

## Japan\*

### *Estate Planning Summary*

#### 1. Overview of Japanese Inheritance Law

##### 1.1 Civil Law

The inheritance law part of the Japanese Civil Code is modeled mainly on the French Civil Code.<sup>1</sup> For example, it adopts universal succession and has legally reserved portions (the so-called “forced heirship”).<sup>2</sup>

##### 1.2 Conflict of Laws

The governing law for inheritance (including the intestacy rules and the legally reserved portion rules) is the law of the decedent’s nationality<sup>3</sup> with the possibility of *renvoi*.<sup>4</sup>

For example, if the decedent is a U.S. citizen, the law of the state most closely related to the decedent<sup>5</sup> governs. In most states within the United States, real property is generally governed by the laws of the jurisdiction of the real property’s location, and personal property is generally governed by the laws of the decedent’s domicile. Therefore, if the decedent had his domicile in Japan, his real properties and his bank accounts located in Japan will be inherited pursuant to the Japanese Civil Code.

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<sup>1</sup> Noriko Mizuno, *Souzokuhou Kaisei to Nihon Souzokuhou no Kadai* (Revision of the Japanese inheritance law and the issues in the future), 90-4 HORITSU JIHO (2018), at 1.

<sup>2</sup> However, the system of French *notaire* who is in charge of the administration and division of the estate was not introduced. *Id.* Instead, Japan has the system of family register (*koseki*), which plays an important role in the Japanese inheritance practice.

<sup>3</sup> Article 36 of the Act on General Rules for Application of Laws (Act No. 78 of June 21, 2006)(the “AGRAL”).

<sup>4</sup> Article 41 of the AGRAL.

<sup>5</sup> Article 38, Paragraph 3 of the AGRAL.

## 1.3 Administration of the Estate

### 1.3.1 No Probate Proceeding Because Heirs Inherit Debts

Because the Japanese Civil Code follows the concept of universal succession, the heirs automatically receive the ownership of the assets of the deceased and also inherit debts of the deceased.<sup>6</sup> Therefore, no probate proceeding exists in Japan.<sup>7</sup>

If there are multiple heirs, a creditor can request each heir to pay the debts according to his/her intestacy share, regardless of whether the decedent dies with a will or not. For example, suppose that a Japanese citizen named Taro died and that he owed \$100,000 to a creditor. The creditor will be able to find his heirs from the family registers (*koseki*) of Taro. The creditor can request payment of \$50,000 from his wife and \$25,000 from each of his two children.

### 1.3.2 Heirs or Executor Administer the Estate

The heirs or the executor designated in a will administer the estate, pay the unpaid debts and distribute the assets without having to refer to the public authority.<sup>8</sup>

Neither the Japanese court nor the Japanese notary plays a role in this process of administration and distribution after death, unlike in the United States or France.

### 1.3.3 Family Register (*koseki*) Plays an Important Role in Japanese Inheritance Practice

Family registers (*koseki*) are official documents made only for Japanese citizens.

Family registers (*koseki*) are made per household (father, mother and children) and not per individual. Birth, marriage, divorce, adoption and death are all recorded in the family register (*koseki*),<sup>9</sup> which proves the existence of parental relationships and spousal relationships. Further, by collecting related family registers (*koseki*), siblings, nephews or nieces of

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<sup>6</sup> Article 896 of the Civil Code (Act No. 89 of April 27, 1896).

<sup>7</sup> However, there is a court-supervised liquidation proceeding similar to probate when there is no heir. Article 952 and 957 of the Civil Code.

<sup>8</sup> Mizuno, *supra* note 1, at 1.

<sup>9</sup> Family Register Act (Act No.224 of December 22, 1947). The old Family Register Act was made in 1871.

the deceased can be found. In a sense, the extensive family relationship of Japanese citizens is officially recorded.<sup>10</sup>

## 1.4 Intestacy

### 1.4.1 Intestacy Distribution (Agreement on Division of the Estate)

If the decedent dies intestate and there are multiple heirs, the heirs have a share in the estate as a whole.<sup>11</sup> The heirs have to agree on how to divide the estate (who takes which property). If heirs cannot agree, an heir can apply for a mediation or court order at a family court.<sup>12</sup>

The heirs usually negotiate and agree upon division of the estate based on intestacy shares.

