
Update: Japan Gift & Inheritance Taxation Reforms affecting Expatriates on Assignment in Japan – Relief and More Exposure

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In brief

The 2017 Japan Tax Reform Proposals were passed in the Diet into law on March 27, 2017. They provide Japan gift and inheritance tax relief on non Japan situs assets to foreign nationals residing in Japan for 10 years or less out of the last 15 years and who hold a “table 1” visa that generally does not allow them to stay indefinitely in Japan, such as a work-related visa.

However, no relief is provided to foreign nationals who hold a “table 2” visa such as a spouse of Japanese national or permanent resident visa or foreign nationals who have resided in Japan for more than 10 years out of the last 15 years (“longer-term foreigners¹”); their worldwide assets remain subject to Japanese gift and inheritance tax.

In addition, for the first time, the transfer of worldwide assets by longer-term foreigners will remain subject to Japan inheritance and gift tax after they depart Japan until they have no longer had a *jusho* in Japan for 10 out of the last 15 years. Therefore, transfer of worldwide assets by longer-term foreigners could remain subject to Japan inheritance and gift tax for up to 5 more years after permanent departure from Japan. Foreign national recipients of non Japan assets from Japanese nationals who have had a *jusho* in Japan within the last 10 years will also be subject to Japan inheritance and gift tax.

Finally, the 5 year lookback rule for Japanese nationals has been increased to 10 years.

In detail

1. Overview of gift and inheritance tax

Japanese gift and inheritance tax is imposed on the recipients of the property, rather than the person transferring the property. This means that even if a recipient who is not a resident in Japan may still be subject to Japan gift/inheritance taxation.

A recipient’s or the decedent’s *jusho* is critical in determining the scope of Japan gift and inheritance taxes which can be limited to assets located in Japan (so-called “*limited taxpayer*”) or for worldwide assets (so-called “*unlimited taxpayer*”).

¹ For ease of reference in this alert, we refer to these taxpayers as “longer-term foreigners”, but please note that this term is not included in the Japan tax law.

2. Definition of *Jusho*

There is no definition under the Japan tax laws for what constitutes as a *jusho* however, it is understood to refer to the definition under Japan Civil Law, which is described as a person’s “principal place of living” as determined based on an individual’s “objective facts and circumstances”.

Please note that *jusho* is not the same as the concept of permanent home as defined in other locations.

Some of the main factors that are considered in determining one’s *jusho* include, but are not limited to, the following:

- Location of where one resides;
- Location of the person’s spouse and other family members;
- Location of the person’s occupation;
- Location of the person’s assets/property

3. Pre-April 1, 2017 law– who is subject to tax – Limited versus Unlimited Taxpayers

If the recipient’s *jusho* is outside of Japan, the recipient is considered to be a “limited taxpayer” and gift and inheritance tax is only levied on those assets situated in Japan at the time of the transfer.

If an individual inherits/receives assets while his/her *jusho* is in Japan, then he/she is considered an “unlimited taxpayer” and inheritance/gift tax may be levied on the value of worldwide assets inherited/received, regardless of whether the donor/decedent’s *jusho* was in Japan or overseas at the time of the asset transfer.

In addition, where the donor/decedent had a *jusho* in Japan, even if the recipient did not have a *jusho* in Japan, the recipient is also classified as an unlimited taxpayer and subject to gift and inheritance tax on worldwide assets.

Beneficiaries who are Japanese nationals may be considered “unlimited taxpayers” even if residing outside of Japan, if they or the decedent had a *jusho* in Japan within the past 5 years of the inheritance or gift.

The current law is summarized in the table below:

Donor/Decedent \ Donee/Heir		Jusho of Donee/Heir	
		Jusho in Japan	No Jusho in Japan
Jusho of Donor/Decedent	Jusho in Japan	Unlimited taxpayer - the donee/heir has Jusho in Japan, worldwide assets regardless of situs will be taxable.	Unlimited taxpayer - Even though the donee/heir does not have Jusho in Japan, the donor/decedent's Jusho in Japan will make worldwide assets taxable regardless of its situs. *
	No Jusho in Japan	Unlimited taxpayer - the donee/heir has Jusho in Japan, worldwide assets regardless of situs will be taxable.	Limited taxpayer - both the donee/heir & donor/decedent do not have Jusho in Japan, only Japan situs assets will be taxable**

* With the tax reform effective April 1, 2013, if the donor/decedent has Jusho in Japan, the Non-Japanese beneficiary will be classified as an unlimited taxpayer taxed on worldwide assets.

** If the Donee/Heir is a Japanese National, both the Donor/Decedent and the Donee/Heir have to break Jusho for at least 5 years.

4. Pre-April 1, 2017 law – Impact on expatriates

Practically, expatriates on an assignment in Japan for 1 year or longer would have potential Japanese inheritance tax exposure on any worldwide amounts inherited and a Japan gift tax exposure for any worldwide gifts received while residing in Japan. In addition, any assets they transfer while in Japan through gift or inheritance would potentially be subject to Japan gift or inheritance tax for the recipient.

