

# International **Comparative** Legal Guides



## Private Client **2021**

A practical cross-border insight into private client work

**10<sup>th</sup> Edition**

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# Japan

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## 1 Connection Factors

### 1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

#### Income Tax

For Japanese income tax purposes, all individuals are classified as (i) residents (including non-permanent residents), or (ii) non-residents. Residents will generally be subject to Japanese income tax on their worldwide income. However, non-permanent residents who do not have Japanese citizenship and who have spent a total of five years or less within the past 10 years as residents in Japan are taxed on: (a) their Japan-sourced income; and (b) their non-Japan-sourced income to the extent that it is remitted to Japan. Non-residents are persons who are not treated as residents. Japanese income tax for non-residents is assessed on Japan-sourced income only.

#### Inheritance Tax and Gift Tax

For Japanese inheritance tax and gift tax purposes, all individuals are classified as either (i) residents, or (ii) non-residents, depending on their place of domicile. In addition, their nationality and the length of the residency matter as well. Since the criteria are complex, further details will be covered in question 2.1 below.

### 1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

Persons having a domicile (*jyusho*) in Japan and persons having a residence (*kyosho*) in Japan for one year or more are treated as residents for income tax purposes, and persons having a domicile (*jyusho*) in Japan are treated as residents for inheritance/gift tax purposes. Domicile as used in the Income Tax Law and Inheritance Tax Law is interpreted to mean the “principal base and centre of one’s life”, while residence refers to a location in which an individual continually resides for a certain time, but which does not qualify as a base and centre of one’s life. However, there is no clear-cut definition of domicile in Japanese tax laws; therefore, whether a person is a resident or non-resident cannot be simply decided based on specific and clear numbers (e.g., days spent in Japan) under domestic laws in Japan, unlike those countries that have a 183-day rule. There are many court decisions on whether the taxpayer or relevant individual in question has a domicile in Japan. Generally speaking, whether an

individual has a domicile in Japan would be decided taking into account many facts, including the time spent in Japan, place of living, place of domicile of his/her family, place of his/her occupation and place of his/her assets.

### 1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

Please see questions 1.1 and 1.2 above for the answer to this question.

### 1.4 If residence is relevant, how is it defined for taxation purposes?

Please see questions 1.1 and 1.2 above for the answer to this question.

### 1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

For income tax purposes, nationality matters only when deciding whether a resident individual falls under the category of non-permanent residents. For inheritance/gift tax purposes, nationality matters when deciding the scope of inheritance tax and gift tax liabilities. Please see question 2.1 below for further details.

### 1.6 If nationality is relevant, how is it defined for taxation purposes?

Nationality is not defined in the Japanese Inheritance Tax Law, and the types of persons who have Japanese nationality are defined in the Nationality Act. For example, if a father or mother is a Japanese citizen at the time of their child’s birth, the child will be a Japanese citizen. Also, a person who is not a Japanese citizen may acquire Japanese nationality through naturalisation, subject to permission from the Minister of Justice.

### 1.7 What other connecting factors (if any) are relevant in determining a person’s liability to tax in your jurisdiction?

For a person not having Japanese nationality, the type of visa status would matter when deciding the scope of inheritance/gift tax liabilities. For further details, please see question 2.1 below.

**1.8 Have the definitions or requirements in relation to any connecting factors been amended to take account of involuntary presence in (or absence from) your jurisdiction as a result of the coronavirus pandemic?**

The definitions or requirements have not been amended. Since the time spent in Japan is taken into account when determining domicile/residence (and overseas travelling has become difficult due to the coronavirus pandemic), controlling the time spent in Japan (and thereby controlling the domicile/residence requirement) has become more difficult than usual.

## 2 General Taxation Regime

**2.1 What gift, estate or wealth taxes apply that are relevant to persons becoming established in your jurisdiction?**

The Japanese Inheritance Tax Law covers inheritance tax and gift tax.

Inheritance tax is imposed on an individual who acquires property by inheritance or bequest upon the death of the decedent.

Inheritance tax is imposed on the aggregate value of all properties acquired. The taxable base of property for inheritance or gift tax purposes is the fair market value at the time of the transfer. If the aggregate value does not exceed a basic

deduction, no inheritance tax will be levied. Currently, the basic deduction is ¥6 million multiplied by the number of statutory heirs, plus ¥30 million.

