
Update: 2018 Japan Gift & Inheritance Taxation Reforms

April 2018

In brief

The 2018 Japan Tax Reform Proposals were passed in the Diet into law 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depart Japan but had a *jusho* in Japan for 10 out of the last 15 years (“former not short-term foreigners”) is repealed. However, if the former not short-term foreigner returns to Japan and re-establishes *jusho* within 2 years of permanent Japan departure 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

1. 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, the transfer 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 transfer tax in another country for up to 5 years after permanently moving out of Japan (‘5-year tail’ rule). 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 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.

2. Details of the April 1, 2018 law

a) 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tail’ rule for foreign nationals who had departed Japan but had a *jusho* in Japan for 10 out of the last 15 years is repealed for gifts and inheritances occurring on or after April 1, 2018. This is provided that the donor does not return and re-establish *jusho* within 2 years of permanent Japan departure, in which case the 10-out-of-15-year lookback rule will still apply. Effectively, any worldwide gifts occurring within the 2 years between Japan departure and return could potentially 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, and accordingly the claw-back provision does not apply to them.

b) Japan gift and inheritance tax matrix – April 1, 2018

The current laws are summarized in the table below. The shaded cells 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 2-year claw-back provision).

Donor/Decedent		Donee/Heir	Jusho in Japan	No Jusho in Japan		
				Temporary Foreigners	Japanese National	Non-Japanese National
Jusho in Japan				Had Jusho in Japan within 10 years before death/gift	No Jusho in Japan within 10 years before death/gift	
		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 *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 (provided they are not Japanese national during any of the Japan residency period)
- 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 (provided they are not Japanese national during any of the Japan residency period)

Note 1: The donor/decendent'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 *Jusho* within 2 years after permanent departure from Japan

3. Visa arrangements continue to play an important role while residing in Japan

While the repeal of ‘5-year tail’ rule does provide 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 foreign national 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 Japanese 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 are therefore subject to

worldwide taxation of Japan gift and inheritance tax while residing in Japan, regardless of whom the transfers are made with.

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

4. Continued '10-year tail' rule for transfers involving Japanese nationals

a) Japanese national heir/donee

The 2017 Tax Reforms provide that if the Japanese national heir/donee who 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 both the donor/decedent (Japanese or foreign national) and the Japanese national heir/donee should not have a *jusho* in Japan within 10 years before gift or inheritance for the Japanese national heir/donee to not be subject to Japan gift and inheritance tax on overseas assets. An exemption to this rule is provided to decedent/donor who is a temporary foreigner residing in Japan, and foreign national who has permanently departed Japan.

b) Japanese national decedent/donor

Similarly, if the Japanese national decedent/donor who 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 alert located here: <https://www.pwc.com/jp/en/taxnews-international-assignment/assets/gms-20170414-en.pdf>

The Takeaway

The repeal of the '5-year tail' provides a welcome relief for foreign nationals who currently have a *jusho* in Japan for 10 out of the last 15 years, and plan to or already have permanently departed Japan. In addition, individuals should be aware that the type of visa, nationality, and number of years of *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 how this issue might affect your own personal situation, please contact:

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