

Private client law in Japan: overview

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A Q&A guide to private client law in Japan.

The Q&A gives a high level overview of tax; tax residence; inheritance tax; buying property; wills and estate management; succession regimes; intestacy; trusts; co-ownership; familial relationships; minority and capacity, and proposals for reform.

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Taxation

Tax year and payment dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

For individuals, the tax year runs from 1 January through to 31 December. Individual income tax returns and gift tax returns must generally be filed no later than 15 March of the following year. Individual consumption tax returns must generally be filed no later than 31 March of the following year, while inheritance tax returns must be filed within ten months after the death of the deceased.

Domicile and residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

Domicile

There is no legal concept of "domicile" in Japan. For income tax purposes, however, taxes are imposed based on a taxpayer's residence status (*see below, Residence*).

Residence

Individuals are classified into resident taxpayers and non-resident taxpayers based on their residency:

- **Resident.** An individual whose address or residence is in Japan is considered a resident. "Address" (*gyūsho*) means a person's centre of living and "residence" (*kyōsho*) means the place where an individual lives continuously for a certain period of time but cannot be deemed the centre of living. An individual with address or more than one year of residence in Japan is also defined as a resident. A resident is subject to income tax on his/her worldwide income. A resident without Japanese nationality who has lived in Japan for less than five years of the last ten years is a non-permanent resident. A non-permanent resident belongs to the same taxpayer category as a resident. However, a non-permanent resident's tax liability on income from foreign sources is limited. This means that income derived from foreign sources is not subject to Japanese tax unless it is paid in Japan or it is remitted into Japan.
- **Non-resident.** All individuals other than residents are considered non-residents. Non-resident taxpayers are subject to Japanese income tax only on income derived from sources in Japan.

Taxation on exit

3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

Individuals that have been residents of Japan for more than five years out of the past ten years immediately prior to the date of departure can be subject to exit taxes. These taxes are imposed on unrealised capital gains from financial assets (such as shares) calculated at the time of departure. The target of these exit taxes are individuals with financial assets exceeding JPY100 million. These financial assets can include:

- Company stock.
- Government bonds.
- Corporate bonds.
- Equity in anonymous partnerships (*tokumei kumiai*).
- Unsettled derivatives.

An individual subject to the exit tax will be allowed to enjoy a tax-payment grace period for five years and four months from the date of departure (a maximum of ten years is possible by submitting the appropriate application)

by appointing a tax agent and paying a deposit at the time of departure. If an individual who has already paid the exit tax returns to Japan within five years of the date of departure without actually having sold the assets that were taxed, the exit tax can be refunded. Non-Japanese will not be subject to this exit tax until 1 July 2020 regardless of the visa status that they hold or the amount of their financial holdings.

For any year in which an individual terminates their Japanese residency, they will be subject to Japanese income tax as a resident until the termination of the residency, and will thereafter be taxed as a non-resident. In this case they will need to file a tax return and pay income tax until leaving Japan, unless they appoint a tax agent prior to departing Japan.

A resident is subject to local inhabitant's income tax on taxable income for the previous year. An individual who is a resident of Japan on 1 January of a given tax year must pay the local inhabitant's income tax on income from the prior year. Therefore, an individual with residency on 1 January 2017 who is no longer resident at some point in 2017 must pay the inhabitants tax on the taxable income for 2016.

Temporary residents

4. Does your jurisdiction have any particular tax rules affecting temporary residents?

There is no statutory definition of a "temporary resident" under Japanese law. However, non-permanent residents (see [Question 2](#)) are subject to income tax only on their Japan-sourced income as well as any foreign income that is paid in Japan or remitted into Japan.

Taxes on the gains and income of foreign nationals

5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

Individuals are classified as either residents (including non-permanent residents) and non-residents. The rates described below apply to a foreign national living outside of Japan (a non-resident) from a country with no applicable tax treaty with Japan or with no permanent establishment in Japan.

Capital gains derived from the transfer of real property

In the case of capital gains derived from the transfer of real property in Japan, the following rates apply:

- Long-term (held for more than five years): 15% of the taxable amount of capital gains plus an earthquake reconstruction surtax equal to 2.1% of income tax owed.
- Short-term (held for fewer than five years): 30% of the taxable amount of capital gains plus an earthquake reconstruction surtax equal to 2.1% of income tax owed.
- When a non-resident sells real property in Japan, the purchaser must withhold 10.21% of the sale price (10% for income tax and 0.21% for the earthquake reconstruction surtax).