The total inheritance tax is calculated separately for each statutory heir and legatee based on the statutory shares, regardless of how the assets are transferred, using the progressive tax rates (ranging from 10% (¥10 million or less) to 55% (more than ¥600 million)). Then, the total amount of tax is allocated among those who will actually receive the estate assets in accordance with the decedent's will or the agreement among the heirs. Since there is a special exemption for spouses, in many cases, they do not have to pay inheritance tax.

Gift tax is imposed on an individual who acquires properties by gift during the lifetime of the donor. Gift tax is imposed as a supplement to inheritance tax.

The amount of gift tax is calculated based on the value of properties obtained by a gift during each calendar year, after deducting an annual basic exemption of ¥1.1 million, using the progressive tax rates (from 10% (¥2 million or less) to 55% (more than ¥45 million), in the case of gift acquired by a person of 20 years or older from lineal ascendant).

As a result of the 2017 tax reform, there have been changes to the scope of inheritance and gift tax depending on the status of heir/donee and deceased/donor. Heirs or donees subject to Japanese inheritance or gift tax can be summarised as shown in the following table:

Deceased Donor \ Heir Donee		Japanese resident	Non-Japanese resident		
			Japanese nationality		No Japanese nationality
			Japanese resident any time in the past <b>10 years</b>	Non-Japanese resident any time in the past <b>10 years</b>	
Japanese resident	Japanese resident				
	<b>Japanese temporary resident (*1)</b>				
	Japanese resident any time in the past <b>10 years</b>				
Non-Japanese resident	<b>Japanese temporary resident in the past (*2)</b>				
	Non-Japanese resident any time in the past <b>10 years</b>				

 : Unlimited liability

 : Limited liability

\*1 An alien residing in Japan under a status of residence listed in the left-hand column of Table I of Immigration Control and Refugee Recognition Act, whose total duration of residence is 10 years or less in the past 15 years.

\*2 A person having no Japanese nationality, whose total duration of residence is 10 years or less in the past 15 years.



For instance, an heir or donee who is domiciled in Japan when acquiring property upon the death of the deceased or by gift has unlimited liability for inheritance tax or gift tax, regardless of his/her nationality (except in certain cases, including the case where both an heir or donee and the deceased or donor are Japanese temporary residents). Unlimited liability taxpayers are subject to inheritance tax or gift tax on all of the properties acquired regardless of whether the assets are located in or outside Japan. On the other hand, limited liability taxpayers are subject to inheritance tax or gift tax only on the assets situated in Japan. Whether the property is situated in Japan is determined based on the location rules promulgated in the Inheritance Tax Law. For instance, real property is deemed a Japan-based asset if it is located in Japan. Also, corporate shares, bonds and debentures are deemed Japan-based assets if the issuing company has its head office or its principal office in Japan.

## 2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

As stated in question 1.1 above, Japanese residents will generally be subject to Japanese income tax on their worldwide income.

The annual tax rate is based on taxable income, ranging from 5% (for income of ¥1.95 million or less) to 45% (for income over ¥40 million). In addition, an income surtax will be applied for income earned through 31 December 2037 at a rate of 2.1% of the base income tax liability to secure the financial resources to implement the restoration from the Tohoku Earthquake in 2011. There are also municipal income and prefectural income taxes imposed on taxable income, and the combined rate for these taxes is 10%. Certain types of capital gains are treated separately from other types of income. For example, capital gains from a sale of stock in a corporation will generally be subject to a flat rate of 20.315% (national tax and local tax combined).

The Japanese government introduced the exit tax effective from 1 July 2015, which is applicable to certain expatriating Japanese individual residents. Under the exit tax rule, a Japanese resident who is subject to the exit tax will be subject to individual income tax on unrealised gain from certain securities upon the resident's emigration from Japan. The exit tax is applicable to a person who:

- a) is a Japanese resident whose place of domicile (*jyusho*) or residence (*kyosho*) has been Japan in excess of five years out of 10 years prior to the emigration; and
- b) has taxable assets (certain securities, interests in a silent partnership (*tokumei kumiai*), unsettled credit transactions and unsettled derivatives) with a combined value of ¥100 million or more.

