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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 is generally the calendar year. Any individual income tax return required to be filed must generally be filed no later than 15 March of the subsequent year. For details of the filing deadlines when a person terminates Japan residency, see *Question 3*.

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?

For income tax purposes, Japan taxes individuals based on their residency status as a:

- Permanent resident.
- Non-permanent resident.
- Non-resident.

Generally, a Japan tax resident is defined as a person whose centre of living (*jusho*) or domicile (*kyosho*) for at least one year is in Japan. However, income tax treaties may provide further criteria on whether an individual is deemed to be Japan tax resident.

A Japan resident is generally treated as a permanent resident unless he lacks the intent to permanently reside in Japan. However, a Japanese national residing in Japan is generally deemed to be a permanent resident. Non-Japanese nationals are generally presumed to be non-permanent residents unless they have resided in Japan for a total of at least five years within the past ten years.

Permanent residents are generally subject to income tax on their worldwide income.

Non-permanent residents are generally subject to income tax only on their Japan source income and any foreign source income which is paid in, or remitted into, Japan. Japan source income includes compensation for services performed in Japan, regardless

of whether the income is paid offshore or by a foreign party. If the compensation relates to services performed both within and outside of Japan, then in practice the individual generally allocates the compensation based on the number of days during the tax year that he is physically present in Japan.

Non-residents are not generally subject to Japan income tax, except with respect to Japan source income.

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)?

No income tax applies on the termination of Japan residency or expatriation (termination of Japanese nationality). However, for any year in which an individual terminates Japan residency, he continues to be subject to Japan income tax based on his residency status, up until the date on which residency is terminated. Any income tax return required to be filed for the final (short) tax year from 1 January until the residency termination date must be filed by either:

- The termination date.
- 15 March of the year following the year in which residency was terminated, if the individual appoints a tax agent in Japan.

In addition, an individual resident is liable for local Inhabitant's Income Tax (*Juminzei*) on taxable income for a tax year, if he was a resident on 1 January of the year following that tax year. Therefore, an individual planning to terminate Japan residency in Year 1 should do so before 1 January in Year 2, to avoid being subject to Inhabitant's Income Tax in Year 2 on all taxable income earned in Year 1.

Temporary residents

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

Non-permanent residents are generally subject to income tax only on their Japan source income and any foreign source income which is paid in, or remitted into, Japan (see *Question 2*).



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?

Unless an applicable tax treaty provides otherwise, a non-resident individual (who does not conduct business in Japan) selling or otherwise disposing of real estate or other assets is generally subject to Japan tax on any gain realised as follows:

- Real property located in Japan:
 - long-term (held for more than five years as of 1 January of the year of sale): 15% (15.315% from 2013 to 2037);
 - short-term (held for less than five years as of 1 January of the year of sale): 30% (30.63% from 2013 to 2037).
- Shares of a Japan company are generally taxed at 15% (15.315% from 2013 to 2037) (7.147% until 31 December 2013) on listed company shares, but only if the individual, directly or through attribution, either:
 - owns, or owned at any time during the three tax years ending in the year in which the shares are disposed of, 25% or more interest in the company, and disposes of 5% or more of his interest;
 - disposes of 2% of the shares of an unlisted, or 5% of a listed, Japan real estate holding company (a company more than 50% of the assets of which consist of Japan real property).
- Intellectual property rights in Japan: generally treated as the one-time payment of a royalty subject to withholding tax of 20% (20.42% from 2013 to 2037).
- Certain other Japan assets, such as golf club memberships, certain forestry rights, and so on, are subject to tax.

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

Unless an applicable tax treaty provides otherwise, a non-resident individual is subject to Japan tax on income, other than on the sale or other disposition of an asset (see *Question 5*), as follows:

- If the individual is not engaged in business through a permanent establishment (PE) in Japan, certain Japan source income (for example, dividends, interest and royalties) is subject to a withholding tax of 20% (20.42% from 2013 to 2037) or 15% (15.315% from 2013 to 2037).
- If the individual is engaged in business through a PE in Japan, any Japan source income is subject to Japan income tax at the ordinary, marginal income tax rates applicable to residents of up to 50% (50.84% from 2013 to 2037).