Capital gains from the sales of stocks, shares or convertible bonds

Generally, a non-resident is not subject to Japanese income tax on capital gains from the sale of Japanese stock, shares or convertible bonds. In certain cases, however, a non-resident's capital gains are taxed at 15.315% (15% for income tax and 0.315% for the earthquake reconstruction surtax). These cases include individuals who enter into an agreement during their stay in Japan for the sale of such holdings as shares and other similar financial assets.

Except for non-Japanese, exit taxes will be imposed on unrealised capital gains of financial assets on certain types of residents leaving Japan (see [Question 3](#)).

6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

In addition to capital gains discussed in [Question 5](#), the following are also generally treated as Japan-sourced income that non-residents are taxed on:

- Interest on deposits with a bank located in Japan or similar income.
- Dividends from a Japanese company.
- Real estate income (rent) from real property located in Japan.
- Fees received for services performed in Japan.
- Royalties for the use of intellectual property received from licensees that engage in business in Japan.

Unless the applicable tax treaty states otherwise or the non-resident has permanent establishment in Japan, interest and dividends are subject to a 15.315% withholding tax (15% for income tax and 0.315% for the earthquake reconstruction surtax). Rents, fees and royalties are subject to a 20.42% tax (20% for income tax and 0.42% for the earthquake reconstruction surtax). For capital gains from the sale of real estate, the purchaser must withhold 10.21% of the sale price (10% for income tax and 0.21% for the earthquake reconstruction surtax).

Inheritance tax and lifetime gifts

7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

Unlike in the US, Japanese inheritance taxes and gift taxes are levied on the beneficiary rather than on the deceased's estate or on the individual who made the gift. The tax is imposed on a worldwide basis, but foreign assets can be excluded depending on where the deceased and the beneficiaries reside, and whether the beneficiary has Japanese nationality.

- Under current law as of February 2017, tax is imposed only on Japanese assets if:
- At the time the inheritance/gift was made, the deceased/donor did not reside in Japan and the beneficiary is a non-Japanese who does not reside in Japan.
- Five years prior to making the inheritance/gift, both the deceased/donor and the Japanese beneficiary did not reside in Japan.

However, from 1 April 2017, the threshold that applies to the deceased/donor and beneficiaries will increase from five years to ten years. Therefore, under the new rules, where both the deceased/donor and beneficiaries had not resided in Japan within the past ten years prior to the inheritance/gift being made, assets located outside Japan will be exempt from Japanese inheritance/gift tax. Therefore, tax is imposed only on Japanese assets if:

- At the time the inheritance/gift was made:
 - the deceased/donor did not reside in Japan, and did not reside in Japan ten years prior to that time; and
 - the beneficiary is a non-Japanese who did not reside in Japan.
- At the time the inheritance/gift was made:
 - the deceased/donor did not reside in Japan, and did not reside in Japan ten years prior to that time; and
 - the Japanese beneficiary did not reside in Japan, and did not reside in Japan during the ten years prior to that time.

The proposal introduces a new category of “short time visitors”, who would be taxed only on assets located in Japan even if they reside in Japan at the time the inheritance/gift is made. This would be an improvement from the current rules, which make no distinction between non-Japanese residing in Japan on a temporary basis and other residents in Japan, whose worldwide assets are subject to Japanese tax. This change allows a non-Japanese national residing in Japan temporarily on an intra-company transferee visa to circumvent the current Japanese inheritance/gift tax rules that cover worldwide assets.

8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?

Tax rates

Inheritance tax is levied at the following rates depending on net taxable assets:

- Up to JPY10 million: 10%.
- Over JPY10 million up to JPY30 million: 15%.
- Over JPY30 million up to JPY50 million: 20%.
- Over JPY50 million up to JPY100 million: 30%.
- Over JPY100 million up to JPY200 million: 40%.
- Over JPY200 million up to JPY300 million: 45%.
- Over JPY300 million up to JPY600 million: 50%.
- Over JPY600 million: 55%.