It is notable that the exit tax is generally applicable not only to a Japanese national but also to a non-Japanese national, although the period of time spent in Japan by non-Japanese nationals under certain types of visa status (including intra-company transferee visas or business investor/manager visas) does not count toward the five-year threshold.

Those who are subject to the exit tax are deemed to have transferred certain taxable assets at the fair market value. If a taxpayer who paid the exit tax returns to Japan within five years of the initial emigration, and if such taxpayer still owns the taxable assets, he/she can apply for a cancellation and refund of the exit tax. Also, the tax authorities may grant a grace period of five years (which may be extended up to 10 years) to a taxpayer who has an exit tax liability if certain conditions (including the provision of collateral) are met.

## 2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

Individuals who are sole proprietors are subject to individual enterprise tax. Tax rates of the individual enterprise tax range from 3% to 5%, depending on the business segments.

## 2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

If there is a transfer or rental/lease of assets or provision of services as a business by an individual, consumption tax will be generally applicable. Also, consumption taxes and custom duties are generally imposed when goods are imported into Japan. For further details, please see question 4.2 below.

## 2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

There are a number of anti-avoidance provisions which apply in relation to income tax. Among other provisions, the Japanese CFC (controlled foreign company) regime is the most important provision for Japanese resident high-net-worth individuals.

The Japanese CFC regime is a mechanism to include income generated by a CFC in its Japanese parent company's or its individual Japan-resident shareholders' income and tax it in Japan under certain conditions in order to deter tax avoidance by utilising CFCs, especially in low/zero tax countries. To briefly introduce the complex rules of the Japanese CFC regime, the CFC rules generally apply if (a) Japanese corporations and Japanese resident individuals collectively own more than 50% of a foreign corporation, (b) a particular individual/corporate shareholder owns 10% or more of such foreign corporation, and (c) if the foreign corporation falls under either "Specified CFC" or the non-Specified CFC that meets certain requirements. A Specified CFC is a controlled foreign subsidiary that meets one of the following conditions: (i) paper company; (ii) cash-box company; and (iii) black-list company. If such Specified CFC's effective tax rate is below 30%, the full amount of income of the Specified CFC will be included in the income of its individual Japan-resident shareholders. Even if the foreign corporation does not meet the test of Specified CFC, if the effective tax rate of the CFC is below 20%, the full-inclusion rule or partial inclusion rule (depending on the substance of the CFC) is applicable.

## 2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

There are certain general anti-avoidance taxation provisions under Japanese tax laws. For example, there is a general anti-avoidance taxation provision that allows a director of each tax office to re-classify a transaction in a case where a family corporation (*douzoku kaisyā*) uses a scheme through which the amount of tax on a shareholder of the family corporation is reduced "unfairly". Similarly, there is an anti-avoidance taxation provision in the Japanese Inheritance Tax Law.

## 2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

Currently, we do not have a rule for the disclosure of aggressive

tax-planning schemes, although it is reported that the government is aiming to introduce the mandatory disclosure rule in response to Action 12 of the BEPS Plan.

### 3 Pre-entry Tax Planning

#### 3.1 In your jurisdiction, what pre-entry estate, gift and/or wealth tax planning can be undertaken?

Inheritance/gift taxes are assessed depending on the residency status of the deceased/donor and heir/donee as described in question 2.1 above. If both donor and donee are non-Japanese residents for a certain period of time, and the gifted assets are non-Japan-based assets, this gift will not be subject to Japanese gift tax. Therefore, a foreign resident who is considering becoming a Japanese resident may gift overseas assets to his/her future heirs prior to the entry into Japan.

#### 3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Income arising in the tax year prior to becoming a Japan resident is not taxable. The Japanese tax year for individuals runs from January 1 to December 31 each year. Pre-entry planning includes measures to accelerate the receipt of income (e.g., dividend or capital gains) prior to becoming a resident for Japanese income tax purposes.

#### 3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

This is not applicable.

### 4 Taxation Issues on Inward Investment

#### 4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments made by a non-resident in your jurisdiction?

Japanese income tax for non-residents is assessed on Japan-sourced income only. Such Japan-sourced income includes the following types of income: (i) capital gains from a disposal of real properties in Japan; (ii) capital gains from a sale of shares of a Japanese company if a foreign shareholder both (a) owns 25% or more of the shares of a Japanese company, and (b) disposes of 5% or more of those shares in the same tax year ("25/5 Rule"); (iii) dividends from a Japanese company; (iv) interest paid by a Japanese company or individual; and (v) rental income from a lease of real properties in Japan. Please note that a special rule to modify the scope of Japan-source income may apply if a foreign investor is a tax resident in a country with which Japan has a tax treaty (see question 6.1).

