

CROSS-BORDER ESTATE PLANNING IN JAPAN

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I. Conflict of Law – Application of Japan succession law in cross-border cases.

A. Determining whether Japan or other (home country) law applies.

1. Generally, Japan applies the succession law based on the decedent's nationality, so that Japan succession law applies in the case of Japanese national decedents. In the case of foreign nationals, Japan first applies the conflict rules of the succession law of the home country of the foreign national. Where the home country does not have a single, national succession law, but rather each subdivision within the home country has its own succession law, the conflict rules of the succession law of the subdivision are first applied. For example, for U.S. decedents, this means the conflict rules of the probate law of the decedent's home state would first be applied.
2. Conflict rules of succession laws vary. In certain common law jurisdictions (such as the U.S.), the conflict rules provide that, with respect to personal property, the law of the decedent's domicile should apply and, with respect to real property, the law of the place where the property is located should apply. Certain U.S. states permit state law (rather than law of the domicile) to apply to personal property held or managed in that state.
3. Thus, if a foreign national is domiciled in Japan, then Japan succession law may end up applying to his personal property.
4. For certain foreign nationals, Japan may apply their home country succession law to both real and personal property if their home country law provides that the law of the decedent's nationality should apply.

B. Real Property.

1. With respect to expatriates of common law jurisdictions (U.K., U.S., etc.), and certain civil law countries, the succession law applicable to real property is generally the law of the jurisdiction in which the real property is located.
2. With respect to expatriates of certain civil law countries, the succession law applicable is generally the law of the decedent's nationality.

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C. Personal Property.

1. With respect to expatriates of the U.S., U.K., and other common law jurisdictions, and certain civil law jurisdictions, the succession law applicable to personal property is generally the law of the jurisdiction in which the decedent was domiciled at death. Certain U.S. states permit state law (rather than law of the domicile) to apply to assets held or managed in that state.
2. With respect to expatriates of certain civil law countries, the succession law applicable is generally the law of the decedent's nationality.

D. Domicile.

1. **Japan Law.** The place of permanent residence (*jusho*); the base and center of livelihood of an individual, as opposed to place of abode or physical residence (*kyosho*).
2. **By comparison, U.S. Law in general.** The place of a true, fixed, and permanent home, to which, whenever absent, there is an intent to return.

E. Dealing With the Uncertainty. Unfortunately, the Japan conflict rules are not highly developed (as there have been few cases of decedent expatriates with Japan assets) and thus, it is unclear how Japan courts would ultimately rule in specific cases. If it is necessary to ensure certain results, then it may be possible to choose the law of a state which will apply its own law or to change the situs of assets. Unlike a contract, it is not possible to choose the law applicable to an inheritance.

II. Estate Planning Process in Japan.

A. Succession (*Souzoku*). Unlike the U.S. and other common law countries (where a decedent's assets are automatically transferred to an "estate" upon the decedent's death and, after all debts and applicable taxes have been paid by the estate, to the heirs/beneficiaries), in Japan the successors are deemed to succeed to the decedent's property (except for certain rights and property which are entirely personal and thus, cannot be inherited) and debts immediately upon the decedent's death.

B. Statutory Share (*Souzokubun*). If the decedent did not have a valid Will, then under the statutory share rules of the Succession provisions of the Japanese Civil Code (*Minpo*), if the decedent is survived by:

1. Spouse and children, then the spouse is entitled to one-half the decedent's assets and the children share equally the other half (any children of a predeceased child are entitled to share the predeceased child's share);

2. Spouse and lineal ascendants (mother & father), but no children or other issue (grandchildren), then the spouse is entitled to two-thirds and the lineal ascendants share the remaining one-third;
3. Spouse and siblings of decedent, but no children or other issue or ascendants, then the spouse is entitled to three-fourths and the siblings share the remaining one-fourth;
4. Spouse, but no children or other issue, ascendants, or siblings, then the spouse is entitled to all the decedent's assets; or
5. Children or other issue (grandchildren), but no spouse, then the children share equally all of the decedent's assets (any children of a predeceased child are entitled to share the predeceased child's share).

