Japan: 2018 gift and inheritance taxation reforms

April 25, 2018

In brief
The 2018 Japan Tax Reform Proposals were passed into law in the Diet on March 28, 2018. Effective April 1, 2018, the ‘5-year tail’ rule for foreign nationals who permanently depart Japan but had a jusho in Japan for 10 out of the last 15 years (‘former not short-term foreigners’) is repealed – this change is welcome relief for certain mobile individuals. However, if the former not short-term foreigner returns to Japan and re-establishes a jusho within two years of his/her permanent departure from Japan, then any assets gifted (including assets located outside of Japan) by him/her during this period will be subject to Japan gift tax.

In detail
Pre-April 1, 2018 law: Overview of ‘5-year tail’ rule
As part of the 2017 Tax Reforms, a ‘lookback’ rule for foreign nationals who had departed Japan but had a jusho (or often described as person’s principal place of living) in Japan for 10 out of the last 15 years was passed into law, effective April 1, 2017. Under this rule, transfers of the foreign nationals’ worldwide assets continue to be subject to Japan gift and inheritance tax after permanently moving out of Japan (‘5-year tail’ rule). Even if the foreign national no longer holds a Japanese visa, the assets are located overseas, or the recipient has never resided in Japan before, the transfer of assets involving the foreign national could be subject to Japan gift and inheritance tax. There was a ‘transition measure’ in the law that exempted foreigners who permanently departed Japan prior to April 1, 2017 from the ‘5-year tail’ rule.

Effectively, the transfer of assets involving foreign nationals who had a jusho in Japan for 10 years or more could be subject to Japan gift and inheritance tax, as well as potentially to transfer tax in another country for up to five years after permanently moving out of Japan (‘5-year tail’ rule).

Details of the April 1, 2018 law
Repeal of the ‘5-year tail’ rule with claw-back provision
Under the 2018 Tax Reforms, the ‘5-year tail’ rule for foreign nationals who had departed Japan but had a jusho in Japan for 10 out of the last 15 years is repealed for gifts and inheritances occurring on or after April 1, 2018. However, if the donor returns and re-establishes a jusho within two years of permanent departure from Japan, the 10-out-of-15-year lookback rule will still apply. Effectively, any worldwide gifts occurring within the two years between departure from and return to Japan potentially could be subject to Japan gift tax.
In addition, the law continues to exempt foreigners who permanently departed Japan prior to April 1, 2017 from the ‘5-year tail’ rule; accordingly the claw-back provision does not apply to them.

Japan gift and inheritance tax matrix – April 1, 2018

The current laws are summarized in the table below. The shaded boxes represent changes from the 2017 Tax Reforms (i.e., the implication of the 2018 Tax Reforms, specifically on the repeal of the ‘5-year tail’ rule with two-year claw-back provision).

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Visa arrangements continue to play an important role

While the repeal of the ‘5-year tail’ rule provides some welcome relief, the Japan gift and inheritance tax laws surrounding foreign nationals, specifically while they are residing in Japan, remain the same. The type of visa held by foreign nationals still has a direct impact on whether they can be exempt from Japan gift and inheritance tax on overseas assets.

Under the 2017 Tax Reforms, the transfer of overseas assets between foreign nationals who have a jusho in Japan for less than 10 out of the last 15 years with a visa issued under Table 1 of the Immigration Act (‘temporary foreigners’) with other temporary foreigners, or with foreigners outside of Japan, is not subject to gift and inheritance tax. Please note the transfer of overseas assets with Japan nationals who currently have a jusho or had a jusho in Japan within the previous 10 years is not exempt. Also, the transfer of Japanese assets continues to be subject to Japan gift and inheritance tax.

To qualify for the above exemption, foreign nationals need to meet the definition of temporary foreigners.
The foreign national has to (1) have a jusho in Japan for not more than 10 out of the past 15 years looking back from the date of death/gift and (2) hold a visa issued under Table 1 of the Immigration Act (see Table 1 below). Foreign nationals who satisfy (1) but fail to satisfy (2) (i.e., hold visa issued under Table 2) will not qualify as temporary foreigners and therefore are subject to worldwide taxation for Japan gift and inheritance tax purposes while residing in Japan, regardless of with whom the transfers are made.

### Table 1

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Diplomat</th>
<th>Official</th>
<th>Professor</th>
<th>Artist</th>
<th>Religious activities</th>
<th>Journalist</th>
</tr>
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<tbody>
<tr>
<td>Highly skilled professional</td>
<td>Business manager</td>
<td>Legal / accounting services</td>
<td>Medical services</td>
<td>Researcher</td>
<td>Instructor</td>
<td></td>
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<tr>
<td>Engineer / specialist in humanities / intl services</td>
<td>Intra-company transferee</td>
<td>Entertainer</td>
<td>Skilled labor</td>
<td>Technical intern training</td>
<td>Cultural activities</td>
<td></td>
</tr>
<tr>
<td>Temporary visitor</td>
<td>Student</td>
<td>Trainee</td>
<td>Dependent</td>
<td>Designated activities</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Table 2

<table>
<thead>
<tr>
<th>Table 2</th>
<th>Permanent resident</th>
<th>Spouse or child of Japanese national</th>
<th>Spouse or child of permanent resident</th>
<th>Long-term resident</th>
</tr>
</thead>
</table>

**Continued ‘10-year tail’ rule for transfers involving Japanese nationals**

**Japanese national heir/donee**

The 2017 Tax Reforms provide that if the Japanese national heir/donee is not a resident of Japan but either the heir/donee or the decedent/donor had a jusho in Japan within the past 10 years of the gift or inheritance, then the Japanese national heir/donee would be subject to gift or inheritance tax on worldwide assets. This means that neither the donor/decedent (Japanese or foreign national) nor the Japanese national heir/donee should have a jusho in Japan within 10 years before the gift or inheritance so as not to be subject to Japan gift and inheritance tax on overseas assets.

An exemption to this rule is provided to a decedent/donor who is a temporary foreigner residing in Japan, and to a foreign national who has permanently departed Japan.

**Japanese national decedent/donor**

Similarly, if the Japanese national decedent/donor is not a resident of Japan but had a jusho in Japan within the past 10 years of the gift or inheritance, then a foreign national heir/donee would be subject to gift or inheritance tax on worldwide assets. This means there is a ‘10-year tail’ in relation to the Japanese national decedent/donor’s assets, even if the heir/donee is a foreign national.

For more background and detailed information on the 2017 Tax Reforms, please see our previous Global Mobility Insight [here](#).

**The takeaway**

The repeal of the ‘5-year tail’ provides welcome relief for foreign nationals who currently have a jusho in Japan for 10 out of the last 15 years, and who plan to depart or already have permanently departed Japan. In addition, individuals should be aware that the type of visa, nationality, and number of years of having a jusho in Japan continue to have significant importance with respect to Japan gift and inheritance taxes. These laws are complex, and individuals should seek professional advice.
Insights

Let’s talk

For a deeper discussion of this issue, please contact your Global Mobility Services engagement team or one of the following professionals:

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