

2021 Japan Tax Reform Proposals: Some Japanese gift & inheritance tax relief for foreigners

January 2021

In brief

The 2021 tax reform proposals submitted by the Government's Ruling Party were released on December 10, 2020 and are due to be submitted to the Japanese parliament in early 2021.

This alert provides a brief summary of the pertinent reforms, impacting the scope of Japanese gift and inheritance tax for foreigners. A subsequent tax update will provide more detailed analysis once the 2021 tax reform proposal is passed into law and the enforcement order has been issued.

In detail

1. Japan Gift and Inheritance Tax

With the aim of promoting and increasing the number of foreigners employed in Japan, in the 2021 tax reforms proposals, the Japanese government have tried to reduce the impact of Japanese gift and inheritance tax for foreigners.

Under the current law, the scope of Japanese gift and inheritance tax can be limited to only Japan situs assets, where foreign nationals are considered as temporary foreigners. To qualify as a temporary foreigner, a foreigner national needs to meet both the visa test and a residency time period test.

Under the current law, a foreign national needs to hold a visa issued under Table 1 of the Immigration Act, such as work-related visa, AND have had resided in Japan for not more than 10 years out of the past 15 years looking back from the date of death or gift. Please note that the visa test and residency time period test are applied to both the donor/decedent and donee/heir. To summarize, under the current law, inheritances and gifts received by non-residents or temporary foreigners residing in Japan from other temporary foreigners residing in Japan on non-Japan situs assets, will not be subject to Japan gift or inheritance tax.

The 2021 tax reform, proposes to provide some relief to foreign nationals who have lived in Japan for more than 10 years out of the last 15 years where under the current laws there has been no relief or exemption available by relaxing how "temporary foreigners" are defined and removing the residency time period test (i.e. the 10 years out of the past 15 years look back test). However, the 2021 tax reform only plans to remove this residency time period test for the donor/decedent and retain the residency time period test for the donee/heir. As such, the current law would still apply when determining foreign nationals' classification as a donee/heir.

Practically, this would mean foreign nationals would be considered as "temporary foreigners", as the donor/decedent, if they are holding a Table 1 visa at the time of the transfer, regardless of how long

they have been residing in Japan. Non-Japan situs assets transferred to a non-resident of Japan or to other temporary foreigners residing in Japan should not trigger any Japan gift or inheritance tax.

However, under the proposed 2021 tax reform, non-Japan situs assets transferred from “temporary foreigners” to other family members who have been residing in Japan for longer than 10 years would trigger Japan gift or inheritance tax since the new definition of “temporary foreigner” would not apply to the donee/heir under this situation. Please refer to the matrix below for further guidance.

There was no stated date of effectiveness if this proposed reform were to be passed into law.

2. Japan gift and inheritance tax matrix under the new proposal

Under the tax reform proposal, the dark grey cells represent the potential changes for the “temporary foreigners” as the donor or decedent.

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			Note 3		Note 3	Note 3
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 will be relaxed under the current proposal
	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/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 Jusho within 2 years after departure from Japan
Note 3:	Propose to remove the 10 years out of the past 15 years look back requirement for a Temporary Foreigner as a donor/decedent

3. Other Considerations

When it comes to cross border estate planning, one should also consider their application of their home country’s gift and inheritance tax laws. Additionally, the current state of public finances expended to provide economic support to fight the COVID-19 pandemic, along with tax changes (recent, proposed and anticipated), resulting from the pandemic and changes in governments provide a backdrop for some urgency in engaging in cross border estate planning.

A relevant and timely example would be for taxpayer with family members who are US nationals or green card holders or holding US situs assets. The current US lifetime gift and estate exemption is \$11.7 million. However, this exemption amount may not stay at this level depending on the new tax landscape in the US due to COVID-19 and the incoming administration. As such, this may provide an opportunity for some accelerated wealth transfer planning before any changes to the exemption amount. We will provide further updates once there are any relevant tax changes from the new US

administration and/or other significant tax reforms from other countries that significantly impact the foreign community in Japan.

In addition, taxpayer should also keep in mind of Japan Exit Tax which may apply to certain financial assets transferred from a resident of Japan to a non-resident of Japan if the taxpayer falls under the scope of the Japanese Exit Tax scheme. For further details of Japan Exit Tax, please refer to our prior tax update on this subject by clicking on the link [here](#).

Please note that the explanations above have been simplified to help with ease of understanding the general concepts and rules on the 2021 tax reform proposal. However, the final language will need to be further examined once it is passed into law, which is expected to be in late March of 2021. A further update will be provided in our future tax alerts.

The takeaway

In order to attract more foreigners to come work in Japan, the current government is proposing to relax Japan gift and inheritance tax assessed on non-Japan situs assets for certain foreigners. To achieve this, the scope of who qualifies as a temporary foreigner will be relaxed, removing the residency time period test for foreign national donors and decedents but not for foreign national donees and heirs.

Practically, this means that only non-Japan situs assets transferred to a non-resident of Japan or other temporary foreigners residing in Japan would be exempt from Japan gift and inheritance tax. While this proposed reform will not address all the significant Japan inheritance and gift tax concerns of foreign nationals living in Japan, it does provide some relief to foreign nationals who have lived in Japan for more than 10 out of the last 15 years where under the current laws, there is no relief or exemption available.

As a reminder, the Japan gift and inheritance laws and regulations are complex and will continue to evolve as further guidance is issued. As such, professional tax advice is strongly recommended for affected individual taxpayers. Foreign taxpayers in Japan are further advised to consider the potential gift and estate/inheritance individual tax impacts of any actions they may take in regard to asset transfers, so professional Japanese tax advice and tax advice in their home jurisdiction is recommended.

Let's discuss

For a deeper discussion of how this issue might affect your estate planning, please contact us at:

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