#### 4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Consumption taxes (at a rate of 10% from October 2019) and custom duties are generally imposed when goods are imported into Japan. However, assets that are to be used by a person and his/her family members who move into Japan for one year or more, and that are imported into Japan within six months from the entry into Japan, are generally exempt from consumption tax and custom duty.

#### 4.3 Are there any particular tax issues in relation to the purchase of residential properties by non-residents?

Generally, a real property acquisition tax (at a rate of 3% for land and residential property) is imposed. However, for residential properties, there are certain exemptions or reduced rates. Also, upon registration of purchased real properties, a registration and licence tax will be imposed (generally at a rate of 1.5% or 2%). As is the case with the real property acquisition tax, there are certain exemptions and reduced rates for residential properties.

### 5 Taxation of Corporate Vehicles

#### 5.1 What is the test for a corporation to be taxable in your jurisdiction?

A domestic corporation, meaning that the corporation is incorporated in Japan, is taxed on its worldwide income, including foreign branch income.

#### 5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

Domestic corporations are subject to corporation tax, national local corporate tax, standard enterprise tax and local corporate special tax and inhabitant's tax. The total corporate effective tax rate (operating in Tokyo and enterprises that are not small or medium enterprises) is approximately 30.62% (for tax years beginning on or after April 1, 2018).

#### 5.3 How are branches of foreign corporations taxed in your jurisdiction?

Japan-source income attributable to a branch (permanent establishment) is taxed in the same way as a domestic corporation.

### 6 Tax Treaties

#### 6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Japan has concluded many tax treaties with many countries for the purposes of avoiding double taxation of income internationally and preventing tax evasion (currently 74 conventions, applicable to 132 jurisdictions as of September 1, 2019). The provisions of tax treaties supersede those of domestic law. In determining the tax liability in Japan of individuals domiciled in a country with which Japan has a tax treaty, the scope of Japan-source income may at times be amended to accord with these tax treaties. In the tax treaties, there are provisions for reducing the tax on, or exempting from tax, various types of income sourced in Japan.

#### 6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

Generally speaking, the income tax and capital gains tax treaties follow the OECD model.

#### 6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

Japan has signed only one tax treaty in relation to estate,

inheritance and gift tax, which is that with the United States. The purpose of the treaty is to avoid double taxation of inheritance tax in Japan and estate tax in the United States.

#### 6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

The Japan-US treaty does not follow the OECD model. The treaty focuses on the place of the deceased's assets, thereby aiming to avoid the double taxation.

## 7 Succession Planning

#### 7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

Under Japanese law, the rules of inheritance are governed by the law of the nationality of the decedent. Therefore, if a decedent's nationality at the time of his/her death is Japanese, Japanese law governs the rules of inheritance.

According to the Japanese Civil Code, all rights and obligations (except the rights or duties that are purely personal) of the deceased transfer to heirs automatically and comprehensively at the time of the decedent's death.

As Japan ratified in 1964 the 1961 Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, the formal validity of a will made in a form that satisfies foreign law requirements may be admitted. On the other hand, essential validity of a will is governed by the law of the nationality of the decedent.

#### 7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

Japanese inheritance law applies to an inheritance of a decedent who has Japanese nationality regardless of the place of his/her real property, unlike some countries' rules in which succession laws of the location of the real property apply to a specific succession of real property (e.g., the United Kingdom or the United States).

#### 7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

As is the case in other civil law jurisdictions, the statutory reserved portion of certain statutory heirs is provided for in the Civil Code. The statutory reserved portion enables certain persons to claim a share of an estate if they are excluded from succession by the decedent's will. Although the decedent may determine the allocation of his/her estate property by will, his/her spouse, child or children and lineal ascendants as heirs will have a right to receive their statutory shares of the estate under forced heirship rules. As a result of the amendments to the Civil Code regarding the succession system, which became effective on July 2019, certain rules regarding forced heirship rules have been changed (e.g., gifts made 10 years or more before the commencement of succession are not counted in the calculation of the statutory reserved portion of the estate for certain heirs).