Income derived from the following sources is generally treated as Japan source income:

- Income arising from the conduct of business in Japan.

- Income from services performed in Japan.
- Lease rents relating to real property in Japan.
- Lease rents relating to equipment or other assets located in Japan.
- Income from the transfer of assets located in Japan.
- Profits of a Japan business under a *tokumei kumiai* contract (TK) (a type of silent partnership arrangement authorised under the Japan Commercial Code).
- Dividends from a Japanese company.
- Interest on loans to a Japan person.
- Royalties for the use of intellectual property in Japan.

Inheritance tax and lifetime gifts

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

Japanese gift and inheritance tax applies as follows:

- **Japan situs property.** Tax applies regardless of the residency/nationality of the transferor or transferee.
- **Japan residents.** Tax applies to individuals domiciled in Japan who receive property located anywhere in the world by gift or inheritance.
- **Japan nationals not resident in Japan (“5-Year Rule”).** These continue to be subject to tax on non-Japan property received by gift or inheritance:
 - for 5 years after leaving Japan; or
 - indefinitely if received from a transferor, whether or not a Japanese national, who had a domicile in Japan within 5 years before the gift or death.

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

Tax rates

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

- Up to JPY10 million: 10%.
- JPY10 million to JPY30 million: 15%.
- JPY30 million to JPY50 million: 20%.
- JPY50 million to JPY100 million: 30%.
- JPY100 million to JPY300 million: 40%.
- Over JPY300 million: 50%.

There is a surtax of 20% on amounts inherited by persons other than the deceased's:

- Spouse.
- Parents by blood.
- Children by blood.



In addition, for income tax purposes, heirs take a carryover adjusted tax basis in property received by inheritance (the same tax basis that the decedent had at death).

Gift tax. Gift tax is levied at the following rates on net taxable assets:

- Up to JPY2 million: 10%.
- JPY2 million to JPY3 million: 15%.
- JPY3 million to JPY4 million: 20%.
- JPY4 million to JPY6 million: 30%.
- JPY6 million to JPY10 million: 40%.
- Over JPY10 million: 50%.

Inheritance tax. A basic exemption of JPY50 million, plus JPY10 million for each statutory heir, applies to the total amount inherited. Certain limitations apply on the number of adopted children who can be treated as “statutory heirs” for this purpose.

Gift tax. A basic annual exemption of JPY1.1 million applies to all gifts received by the donee during the year (up to JPY20 million for certain one-time gifts of residential property to be used by a spouse married for more than 20 years).

In addition, donors aged 65 or older can use a special gift tax regime for certain gifts to lineal descendants aged 20 or older. In lieu of the JPY1.1 million basic exemption, these gifts are allowed a one-time JPY25 million exemption, after which gifts are tentatively taxed at a flat 20% rate. On the death of the donor, the gift is taxed at the lower inheritance tax marginal rates, rather than at the higher gift tax marginal rates (a credit can be claimed for the initial 20% tax paid at the time the gift was made).

Exemptions

Generally, assets are valued at their fair market value. However, certain special valuation rules apply, including:

- **Land.** Land value is generally based on the Road Tax (*Rosenka*) value for land in Japan, as set by the Japanese tax authorities. Special deductions (of up to 80%) may apply for property used as the primary residence of the decedent and/or heirs.
- **Real property improvements.** Their value is based on the same value as that used for the annual Fixed Asset Tax (*Koteishisanzei*) and set by the local government.

The following are allowed as deductions against the total amount inherited:

- Debts and funeral expenses: generally, allocated to the successor assuming the debt.
- Estate administration: not deductible.
- Charitable gifts: allocated to the charitable successor. Only charities qualifying as such under Japan law are eligible.
- Life insurance proceeds (JPY5 million times the number of statutory successors): allocated to each beneficiary receiving insurance proceeds.

- Retirement allowances and so on (JPY5 million times the number of statutory successors): allocated to each beneficiary receiving the benefits.

