



**COUNTRY
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The Legal 500 Country Comparative Guides

Japan

PRIVATE CLIENT

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This country-specific Q&A provides an overview of private client laws and regulations applicable in Japan.

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JAPAN

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1. Which factors bring an individual within the scope of tax on income and capital gains?

The main factors determining income tax liability in Japan are domicile (*jusho*), residence (*kyosho*), nationality, length of domicile and residence in Japan, and whether the income is domestically sourced income or not.

Individuals liable for income tax in Japan are broadly classified into two categories: residents and non-residents. Residents are classified into two categories: residents other than non-permanent residents and non-permanent residents. Residents are individuals who have a domicile or residence in Japan for at least 1 year, and all income (whether domestic or foreign) is taxable. Non-permanent residents are individuals who do not have Japanese nationality and have had a domicile or residence in Japan for less than 5 years within the past 10 years. The taxable income includes income generated in Japan (domestically sourced income) and other foreign sourced income paid in Japan or remitted into Japan. Non-residents are individuals who are not residents, and only domestically sourced income is taxable.

Domicile means the individual's centre of living. Whether or not a person has a domicile in Japan is determined based on a combination of objective factors such as the number of days of actual stay in Japan, occupation, location of assets, residence status of family and relatives, and nationality.

Residence means the place where the individual stays continuously for a certain period but where it cannot be said his/her centre of living.

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be

submitted and tax paid?

2.1. Income Tax Income tax is calculated by dividing income into 10 categories: (i) interest income, (ii) dividend income, (iii) real estate income, (iv) business income, (v) employment income, (vi) retirement income, (vii) forestry income, (viii) capital gain income, (ix) temporary income, (x) and miscellaneous income. The tax is calculated by subtracting each income deductions from the total amount of income and then multiplying the remaining balance which is the taxable amount by the progressive tax rates, ranging from 5% (for the amount of JPY 1.95 million or less) to 45% (for the amount over JPY 40 million). A special restoration income surtax of 2.1% will be applied on income earned through December 31, 2037 on the amount of income tax each year. The inhabitant tax of 10% is imposed, which is divided into municipal income and prefectural income taxes.

Certain type of capital gains are taxed separately from other sources of income. Gains from the transfer of real estate held for more than 5 years are taxed as long-term capital gains at a flat rate of 20.315% (15.315% for national tax and 5% for inhabitant tax), separately from other income. On the other hand, gains from the transfer of real estate held for 5 years or less is taxed as short-term capital gains at a flat rate of 39.63% (30.63% for national tax and 9% of inhabitant tax).

Gains from the sale of certain securities are taxed separately from other income at a flat rate of 20.315% (15.315% for national tax and 5% for inhabitant tax). Capital gains/losses from the sale of listed company's securities cannot be applied to capital gains/losses from the sale of non-listed company's securities.

Income tax is imposed on an individual's income during one calendar year. Income tax return shall be filed by March 15 of the following year and income tax payment shall be paid by the same date.

2.2. Exit Tax Exit tax has been introduced since July 1, 2015. Under this exit tax regime, when an individual (i) who is a resident staying in Japan in excess of 5 years

within 10 years prior to the emigration (except for a foreign individual staying in Japan with a certain working visa); and (ii) who owns certain taxable securities, including certain securities, interest in a silent partnership (*tokumei kumiai*), and unsettled derivatives with aggregate value of JPY 100 million or more leaves Japan, he/she is subject to income tax on unrealized gain from these taxable securities as if they are deemed to have been realized at the emigration. The individual who has notified the tax administrator with the authority by the emigration is required to file a tax return by March 15 of the following year. However, the one who does not appoint and notified tax administrator by the emigration must file and pay tax by the emigration.

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

The main types of income subject to withholding tax on payment made in Japan to residents and their tax rates are as follows:

Interest income: 15.315% of national tax and 5% of inhabitant tax

Dividend income: Dividends other than those from listed stocks-20.42% (no inhabitant tax), dividends from listed stocks-20.315% (15.315% of national tax and 5% of inhabitant tax)

Employment income - Withholding tax on employment income is calculated according to the "Table of Withholding Tax Amounts for Employment Income" and the "Table of Calculation Rates for Withholding Tax on Bonuses," both of which are published from the government annually.