The current Civil Code has been amended to provide that "legitimate" and "illegitimate" are entitled to the same shares.

C. Marriage Under Japan Law. To be entitled to spousal statutory share rights and be otherwise recognized as a "spouse" under Japan law, the marriage must be recognized under Japan law. Generally, the requirements of marriage are governed as to each person by the law of the country of their nationality, but the formalities of (procedures for) marriage are governed by the law of the place where the marriage takes place.

1. In the case of marriages taking place in Japan, in general the legal requirements for marriage under Japan law must be met and the Japanese marriage (registration) procedures must be followed.
2. In the case of marriage to Japanese nationals (whether in Japan or another country), in general such marriages must be properly registered under the Family Registration Law at the place of where the Japanese national's family registration is located or, if residing outside of Japan, such marriages may be registered with the Japanese consular authorities.
3. Same-sex marriages are not permitted under Japan law.

D. Estate Planning. Japan law generally permits individuals to create their own estate plan, with certain limitations. If the intestacy provisions are not desired, a Will may be used, the provisions of which are subject to the forced heirship (*iryubun*, or legally secured portion) rules.

1. **Jointly-Held Property.** Joint ownership with right of survivorship is not generally recognized under Japan law. However, Japan generally permits succession in a co-ownership, such that if the decedent has no successors, then the other co-owners will succeed to the decedent's interest.
2. **Beneficiary-Designated Property.** Beneficiary-designated property is generally limited to life insurance; similar to trusts, in which beneficiaries are designated.

3. **Will (*Igon* or *Yuigon*).** In addition to the disposition of property, guardians for dependents may be named in the Will. A Will may be changed or revoked at any time before death.
 4. **Trust.** The Trust Law (*Shintaku Hou*), which took effect on September 30, 2007, generally provides additional flexibility in using trusts for estate planning (*see* below).
- E. **Japan Wills (*Igon* or *Yuigon*).** Generally, three types of Wills are valid in Japan:
1. **Holographic Will (*Jihitsu Shosho Igon*).** A document prepared in the decedent's own handwriting (a typed list may be attached to a handwritten document; need not be in the Japanese language), with any seal affixed, signed, and dated. Generally, such a Will must be filed with the Family Court upon the decedent's death. However, from 2020, holographic Wills registered at the applicable Legal Affairs Bureau will no longer require Family Court registration at death.
 2. **Notarial Will (*Kosei Shosho Igon*).** A document prepared in its entirety by a notary (*kōshōnin*) to whom the decedent recited his intentions in the presence of two witnesses, signed by the decedent and witnesses, attested by the notary and kept by the notary. The notary retains the original Will; however, the Will does not need to be filed with the Family Court upon the decedent's death to become effective.
 3. **Will by Secret Document (*Himitsu Shosho Igon*).** A document (handwritten or typed) seal affixed/signed by the decedent and placed in an envelope and sealed (seal affixed). The decedent presents the envelope to a notary before two witnesses, declaring the contents to be his Will. The notary writes this information on the envelope and sign, along with the decedent and witnesses. Must be filed with the Family Court upon the decedent's death.
 4. **Foreign Wills.** In certain cases, a foreign Will is valid for Japanese nationals.
 5. **Wills of Non-Nationals.** Non-Japanese nationals can choose to use a Japan Will or a Will from their home country. The form of non-Japan Wills (preparation and execution) is valid if made in compliance with the law of the:
 - a. Place where the Will is made;
 - b. Country of the testator's nationality either at the time of making the Will or at death;
 - c. Domicile or usual residence of the testator either at time of making the Will or at death;
 - d. In the case of immovables (real property), the law of the place where the immovable is situated.

