
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depart Japan but had a *jusho* in Japan for 10 out of the last 15 years (‘former not short-term foreigners’) is repealed – this change is welcome relief for certain mobile individuals.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 they depart Japan until they no longer have a *jusho* in Japan for 10 out of the last 15 years.

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). 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.

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tail’ rule for foreign nationals who had departed Japan but had a *jusho* in Japan for 10 out of the last 15 years is repealed for gifts and inheritances occurring on or after April 1, 2018.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).

Donor/decedent \ Donee/heir		Jusho in Japan		No jusho in Japan		
		Temporary foreigners	Japanese national		Non-Japanese national	
			Had jusho in Japan within 10 years before death/gift	No jusho in Japan within 10 years before death/gift		
Jusho in Japan						
Temporary foreigners						
No jusho in Japan	Had jusho in Japan within 10 years before death/gift	Japanese national	Note 1		Note 1	Note 1
		Former not short-term foreigners	Note 2		Note 2	Note 2
		Former short-term foreigners				
	No jusho in Japan within 10 years before death/gift					

	Inheritance/gift tax on Japan-situs assets and no change from previous rule
	Inheritance/gift tax on Japan-situs assets and the rule has been relaxed
	Inheritance/gift tax on worldwide assets and no change from previous rule

- Temporary foreigners: Foreign nationals who hold a visa issued under Table 1 of the Immigration Act, such as work visa, and have had a *jusho* in Japan for not more than 10 years out of the past 15 years looking back from the date of death/gift
- Former not short-term foreigners: Foreign nationals who have left Japan and had a *jusho* in Japan for more than 10 years out of the past 15 years (provided they are not Japanese nationals during any of the Japan residency period)
- Former short-term foreigners: Foreign nationals who have left Japan, and have had a *jusho* in Japan for not more than 10 years out of the past 15 years looking back from the date of death/gift (provided they are not Japanese nationals during any of the Japan residency period)
- Note 1: The donor/decedent's worldwide assets are subject to inheritance/gift tax for 10 years after permanent departure
- Note 2: The donor's worldwide assets are subject to gift tax if the donor reestablishes a *jusho* within two years after permanent departure from Japan

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

Table 2			
Permanent resident	Spouse or child of Japanese national	Spouse or child of permanent resident	Long-term resident

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.

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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