The gift tax is levied on assets that a beneficiary receives from an individual (not a corporation or other entity). A beneficiary who is at least 20 years old and receives a gift from a lineal ancestor can in some cases receive a special favourable tax rate as follows:

- Up to JPY2 million: 10% (general) or 10% (special).
- Over JPY2 million up to JPY3 million: 15% (general) or 15% (special).
- Over JPY3 million up to JPY4 million: 20% (general) or 15% (special).
- Over JPY4 million up to JPY6 million: 30% (general) or 20% (special).
- Over JPY6 million up to JPY10 million: 40% (general) or 30% (special).
- Over JPY10 million up to JPY15 million: 45% (general) or 40% (special).
- Over JPY15 million up to JPY30 million: 50% (general) or 45% special).
- Over JPY30 million up to JPY45 million: 55% (general) or 50% (special).
- Over JPY45 million: 55% (general) or 55% (special).

Tax free allowance

The basic estate allowance is calculated as follows: JPY30 million plus JPY6 million x number of statutory heirs.

If the taxable amount is less than the basic estate allowance, the beneficiary does not in principle need to pay any inheritance tax and file an inheritance tax return.

Although gift tax was increased up to a maximum rate of 55%, the gift tax burden will in some cases be lower due to the establishment of special tax rates for gifts from lineal ancestors. The annual basic allowance is JPY1.1 million per beneficiary.

Exemptions

Generally, the following amounts can be deducted from the total inherited amount that is subject to taxation:

- Debts and funeral expenses.

- Life insurance proceeds (JPY5 million x number of statutory heirs).
- Retirement allowance (JPY5 million x number of statutory heirs).

The following tax credits can be credited against the inheritance tax in the order below:

- **Gift tax credit.** Any gift tax paid within three years prior to the deceased's death or, gift tax paid under the unified system can also be deducted.
- **Spousal credit.** A deceased's spouse is entitled to a credit equal to the statutory share of the taxable assets for the spouse (half under Japanese law) or JPY160 million whichever is greater.
- **Minor child credit.** If a statutory heir is younger than 20 years old at the time of the deceased's death, he/she is entitled to a credit equal to JPY60,000 x number of years until he/she reaches the age of 20 years.
- **Disabled person credit.** A disabled person is entitled to a credit equal to JPY60,000 (JPY120,000 for a severely handicapped person) x number of years until he/she reaches the age of 70 years.
- **Inheritance credit.** This credit is allowed in the event that the deceased paid inheritance tax within the ten years preceding his/her death.
- **Foreign tax credit.** Foreign taxes or estate taxes paid before the filing of an inheritance tax return in Japan can be credited against Japanese inheritance tax up to certain limits.

Techniques to reduce liability

Life insurance is commonly used as an estate planning device since the proceeds received by the statutory heirs can be deducted from the inheritance tax. The amount to be deducted is JPY5 million x number of statutory heirs.

In contrast to the US, *inter vivos* gifting in Japan is not an efficient way to reduce taxes since the tax rate is as high as the inheritance tax rate, and the rate bracket less favourable compared to that for inheritance taxes. However, annually gifting less than JPY1.1 million per beneficiary over the course of many years is frequently used as a long-term technique to reduce inheritance taxes.

9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

Both Japanese inheritance and gift tax apply to assets located in Japan that are transferred (*see Question 7*). Even if no Japanese assets are transferred, Japanese inheritance tax and gift tax would still apply to foreign assets transferred to foreign owners under the current law as of February, 2017 if the transferor or the beneficiary resides in Japan. If the Diet (legislature) passes the 2017 tax reform proposals, Japanese inheritance tax and gift tax would apply to also foreign assets transferred to foreign owners if either:

- The transferor or the beneficiary resides in Japan (unless they are a short-term visitor).
- A non-resident transferor resided in Japan for the ten-year period prior to making the inheritance/gift even if foreign owners did not reside in Japan at that time.

10. Are there any other taxes on death or on lifetime gifts?

A registration tax is levied on the transfer of Japanese real property by inheritance or gift. The tax rate is 0.4% for inheritance and 2% for gifts.

Taxes on buying real estate and other assets

11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

Purchase and gift taxes

Acquisition tax is a local tax imposed on the purchaser of real property. The standard rate is 4% on the official appraised value. In addition, registration tax (*see Question 10*) is levied when real property is purchased. In Japan, a stamp tax also applies to the execution of certain types of documents such as promissory notes, real property sales agreements and merger agreements.

Wealth taxes

There is no concept of wealth tax in Japan. However, real property owners are subject to fixed assets tax annually.