This tax exposure is regardless of their status as non-permanent residents or permanent residents (living in Japan for more than 5 years within the past 10 years) for income tax purposes. Therefore, currently for foreigners it is possible to be taxed on Japan source income only for income tax purposes but be subject to Japan inheritance and gift tax on worldwide inheritances and gifts.

For more background and detailed information on the current law, please see our previous alert located here: <http://www.pwc.com/jp/en/taxnews-international-assignment/assets/japan-gift-and-inheritance-tax-reform-update.pdf>

5. Details of the April 1, 2017 tax laws

(1) Exclusion from Japan inheritance and gift tax for foreigners “staying temporarily” in Japan

Under the FY17 tax reform, the transfer of overseas assets regarding a foreigner could be excluded from Japan gift or inheritance tax if the foreigner is “staying temporarily” in Japan with a visa issued under table 1 of the Immigration Act (we have included a matrix below to help illustrate; an example of this kind of situation would be Case 1 in the matrix).

Taxpayers who have resided in Japan for a period of not more than 10 years out of the previous 15 years are considered as “staying temporarily” in Japan. The transfer of overseas assets between these taxpayers and other taxpayers who are “staying temporarily” in Japan with a visa issued under table 1 of the Immigration Act or with foreigners outside of Japan who have not resided in Japan before would not be subject to gift and inheritance tax (see Cases 2 and 3 in the matrix). However, please note the transfer of overseas assets with Japanese nationals who are subject to gift and inheritance tax would not be excluded. Also, the transfer of Japanese assets would continue to be subject to Japan gift or inheritance tax.

Foreign nationals holding a spouse of a Japanese national visa or permanent resident visa (or other visa under “table 2”) or foreign nationals who have maintained a *jusho* in Japan for more than 10 years out of the last 15 years will be considered as unlimited taxpayers and subject to gift and inheritance tax on worldwide assets transferred (i.e. they are not considered “short-term foreigners” in the matrix).

(2) Foreigners subject to Japan inheritance and gift tax after departing Japan

As an anti-tax avoidance measure, the proposed reforms also include a “lookback” rule for foreign nationals. The transfer of foreign nationals’ worldwide assets will continue to be subject to Japan inheritance and gift tax after they depart Japan until they have no longer had a *jusho* in Japan for 10 out of the last 15 years (See Note 2 in the matrix).

To clarify, this means that the transfer of assets involving foreign nationals who had a *jusho* in Japan for 10 years or more could be subject to Japan gift or inheritance tax as well as potentially transfer tax in another country for up to 5 years after permanently moving out of Japan. Even if the foreign national no longer holds a Japanese visa or if the assets are located overseas or if the recipient has never resided in Japan before, the transfer of assets involving the foreign national would be subject to Japan gift or inheritance tax.

There is a “transition measure” in the law that basically exempts foreigners who permanently departed from Japan prior to April 1, 2017 from the 5 year lookback rule.

In addition, if the decedent/donor is a Japanese national who is not a resident of Japan but had *jusho* in Japan within the past 10 years of the taxable inheritance or gift then the recipient would be taxable on the inheritance or gift even if the asset was not located in Japan and/or the recipient is a foreign national. This means that there is a 10 year “lookback” in relation to the Japanese national decedent/donor’s assets (see Note 1 in the matrix).

(3) Increased scope of gift and inheritance tax for Japanese Nationals

Historically, beneficiaries who are Japanese nationals may be considered “unlimited taxpayers” even if residing outside of Japan if they or the donor/decedent had a *jusho* in Japan within 5 years of the inheritance or gift. The new law increases this time period from 5 years to 10 years.

In addition, there is no transition measure for Japanese nationals. Therefore, Japanese nationals who departed Japan 6 years ago as of March 31, 2017 may have no longer been subject to Japan gift and inheritance tax on assets outside of Japan per the old law but from April 1, 2017, they will be subject to Japan gift and inheritance tax on assets outside of Japan again for another 4 years.

6. Japan Gift and Inheritance tax matrix – April 1, 2017

Donor/Decedent \ Donee/Heir		Jusho in Japan	No Jusho in Japan		
			Japanese National		Non-Japanese National
		Short-Term Foreigners	Had Jusho in Japan within 10 years before death/gift	No Jusho in Japan within 10 years before death/gift	
Jusho in Japan					
Short-term Foreigners			(Case 1)		(Case 2)
No Jusho in Japan	Had Jusho in Japan within 10 years before death/gift	Japanese National	Note 1		Note 1
		Former Not Short-Term Foreigners	Note 2		Note 2
		Former Short-Term Foreigners			
	No Jusho in Japan within 10 years before death/gift		(Case 3)		

	Inheritance/gift tax on Japan-situs assets and no change from previous rule or the rule has been relaxed
	Inheritance/gift tax on worldwide assets and no change from previous rule
	Inheritance/gift tax on worldwide assets even if donee/heir is not domiciled in Japan and the rule has become stricter