## 8 Trusts and Foundations

#### 8.1 Are trusts recognised/permitted in your jurisdiction?

Trusts, including trusts established abroad, are recognised and permitted in Japan both for legal and tax purposes.

#### 8.2 How are trusts/settlors/beneficiaries taxed in your jurisdiction?

For Japanese income tax purposes, a trust is treated, depending on its legal character, as transparent, not transparent but not a taxable entity, or a deemed corporation. Trusts that are used for wealth management purposes are mostly categorised as transparent trusts. When an individual acquires a trust beneficiary interest upon the death of the decedent, inheritance tax would be imposed on such an individual.

As stated above, there are trusts that are treated for tax purposes as if they are corporations. For income and corporation tax purposes, such deemed corporations are subject to corporation tax (at approximately 30% tax rate). If individual heirs of the settlor do not acquire any beneficial interest from the trust, there will be no inheritance tax.

#### 8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

A beneficiary interest in a trust may be transferred in accordance with a trust deed without going through the division of estate procedure. However, the trust may be subject to the forced heirship rules.

#### 8.4 Are private foundations recognised/permitted in your jurisdiction?

Private Foundations (*zaidan boujin*) and Private Incorporated Associations (*shadan boujin*) are permitted to be established under Japanese laws. Also, foreign foundations are recognised in Japan for both legal and tax purposes.

#### 8.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

As there is no ownership interest in a foundation, the assets acquired by the foundation would not be included in the estate upon the death of the decedent, and thus would not generally be subject to inheritance tax upon the death of the founder. Although these entities are generally subject to corporation income tax on gains by gift, if certain conditions are met, the income could be exempt from corporation income tax. When a founder makes a certain gift (other than cash) to a Private Foundation or a Private Incorporated Association, there could be capital gains taxation, although there are some exceptions if certain conditions are met.

#### 8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

A foundation can be a donee of estates, although such gift may be subject to the forced heirship rules.

## 9 Matrimonial Issues

### 9.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

Civil partnerships or same-sex marriages are not yet permitted under the Civil Code.

### 9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

Assets obtained during marriage, except those described below, are deemed common property in substance (even when an asset is obtained under the name of either one of the married couple) and therefore divided equally, even if one of them did not earn any income. In contrast, any assets obtained prior to marriage belong to the original owner. Also, assets that were inherited from a spouse's own family are excluded from the division of assets on divorce.

### 9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Pre-marital agreements are permitted in Japan.

### 9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

As indicated in question 9.2 above, common property will be divided equally upon divorce.

## 10 Immigration Issues

### 10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

In principle, a visa is required for entry into Japan, although persons from countries with a visa waiver programme visiting Japan for certain purposes within a limited period of time are not required to obtain a visa.

### 10.2 Does your jurisdiction have any investor and/or other special categories for entry?

There are visas for those who engage in certain investment/management activities in Japan.

### 10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

If a father or mother is a Japanese citizen at the time when their child is born, the child obtains Japanese nationality. Also, a person who is not a Japanese citizen may acquire Japanese nationality through naturalisation subject to permission from the Minister of Justice.

### 10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

Please see questions 2.1 and 2.2 above.

### 10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

As shown in the table in question 2.1 above, the 2017 tax reform has amended the inheritance tax laws in order not to tax the overseas assets held by a person temporarily living in Japan. As regards immigration, certain rules were put in place to facilitate the acceptance of highly skilled foreign professionals in Japan.

## 11 Reporting Requirements/Privacy

### 11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

As stated in question 6.1 above, Japan has concluded many tax treaties, most of which include an exchange of information clause. Also, Japan is a signatory of the Convention on Mutual Administrative Assistance.

For purposes of implementing the exchange of information based on the Common Reporting Standard (CRS), a system for financial institutions to report relevant information to the competent tax offices was adopted under Japan's 2015 tax reform.

### 11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

In an effort to improve compliance and enforcement with respect to the reporting of income from overseas assets, the foreign asset report requirement was introduced from January 1, 2014 for permanent individual residents who own overseas assets of more than ¥50 million in aggregate. A permanent individual resident means an individual resident who has Japanese nationality or who has been in Japan in excess of five years out of the preceding 10 years.

### 11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

Other than the CRS reporting requirement, there is no such public registration system.





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