12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

To avoid extremely high tax rates of up to 55%, minimising Japanese taxes on Japan situs assets is frequently used as an estate planning device. Holding real property in Japan through a non-Japanese entity could be an effective way to avoid high taxes on real estate.

Taxes on overseas real estate and other assets

13. How are residents in your jurisdiction with real estate or other assets overseas taxed?

The location of real property and other assets does not affect the scope of Japanese inheritance and gift tax. The factors to determine the scope of inheritance/gift tax are:

- The residency of the transferor and the beneficiaries.
- The nationality of the beneficiaries.
- Where they have resided in the past.
- The visa status of non-Japanese residents.

International tax treaties

14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?

Japan has concluded income tax treaties with more than 50 countries, including the US, Sweden, Pakistan, Norway, Denmark, India, Singapore, Australia, the UK, New Zealand, Thailand, Malaysia, Canada, France, Germany, Belgium, Italy, Australia, the Netherlands, Korea, Spain, the Philippines, Hungary, Indonesia, China, Vietnam, Mexico, South Africa, Kuwait, Saudi Arabia, the UAE, and Russia.

Japan has a gift, inheritance and estate tax treaty only with the US.

Wills and estate administration

Governing law and formalities

15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

It is recommended that foreigners who own assets in Japan, whether they are Japanese resident or not, make a Japanese notarial will to transfer their Japanese assets to a beneficiary smoothly and without going through probate procedures in Japan. Under Japanese conflict of law, the deceased's inheritance matters are governed by the law of the deceased's nationality. Testators cannot designate the governing law at their discretion.

With regard to the effectiveness of the form of will prepared and executed under foreign law, such will is valid if it is made in compliance with the law of a country that has ratified the Convention of Conflict of Laws Relating to the Form of Testamentary Dispositions under the Act Concerning Laws Governing Forms of Will. The form of testamentary dispositions is valid under:

- The law of the place where the will was made.
- The law of the country where the testator had nationality, either at the time he/she made the will or at the time of his/her death.
- The law of the place where the testator has address (*jyūsho*), either at the time he/she made the will or at the time of his/her death;
- The law of the place where the testator had habitual residence (*kyosho*), either at the time he/she made the will or at the time of his/her death.
- The law of the place where the real property is located.

16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

There are three ordinary types of will under Japanese law, which may be used by foreign nationals as well as Japanese nationals:

Notarial will. This is a will made using a notary to whom the testator recited the contents in the presence of two witnesses. The testator and two witnesses sign the will in the presence of the notary and the notary attests. The notary public office retains the original will. The will can be executed immediately after the testator's death without probate at the Family Court. A notarial will must be written in Japanese, however, a testator who cannot speak and read Japanese can make a notarial will with the assistance of an interpreter.

Holographic will. This is a will drafted in the testator's own handwriting with his/her seal, signed and dated. A holographic will does not need to be written in Japanese and does not require any witnesses. However, Japanese law does not allow a typed holographic will, it must be handwritten. To execute the will, it must be filed for the probate at the Family Court. This type of will frequently results in conflicts among heirs for example disputing whether the will was drafted in the testator's handwriting or not, or disputing the testator's capacity.

Secret certificate will. This is a will drafted by the testator (either handwritten or typed) with his/her seal, signed and affixed. He/she seals the envelope with the same seal affixed on the will. He/she must present the envelope to a notary before two witnesses, declaring that the document in the envelope is his/her will, and provide his/her name and address, then the notary notes the date that the will is presented and the statement of the testator on the envelope, and the testator and the two witnesses sign on the envelope. Secret certificate wills are rarely used in Japan.

Generally, foreign nationals who have assets in Japan are advised to make a notarial will for their Japanese assets in order to transfer those Japanese assets to beneficiaries in the most efficient manner possible.

Redirecting entitlements

17. What rules apply if beneficiaries redirect their entitlements?

A statutory heir can renounce his/her rights to all of the deceased's property by filing a declaration with the Family Court within three months from the acknowledgment of the inheritance. The statutory heirs inherit not only assets but also debts.

Validity of foreign wills and foreign grants of probate

18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

Validity of foreign wills

Since Japan ratified the Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, a will made in a jurisdiction other than Japan is also a valid will as long as it conforms to the applicable laws stated in the Act Concerning Laws Governing Forms of Will (see [Question 15](#)).