In addition, the following are allowed as credits against the inheritance tax:

- Spousal: generally, equal to the greater of the first JPY160 million of net taxable assets (before the basic exemption), or the total inheritance tax times the spouse's statutory share (usually 50%).
- Minor child: JPY60,000 times the number of years until the child reaches age 20 (majority).
- Disabled person: JPY60,000 times the number of years until the person reaches age 70.
- Gift tax: any gift tax paid on gifts made within three years of death (these gifts being included in the taxable inheritance).
- Transfers from a prior decedent within ten years.
- Foreign tax credit: credit for inheritance, estate and similar taxes paid to foreign governments on property subject to inheritance tax is permitted subject to certain limitations.

Techniques to reduce liability

Deferring gifting until death. The maximum marginal rate for gift taxes applies to gifts starting from only JPY10 million and for inheritance tax, from JPY300 million. Therefore, *inter vivos* gifts are generally not tax efficient.

Life insurance. If using life insurance, arranging for the beneficiary to own (that is, pay premiums on) the life insurance generally results in more net proceeds. This is because life insurance owned by the insured is treated as deemed inheritance subject to inheritance tax (at up to a 50% tax rate). However, life insurance owned by the beneficiary is not treated as deemed inheritance, but are treated as occasional income, only half of which is subject to income tax (resulting in a net effective tax rate of 25%).

Valuation of closely-held companies. For individuals operating closely-held, family companies, traditional inheritance tax planning involves restructuring the family company so as to qualify to use a preferable valuation method, which results in the lowest tax value. For unlisted stock, the valuation is based on one of three valuation methods: net asset value, comparable or a combination of these methods.

However, which method can be used depends on various factors, such as the size of shareholding being valued, type and scale of the company, value of net assets, stated capital and capital surplus, dividends, and comparable figures of similar companies.

Compared to the net asset value method, the comparable method generally produces the lowest value because it is based on dividends, net income and book value of net assets, which is relatively low for many Japanese companies.

Family businesses. As an incentive to support family businesses, inheritance or gift tax can be deferred on certain intergenerational



transfers. For certain family businesses, a principal heir can defer payment of inheritance tax on up to 80% of the taxable value of up to two-thirds of the issued and outstanding voting shares held by a qualifying decedent in a qualifying company and received by way of inheritance until the death of the principal heir (provided certain requirements for providing collateral are met). Similarly, an heir of the principal heir can, on the death of the principal heir, defer the tax under the same conditions, such that the tax deferral can continue to future generations.

In the case of a gift, a principal donee can defer payment of gift tax on up to two-thirds of the issued and outstanding voting shares (including shares already held by the principal donee) in a qualifying company received by way of gift from a qualifying donor (provided certain requirements for providing collateral are met).

Other

For Japan nationals, under the “5-Year Rule” (see *Question 7*), non-Japan assets can be gifted or inherited tax-free only if both the donor/decedent and donee/heir have both been non-residents of Japan within the past five years. Therefore, Japan nationals who become non-residents of Japan (for work or other reasons) can make gifts of non-Japan assets to non-resident family members after residing outside of Japan for at least five years.

For non-Japanese nationals, because of the relatively high (50%) gift and inheritance tax rates, minimising Japan taxes on Japan situs assets could, for example, simply involve purchasing or holding these assets in a non-Japan company. In this case, the asset (shares of a non-Japan company) inherited would not generally have Japan situs, provided that the donee/heir was not a Japan resident.

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

Japan gift and inheritance tax applies if the donee/heir is a Japan resident, the assets are Japan situs assets, or if the donee/heir is a non-resident Japanese national, if either the donee/heir or the donor/decedent was a Japan resident within the past five years (see *Question 7*). Therefore, Japan real property or assets owned by a non-resident is potentially subject to gift or inheritance tax.

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

Transfers of Japanese real property by way of inheritance or gift are subject to Registration Tax of 0.4% and 2%, respectively.