Intestacy shares<sup>13</sup> depend on who the heirs are. For example,

- If Taro dies survived by his wife and two children,  
Wife: 1/2, children: 1/2 (equally)
- If Taro dies survived by his wife and his parents,  
Wife: 2/3, parents: 1/3 (equally)
- If Taro dies survived by his wife and his siblings,  
Wife: 3/4, siblings: 1/4 (equally)

The heirs can jointly decide to allocate the assets differently from their intestacy shares. For example, if Taro dies intestate survived by his wife, a son and a daughter, his wife's intestacy share is one-half and each share of his children is one-quarter. However, the heirs can agree that his son will take all the assets. In this case, no gift tax will be imposed. Inheritance tax will be imposed only on the son.

### 1.4.2 Necessary Documents to Transfer the Title

When a Japanese citizen dies intestate, heirs will need to submit both (a) the agreement by “all the heirs” (or court order) and (b) all of the family registers (*koseki*)<sup>14</sup> of the decedent proving who “all the heirs” of

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<sup>10</sup> Noriko Mizuno, *Koseki Seido* (The system of family register), 1000 JURIST (1992), at 163.

<sup>11</sup> Articles 898 and 899 of the Civil Code.

<sup>12</sup> Article 907 of the Civil Code.

<sup>13</sup> Article 900 of the Civil Code.

<sup>14</sup> Starting from May 29, 2017, an heir can ask the Legal Affairs Bureau to issue “information of heirs” (*houtei souzoku syomei joho*) by submitting family registers (*koseki*) to the Legal Affairs Bureau. The heir can submit this document to each institution in place of family registers (*koseki*). Unlike in the EU, Japanese courts do not issue “certificate of inheritance.”

the decedent are to the Legal Affairs Bureau or to a bank in order to transfer the title of the real property or to withdraw the deposits.

When a non-Japanese citizen dies intestate, the heirs will need to submit an affidavit that there are no other heirs in place of *koseki*. Some banks are unfamiliar with the affidavit and thus are reluctant to release the bank deposits of the deceased. It is advisable for a non-Japanese citizen to make a will (a Japanese notarial deed Will, if possible) for assets in Japan.

## 1.5 Testacy

### 1.5.1 Choice of Situs Wills or Single Multijurisdictional Will

Situs Wills (a Japanese Will which covers assets located in Japan) are preferable as they expedite inheritance procedures. With a Japanese notarial deed Will, the Legal Affairs Bureau will change the title of real properties and Japanese banks will release the deposits to the executor of the Will without delay. This is because they are familiar with that type of Will.

If non-Japanese citizen client cannot come to Japan to make a Japanese notarial deed Will, a single foreign Will covering worldwide assets also works because a foreign Will can be valid in Japan as described below.

### 1.5.2 Japanese Will

The forms of the Wills under the Japanese Civil Code are (1) a holographic Will,<sup>15</sup> (2) a notarial deed Will,<sup>16</sup> and (3) a secret Will.<sup>17</sup> A notarial deed Will is recommended for foreigners. This is because (i) there is no need to apply for confirmation (*kennin*<sup>18</sup>) of a notarial deed Will at a court after the testator's death and (ii) a notarial deed Will is made by a notary who is a retired judge or prosecutor and is relied on by the Legal Affairs Bureau and banks, and thus executors can easily execute the Will. Non-Japanese citizens who do not understand the

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<sup>15</sup> Article 968 of the Civil Code.

<sup>16</sup> Article 969 of the Civil Code.

<sup>17</sup> Article 970 of the Civil Code.

