

Client Alert

Tokyo

BAKER & MCKENZIE

東京青山・青木・狛法律事務所

January 2009

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Japan and Brunei Darussalam Sign Tax Treaty

The governments of Japan and Brunei signed a double tax treaty on January 20, 2009. This is the first tax treaty concluded between the two countries. The new treaty seeks to clarify the taxation of investment and economic activities between the two countries. The conclusion of a tax treaty between Japan and Brunei reflects Japan's recent ongoing efforts to conclude tax treaties with resource-rich countries, such as Kazakhstan, Kuwait, Saudi Arabia and the United Arab Emirates.

A Japanese Ministry of Finance ("MOF") announcement provides the text of the treaty and also briefly outlines key points of the new treaty:

Reduced Withholding Tax Rates for Investment Income (Dividends, Interest and Royalties)

The following are the maximum tax rates applicable to investment income (dividends, interest and royalties) derived from the source country.

Income		Maximum tax rates
Dividends (Article 10)	10% or greater shareholder	5%
	Other dividends	10%
Interest (Article 11)		10%*
Royalties (Article 12)		10%

* Interest received by governments, central banks or certain government related financial institutions is exempt from tax.

Limited Taxation of Capital Gain Arising from Alienation of Corporate Shares

Gains from the alienation of corporate shares may only be taxed if (a) the person alienating the shares owns 25% or more of the outstanding shares of

the corporation; and (b) the total number of shares alienated during the relevant taxable year is 5% or more of the outstanding shares. This may be referred to as the “25/5% rule” and broadly follows the treatment applicable under Japanese domestic tax law. Special treatment is provided for real property holding companies, partnerships and trusts. Gain from the alienation of such interests is taxable unless the interests are publicly traded and the person alienating the interests owns less than 5% of the total of such interests.

Clarification of Host Country Taxation

The treaty confirms that taxation of a PE will be limited to attributable income of the PE.

“Sleeping Partnership” (“Tokumei Kumiai”) Distributions Taxable

Notwithstanding any other provisions of the treaty, distributions received from a TK (“sleeping” or “silent” partnership) arrangement may be taxed in accordance with the domestic law of the source country. Inclusion of this provision is consistent with Japan’s policy in recent treaty negotiations to close off the possibility of using the TK structure to avoid Japanese tax on investment returns as has been done under some of Japan’s older tax treaties which allowed TK distributions to be exempted from Japanese tax as “other income” not taxable by Japan.

Mutual Agreement Procedure

The treaty will contain a mutual agreement procedure provision allowing a taxpayer that considers itself to be subject to taxation not in accordance with the tax treaty to request resolution via a mutual agreement procedure.

Exchange of Information

The treaty will provide for the tax authorities of Japan and Brunei to exchange information for the purpose of ensuring the proper enforcement of their respective tax laws.

The full text of the treaty (English original), its full Japanese translation and the announcement from the MOF can be found respectively at:

English original:

<http://www.mof.go.jp/jouhou/syuzei/sy210120b.pdf>

Japanese translation:

<http://www.mof.go.jp/jouhou/syuzei/sy210120a.pdf>

MOF announcement:

<http://www.mof.go.jp/jouhou/syuzei/sy210120c.htm>