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

There are two types of transfer tax potentially payable on transfers of real estate by the acquirer located in Japan:

- **Acquisition tax.** This is a local tax payable at a standard rate of 4% on the official appraised value of the real estate transferred.

- **Registration tax.** This is a national tax at a standard rate of 2% arising when the acquirer applies for a change in the real estate registration that is assessed at the time of registration.

In addition, stamp tax applies to the execution of various types of documents, including:

- Promissory notes.
- Real estate contracts.
- Loan documents.
- Merger agreements.
- Articles of incorporation.
- Debt guarantees.

Rates vary from as little as JPY200 to JPY600,000, depending on the type of document and the size of the transaction.

Wealth taxes

Fixed Asset Tax (*Koteishisanzei*) applies annually with respect to registered ownership of certain property, such as real property and certain intellectual property, based on the tax-assessed value.

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

To minimise gift and inheritance tax, non-resident individuals should generally hold Japan real property through a non-Japan company, where the donee/heir is not a Japan resident (see *Question 8, Other*).

Taxes on overseas real estate and other assets

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

Gift and inheritance tax

For gift and inheritance tax purposes, the location of property does not matter in the case of Japan resident donees/heirs, as all worldwide assets received are subject to tax.

Income tax

For income tax purposes (see *Question 2*), a permanent resident is subject to tax on worldwide income, including income from real estate and other assets outside of Japan (foreign tax credits can be claimed with respect to foreign income tax assessed on such non-Japan income). In addition, under the anti-tax haven rule, a resident shareholder who directly or by attribution owns 10% or more of the shares in a “designated foreign subsidiary” is subject to current taxation on his allocable share of “taxable undistributed profits” of the subsidiary, to the extent of his direct ownership in the subsidiary. A “designated foreign subsidiary” (*Tokutei Gaikoku Kogaisha*) is generally defined as a foreign company both:

- In which more than 50% of the shares is owned directly or indirectly by Japan residents.



- Which is either not subject to any income taxation in its home jurisdiction, or if subject to income taxation in its home jurisdiction, is subject to an effective tax rate of 20% or less.

International tax treaties

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

Japan has an extensive network of income tax treaties, including with all major financial centres in the Americas, Asia and Europe:

- Americas (Brazil, Canada, Mexico, USA).
- Asia (Bangladesh, Brunei, China, Hong Kong, India, Indonesia, Korea, Malaysia, Pakistan, Philippines, Singapore, Sri Lanka, Thailand, Vietnam).
- Europe (Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, The Netherlands, Norway, Poland, Romania, Slovak Republic, Spain, Sweden, Switzerland, UK).
- Pacific (Australia, Fiji, New Zealand).
- Middle East and Africa (Egypt, Israel, Saudi Arabia, South Africa, Zambia).
- Former USSR (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan).

In addition, Japan has a gift, inheritance, and estate tax treaty with the USA.

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?

With respect to inherited assets subject to Japan succession law, there is generally no need to make a will, unless the distribution under the intestacy rules is unsatisfactory. Generally, with respect to a Japanese national resident, only a Japan will (described in *Question 16*) is valid. With respect to foreign national residents, the creation and effect of a will is governed by the national law of a testator. The form of non-Japan wills (preparation and execution) is valid if made in compliance with the law of the:

- Place where the will is made.
- Country of the testator's nationality either at the time of making the will or at death.
- Domicile or usual residence of the testator either at time of making the will or at death.
- In the case of immovables (real property), the law of the place where the immovable is situated.

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?