- F. Forced Heirship (Legally Secured Portion – *Iryubun*).** Notwithstanding the provisions of a Will, certain statutory successors are entitled to a minimum portion of the decedent's assets.
- 1. One-Half of Statutory Share.** Generally, a surviving spouse, children and other issue are entitled to elect to take half of their respective statutory share. Ascendants (parents and grandparents) are entitled to one-third of their statutory share, but siblings are not entitled to take any legally secured portion. The right to a legally secured portion applies regardless of the nationality/citizenship or residence of the heirs. Thus, if a decedent is survived by a spouse and one child, then the spouse and child are each entitled to elect to take at least 25% (one-half of their respective intestate share (50%)), regardless of how the decedent's assets are to be distributed under his/her Will.
 - 2. Property to Which Forced Heirship Applies.** With respect to a non-Japanese national domiciled in Japan, the property to which the forced heirship rules apply will depend, in part, on whether Japan succession law applies (as determined under the conflict of law rules discussed above).
- G. Trusts.** The Trust Law (*Shintaku Hou*), which was substantially amended effective from September 30, 2007, generally provides additional flexibility in using trusts for estate planning. However, the duties of the trustee and rights of beneficiaries are not well-developed under current law. As a practical matter, personal trusts are not generally used in Japan. There are three ways in which a trust can be created as provided in the law:
- 1. By Contract.** A trust can be created through a contract between a grantor and a trustee. A beneficiary is irrelevant in this case.
 - 2. By Will.** A grantor can create a trust in his Will.
 - 3. By Trust Deed.** A trust created only by the declaration of a grantor. For example, the Trust Law permits certain self-declared trusts (*jikoshintaku*) in which a settlor is also trustee (but it is unclear whether the settlor can also be a beneficiary of such a trust).
- H. Succession Procedure, Practical Aspects.** As a practical matter, succession (transferring title of a decedent's assets) is a matter of satisfying the local registry office with respect to land, the corporation or transfer agent with respect to stock shares, or the bank with respect to deposit accounts, etc. Unless there is a dispute, succession matters are not handled by the Japanese courts. Probate documents from the home country, documents listing the legal heirs, and/or powers of attorney given by the estate's personal representative/executor or heirs to persons in Japan, along with Japanese translations, may be sufficient to satisfy most requirements for transferring title ownership. However, the actual documents required will depend on the individual policies of the legal affairs bureau, corporation, bank, etc., where title/custody of the asset is held.

- I. **Debts and Renunciation.** Statutory successors succeed not only to the assets of the deceased, but also to the deceased's debts. If the decedent's debts exceed his assets, then the successors may renounce their right to succession to avoid incurring the personal liability for the decedent's debts. Because a renunciation affects all aspects of succession, the successors may alternatively make a qualified acceptance which would limit their liability only to the decedent's property received by succession.
 - J. **Guardianship.** For minor children surviving the death of both parents, the last parent exercising parental power may designate a guardian by Will. If no guardian is named, the Family Court will appoint a guardian.
- III. **Japanese Inheritance Tax (*Souzokuzei*).** The tax is levied on the *heir/beneficiary* of an inheritance (that is, any property received from a decedent as a result of his or her death), rather than on the decedent or estate of the decedent (as for U.S. gift and estate tax). The tax applies only to transfers of an individual decedent's property to another individual/heir (and not to transfer from and/or to a corporate or other legal entity).
- A. **Scope of Inheritance and Gift Tax.** Japan gift and inheritance tax applies in *any* of the following cases:
 1. **Japan Situs Property** – any gift or inheritance of Japan situs property, regardless of the residency/nationality of the donor/decedent or the donee/heir, but only to the extent of such property. Japan situs property includes real property located in Japan, bank accounts at a domestic Japan branch of a bank, stock and other securities issued by a company incorporated in Japan, life insurance policy issued by a Japan licensed insurer, tangible property (artwork, jewelry, precious metals, automobiles, etc.) physically located in Japan, etc. An applicable gift and estate tax treaty may change the situs rules (*see* Section VI below).
 2. **Any Property Received By a Japan Resident Donee or Heir** – Any property received by gift or inheritance by a person domiciled in Japan at the time of the gift or death is subject to gift or inheritance tax, no matter the residence/nationality of the donor or decedent, or the location of the asset gifted or inherited, except with respect to a “Short-Term Resident Gift or Inheritance” (*see* Section V.A(6) below) ***Except for a “Short-Term Resident Gift or Inheritance,” non-Japanese nationals, resident (domiciled) in Japan, are subject to tax on any gifts or inheritances received, regardless of the location of the asset or nationality/residence of the person from whom it was received.***
 3. **Any Property Received From a Japan Resident Donor or Decedent** – Any property received by gift or inheritance from a donor or decedent domiciled in Japan at the time of the gift or death is subject to gift or inheritance tax no matter the residence/nationality of the donee or heir, or the location of the asset gifted or inherited, except with respect to a “Short-Term Resident Gift or Inheritance” (*see* Section V.A(6) below). ***Except for a “Short-Term Resident Gift or Inheritance,” a gift or inheritance received from non-Japanese***