Retirement income-20.42% (no inhabitant tax)

Compensation and fees (paid to non-employees) - 10.21%. However, 20.42% is applied to the portion of the amount paid which exceeds JPY 1 million.

When domestically sourced income is paid to a non-resident, the payer is required to collect withholding income tax at the time of payment. For example, when an individual acquires real estate located in Japan from a non-resident (excluding real estate acquired by the individual for his/her own or a relative's residential use and the amount of consideration is not more than JPY 100 million), or when an individual rents real estate located in Japan from a non-resident and pays the rental fee (excluding payments made by an individual who rents the real estate to use for his/her own or his/her

relative's residence), etc.

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

Residents can deduct a certain amount from their income tax when foreign sourced income is subject to taxation equivalent to income tax under foreign laws and regulations. This is called the foreign tax credit for income tax purposes. As of December 1, 2022, Japan has concluded tax treaties on income tax with 79 countries and regions which follow the OECD model. If there is a difference between the foreign tax credit for income tax and the tax treaty, the tax treaty shall prevail.

When foreign property is acquired by inheritance/gift and tax equivalent to the inheritance/gift tax of the country where the property is located is imposed, the inheritance/gift tax of the country can be deducted up to the amount of the Japanese inheritance/gift tax on the property (foreign tax credit for inheritance/gift tax). Japan has concluded inheritance and gift tax treaty only with the US, which does not follow the OECD model and focuses on the place of decedent's estate. If there is a difference between the foreign tax credit for inheritance/gift tax and the tax treaty, the tax treaty shall prevail.

The Convention to Implement Measures to Prevent BEPS ("BEPS Convention") took into force in Japan on January 1, 2019. As of October 6, 2022, Japan's tax treaty partners that have elected to be covered by the BEPS Convention are 42 countries and regions.

5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

No. There is no wealth tax in Japan.

6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

Inheritance tax is charged on an individual who acquires

property resulting from the death of the decedent through inheritance or bequests (collectively "Inheritance"). Gift tax is imposed on an individual who acquires property as a gift during the lifetime of the donor.

6.1. Inheritance Tax Inheritance tax is imposed on the aggregate value of all property acquired by the death of the decedent. The taxable base of the property for inheritance is the fair value at death of the decedent. If the aggregate value does not exceed the basic deduction which is currently JPY 30 million plus the amount equal to JPY 6 million multiplied by the number of statutory heirs. The inheritance tax rate which is progressive tax rates ranging from 10% (the amount of JPY 10 million or less) to 55% (the amount more than JPY 600 million) is applied not to the decedent's estate as a whole, but to the amount each statutory heir legally receives pursuant to his/her statutory share. Then, the total tax amount calculated according to the statutory share is allocated among those who actually receive the estate according to the will or estate distribution agreement among the statutory heirs and donees. The inheritance tax return should be filed within 10 months after the taxpayer learns of the death of decedent.

6.2. Gift Tax The taxable base of the property for gift tax is the fair value of the gift at the transfer. The Gift tax is calculated based on aggregated value of the gift acquired by an individual during the calendar year at progressive tax rates ranging from 10% (JPY 2 million or less) to 55% (more than JPY 30 million) after deduction of annual basic exemption of JPY 1.1 million. The gift tax return should be filed by March 15 of the following year.

6.3. Scope of Inheritance and Gift Tax Individuals liable for inheritance/gift tax are classified into three categories according to the nationality, domicile and residence of the decedent/donor or heir/donee: (i) resident unlimited taxpayers, (ii) non-resident unlimited taxpayers, and (iii) limited taxpayers.