<sup>18</sup> A court procedure name *Kennin* under the Article 1004 of the Civil Code is sometimes translated as "probate", but it is totally different from the probate proceeding in the United States. *Kennin* is just for the preservation of evidence to avoid forgery thereafter. A judge at a family court checks the paper and the writing instrument of the holographic Will and makes a copy of the Will for a record at the court. It usually takes less than 30 minutes.

Japanese language can make a notarial deed Will with an interpreter but need to come to Japan to do so.<sup>19</sup>

### **1.5.3 Foreign Will (Governing Law regarding Form of Will in Japan<sup>20</sup>)**

A foreign Will is valid in Japan if it complies with the law of:

- a. the place where the testator made it;
- b. the place of the testator's nationality at the time when he made it or at his death; (or the place of the state within the United States which has the closest connection with the testator at the time when he made it or at his death)<sup>21</sup>
- c. the place where the testator resided at the time when he made it or at his death; or
- d. the place where the real property is situated, as far as the real property is concerned.

Therefore, most foreign Wills are valid in Japan.

However, practically, with a foreign Will, the executor will have to persuade the Legal Affairs Bureau or banks that the foreign Will is valid in Japan with a translation.

## **1.6 Legally Reserved Portions (So-Called "Forced Heirship")**

### **1.6.1 Legally Reserved Portions**

A certain portion of the estate is reserved for certain heirs. Eligible heirs are the spouse, descendants (including adults) and ascendants, but not siblings.<sup>22</sup>

The share of the legally reserved portion is generally<sup>23</sup> one-half of the decedent's estate.<sup>24</sup> Certain lifetime gifts (evaluated as of death) are

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<sup>19</sup> Articles 29 and 17 of the Notary Act (Act No. 53 of April 14, 1908).

<sup>20</sup> Ratifying the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, Japan enacted the domestic law known as the Act on the Law Applicable to the Form of Wills (Act No. 100 of June 10, 1964), Article 2 of which is summarized as above.

<sup>21</sup> Article 6 of the Act on the Law Applicable to the Form of Wills.

<sup>22</sup> Article 1028 of the Civil Code.

<sup>23</sup> The legally reserved portion is one-third if the heirs are only ascendants. Article 1028 of the Civil Code.

<sup>24</sup> The Japanese courts will apply the legally reserved portion rules to the worldwide assets as well as the Japanese-situs assets. For example, a Tokyo District Court Decision dated March 28,

added to the estate.<sup>25</sup> For example, assuming that Taro dies leaving his wife and two children, each legally reserved portion of the heir is: wife, 1/4; each child, 1/8.

### 1.6.2 Expected Change under the New Inheritance Law

In July 2018, the inheritance law part of the Civil Code was revised for the first time in 38 years. The revised Civil Code which passed the Diet on July 6, 2018 will take effect on a date to be designated as no later than July 13, 2019 (hereinafter, “new law”), which will change the legally reserved portion rules.

Under the current law, a Will (bequest)<sup>26</sup> becomes void to the extent it infringes a claimant’s legally reserved portion when an heir claims his right.

Under the new law, the right to the legally reserved portion will be a monetary claim against the devisee.<sup>27</sup> A Will remains valid even after an heir claims his right.

### 1.6.3 Jurisdiction

Japanese courts will have jurisdiction<sup>28</sup> over disputes regarding the legally reserved portion if

- a) the decedent resided in Japan,<sup>29</sup> or
- b) the defendant (devisee) resides in Japan.<sup>30</sup>

For an heir to enforce his or her right to the legally reserved portion in international cases, there are two requirements:

- a) There is jurisdiction by a court in Japan or in the United States, and
- b) The governing law will be the Japanese law (the Civil Code) at the court.

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2007 included the decedent’s overseas assets such as a Cayman trust, joint accounts in the United States and the condominium in California among the basic assets to calculate the amount of the legally reserved portion.

<sup>25</sup> Article 1029, Paragraph 1 of the Civil Code.