Generally, there are three types of will under Japan law, which can be used by foreign nationals as well as by Japanese nationals:

- Holographic will (*Jihitsu Shosho Igon*).** A document prepared in the decedent's own handwriting (it need not be in the Japanese language), with any seal affixed, signed and dated. The will takes effect at the time of the testator's death. However, to execute the will, the will must be filed with, and recognised by, the Family Court.
- Notarial will (*Kosei Shosho Igon*).** A document prepared in its entirety by a notary (*kashonin*) to whom the decedent recited his intentions in the presence of two witnesses. It is signed by the decedent and witnesses, attested by the notary and kept by the notary. The notary retains the original will. The will takes effect at the time of the testator's death and may immediately be executed (generally, there is no need to file the will with the Family Court).
- Will by secret document (*Himitsu Shosho Igon*).** A document (handwritten or typed) seal affixed/signed by the decedent and placed in an envelope and sealed (seal affixed). The decedent presents the envelope to a notary before two witnesses, declaring the contents to be his will. The notary writes this information on the envelope and signs, along with the decedent and witnesses. The will takes effect at the time of the testator's death. However, to execute the will, the will must be filed with, and recognised by, the Family Court.

Redirecting entitlements

17. What rules apply if beneficiaries redirect their entitlements?

A successor can renounce his right to all or a portion of the decedent's assets to which the successor succeeds by filing a declaration with the Family Court. By renouncing his right to succession, the successor is deemed not to have been a successor. Statutory successors succeed not only to the assets of the deceased, but also to the deceased's debts. If the decedent's debts exceed his assets, then the successors may renounce their right to succession to avoid incurring personal liability for the decedent's debts. Because a renunciation affects all aspects of succession, the successors may alternatively make a qualified acceptance which would limit their liability only to the decedent's property received by succession.

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

With respect to foreign national residents, either a Japan will or a will from their home country is valid. The form of non-Japan wills



(preparation and execution) is valid if made in compliance with the law of one of the following:

- The place where the will is made.
- The country of the testator's nationality either at the time of making the will or at death.
- The domicile or usual residence of the testator either at time of making the will or at death.
- In the case of immovables (real property), the law of the place where the immovable is situated.

Validity of foreign grants of probate

Generally, with respect to the Japan property of a foreign non-resident decedent, the disposition of property under a foreign probate proceeding is recognised in certain circumstances.

Death of foreign nationals

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

Practically, the procedure for succession (transferring title of a decedent's assets) is a matter of satisfying the local registry office with respect to land, the corporation or transfer agent with respect to stock shares, or the bank with respect to deposit accounts, and so on. Unless there is a dispute, succession matters are generally not handled by the Japanese courts.

Probate documents from the home country, documents listing the legal heirs, and/or powers of attorney given by the estate's personal representative/executor or heirs to persons in Japan, along with Japanese translations, may be sufficient to satisfy most requirements for transferring title ownership as part of the succession procedure. However, the actual documents required depend on the individual policies of the legal affairs bureau, corporation, bank, and so on, where title/custody of the asset is held. Further, because these documents generally need to be translated into the Japanese language, it may be administratively more efficient to use a Japan will to dispose of Japan assets.

Administering the estate

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

Responsibility for administering

Generally, the heirs are responsible for administering the assets of the decedent. An executor(s) can be appointed under a will (or a will can name a third person to designate the executor) to act on behalf of the successors to execute the terms of the will, but not to administer the decedent's property. If a decedent has no apparent heirs or if there is a dispute among the heirs, the Family Court appoints an administrator on the application of an interested party or a public prosecutor to administer the decedent's property.

Vesting

The successors (heirs) are deemed to succeed to the decedent's property (except for certain rights and property which are entirely personal and therefore cannot be inherited) and debts immediately on the decedent's death.

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 succession procedure is generally an informal matter handled by the heirs (see *Question 19*), often with the help of a certified tax accountant (*zeirishi*), to:

- Determine the assets and liabilities.
- Locate necessary documents.
- Pay off liabilities including any taxes.
- File tax returns.
- Agree to an allocation/partition of the net assets among the successors.
- Distribute the assets in accordance with the allocation/partition.

The transfer of title/ownership of assets from the decedent to the heirs generally requires filing the appropriate documents with the institution where ownership is recorded (for example, the bank branch where a deposit account is located, the local Legal Affairs Bureau where title to real property is registered, and so on). In addition to the death certificate, key documents include an official family registry or other official documentation containing similar information (to determine the statutory heirs). In addition, foreign language documents must generally be translated into the Japanese language, which may require official translations.