6.3.1. Resident Unlimited Taxpayer A resident unlimited taxpayer is an individual who acquired property through inheritance/gift and has a domicile/residence in Japan at the inheritance/gift. The resident unlimited taxpayer is subject to inheritance/gift tax on his/her worldwide property. However, if a temporary resident, a person who has a certain working visa and whose total period of domicile in Japan within 15 years prior to the inheritance/gift is 10 years or less ("Temporary Resident") acquires the property from a foreign resident decedent/donor who has a certain working visa ("Foreign Resident Decedent/Donor") or non-resident decedent (i) who has no domicile in Japan at the inheritance/gift but had domicile in Japan within

10 years prior to the inheritance/gift but never had Japanese nationality during that period or (ii) who has no domicile in Japan at the transfer and not had domicile in Japan within 10 years prior to the inheritance/gift (collectively "Non-Resident Decedent/Donor"), inheritance/gift tax is imposed only domestic property.

6.3.2. Non-Resident Unlimited Taxpayer

(1) Even if a Japanese national who has acquired property by inheritance/gift does not have domicile in Japan at the inheritance/gift, the heir/donee is subject to inheritance/gift tax on the acquired worldwide property if any of the following applies:

- (i) If the decedent/donor (excluding Foreign Resident Decedent/Donor) has domicile in Japan at the time of inheritance/ gift; or
- (ii) If either the heir/donee or the decedent/donor (excluding a Non-Resident Decedent/Donor) has domicile in Japan within 10 years prior to the inheritance/gift; or
- (iii) If the decedent/donor has received an extension of due date of the exist tax (See 2.2).

(2) A non-Japanese who does not have domicile in Japan at the time of inheritance/gift but the decedent/donor (excluding Foreign Decedent/Donor and Non-Resident Decedents/Donor) has domicile in Japan at the time of inheritance/gift or has had domicile in Japan within 10 years prior to inheritance/gift, the heir/donee is subject to inheritance/gift tax on the acquired worldwide property.

6.3.3. Limited Taxpayers A limited taxpayer is subject to inheritance/gift tax on the acquired domestic property only. A limited taxpayer is an individual (i) who acquired property by inheritance/gift, who do not have domicile in Japan at the time of inheritance/ and who do not fall under the category of non-resident unlimited taxpayer; or (ii) a Temporary Resident who acquired property by inheritance/gift from a Foreign Decedent /Donor or Non-Resident Decedent/Donor.

7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?

7.1. Inheritance Tax

7.1.1. Spousal Credit There is a spousal credit for the Japanese inheritance tax. However, unlike the unlimited

marital deduction in the US, the spousal credit is limited, which is no Japanese inheritance tax will be imposed on amounts that the spouse receives up to (i) the spouse's statutory share of the total taxable property, or (ii) JPY 160 million, whichever higher. This spousal credit is only allowed to a spouse who is statutorily married. There is no civil partnership system in Japan.

7.1.2. Minor's Deduction If the heir is a minor (less than 18 years old), a certain amount may be deducted from the amount of his/her inheritance tax calculated.

7.1.3. Disability Deduction If the heir is a disabled person who is less than 85 years old, a certain amount may be deducted from the amount of his/her inheritance tax calculated.

7.2. Gift Tax

7.2.1. Special Gift Tax Regime In case of a gift to an individual who is 20 years old or more from the lineal ascendant, preferable gift tax rates ranging from 10% (JPY 2 million or less) to 55% (more than JPY 45 million) is applied.

7.2.2. Spousal Gift Tax Credit for Residence In case of a gift of residential real estate or money to acquire residential real estate between a married couple who have been married for 20 years or more, up to JPY 20 million can be deducted in addition to the annual basic exemption of JPY 1.1 million.

7.2.3. Gift from Lineal Ascendant for Residence During the period from January 1, 2022 to December 31, 2023, an individual who receives a gift from a lineal ascendant to construct, acquire, or expand a residential house for his/her own residential use is exempt from taxation to the extent up to JPY 10 million for energy efficient-housing and JPY 5 million for the others.

7.2.4. Gift of Education Funds During the period up to March 31, 2026, an individual less than 30 years old can receive a lump-sum gift of education funds up to JPY 15 million, provided, however that (i) the donee opens an account for education funds with a certain financial institution under a certain agreement; and (ii) he/she submits the education funds tax exemption report through the financial institution, etc.