<sup>26</sup> And the lifetime gifts only if the estate was not enough to satisfy the legally reserved portion. Articles 1031 and 1033 of the Civil Code.

<sup>27</sup> Article 1046 of the new law (the revised Civil Code).

<sup>28</sup> This explanation is based on the new law (the right to the legally reserved portion is a monetary claim against the devisee).

<sup>29</sup> Article 3-3, Item 12 of the Code of Civil Procedure (Act No. 109 of June 26, 1996)(the “CCP”).

<sup>30</sup> Article 3-2 of the CCP.

## 1.7 Trusts<sup>31</sup>

### 1.7.1 The Old Trust Act of 1922

Despite its civil law traditions, Japan has had a codified law of trusts since 1922. The old Trust Act was modeled initially on the Indian trust law and the California Code, but was finally modeled on the case law in England.<sup>32</sup>

### 1.7.2 The Trust Act of 2006

The Trust Act (Act No. 108 of December 15, 2006) substantially amended the old Trust Act of 1922. It encourages the use of *inter vivos* and testamentary trusts as an estate planning device. However, as described later, the taxation of trusts which takes a hostile view of trusts for estate planning sometimes discourages people from using such trusts.

### 1.7.3 The Trust Business Act

There is a license requirement to engage in trust businesses. Entities to provide trust service as a professional shall be a joint stock company licensed by, or registered with, the Prime Minister of Japan.<sup>33</sup>

### 1.7.4 Foreign Trusts (Governing Law for validity and effect of trusts<sup>34</sup>)

The governing law for trusts is basically the law designated in the trust instrument, i.e. (i) the law chosen by the parties in the trust

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<sup>31</sup> If you come to Japan, please visit the Trust Museum (Mitsubishi UFJ Trust and Banking Corporation Trust Museum) located near the Tokyo station. You can enjoy the dynamic displays of the history of trusts in the world and in Japan through wall displays, video images and artifacts (including replica of ancient documents such as the Will of John of Gaunt (1399) and the Statute of Uses (1535-1536) by Henry VIII).

<sup>32</sup> HIROTO DOGAUCHI, TRUST LAW (2017), at 12. KAZUO SHINOMIYA, TRUST LAW(1998), at 2.

<sup>33</sup> Articles 3 and 2 (Paragraphs 1 and 2) and Articles 5 and 7 of the Trust Business Act (Act No. 154 of December 3, 2004).

<sup>34</sup> Japan has not adopted the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on Their Recognition.

agreement<sup>35</sup> or (ii) the law chosen by the settlor in the testamentary trust.<sup>36</sup> Thus, foreign trusts should be valid in Japan.

## 2. Overview of Japanese Inheritance/Gift Tax

### 2.1 Taxpayer

Japan imposes inheritance and gift tax on an heir/devisee/donee who receives the assets<sup>37</sup> (collectively, the beneficiary). Neither the estate itself nor the executor is a taxpayer.

All the beneficiaries who received assets from the same decedent have joint and several liability for inheritance tax, up to the amount of assets which he/she actually received.<sup>38</sup>

### 2.2 Individual Devisee

An inheritance/gift tax is imposed only on a bequest/gift from an individual to an individual.

Corporations which receive bequests and gifts from individuals are treated as receiving income, subject to corporate income tax. Regarding foreign corporations, Japanese corporate income tax applies only on income from sources in Japan.<sup>39</sup>

### 2.3 Basic Exclusion for Inheritance Tax

The basic exclusion amount (which is deducted from the amount of the total taxable assets held by the decedent to calculate the tax base) for inheritance tax is: (1) 30 million<sup>40</sup> Japanese yen (JPY), plus (2) the amount obtained by multiplying JPY 6 million,<sup>41</sup> by the number<sup>42</sup> of

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<sup>35</sup> Intellectual Property High Court Decision dated February 14, 2012, which affirmed the Tokyo District Court Decision dated February 10, 2010. 1420 JURIST 353.