Validity of foreign grants of probate

Theoretically, a grant of probate by the foreign court having jurisdiction is recognised provided that it meets conditions stated in the Japanese Code of Civil Procedure. However, practically, it takes some time and money to execute a grant of probate by a foreign court on the deceased's property in Japan.

Death of foreign nationals

19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

Transferring the title of the deceased's property from the deceased to the heirs is generally conducted by the deceased's heirs without involving the Japanese courts. Court-supervised estate administration is not common in Japan, except where there is no heir.

Transferring title from a foreign deceased to the heirs requires more time and money in comparison with the case where all interested parties are Japanese. Necessary documents vary depending on the kinds of assets and administrative authority or company managing the deceased's assets. Generally, the following documents are necessary to transfer title to the beneficiaries:

- Certificate of death of the deceased.
- Certificate showing the relationship between the heirs and beneficiary and listing all statutory heirs of the deceased.
- The probated will if any.
- Certificate of signature, address and nationality of the heirs who inherit the deceased's property.

These documents must generally be translated into Japanese. In addition, some institutions (for example banks) may request an explanation of the legal regime on inheritance matters under the law of the deceased's nationality since the inheritance matter should be governed by the law of the deceased's nationality. Considering efficiency and cost, it is more advantageous for foreign nationals to make a Japanese notarial will for their Japanese assets rather than making a foreign will to be probated outside Japan.

Administering the estate

20. Who is responsible for administering the estate and in whom does it initially vest?

Responsibility for administering

If a testator appoints an executor in the will and the person appointed as the executor assumes such position, the executor is responsible for executing the will and administering the deceased's assets. However, if the testator does not appoint an executor, the heirs are generally responsible for administering the assets of the deceased, such as gathering asset information, paying debts or unpaid taxes of the deceased and filing an income tax return and inheritance tax return. If a deceased has no statutory heirs, the Family Court appoints an assets administrator who administers the deceased's property.

Vesting

Under Japanese law, the heirs inherit the deceased's property (both positive and negative (for example debts and unpaid taxes) immediately upon the deceased's death without probate proceeding as there is no estate administration system similar to the US in Japan. However, whether Japanese law applies to the inheritance depends on whether the deceased was a Japanese national, as the inheritance matter should be governed by the law of the deceased's nationality under the Japanese Conflict of Law.

21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:

- Establishing title and gathering in assets (including any particular considerations for non-resident executors)?
- Paying taxes?
- Distributing?

Establishing title and gathering in assets

The heirs are generally responsible for administrating the deceased's property (see [Question 20](#)), including establishing title and gathering assets. With regard to an inheritance involving foreign nationals (either as deceased or as an heir), any necessary documents that are not in Japanese and that will be submitted to certain institutions (such as banks, securities companies, post offices, the legal affairs bureau, the tax agency and so on) are generally required to be translated into Japanese. If the deceased is non-Japanese, the law of the deceased's nationality, not Japanese law, will govern inheritance matters. It is recommended that heirs involving foreign nationals retain professionals (lawyers or a tax accountant) to administer the deceased's assets.

Procedure for paying taxes

Japanese inheritance tax is levied on beneficiaries (heirs and legatees), not on the deceased's estate itself. Beneficiaries who receive assets exceeding the basic tax allowance must file an inheritance tax return within ten months after the deceased's death.

Distributing the estate

Under Japanese law, theoretically the heirs inherit their respective share in each asset of the deceased immediately upon the deceased's death unless the will specifically designates how to distribute the testator's assets. In intestacy, heirs generally distribute the assets by entering into a distribution agreement. However, if the heirs cannot reach an agreement, the case generally goes to mediation conducted by the Family Court. If mediation fails, it will go to litigation.

22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

The deadline for the inheritance tax return is ten months after the deceased's death and no extension is allowed. Beneficiaries who inherit assets exceeding the basic estate allowance must establish title, gather the assets, specify the statutory heirs, and file the inheritance tax return within the ten-month period. Appraisals for purposes of inheritance or estate tax filing are conducted according to Japanese tax rules. However, when those Japanese rules do not apply, the market price or a price that a certified appraiser determines are usually acceptable in practice.

23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

A beneficiary may challenge the validity of the will by filing a claim with the Family Court for lack of capacity, a forged will (in the case of a holographic will, (see [Question 16](#)) as well as other grounds. A beneficiary may file a petition to dismiss the executor appointed by the will if the executor breaches their fiduciary duty or if there is any other justifiable reason for dismissal.