Procedure for paying taxes

Liability for inheritance taxes lies with the successors (heirs), who generally file a joint inheritance tax return (which is due ten months after the date of death), often with the help of a certified tax accountant.

Distributing the estate

Because successors succeed to their respective share in each asset of the decedent, the successors generally enter into a partition agreement to divide the assets so that each heir ends up with a 100% interest in specific assets (usually, with the help of the certified tax accountant). On filing the appropriate documents, including the partition agreement with the institution where ownership is recorded, title in specific assets is then recorded in the name of the specific heir entitled to that asset under the partition agreement.

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

The due date for filing the inheritance tax return is ten months after the date of death and therefore tax liabilities in the other



jurisdictions should be determined and paid before then to permit foreign tax credits to be claimed. With respect to valuation of foreign assets, the valuation used for the inheritance or estate tax filing in the local jurisdiction, or an appraisal by a certified appraiser, are generally sufficient for Japan tax purposes.

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

The validity or terms of a will can be challenged by a successor by filing a claim with the Family Court. In addition, successors can initiate a court action to remove an executor for cause.

SUCCESSION REGIMES

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

Generally, a decedent can dispose of his assets under the terms of a valid will, subject to the legally secured portion of certain statutory heirs (see Question 25). If there is no will, the assets (and liabilities) pass in accordance with the intestacy rules (see Question 28).

Forced heirship regimes

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

Regardless of the provisions of a will, certain statutory successors are generally entitled to a minimum portion (legally secured portion (*Iryubun*)) of the decedent's assets as follows:

- Surviving spouse, children and other issue are entitled to elect to take half of their respective statutory share (that is, the share they would have received if the decedent died intestate (see Question 28)).
- Ascendants (parents and grandparents) are entitled to one-third of their statutory share, but siblings are not entitled to take any legally secured portion.

The right to a legally secured portion applies regardless of the nationality/citizenship or residence of the heirs. Therefore, in general, a decedent can freely distribute at least one-half of the assets subject to succession free of the legally secured portion rule.

Avoiding the regime

It is first necessary to determine whether Japan succession law (including the legally secured portion) applies to each asset based on the applicable conflict law (which generally depends on the nationality of the decedent). If, under the applicable conflict of law rules, Japan succession law applies, it may be possible to avoid the Japan legally secured portion rules where, for example, the local jurisdiction in which the property is located does not allow these rules to apply.

Assets received by beneficiaries in other jurisdictions

With respect to a decedent domiciled in Japan, the property to which the forced heirship rules apply depends on whether Japan

law applies as determined under the applicable conflict of law rules (see above, *Avoiding the regime*).

Mandatory or variable

A statutory heir entitled to forced heirship rights may claim or waive his rights.

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?

Generally, Japan applies the conflict and succession law based on the decedent's nationality (or the law of a political subdivision if there is no national conflict and succession law and/or the subdivision has its own conflict and succession law). Where the home jurisdiction's conflict law provides that, with respect to personal property, the law of the decedent's domicile should apply and, with respect to real property, the law of the place where the property is located should apply, Japan will apply the succession law accordingly. If the home jurisdiction permits its own law (rather than the law of the domicile) to apply to personal property held or managed in that state, Japan will generally apply the succession law of the decedent's home country accordingly.

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

Japan generally applies *renvoi* if the home country law is the governing law.

INTESTACY

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

If a decedent did not have a valid will, then under the intestacy rules, the assets are divided as follows, where the decedent is survived by:

- Spouse and children, then the spouse is entitled to one-half the decedent's assets and the children share equally the other half (any children of a predeceased child are entitled to share the predeceased child's share).
- Spouse and lineal ascendants (mother and father or other issue), but no children or other issue (grandchildren), then the spouse is entitled to two-thirds and the lineal ascendants share the remaining one-third.
- Spouse and siblings of decedent, but no children or other issue or ascendants, then the spouse is entitled to three-fourths and the siblings share the remaining one-fourth.
- Spouse, but no children or other issue, ascendants or siblings, then the spouse is entitled to all the decedent's assets.
- Children or other issue (grandchildren), but no spouse, then the children share equally all of the decedent's assets (any children of a predeceased child are entitled to share the predeceased child's share).