<sup>36</sup> Makoto Shimada, *Kokusai Sintaku no Seiritsu oyobi Kouryoku no Junkyoho* (2) (Laws governing validity and effects of international trust), 13 KEIO HOGAKU (2009), at 53.

<sup>37</sup> Articles 1-3 and 1-4 of the Inheritance Tax Act (Act No. 73 of March 31, 1950).

<sup>38</sup> Article 34 of the Inheritance Tax Act.

<sup>39</sup> Articles 141 and 138 (Paragraph 1(6)) of the Corporate Tax Act (Act No. 34 of March 31, 1965) and Article 180 (2) of the Order for Enforcement of the Corporate Tax Act (Cabinet Order No. 97 of March 31, 1965).

<sup>40</sup> JPY 30 million = about \$270,120 (JPY 1 million = \$9,004, as of July 30, 2018. The same conversion rate applies throughout this article.).

<sup>41</sup> JPY 6 million = about \$54,024.

<sup>42</sup> Only up to two adopted children can be counted as legal heirs for this purpose (only one for a decedent having one or more biological children). Article 15, Paragraph 2 of the Inheritance Tax Act.

Some adopt their grandchildren to increase the number of legal heirs to reduce the inheritance tax.

legal heirs (= JPY 30 million + (JPY 6 million × number of legal heirs)).<sup>43</sup> For example, if a husband dies leaving a wife and two children (three heirs), the basic exclusion is JPY 48 million.<sup>44</sup>

## 2.4 Inheritance Tax Rate

The inheritance tax rate<sup>45</sup> is applied not to the decedent's estate as a whole but to the amount each heir assumptively receives pursuant to his/her statutory share (intestacy share under the Japanese Civil Code).<sup>46</sup> The objective behind this globally unique method is to calculate the total inheritance tax, regardless of how assets are actually divided by the heirs/devisees.

The calculation of the inheritance tax amount is complicated. See "Computation of Inheritance Tax."

## 2.5 Spousal Credit for Inheritance Tax

### 2.5.1 Marital Property Regime (Separate property)

Our marital property regime is a separate property model unless there is a prenuptial agreement<sup>47</sup> (which is practically never used). Property acquired during marriage in the name of either spouse is separate property,<sup>48</sup> even if it was acquired by the joint contribution of the spouses. Upon death, the property in the name of either spouse is included in his or her estate, according to the legal title of the property.

### 2.5.2 Limited Spousal Credit

Unlike the unlimited marital deduction in the United States, the spousal credit for the Japanese inheritance tax is limited. That is, no Japanese inheritance tax will be imposed on amounts that the spouse receives up to the greater of: (1) the spouse's statutory (intestacy) share of the total taxable assets,<sup>49</sup> or (2) JPY 160 million.<sup>50</sup> The statutory share

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<sup>43</sup> Article 15, Paragraph 1 of the Inheritance Tax Act.

<sup>44</sup> JPY 48 million = about \$432,192.

<sup>45</sup> For the inheritance tax rate, see Kenichi Sadaka and Akira Tanaka, "*Japan*," Private Client 2018, at 85.

<sup>46</sup> Article 16 of the Inheritance Tax Act.

<sup>47</sup> Article 755 of the Civil Code.

<sup>48</sup> Article 762, Paragraph 1 of the Civil Code.

<sup>49</sup> Taxable assets can be only Japanese-situs assets.

<sup>50</sup> JPY 160 million = about \$1,440,640. Article 19-2, Paragraph 1 of the Inheritance Tax Act.

of the spouse will be one-half if the decedent is also survived by children.<sup>51</sup>

## 2.6 Gift Tax<sup>52</sup>

One cannot avoid the inheritance tax by making a gift during the donor's lifetime. To deter such tax avoidance, the graduated gift tax rate<sup>53</sup> structure imposes a higher tax rate at a lower threshold than in the inheritance tax.