Succession regimes

24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

A deceased may dispose of his/her assets under the will at his/her discretion unless the distribution by the will infringes forced heirship rights, known as "legally secured portion" (see [Question 25](#)).

Forced heirship regimes

25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

Certain eligible heirs (spouses, children and parents, but not siblings) are reserved one-third to one-half of the deceased's assets. In the event that a deceased had a spouse and one child, the legally secured portion for each is one-quarter (one-half in total). If a deceased had a spouse and two children, the legally secured portion for the spouse is one-quarter and for each child is one-eighth (one-half in total). If a deceased had ancestors only, their legally secured portion is one-third in total. The eligible heirs must assert their legally secured portion rights if a will infringes their rights within one year after he/she is aware of the deceased's death and the infringement.

Avoiding the regime

If the deceased had Japanese citizenship and his/her inheritance is governed by Japanese law, according to Japanese Conflict of Law the above regime applies even to the heirs living outside Japan, at least in theory. To avoid the forced heirship regime a deceased could renounce their Japanese citizenship during their lifetime, however, this is not a practical option.

Assets received by beneficiaries in other jurisdictions

If the deceased had Japanese citizenship, Japanese court will consider that the regime applies to the assets received by heirs living outside Japan.

Mandatory or variable

Eligible heirs must claim their forced heirship rights within one year after acknowledging the death of the deceased. Eligible heirs can renounce their rights by obtaining approval from the Family Court prior to the inheritance. After the inheritance occurs, eligible heirs can renounce their forced heirship rights at any time. Such a renouncement is deemed to have occurred by failing to execute their forced heirship rights within the prescribed period of time.

Real estate or other assets owned by foreign nationals

26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

Inheritance is governed by the law of the deceased's nationality under the relevant Japanese conflict of law rules. Real property or other assets owned by a foreign national are subject to the law of deceased's nationality, not Japanese law. However, Japanese law may apply to the deceased's real property located in Japan since the Japanese conflict of law rules adopt the doctrine of *renvoi* (see [Question 27](#)).

27. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

Japanese courts do apply the doctrine of *renvoi*. Since Japanese Conflict of Law provides for the doctrine of *renvoi*, Japanese law applies to the deceased's real property even if the deceased was a foreign national. If the conflict of law of the deceased's nationality provides that succession of real property is generally governed by the law of the situs, Japanese law applies to the inheritance of the deceased's real property located in Japan.

Intestacy

28. What different succession rules, if any, apply to the intestate?

Under Japanese Law, if a deceased did not have a will, the assets are distributed under intestacy distribution rules. The spouse of the deceased is always a statutory heir. Additionally, certain relatives are statutory heirs in following order:

First rank relatives. Direct descendants (children and his/her lineal descendants including *stirpes*).

Second rank relatives. Direct ancestors.

Third rank relatives. Siblings (or their children, if deceased).

The spouse receives at least one-half of the deceased's assets. If there are statutory heirs in addition to the spouse, the deceased's assets will be distributed as follows:

First rank relatives. Spouse (one-half) and direct descendants (one-half).

Second rank relatives. Spouse (two-thirds) and direct ancestors (one-third).

Third rank relatives. Spouse (three-quarters) and siblings (one-quarter).

29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

Japanese law allows statutory heirs to change and adjust each statutory share under the intestacy rules considering each statutory heirs' contribution to increase and maintain the deceased's assets, and gifts or benefits provided to certain statutory heirs from/by the deceased during his/her lifetime. The statutory heirs can challenge the adequacy of the statutory share under the intestacy rules by agreement with all of the heirs or through court proceedings.

Trusts

30. Are trusts (or an alternative structure) recognised in your jurisdiction?

Despite its civil law regime, trusts are generally allowed in Japan. However, trusts are not widely used in Japan for estate planning purposes. One reason is that, unlike the system in the US, inheritance under Japanese law does not require probate, which can take a considerable amount of time to complete (strictly speaking, holographic wills and secret certificates (*see Question 16*) will need to be probated, however Japanese probate is merely a procedure to acknowledge the existence of the will and its terms). Therefore, there is no need to rely on trusts to avoid probate. Furthermore, paid professional trustees must be licensed by the government and there are only a small number of such licensed trustees. However, the key reason that trusts are not widely used in Japan as an estate planning device is that they cannot be used in Japan as a tax-reduction strategy.