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

Generally, it is not possible to challenge the adequacy of the statutory share provided under the intestacy rules. However, where a successor has contributed to the maintenance or increase in property of the decedent, provided recuperation and/or nursing services to the decedent, and so on, the successor may by agreement with the other successors, or by order of the Family Court, succeed to additional property of the decedent in recognition of the contribution or services provided.

TRUSTS

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

Type of trust and taxation

Under the Japan Trust Law, trusts are generally recognised. For estate planning purposes, there are generally three types of trust that can be used:

- **No Beneficiary Trust (*Jyuekisha Tou Ga Sonshinai Shintaku*).** A trust is a No Beneficiary Trust if no beneficiary or other person (who can receive trust assets) with the power to amend the terms of the trust so as to violate the purpose of the trust, is specified. For Japan tax purposes, on the transfer of property into the trust:
 - the settlor/transferor is deemed to have sold the property (and therefore may be subject to income tax on any gain on the deemed sale);
 - the trustee is deemed to have received a donation (which is treated as donation income), as if the trustee were a corporation under the Corporation Tax Law; and
 - if a beneficiary is related to the settlor, the trustee is also deemed to have received a gift as if the trustee were a Japanese national under the Gift Tax Law (however, any corporation tax on the deemed donation described immediately above is creditable against the gift tax).

The trustee is deemed the owner of the trust assets as if the trustee was a corporation for corporation and income tax purposes. In addition, beneficiaries are deemed to be the shareholders of the deemed corporation. If a beneficiary of a No Beneficiary Trust is determined, then:

- the trust ceases to be a No Beneficiary Trust;
- the trust assets are deemed to be transferred to the beneficiary at their adjusted tax basis; and
- the beneficiary is not subject to income tax on the deemed receipt of such assets, provided that the beneficiary was in being (alive) at the time the trust came into effect. A beneficiary not in being at such time is subject to Gift Tax on the distribution.

- **Sequential Beneficiary Trust (*Jyuekisha Renzokugata Shintaku*).** A sequential beneficiary trust is a trust the terms of which:

- provide that the beneficial right expires on the beneficiary's death and another person becomes the new beneficiary in sequence;
- provide that the beneficial right expires on the beneficiary's death or on the happening of other circumstances, at which time another person will obtain new beneficial rights;
- provide that the beneficial right will be transferred to another person on the beneficiary's death or on the happening of other circumstances;
- provide that a person has the right to change or name beneficiaries; or
- are similar to the above.

For Gift Tax purposes, the initial beneficiary is deemed to receive a gift from the settlor upon the establishment of the trust, and the subsequent beneficiary is deemed to receive a gift upon succeeding to or receiving the subsequent beneficial interest.

- **General Trust.** A general trust is a trust which is not one of the above (or another type of business trust, collective investment trust, pension trust, and so on, under the Japan Trust Law). For Japan tax purposes, a beneficiary of a general trust is deemed to receive a gift, unless the settlor is also the beneficiary (in which case there are no tax consequences to the settlor or trustee). The beneficiary is then deemed to directly own the assets of the trust and deemed to directly earn the income from the assets.

Residence of trusts

The tax residency of a trust is generally based on the residency of the deemed owner of the trust assets, whether the beneficiary, settlor, or trustee.

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

Generally, there is no restriction on recognising trusts governed by foreign laws, but as a practical matter, it is not clear what the legal status of a foreign trust is.

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

Depending on how the trust is treated for Japan tax purposes (see *Question 30*), the trustee is generally subject to Japan tax on the income from the trust assets if the trustee is treated as the owner of the trust assets under Japan tax law.



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

Generally, a trust may be created for any purpose which is not illegal.

Perpetuities and accumulations

Under the Japan Trust Law, there is no perpetuity period or limit on the period in which income may be accumulated, except with respect to a No Beneficiary Trust, the period of which cannot exceed 20 years.