The basic annual exclusion of JPY 1.1 million<sup>54</sup> applies to all gifts received by a donee per year. Up to \$15,000 for 2018 can be gifted annually free of U.S. gift tax. However, if also subject to Japanese gift tax, then such gifts cannot exceed JPY 1.1 million annually.

## 2.7 Taxation on Trust with a Beneficiary (trust used for estate planning)

A trust is a "pass-through" or conduit, not a taxable entity.

### 2.7.1 Inheritance/Gift Tax

Japan taxes trust beneficiaries as if they had received the assets outright.

The taxpayer is a beneficiary<sup>55</sup> who "currently"<sup>56</sup> enjoys the beneficial rights.<sup>57</sup>

A beneficiary (who is not a settlor)<sup>58</sup> is legally deemed to receive the assets outright by gift or bequest from the settlor on the acquisition of beneficial rights (at the time of the settlor's death, for example),<sup>59</sup> and not on actual receipt of distribution of trust assets, even when the beneficiary's interest is either merely a life income interest or a

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<sup>51</sup> Article 900, Item 1 of the Civil Code.

<sup>52</sup> Articles 21, 21-2 and 21-7 of the Inheritance Tax Act.

<sup>53</sup> For the gift tax rate, see Sadaka and Tanaka, *supra* note 47, at 85.

<sup>54</sup> JPY 1.1 million= about \$9,904. Article 70-2-4 of the Act on Special Measures concerning Taxation (Act No. 26 of March 31, 1957).

<sup>55</sup> Article 9-2, Paragraph 1 of the Inheritance Tax Act.

<sup>56</sup> This excludes beneficiaries who do not have any rights before the settlor dies.

<sup>57</sup> It includes certain settlors who are not beneficiaries and who have the right to amend the terms of the trust and to whom any part of the trust assets is to be delivered. Article 9-2, Paragraph 5 of the Inheritance Tax Act.

<sup>58</sup> If the settlor is the beneficiary (settlor = beneficiary), no tax applies because this is just the change of legal form and not a change of substantial owner, although there is no statute directly covering this.

<sup>59</sup> Article 9-2, Paragraphs 1 and 6 of the Inheritance Tax Act.

discretionary interest contingent upon a trustee determination. This is because any restriction on income beneficiary rights which decreases the value of the beneficiary rights is ignored under Article 9-3 of the Inheritance Tax Act.<sup>60</sup>

### 2.7.2 Income Tax<sup>61</sup>

There is no concept of separate trust income.

The beneficiary<sup>62</sup> is the taxpayer because he or she is deemed to own the trust assets.<sup>63</sup>

Income is subject to tax as the income is earned (current year basis). Whether income is distributed to a beneficiary or reserved in trust is irrelevant.

## 2.8 Scope of Inheritance/Gift Tax<sup>64</sup>

### 2.8.1 Japanese-Situs Assets

A beneficiary who receives Japanese-situs assets is always subject to the Japanese inheritance tax.

### 2.8.2 Non-Japanese Situs Assets

A beneficiary who is a resident<sup>65</sup> of Japan is subject to Japanese taxation on worldwide assets.

A beneficiary who is a non-resident in Japan can also be subject to the same worldwide taxation (excluding the case where the decedent/

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<sup>60</sup> There are two reasons:

- 1) It is difficult to appraise value of income beneficiary rights with restriction: Thus, the value of income beneficiary rights is deemed to be 100% of the value of the whole trust property (as a legal valuation).
- 2) To prevent tax avoidance: Japan tax law views such types of trusts as being susceptible to be used for tax avoidance.

<sup>61</sup> Taxpayer of Income Tax: Residents are subject to income tax on their worldwide income from sources in any country, while non-residents are subject to income tax on income from sources in Japan. A resident is an individual (i) who has residence in Japan or (ii) who has had residence in Japan for one year or more. Articles 2 and 5 of the Income Tax Act (Act No. 33 of March 31, 1965).

<sup>62</sup> The term “beneficiary” is limited to persons who “currently” enjoy the beneficial rights. Article 13, Paragraph 1 of the Income Tax Act.