national, resident (domiciled) in Japan, is generally subject to tax, regardless of the location of the asset, or nationality/residence of the donee/heir.

4. **Non-Resident Japanese Nationals (“10-Year Rule”)** – Any property received by gift or inheritance by a non-resident Japanese national is subject to gift and inheritance tax, if *either* the donor/decedent *or* the Japanese national donee/heir was a Japan resident within 10 years of the gift or death. In addition, any property received by gift or inheritance from a non-resident Japanese national is subject to gift and inheritance tax, if the Japanese national donor/decedent was a Japan resident within 10 years of the gift or death. ***Under the 10-Year Rule, Japanese nationals (even if dual citizens) are subject to Japan gift and inheritance tax for at least 10 years after leaving Japan on gifts or inheritances received, including from a non-Japan national spouse/parent.***
 5. **Gifts From “Returning Long-Term Resident” Donors** – Any property received by gift from a non-resident, non-Japanese national donor (“***Returning Long-Term Resident***”), who: (i) made such gift within two years of having terminated Japan residency; (ii) subsequently, resumed Japan residency within two years of such termination; and (iii) was a Japan resident for more than 10 years during the 15-year period prior to the gift.
 6. **Short-Term Resident Gift or Inheritance** – Any non-Japan situs property received by gift or inheritance by a “***Short-Term Resident***” from either another Short-Term Resident donor/decedent; or a non-resident donor/decedent who was not either a Japan resident within 10 years prior to the gift/death, or a “***Returning Long-Term Resident.***” A ***Short-Term Resident*** is a non-Japanese national resident:
 - a. Who was a Japan resident for not more than 10 years during the 15-year period prior to the gift/death; and
 - b. Whose immigration status on the date of the gift/death is specified in Table I of the Immigration Control and Refugee Recognition Act (that is, was ***not*** a permanent resident (*eijyuken*), spouse or child of a Japanese national or permanent resident, etc.).
- B. Calculation of Inheritance Tax (*Souzokuzei*).** Inheritance tax is calculated based on a hypothetical inheritance by the statutory (intestacy) heirs.
1. Allocate inherited assets subject to tax and deductions to each successor.
 2. Determine total net taxable (inheritance) amount of all successors.
 3. Deduct Basic Exemption.

4. Allocate total taxable inheritance to each statutory heir under the Japan intestacy rules.
5. Apply tax rate (10%-55%) to each statutory heir's taxable inheritance.
6. Determine total tax of all statutory heirs.
7. Allocate total tax to each successor in proportion to the assets actually received.
8. Deduct from a successor's portion of the tax any available tax credit applicable to the successor.