Beneficiaries' rights to information

A beneficiary may request:

- That a trustee to report on the processing status of trust administration.
 - To inspect or copy the documents of a trustee. In this case, the trustee may refuse such request in certain cases, such as if the request was made:
 - for purposes other than an investigation related to secure or exercise of the requester's rights;
 - at an inappropriate time;
 - for the purpose of disturbing the trust administration or harming the common interests 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?

Generally, a spouse can make a claim against any interest that a settlor or beneficiary has in a trust, but cannot make a claim against the trust assets themselves on the dissolution of a marriage.

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?

Assets transferred to a trust by a settlor cannot generally be claimed by the settlor's creditors, except in the case of a fraudulent transfer or to the extent of a settlor's interest in the trust. Similarly, assets held in trust cannot generally be claimed by a creditor of a beneficiary. However, a creditor may be able to, for example, obtain the settlor's or beneficiaries' interest in the trust.

ONLINE RESOURCES

Ministry of Internal Affairs

<http://law.e-gov.go.jp/cgi-bin/idxsearch.cgi>

Official texts of certain laws and cabinet orders (regulations) published by the Ministry of Internal Affairs.

National Tax Agency

www.nta.go.jp/shiraberu/zeiho-kaishaku/tsutatsu/menu.htm

Official texts of Circulars issued by the National Tax Agency.

OWNERSHIP AND FAMILIAL RELATIONSHIPS

Co-ownership

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

Persons can own specific portions of a property (for example, as tenants in common), but there is generally no concept of joint ownership or joint ownership with survivorship rights. However, if a decedent who co-owned property has no successors or withdraws from the co-ownership arrangement, the surviving or remaining co-owner(s) may succeed to the co-owned property.

Familial relationships

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

Under a surviving spouse's forced heirship right, the spouse can claim one-half of the spouse's statutory share of the decedent's assets (see *Question 28*).

38. 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 legal relationship for same-sex couples.

39. How are the following terms defined in law:

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

Married

Generally, the pre-requisites of marriage are governed by the law of the jurisdiction of each party's nationality, but the formalities of (procedures for) marriage are governed by the law of the place where



the marriage takes place. In the case of marriages taking place in Japan, the legal requirements for marriage under Japan law must be met and the Japanese marriage registration procedures must be followed. Marriages to Japanese nationals (whether in Japan or another country) must be properly registered under the Family Registration Law at the place where the Japanese national's family registration is located (or, if the Japanese national resides outside of Japan, with the Japanese consular authorities).

Divorced

A married couple can divorce by agreement, which should be registered (no court proceeding is necessary).

Adopted

An individual of legal age can adopt another person other than an ascendant or older person (generally, court proceedings are required when a person to be adopted is a minor). An adopted child is treated as the legitimate child of the adopting parent.

Legitimate

A child conceived by a wife during a marriage is presumed to be the child of her husband, unless the husband denies that the child is legitimate. A child who is not legitimate may be acknowledged by its father or mother.

Civil partnership

Civil partnerships are not recognised.

Minority

40. 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 is entitled to inherit assets in the same way as an individual who has reached majority (age 20). A minor is entitled to own property, but his property is subject to control by the minor's guardian (generally, his parent(s)). If the minor has no parents or his parents lack the capacity to serve as guardian, the Family Court can appoint a guardian to act for the minor.

CAPACITY AND POWER OF ATTORNEY

41. 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 person in a habitual condition of mental unsoundness may be adjudged incompetent by the Family Court on the application of the person, his spouse, any relative within the fourth degree, his guardian or curator, or a public procurator.

In practice, Japan powers of attorney must generally be very specific as to the actions that the attorney is allowed to take and the conditions under which the actions can be taken. Therefore, "general" powers of attorney are usually not used or recognised.

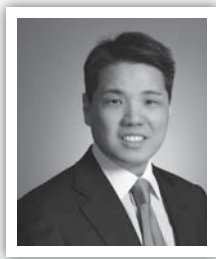
PROPOSALS FOR REFORM

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

There are no official proposals for reform.



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