<sup>63</sup> *Id.* A beneficiary is deemed to possess all the assets and debts of the trust, and its profits and expenses are deemed to be attributable to him/her.

<sup>64</sup> Articles 1-3 and 1-4 of the Inheritance Tax Act.

<sup>65</sup> The legal residency for inheritance and gift tax purposes is the “principal place of living” under Article 22 of the Civil Code. It is determined by objective factors such as the length of the person’s stay, the person’s occupation, the location of the person’s spouse and other family members and the person’s assets/property.

donor falls within certain exceptions), to prevent tax avoidance. See “Scope of Japanese Inheritance and Gift Taxation (after the 2018 Reform).”

### **2.8.3 When Can a Client Avoid Japanese Inheritance Tax on His U.S.-Situs Assets?**

Here is the outline of the 2018 rule from the standpoint of a decedent.

#### **2.8.3.1 Japanese Citizen**

Suppose the client is a Japanese citizen. The advice to him is to stay alive more than 10 years after he leaves Japan. The beneficiary, who is a Japanese citizen, also needs to meet that requirement.

#### **2.8.3.2 Temporary Resident**

Suppose the client is a U.S. citizen temporarily living and working in Japan. There are two requirements to be a temporary resident: (1) to reside in Japan with a “Table 1” visa<sup>66</sup> under the Immigration Control and Refugee Recognition Act (Cabinet Order No. 319 of October 4, 1951, “the Act”), such as a work visa, and (2) having resided in Japan not more than 10 years. Because the Table 1 visa includes work visas such as intra-company transferee and dependent visas, many foreign citizens and their family members are likely to satisfy these two requirements. Then, Japanese worldwide taxation will not apply.

#### **2.8.3.3 Not Temporary Resident**

In contrast, if the client is a U.S. citizen who: (1) resides in Japan with a “Table 2” visa<sup>67</sup> under the Act, such as a spouse visa, or (2) has resided in Japan for more than 10 years, the client will not be a temporary resident, and Japanese worldwide taxation will apply.

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<sup>66</sup> Table 1 Visa: For example, highly skilled professional, business manager, legal/accounting services, medical services, engineer/specialist in humanities/ international services, intra-company transferee, temporary visitor or dependent.

<sup>67</sup> Table 2 Visa: permanent resident, spouse or child of Japanese citizen, spouse or child of permanent, long-term resident.

#### **2.8.3.4 Foreigners Who Have Left Japan**

Suppose the client is a U.S. citizen with a U.S. wife who has resided in Japan for more than 10 years and will leave Japan to return to his home country. The 2018 tax reform provides them a relief. If they leave Japan, his U.S. assets inherited by a U.S. wife will not be subject to the Japanese inheritance tax. In contrast, if he has a Japanese wife, assets inherited by her will remain subject to the Japanese inheritance tax for 10 years after she leaves Japan.

### **2.9 Double Taxation**

If double taxation occurs, the foreign tax credit under the U.S.-Japan Estate, Inheritance and Gift Tax Treaty and the Japanese Inheritance Tax Act<sup>68</sup> may provide some relief. However, the United States is the only country with an inheritance tax treaty with Japan. There will be more cases with no relief to avoid double taxation.

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<sup>68</sup> Article 20-2 of the Inheritance Tax Act.