Short-Term Foreigners: Foreign nationals who hold a visa issued under Table 1 of the Immigration Act, such as work visa, and have had *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 *Jusho* in Japan for more than 10 years out of the past 15 years

Former Short-Term Foreigners: Foreign nationals who have left Japan, and have had *Jusho* in Japan for not more than 10 years out of the past 15 years looking back from the date of death/gift

Note 1: The donor/decedent’s worldwide assets are subject to Inheritance/Gift Tax for 10 years after permanent departure.
 Note 2: The donor/decedent’s worldwide assets are subject to Inheritance/Gift Tax for up to 5 years after permanent departure.

Case 1: Foreign national executive and family temporarily living in Japan. Executive dies and family inherits assets.
 Case 2: Foreign national executive temporarily living in Japan dies and family in home country inherits assets.
 Case 3: Foreign national executive temporarily living in Japan and parents in home country die and executive inherits assets.

7. Issues to Consider for your Expatriate Employees

Impact for Short-term Foreigners:

These changes provide welcome relief for short-term foreigners, relieving them of the burden of potentially being subject to Japanese gift/inheritance on overseas assets. This change should reduce the trepidation that some assignees may have had about seeking and accepting an assignment in Japan. We believe that this change should positively impact the number of employees considering accepting a Japanese assignment.

Impact for Longer-term Foreigners:

However, the impact for longer-term foreigners is their worldwide assets will be exposed to Japanese gift and inheritance tax for up to 5 years after they permanently depart Japan. Companies will need to consider possible methods of helping their longer-term foreigners manage the potential additional gift/inheritance tax exposure.

Impact for Japanese national assignees:

The rules have also become stricter for Japanese national assignees (including foreign national assignees with Japanese national spouse/children). Potentially, they and/or their assets will be subject to Japan gift or inheritance tax for 10 years after their departure from Japan.

Potential Approaches:

Communication to Expatriates – Educating current expatriates residing in Japan of their potential gift/inheritance tax exposure is also important to potentially avoid any inadvertent and unexpected tax liabilities (for example, seminars to educate employees and employers to make them aware of these issues).

Considering visa arrangements for expatriates

Given the fact that the type of Japan visa held by foreign nationals now has a direct impact on whether foreign nationals can be excluded from Japan gift and inheritance tax on overseas assets, impacted individuals and companies should review their visa status.

Pre-Assignment and during assignment planning – In many cases, gift and inheritance tax implications may be managed through appropriate planning prior to and during the Japan assignment. For instance, the acceleration of gifts to the pre-assignment period (or before an expatriate has resided in Japan for 10 years) could possibly avoid the Japan gift taxation and decrease the expatriate's net worth for Japan inheritance tax exposure. In addition, proper titling of properties could also reduce inheritance tax exposure. Of course, the gift and estate tax implications in the home country would also need to be considered.

Estate Tax Planning – Companies can also consider providing professional personal financial planning assistance to senior executives and those shorter-term expatriates approaching the 10 year threshold. Often executives fail to consider the effect of a long-term assignment on their estate planning, not realizing their home country planning may no longer be fully effective.

Tax Protection/Tax Equalization – Obtaining a better understanding of the exposure of gift and inheritance taxes for your expatriates in Japan should be on the agenda of all company HR and mobility professionals. We recommend that companies take a moment to review their current tax equalization policies to see if any clarification is needed on gift and/or inheritance tax matters. Similarly, companies may want to review their tax protection policies and the applicable tax ceiling coverage limits.

In summary

These new laws should provide welcome relief from gift and inheritance tax exposure for short-term expatriates. On the other hand, the increased exposure for longer-term foreigners and Japanese national employees mean that Global Mobility professionals may need to consider ways to address their potential additional gift and inheritance tax burden. The new laws are complex and can be confusing so interested individuals should seek professional advice.

Let's talk

For further information and assistance on these matters, please contact your PwC Tax Japan representative or any of the PwC professionals listed below.

PwC Tax Japan

Kasumigaseki Bldg. 15F, 2-5, Kasumigaseki 3-chome, Chiyoda-ku, Tokyo 100-6015

Tel: 81-3-5251-2400

Email: pwcjapan.taxpr@jp.pwc.com

www.pwc.com/jp/e/tax

Global Mobility Services

Nasir Majid

Partner

81-3-3539-6310

nasir.majid@pwc.com

Marcus Wong

Partner

81-3-3539-6406

marcus.wong@pwc.com

Ichiro Kawakami

Partner

81-3-3539-6369

ichiro.kawakami@pwc.com

Ryo Uehara

Director

81-3-3539-6389

ryo.uehara@pwc.com

Thomas Lu

Manager

81-80-4105-4130

thomas.lu@pwc.com

Yuriko Sudo

Manager

81-80-4105-4131

yuriko.sudo@pwc.com

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