C. Assets Subject to Tax.

1. **Cash, deposit accounts, stocks and bonds, real estate, tangible property.**
2. **Deemed Inherited Property.**
 - a. Life insurance proceeds on the life of the decedent to the extent the decedent paid the premiums on the policy (or certain small amount short-term policies), to the extent the proceeds exceed an amount equal to JP¥5 million × number of statutory heirs. However, life insurance proceeds received on the life of another is not treated as deemed inherited property, but rather is generally treated as Occasional Income (50% of which is excluded, after a basic deduction of JP¥500,000) subject to income tax.
 - b. Retirement allowance (in excess of JP¥5 million × number of statutory heirs), meritorious service award, distributions from qualified pension plans, etc.
 - c. Annuity or periodic payment contract to extent paid for by decedent.
 - d. Other economic benefits provided by decedent to beneficiaries (debt forgiveness, trust interests, interest-free loans, etc.).
3. **Trust Interests.** The taxation of trust interests under the Trust Law, is described below (except that transfers in trust subject to Gift Tax will instead be treated as being subject to Inheritance Tax) for trusts that are effective (generally, when the trust agreement is entered into) on or after September 30, 2007. For trusts that became effective prior to the implementation of the new Trust Law, assets transferred to a trust are treated as still owned by the settlor, unless the beneficiary is deemed to receive a gift of the assets placed in trust (*see* below). If the settlor is deemed to own the trust assets at his death, then the beneficiaries are generally deemed to receive an inheritance of the trust assets. If no beneficiaries of the trust are specified, then the trust assets are deemed to be inherited by the settlor's statutory heirs.

4. **Gifts Subject to Unified Taxation Regime.** Gifts in excess of JP¥25 million under the unified gift and inheritance tax regime for gifts received by lineal descendants aged 20 or older from a parent or grandparent donor aged 60 or older. (*see* Section IV.J below)
 5. Property received within three years of death.
- D. Valuation of Certain Assets.** Generally, assets are valued at their fair market value. However, certain special valuation rules apply, including:
1. **Real Property Improvements.** Based on the same value as that used for the annual Fixed Asset Tax and set by the local government.
 2. **Land.** Generally, based on the Road Tax (*Rosenka*) value for land in Japan, as annually fixed by the Japanese tax authorities.
 3. **Small-Size Land Holdings.** Certain real estate (land) continuously used by a family member for residential, business, or rental purposes are eligible for the following valuation deductions:
 - a. **Residential Use (80%).** In certain cases where the decedent and heirs use the real property as their residence as of the date of the filing of the tax return, an 80% deduction in the value of the land up to 330 square meters.
 - b. **Business Use (80%).** In certain cases where land is used for business (but not rental) purposes, an 80% deduction in the value of land up to 400 square meters.
 - c. **Combined Use (80%).** In certain cases where land qualifies under both (a) and (b) above, an 80% deduction in the value of land up to 730 square meters.
 - d. **Rental Use (50%).** In certain cases where real property is rented, a 50% deduction in the value of land up to 200 square meters.
 - e. **Decedents in Nursing Homes.** In cases where the deceased was necessarily resident in a nursing home, residential real property which had been used for residential purposes prior to admission to the nursing home is eligible for the above; provided, that such property was not rented.
 4. **Listed Shares.** For listed shares, the value is the lower of:
 - a. the closing price on the date of date; or
 - b. the lowest of the monthly average price of the stock during the three months ending with the month of the date of death.
- E. Valuation of Unlisted Stock.** For unlisted stock, the valuation is based on a specific formula which in turn is based on one or more of the followings: size

of shareholding being valued, type and scale of the company, value of net assets, stated capital and capital surplus, dividends, and comparable figures of similar companies.

1. **Valuation of a Minority Shareholding.** A Minority Shareholding is generally valued based on the Actual Dividends method, except with respect to certain Specified Companies (companies starting up or dormant), in which case the Net Asset Value method is used.
2. **Valuation of a Controlling Shareholding.** In valuing a Controlling Shareholding of a:
 - a. **Large Scale Company**, either the Comparable or Net Asset Value method may be used.
 - b. **Medium Scale Company**, either the Combination or Net Asset Value method may be used.
 - c. **Small Scale Company**, either the Combination or Net Asset Value method may be used.
 - d. **Specified Company**, such as a company with only one comparable (Combination method may be elected), a share holding company (alternatively, all assets other than subsidiary shares may be valued based on the methods provided for Large, Medium, and Small Scale Companies above), real estate holding company, companies with less than three years old, companies starting up, dormant, or winding down, generally the Net Asset value method is used (except as provided).
3. **Size of Shareholding.** Shareholdings are classified as either Controlling or Minority.
 - a. **Controlling Shareholding.** A Controlling Shareholding with respect to a company is any shareholding in the company which is not a Minority Shareholding.
 - b. **Minority Shareholding.** In the case of a Company *with* Family Shareholders, a Minority Shareholding is shares held by
 - any shareholder who is not a Family Shareholder; or
 - where there is at least one Major Family Shareholder, any shareholder who: (i) is a Family Shareholder, (ii) is not a Major Family Shareholder, (iii) owns directly less than 5% of the voting rights, and (iv) is not a Major Officer.

