrative measures at variance with the regulations and practices of the Contracting State endeavouring to collect the tax or which would be contrary to the public policy (ordre public) of that Contracting State.

Article 28

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Tokyo as soon as possible.

2. This Agreement shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect:

- a) in Turkey:

for taxes with respect to any taxable year beginning on or after the first day of January of the calendar year next following that of entry into force of this Agreement; and

b) in Japan:

as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

Article 29

This Agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June of any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination and, in such event, this Agreement shall cease to have effect:

a) in Turkey:

for taxes with respect to any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given; and

b) in Japan:

as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Ankara on March 8, 1993, in the English language.

For the Government
of the Republic of Turkey :

For the Government
of Japan :

Sümer ORAL

Yoichi YAMAGUCHI

PROTOCOL

At the signing of the Agreement between the Republic of Turkey and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement.

1. With reference to paragraph 1 of Article 4 of the Agreement, it is understood that the term "legal head office" means the statutory seat of a person other than an individual prescribed in the Turkish tax laws and the term "head or main office" means head or main office prescribed in the Japanese tax laws.

2. With reference to paragraph 7 of Article 5 of the Agreement, it is understood that where a person - other than an agent of an independent status to whom the provisions of paragraph 8 of the said Article apply - habitually maintains in a Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, even if such person does not have, or does not habitually exercise in the first-mentioned Contracting State an authority to conclude contracts in the name of the enterprise. However, this provision shall not apply unless it is proved that such person undertakes not only the regular delivery of the goods or merchandise, but also undertakes virtually all the activities connected with the sale of the goods or merchandise except for exercising the above-mentioned authority to conclude contracts.

3. With reference to Articles 5 and 7 of the Agreement, it is understood that where income from furnishing of services carried on by an enterprise of Japan is taxed in Turkey in accordance with the provisions of paragraph 5 of Article 5 and Article 7 of the Agreement, such income is deemed, for the Turkish taxation purposes, as an income from the furnishing of professional services by that enterprise of Japan. This provision shall not affect the imposition of a withholding tax on such income in accordance with the Turkish tax law. However, the withholding tax so charged shall not exceed 15 per cent of the gross amount of the payments made for such professional services and is credited against the final Turkish tax liability on such income.

4. With reference to paragraph 3 of Article 7 of the Agreement, it is understood that no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of:

- a) royalties, fees or other similar payments in return for the use of patents or other rights;
- b) commission, for specific services performed or for management; and
- c) interest on money lent to the permanent establishment; except where the enterprise is a banking institution.

5. With reference to Article 8 of the Agreement, it is understood that profits from the operation of ships or aircraft in international traffic shall also include:

- a) profits derived from the rental on a full basis or on a bare boat basis of ships or aircraft;

- b) profits derived from the use of containers (including trailers and related equipment for the transport of containers) used in international traffic;

If such profits are incidental to profits to which the provisions of paragraph 1 of this Article apply.

6. With reference to sub-paragraphs a) and b) of paragraph 2 of Article 10 of the Agreement, in the case of Turkey, the tax rates referred to therein shall be 15 per cent for sub-paragraph a) and 20 per cent for sub-paragraph b), respectively, where the amount of the Turkish tax imposed on the income of the company paying dividends is less than 40 per cent of such income which is derived in the accounting period ending immediately before the date when such dividends become payable.

7. With reference to paragraph 3 of Article 10 of the Agreement, it is understood that the term "dividends", in the case of Turkey includes income derived from an investment fund and investment trust.

8. Nothing in the Agreement shall be construed as preventing a Contracting State from imposing a tax on the profits of a permanent establishment situated in that Contracting State of a company which is a resident of the other Contracting State (other than those derived from the operation of ships or aircraft in international traffic), after deducting the tax which would be chargeable on the profits of the permanent establishment in accordance with the relevant provisions of the Agreement, provided that such tax shall not exceed 10 per cent of the remaining amount of the profits after such deduction of tax. However, in the case of Turkey, such tax shall not exceed 15 per cent of the remaining amount of the profits after such deduction of tax, where the amount of the Turkish taxes chargeable on the profits of the permanent establishment is less than 40 per cent of its profits.

9. With reference to sub-paragraph a) of paragraph 2 of Article 11 of the Agreement, it is understood that the term "financial institution" means banks and insurance companies. The competent authorities of the Contracting States may include other institutions of a similar character in the term "financial institution" by mutual agreement.

10. With reference to paragraph 2 of Article 24 of the Agreement, it is understood that, in the case of Turkey, the taxpayer must claim the refund resulting from the mutual agreement referred to in the said paragraph within a period of one year after the Turkish tax administration has notified the taxpayer of the result of such mutual agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Ankara on March 8, 1993, in the English language.

For the Government
of the Republic of Turkey :

For the Government
of Japan :

Sümer ORAL

Yoichi YAMAGUCHI

Ankara, March 8 , 1993

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

"I have the honour to refer to paragraph 3 of Article 22 of the Agreement between the Republic of Turkey and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of the Republic of Turkey, the following understanding reached between the Government of the Republic of Turkey and the Government of Japan;

The measures set forth in the following paragraphs and Articles of the Income Tax Law, 1961 (Law No. 193 of 1961) and the Corporation Tax Law, 1949 (Law No. 5422 of 1949) are "the special incentive measures designed to promote economic development in Turkey, effective on the date of signature of this Agreement" referred to in the said paragraph:

- (i) Paragraph 9 of Article 8 of the Corporation Tax Law and Additional Articles 1 to 6 of the Income Tax Law.

- (ii) Paragraph 15 of Article 8 of the Corporation Tax Law and Repeated Article 20 of the Income Tax Law.
- (iii) Temporary Article 19 of the Corporation Tax Law.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of the Government of Japan."

I have further the honour to confirm the understanding contained in Your Excellency's Note, on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Yoichi Yamaguchi
Ambassador Extraordinary
and Plenipotentiary of Japan
to the Republic of Turkey

His Excellency
Mr. Sümer Oral
Minister of Finance and
Customs of the Republic
of Turkey

Ankara, March 8, 1993

Excellency,

I have the honour to refer to paragraph 3 of Article 22 of the Agreement between the Republic of Turkey and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of the Republic of Turkey, the following understanding reached between the Government of the Republic of Turkey and the Government of Japan;

The measures set forth in the following paragraphs and Articles of the Income Tax Law, 1961 (Law No. 193 of 1961) and the Corporation Tax Law, 1949 (Law No. 5422 of 1949) are "the special incentive measures designed to promote economic development in Turkey, effective on the date of signature of this Agreement" referred to in the said paragraph:

- (i) Paragraph 9 of Article 8 of the Corporation Tax Law and Additional Articles 1 to 6 of the Income Tax Law.
- (ii) Paragraph 15 of Article 8 of the Corporation Tax Law and Repeated Article 20 of the Income Tax Law.
- (iii) Temporary Article 19 of the Corporation Tax Law.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Sömer ORAL
Minister of Finance and
Customs of the Republic
of Turkey

His Excellency
Mr. Yoichi YAMAGUCHI
Ambassador Extraordinary
and Plenipotentiary of Japan
to the Republic of Turkey