7.2.5. Gift for Marriage and Child-Rearing Funds During the period until March 31, 2025, an individual between the ages of 18 and less than 50 who receives a lump-sum gift from a lineal ascendant under a certain agreement with a financial institution for marriage and child-rearing is exempt from gift tax up to JPY 10 million for the amount spent for marriage and child-rearing.

7.3. Business Succession Taxation In the event that the owner who is also running an unlisted business company satisfying certain requirements, transfers the share of the company and retires from and have a certain successor assume the representative director, the entire amount of gift taxes on the subject shares may be postponed. However, the conditions are also strict, and this is a time-limited legislation for gifts made by December 31, 2027.

8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

Donations to a public interest incorporated association/foundation are eligible for a donation deduction up to 25% of income tax for the year, provided, however, that certain requirements are met.

There is also a special exception for inheritance/gift tax that excludes the donated property from inheritance/gift tax if the inherited/gifted property is donated to a public interest association/foundation.

Please note that the public interest organization that is eligible for the special relief here must be those recognized in Japan.

9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

Property tax is a local tax imposed on an owner of real estate in Japan as of January 1 every year. Property tax is imposed regardless of the owner's residence status, so non-residents are also required to pay this tax.

The standard tax rate is 1.4%, but it varies depends on municipality. For example, property tax in the 23 wards of Tokyo, the tax rate is 1.4%.

Payments are due four times a year. The taxpayer must pay tax due indicated on the tax notice from competent municipality. If the owner of property tax is a non-resident in Japan, such taxpayer shall appoint a tax administrator responsible for tax administration in Japan.

10. Are taxes other than those described

above imposed on individuals and, if so, how do they apply?

Real estate acquisition tax of 3% for land and residential property and 4% for non-residential property is imposed when the individual who acquired property through purchase, gift and construction. For land for residential use acquired through March 31, 2024, the taxable amount would be 1/2 of the sales price

Registration tax of 20/1000 (15/1000 for registration before March 31, 2026 and 4/1000 for inheritance) is imposed on real estate owner for registration upon acquisition of real estate.

Individual enterprise tax is imposed on individual proprietors. Tax rates range from 3% to 5%, depending on business segments.

Consumption tax, which is an indirect tax, is imposed on consumption, such as domestic sales of goods and provision of services. Consumers are taxed at each stage of the transaction at a standard rate of 10% (including 2.2% of local tax) and a reduced rate of 8% (including 1.76% of local tax).

11. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

When a non-resident in Japan such as a foreign tourist purchases tax-exempted goods at duty-free store in a certain manner for the purpose of bringing them overseas, the consumption tax on such purchases is exempted.

Although the taxpayer is a resident in Japan but who is non-permanent resident is taxed only on domestically sourced income and foreign sourced income that is remitted from overseas or paid in Japan (See 1)

Inheritance/gift tax is also not imposed on foreign property if the heir/donee or decedent/ donor are only partially connected with Japan (See 6).

12. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

Individuals planning to move to Japan who have already initiated or completed their estate planning must

consider restructuring the current schemes or plans in light of the application of the Japanese tax regime before they move to Japan. Especially, those who have established a trust must analyze Japanese trust tax implications under the current scheme, since the Japanese trust tax regime is quite unique (See 20).

Further, if the gift can be conducted without tax or lower tax rates than Japan, the individual who has not connected with Japan may consider gifting property outside Japan to the person who has not connected with Japan as Japanese inheritance/gift tax rate is very high up to 55%.

13. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

Upon death of the decedent, his/her all rights and obligations (including positive assets (legal title to tangible and intangible assets and claims) and negative assets (debts and unpaid taxes and dues)), are automatically succeeded by the statutory heirs.

In principle, an individual is free to dispose of his/her property. During the lifetime, the individual may dispose of his/her property through gifts, transfers, trusts, and wills.

However, certain statutory heirs (spouse, descendants (including adults) and ascendants, but not siblings, are entitled to a certain percentage of the estate (1/2 of the statutory share in case of spouse and descendants, and 1/3 of the statutory share if only ascendants are heirs). The recipient must pay monetary compensation equivalent to the statutorily reserved share if the forced heirship claim holder so requests within one (1) year after the holder recognized the recipient infringes his/her statutorily reserved share.

14. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

There is no civil partnership in Japan. Also, same-sex marriage is not currently statutorily recognized as a marriage in Japan as of December 2022.

In principal, property obtained during marriage is deemed as common property even if the property is obtained under the name of only one spouse except for (i) the property obtained by a spouse prior to marriage; or (ii) the property that a spouse inherits from his/her

own family.

A pre-nuptial agreement regarding the matrimonial property is valid as long as it was entered into prior to filing of the notification of marriage. However, to assert the validity of such pre-nuptial agreement against the successor in title of each spouse, or third party, the agreement shall be registered with the Legal Affairs Bureau prior to the filing of the notification of marriage.

Pre-nuptial agreement have been rarely used in Japan and few court decisions regarding pre-nuptial agreement are only on the tax issues. Whether pre-nuptial agreement regarding division of matrimonial property at the time of divorce and/or inheritance is not clear as no relevant precedent on this issue has been reported.

15. What factors cause the succession law of the jurisdiction to apply on the death of an individual?

Under the Act on General Rules for Application of Laws ("Conflict of Law"), the law of nationality of the decedent governs his/her inheritance. If the decedent is a Japanese, the Japanese Civil Code governs his/her inheritance. However, the Conflict of Law also adopts the doctrine of renvoi. Thus, even if the decedent is non-Japanese, in case that the governing law of inheritance is Japanese law according to the conflict of law of the decedent's nationality, the Japanese Civil Code will be applied for his/her inheritance even the decedent is a foreign citizen. Therefore, the Japanese Civil Code may be the governing law of inheritance of non-Japanese if the decedent had domiciled in Japan or had real estate in Japan, etc.

16. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?

In Japan, the governing law designated by the Conflict of Law applies to the inheritance which includes cross-border factors. Therefore, foreign law designated by the Conflict of Law shall be respected unless its application is against Japanese public policy.

17. In what circumstances should an individual make a Will, what are the consequences of dying without having

made a Will, and what are the formal requirements for making a Will?

In the case of intestacy, the estate is automatically passed to the statutory heirs upon the death of the decedent. If there are multiple statutory heirs, they will jointly own the decedent's estate. This state of joint ownership is a provisional situation, and how to divide each estate will be finally determined through discussions and agreement among all of the statutory heirs ("Estate Distribution"). If the statutory heirs cannot voluntarily reach an agreement on how to divide the estate, the Estate Distribution shall be conducted through court processes such as mediation or verdict of the tribunal at the family court. If a decedent dies leaving a will, the estate will be passed to the statutory heirs and testamentary donees according to the will without Estate Distribution as long as all estate may be divided according to the will.

If an individual owns property in more than one country, including Japan, it is advisable to prepare a separate will for the property in each country, in accordance with the law of the country where the property is located. For property in Japan, it is advisable to prepare a notarized will covering only the property in Japan. A handwritten will is also legally recognized, but it must require probate at the family court to practically execute it. Therefore, a notarized will, which does not require probate at the family court, is preferable. Since a notarized will is prepared in only Japanese, an interpreter is required for those who are not familiar with the Japanese language. The presence of two witnesses is also required.

If a will is validly prepared in a foreign country in accordance with the law of the country, it will be recognized in Japan in principle. However, in practice, it is very costly to transfer the title of the property in Japan from the decedent to testamentary donees according to the will prepared in a foreign country. Therefore, it is advisable to prepare a Japanese notarized will for the properties located in Japan.

18. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

In case of intestacy and there is only one statutory heir, he/she will administer all of the estate since all rights and obligations from the decedent are automatically passed on to him/her. If there are multiple statutory heirs, the statutory heir who possesses the estate shall manage such estate in due course by the conclusion of the Estate Distribution and cannot dispose it off unless

all of the statutory heirs so agree before the conclusion of the Estate Distribution.

If the decedent left a will and an executor is appointed in the will, the executor will administer the estate. If the executor is not appointed in the will, the court will appoint the executor as per the petition by the interested parties such as statutory heirs and testamentary donees.

19. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

In Japan, the management and succession of family members' individual property is often carried out through the use of trusts, general incorporated associations (ippan shadan hojin), general incorporated foundations (ippan zaidan hojin) (collectively ("General Incorporated Organizations")), and asset management companies (stock companies (kabushiki kaisha) and limited liability companies (godo kaisha)).

As there is no ownership interest in General Incorporated Organizations, the property acquired by these organizations will not be included in the estate of the decedent. The property in name of these organizations is not subject to the inheritance tax, but these organizations are subject to corporation income tax.

In particular, asset management companies are often used because they are relatively flexible in managing their organization and assets.

20. How are these structures constituted and what are the main rules that govern them?

General incorporated associations and general incorporated foundations (collectively "General Incorporated Organizations") and asset management companies are registered as legal entities. General Incorporated Organizations are regulated by Act on General Incorporated Associations and General Incorporated Foundations, while asset management companies are regulated by the Companies Act.

Trusts are regulated by the Trust Act and the Trust Business Act. A Trustee who underwrites trusts as a

business is required to obtain a license or registration from the Prime Minister through the Finance Bureau or Financial Services Agency. However, a family trust in which a family member is appointed as a trustee is not regulated by the Trust Business Act.

A trust can be used for flexible wealth management especially for management of the assets on behalf of the beneficiary. However, please bear in mind, a beneficiary of a trust with designated beneficiary is considered to own the assets in the trust and is liable to be taxed even if the beneficiary does not actually receive the assets in the trust. Therefore, the beneficiary is subject to inheritance/gift tax when the settlor transfers the assets to the trustee unless the settlor and the beneficiary is the same person and such beneficiary is subject to the income tax for the income from the trust assets. A trust without designated beneficiary is considered as deemed corporation. In such case, when the settlor transfers the assets (other than cash) to the trust, he/she would be subject to capital gain tax on the unrealized capital gain at that time and the trustee is subject to corporation income tax.

21. What are the registration requirements for these structures and what information needs to be made available to the relevant authorities? To what extent is that information publicly available?

The assets belonging to general incorporated associations and general incorporated foundations (collectively "General Incorporated Organizations") and asset management companies shall be in the name of these legal entities. There is no ownership interest in General Incorporated Organizations. Further, the ownership information for the asset management company is not disclosed in the commercial registry which is publicly available.

For the real estate which is transferred to the trust with designated beneficiary, although its title is registered in the name of the trustee, the beneficiary will also be disclosed through the real estate registry which is publicly available.

22. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Companies including asset management companies are subject to corporation income tax (national and local) and enterprise tax on the income. General incorporated associations and general incorporated foundations

(collectively “General Incorporated Organizations”) are also subject to the same taxes on their incomes like that of the other companies. If an individual donates assets other than cash to companies and/or General Incorporated Organizations, he/she could be subject to capital gain tax if the donated assets have unrealized gain. However, such capital gain tax and corporation income tax may be avoided if the General Incorporated Organizations meet certain requirements.

Since there is no concept of ownership in the General Incorporated Organizations, the assets in the name of the General Incorporated Organizations are not subject to inheritance tax.

A beneficiary of a trust with designated beneficiary is considered to own the assets in the trust and is liable to be taxed even if the beneficiary does not actually receive the assets in the trust. Therefore, the beneficiary is subject to inheritance/gift tax when the settlor transfers the assets to the trustee unless the settlor and the beneficiary is the same individual and such beneficiary is subject to the income tax for the income from the trust assets. A trust without designated beneficiary is considered as deemed corporation. In such case, when the settlor transfers the assets (other than cash) to the trust, he/she would be subject to capital gain tax on the unrealized capital gain at that time and the trustee is subject to corporation income tax.