Type of trust and taxation

Although trusts are not frequently used as an estate planning device, there are many types of trusts under Japanese law. The types relatively used for the estate planning purposes are as follows:

Will trust. A testator can create a trust by appointing a trustee and beneficiaries in the will. If the person appointed as a trustee by the will refuses to act as trustee when the testator passes away, the beneficiary can file a petition to the court requesting the appointment of another trustee. For Japan tax purposes, the beneficiary who receives the benefits from the trust on the testator's death is subject to inheritance tax.

General trust. This is a trust whereby the settlor appoints himself as a beneficiary during his lifetime with the consent of the trustee. The settlor can appoint secondary beneficiaries to address the possibility of the settlor passing away. The secondary beneficiaries who receive the beneficial rights are subject to Japanese inheritance tax at the settlor's death.

No beneficiary trust. This is a trust in which the beneficiary is not specified. The trustee is deemed the owner of the trust assets during the trust period. Even if the trustee is an individual, the trustee for a no beneficiary trust is deemed a corporation. The trustee is subject to corporate tax for the income from the trust assets.

Residence of trusts

The tax residency of the trust is determined based on the residency of the owner of the trust assets, such as settlor, beneficiary, or trustee depending on each trust arrangement.

31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

Whether trusts created in foreign countries or governed by foreign laws have effect in Japan is unclear. Japanese statutes do not address this issue even in Conflict of Law. As a practical matter, for cases including Japanese assets, it is advisable to create a Japanese trust since governmental officials handling real property title registration are less likely to view Japanese trusts with suspicion.

32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?

Whether trustees are subject to Japanese tax depends on the terms of each trust arrangement.

33. If your jurisdiction has its own trust law:

- Does the law provide specifically for the creation of non-charitable purpose trusts?
- Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?
- Can the trust document restrict the beneficiaries' rights to information about the trust?

Purpose trusts

Japanese trust law recognises non-charitable trusts. Non-charitable trusts are considered to be a type of "non-beneficiary trust". An individual cannot serve as a trustee for non-charitable trusts. Only an entity can be a trustee for these kinds of trusts.

Perpetuities and accumulations

Non-charitable trusts may exist for a maximum of 20 years. This limited period does not apply to charitable trusts.

Beneficiaries' rights to information

A settlor can request a trustee to report on the status of the trust administration and inspect or copy the documents of a trustee instead of the beneficiaries.

34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

Japanese case law is still unclear on whether the spouse of a settlor or beneficiary may make a claim against trust assets after a divorce.

35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

Since trust assets are deemed separate assets from those of a settlor or beneficiary, they cannot generally be claimed by the creditors of a settlor or beneficiary, except in the case of a fraudulent transfer.

Charities

36. Are charities recognised in your jurisdiction?

Charities are legally recognised in Japan as Public Interest Incorporated Associations. Charities in Japan are entities mainly aimed at public interest initiatives such as academic, artistic, charitable or other public activities and improvement of general public interest.

37. If charities are recognised in your jurisdiction, how can an individual donor set up a charity?

A charity can be set up under strict conditions in Japan such as that more than 50% of its expenses must be related to public interest activities and certification from the prefectural governor or the prime minister depending on the type of public interest matter. A charity is registered at the legal affairs bureau and is regulated by its supervisory authority (the prefectural governor or the prime minister).

38. What are the benefits for individuals when setting up charitable organisations?

Although a corporation is taxed on its total income, a charity is taxed on only revenue stream income. An individual who donates to a charity is eligible for deduction of charitable contribution as a tax incentive.

Ownership and familial relationships

Co-ownership

39. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

Generally, persons may own specific portions of an asset, such as a real property in common. However, there is no concept of joint ownership, joint account, or joint ownership with survivorship rights in Japan.

Familial relationships

40. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitees/civil partners in real estate or other assets protected by law?

A spouse receives at least one-half of the deceased's assets under the intestacy rules. Even if all of the deceased's assets are bequeathed to other statutory heirs or third parties, the spouse can claim his/her legally secured portion. Cohabitees or civil partners are not protected by Japanese law.

41. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

There is no form of recognised relationship for same-sex couples under Japanese law. Therefore they are treated as third parties (non-family members) for tax and inheritance purposes.

42. How are the following terms defined in law:

- Married?
- Divorced?
- Adopted?
- Legitimate?
- Civil partnership?