**Computation of Inheritance Tax**

	Heir A	Heir B	Devisee C	
①	Assets which A received by inheritance (+)	Assets which B received by inheritance (+)	Assets which C received by bequest (+)	<b>1. Taxable Assets</b> 1) Calculate taxable assets for each heir/ devisee respectively.  2) Add up Net Taxable Assets for all the heirs/ devisees. (= Total Taxable Assets)  2. Deduct <b>Basic Exclusion</b> = JPY 30million + (JPY 6million × the number of legal heirs)  3. Divide Tax Base <b>assumptively</b> pursuant to statutory share  4. Multiply <b>each amount for an heir by Tax Rate.</b>  5. Total Inheritance Tax Amount  6. Allocate Total Inheritance Tax Amount to each heir/ devisee proportionally based on the amount he actually received.  7. Adjust according to each circumstances • 20% surtax if the heir/ devisee is not a spouse, a child or a parent • Tax credits for a spouse, minor and foreign death taxes <b>Taxpayer = Beneficiary (Heir/ Devisee)</b>
②	Assets (life insurance, beneficial rights of trust) which A was deemed to receive by inheritance (-)	Assets (life insurance, beneficial rights of trust) which B was deemed to receive by inheritance (-)	Assets (life insurance, beneficial rights of trust) which C was deemed to receive by bequest (-)	
③	Exempt Properties (-)	Exempt Properties (-)	Exempt Properties (-)	
④	Debts and funeral expenses (+)	Debts and funeral expenses (+)	Debts (+)	
⑤	Assets gifted within 3 years before death (=)	Assets gifted within 3 years before death (=)	Assets gifted within 3 years before death (=)	
	Net Taxable Assets which A inherited (a)	Net Taxable Assets which B inherited (b)	Net Taxable Assets which C was devised (c)	
	<b>Total Taxable Assets</b> (-)			
	<b>Basic Exclusion</b>			
	Total Taxable Assets after Basic Exclusion ( <b>Tax Base</b> )			
	Amount heir A <b>assumptively</b> receives pursuant to his statutory share	Amount heir B <b>assumptively</b> receives pursuant to his statutory share		
	×(Tax Rate)		← ×(Tax Rate)	
	<b>Assumptive Inheritance Tax Amount for heir A</b>	<b>Assumptive Inheritance Tax Amount for heir B</b>		
	<b>Total Inheritance Tax Amount</b>			
	(Prorating on the basis of (a), (b) or (c) over Total Taxable Assets)			
	Prorated tax amount for A (+)	Prorated tax amount for B (+)	Prorated tax amount for C (+)	
	Surtax, if any (-)	Surtax, if any (-)	Surtax, if any (-)	
	Tax credits (=)	Tax credits (=)	Tax credits (=)	
	<b>Tax payable by heir A</b>	<b>Tax payable by heir B</b>	<b>Tax payable by devisee C</b>	

Scope of Japanese Inheritance and Gift Taxation (after the 2018 Reform)

When will Japan impose its inheritance and gift tax on worldwide assets?

Decedent/Donor		Heir/Devisee/Donee (Taxpayer)		Residence in Japan		No Residence in Japan	
				Non-Japanese Citizen	Temporary Resident *A	Japanese Citizen	Non-Japanese Citizen
Residence in Japan	No Residence in Japan	Non-Japanese Citizen	Temporary Resident *A	Tax on worldwide assets			
No Residence in Japan	Had Residence in Japan within past 10 years	Non-Japanese Citizen	Temporary Resident *A	Tax on worldwide assets			
No Residence in Japan	No Residence in Japan within past 10 years	Non-Japanese Citizen	Temporary Resident *A	Tax on worldwide assets			
				Tax on Japanese-situs assets only			

To find the taxable assets, find the resident status of the beneficiary at the time of death or gift from the top, and then find the resident status of the decedent/donor at the time of death or gift on the left.

\*A: **Temporary Resident:** Any resident (i) who had a status of residence listed in Table 1 of the Immigration Control and Refugee Recognition Act, such as a work visa, at the time of death or gift, and (ii) whose total period of having residence in Japan is 10 years or less within the past 15 years prior to death or gift.

\*B: **Short Term Resident:** A non-Japanese citizen and non-resident of Japan whose total period of having residence in Japan is 10 years or less within the past 15 years prior to leaving Japan.

\*C: **Long Term Resident:** A non-Japanese citizen and non-resident of Japan whose total period of having residence in Japan is more than 10 years within the past 15 years prior to leaving Japan and who left Japan more than 2 years ago.