23. Are foreign trusts, private foundations, etc recognised?

Japan has not ratified the Hague Convention on the Law Applicable to Trusts and on their Recognition (“Hague Convention”). There is no explicit provision regarding the governing law for the trust in the Conflict of Law. However, according to the court precedents, a foreign trust established under foreign law is legally valid and recognized in Japan if such trust is validly established under the governing law specified in the trust agreement

24. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

First, from tax perspective, it is necessary to examine whether a trust that is considered valid under the foreign law is also considered a valid trust under the Trust Act, where the “trust” is defined as a settlor entrusting assets to a trustee based on the confidence in the trustee who manages and disposes off the property under the specified trust purposes on behalf of the beneficiaries. If it is considered as a valid trust under

Japanese Trust Act, in case of a trust with designated beneficiary, a typical type that is used by families for wealth management, the trust assets are deemed to have been transferred from the settlor to the beneficiary when the assets are transferred from the settlor to the trustee, and the income generated from the trust assets is taxed as income of the beneficiary.

25. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

In principle, the trust assets are not those for the creditors of settlors, trustees and beneficiaries. However, if the assets are transferred to the trustee knowing that it will prejudice its creditors, the creditors may cancel such transfer to the trustee.

26. What provision can be made to hold and manage assets for minor children and grandchildren?

Minors may own and hold property. However, when a minor owns property, an individual with parental authority or a guardian of the minor generally manages the assets and performs legal acts concerning the assets on behalf of the minors. It is also possible for a trustee to manage property in a trust for minors as beneficiaries. However, in either case, the minor is a taxpayer since they own or are deemed to own (in the case of trust) the property.

27. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

A person with capacity can appoint a voluntary guardian to manage his/her property and provide personal custody care, including, but not limited to, applying admission to a medical or nursing home when he/she loses capacity to make a judgment. To effectuate this arrangement, a voluntary guardian agreement at the public notary office needs to be made which then needs to be registered at the Legal Affairs Bureau. If the person actually loses capacity, the interested person such as appointed guardian and family members must file a petition with the family court to appoint a supervisor of the voluntary guardian to commence the guardianship.

A trust can be used for cases where a person loses the

capacity to make judgement. Since it is difficult for a voluntary guardian to manage his/her assets flexibly under the supervisor appointed by the court and the voluntary guardian may manage the assets only for the ward him/herself, a trust may be preferable if the settlor wishes to use certain property on behalf of other family members in addition to him/herself.

28. What is the jurisdiction's approach to information sharing with other jurisdictions?

Japan has concluded 84 tax treaties which include 151 countries and regions as of December 1, 2022, most of which have an exchange of information clause. Under these tax treaties, the following three types of information exchanges are available: (i) a method in which the Japanese tax authority receives the information from a foreign authority upon its request; (ii) a method in which the Japanese tax authority provides information on the taxpayers in Japan voluntarily to the foreign tax authorities from the perspective of international cooperation, and (iii) a method in which the Japanese tax authority provides tax information on payments, etc., to non-residents from statutory records collectively to tax authorities either in the paying country or receiving country. Also, Japan exchanges the information under the Convention on Mutual Administrative Assistance in Tax Matters signed in 2011.

In addition, automatic exchange of CRS information has been implemented and the number of information

exchanged is increasing.

29. What important legislative changes do you anticipate so far as they affect your advice to private clients?

According to the FY Tax Reform Package that the ruling coalition adopted on December 16, 2022, the following reforms will be submitted to the Diet.

There is a special system where the taxpayer can make an irrevocable election to integrate inheritance and gift tax when certain requirements are met. Under this special system, a donor may fix the fair value of the gifted property for inheritance tax purposes by gifting the same before the donor's death and pays the gift tax at a flat rate of 20%. If the donee elects to opt for this special system, the donee must pay inheritance tax at the death of donor after deducting the amount he/she has paid as gift tax. However, the amount of inheritance tax is calculated based on the value of the gift. Currently, the annual basic exemption of JPY 1.1 million for gifts is not allowed for the donee who opts for this special system. However, this annual basic exemption will be allowed for the gifts made after January 1, 2024 for the donee who elects to opt for this special system.

Furthermore, previously, the aggregate value of the gifts given during the 3 years prior to the donor's death was added to the value of the estate and was subject to inheritance tax. However, this period will be changed to 7 years prior to the donor's death to encourage earlier living asset transfers.

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