Married

To effect a marriage in Japan, a couple (a man and a woman) must agree to get married and register the marriage at the ward office.

Divorced

A married couple may get a divorce without going to court simply by filing the required paperwork with the ward office. If the couple cannot agree to divorce or cannot agree on the terms of the divorce, they will need to get divorced in the family court.

Adopted

An individual who has obtained the age of majority (20 years in Japan) can adopt another person as his/her child. If an adopted person is a minor, Family Court permission is required. When a married person adopts a minor child, such adoption must be made jointly with the spouse except in the event where the adopted child is the legitimate child of the spouse.

Legitimate

A child conceived during marriage is presumed to be the legitimate child of the married couple. A husband can challenge paternity by filing a claim in court.

Civil partnership

There is no legally recognised concept of civil partnership in Japan. Therefore, civil partners are treated as non-family members.

Minority

43. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

A minor heir or beneficiary is treated the same way as someone who has reached majority (20 years old in Japan). Even a pre-born child is deemed entitled to inheritance. A minor can own assets, but his/her property is subject to control by his/her guardian (generally, his/her parents). If the minor has no parents or his/her parents lack the capacity to serve as guardian (for example in the case of conflict of interest), another guardian acting for the minor is appointed by the Family Court.

Capacity and power of attorney

44. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

A voluntary guardianship agreement is used in cases where a property owner loses capacity. The agreement must be notarised upon execution. When a property owner becomes mentally incompetent, a petition to appoint a supervisor for the guardian is filed with the Family Court. Thereafter, the supervisor for the guardian is formally appointed and the guardian appointed in the agreement acts for the property owner under the supervisor. If there is no voluntary guardianship agreement, a petition to appoint an appropriate guardian is filed with the Family Court by an interested party such as a family member.

Proposals for reform

45. Are there any proposals to reform private client law in your jurisdiction?

If the 2017 tax reform proposals are adopted, the new rules will increase the complexity of the current regime. On the positive side, the new rules will introduce a new category of "short-term visitors", which will allow non-Japanese nationals who temporarily reside in Japan to avoid Japanese inheritance/gift taxes on their worldwide assets even if they are living in Japan when inheritance/gift is made. Under the new rules, however, unless both the deceased/donor and the Japanese beneficiaries did not reside in Japan during the ten years prior to the inheritance/gift being made (instead of the current five-year period), any real estate located outside Japan will also be subject to Japanese inheritance/gift tax if the beneficiary is Japanese (see [Question 3](#)).

Online resources

Japanese Law Translations

W www.japaneselawtranslation.go.jp/?re=02

Description. This Japanese Law Translation Database is provided by the Ministry of Justice. It contains relevant laws and rules on the private client law such as the Civil Code, Income Tax Act, Corporate Tax Act, Inheritance Tax Act, Charities Act, and so on, available in English.

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Publications

- *Company Formation-A Practical Guide, Third Edition, co-author, Globe Business Publishing 2015.*
- *Labour Law: A Practical Global Guide, Japan Chapter, co-author, Globe Business Publishing 2011.*
- *Cash Management Under Japanese Law, co-author, Euro-Association of Corporate Treasurers (EACT), 2004.*

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- Society of Trust and Estate Practitioners (STEP, Hong Kong branch).
- Member, Japan Association of Trust Law.
- Special Commissioner, Central Committee for Adjustment of Construction Work Disputes, the Ministry of Land, Infrastructure, Transport and Tourism.
- Member, Manual Preparation Committee, The Association for Promotion of Digital Broadcasting (2009-2010).

Publications

- *International Inheritance Legal and Tax Practice*, co-author, *Zeimu Kenkyukai*, 2014.
- *Labour Law: A Practical Global Guide, Japan Chapter*, co-author, *Globe Business Publishing* 2011.
- *Utilisation of Professionals (Independent Experts and Expert Witnesses) in the Process of Arbitration*, co-author, *Arbitration-ADR Forum Vol 1*, 2007.

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Publications

- *The International Arbitration Review, Seventh Edition, Japan Chapter, co-author, Law Business Research, 2016.*
- *The Foreign Direct Investment Book, Japan Chapter, co-author, The Global Legal Post, 2016.*
- *Overview of the Hague Convention on the Civil Aspects of International Child Abduction, Roppongi Bar Association, 2010.*

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