In the case of a Company *without* Family Shareholders, a Minority Shareholding is shares held by:

- any shareholder who holds, directly or through a “specified relationship,” less than 15% of the voting rights; or

- where there is at least one Major Shareholder, any shareholder who: (i) who holds, directly or through a “specified relationship,” 15% or more of the voting rights, (ii) owns directly less than 5% of the voting rights, and (iv) is not a Major Officer.
- c. **Family Shareholder.** A Family Shareholder is any shareholder who, directly or through a “specified relationship,” holds 30% or more of the voting rights in a company.
- d. **Major Family Shareholder.** A Major Family Shareholder is a shareholder who, together with any spouse, direct descendant/ancestor, or brother-sister (and one degree by marriage), holds 25% or more of the voting rights.
- e. **Major Shareholder.** A Major Shareholder is a shareholder who holds, directly or through a “specified relationship,” 15% or more of the voting rights and directly holds 10% or more of the voting rights.
- f. **Specified Relationship.** A shareholder is deemed to have a specified relationship with respect to Related Individuals and Controlled Companies.
 - (i) **Related Individual.** A Related Individual is any relative within six degrees of relationship (three degrees by marriage), a common law spouse, an employee of an individual shareholder, other individuals economically supported by the shareholder, a relative (within six degrees of relationship (three degrees by marriage)) of any of the foregoing individuals who live together with any such foregoing individual.
 - (ii) **Controlled Company.** A Controlled Company is any company with respect to which the shareholder and any Related Individuals hold, directly or indirectly, more than 50% of the total amount of shares or voting rights; or comprise more than 50% of the shareholders/members of such company.
- g. **Major Officer.** A company president, director, vice president representative director, executive director, executive officer, liquidator, auditor or whip.

4. **Scale of the Company.**

- a. **Large Scale.** A large scale company is any company that has: (i) 100 or more employees; (ii) fifty or more employees and total assets with a book value of JP¥1 billion (JP¥2 billion for a wholesaler) or more; or (iii) annual gross income of JP¥2 billion (JP¥8 billion for a wholesaler) or more.

- b. **Small Scale.** A small scale company is any company that has less than 100 employees which satisfies the following: (i) less than five employees or total assets with a book value of less than JP¥50 million (JP¥70 million for a wholesaler, JP¥40 million for a retail or service company); and (ii) annual gross income of less than JP¥80 million (JP¥200 million for a wholesaler, JP¥60 million for a retail or services company).
- c. **Medium Scale.** A company which is classified as neither a large nor small scale company is classified as a medium scale company.

5. Valuation Methods.

- a. **Comparable.** A method based on a comparison of certain factors with those of another company, which is listed, in the same or similar business. The value is computed as follows:

$$A \times \frac{\frac{B'}{B} + \frac{C'}{C} + \frac{D'}{D}}{3} \times E$$

- A - Share price of comparable companies
- B - Average dividend per share of the comparable companies
- B' - Average dividend per share of the company
- C - Average net profit per share of similar comparable companies
- C' - Average net profit per share of the company
- D - Average historical value of net assets per share of comparable companies
- D' - Book value of net assets per share of the company
- E - Applicable ratio (0.5, 0.6, and 0.7 for Small, Medium, and Large Scale companies, respectively)

- b. **Net Asset Value.** A method based generally on the inheritance tax value of the company for all assets and liabilities. The per share value is computed as follows:

$$[A - (A - B) \times 37\%] / C$$

- A - Value of net assets of the company calculated based generally on the inheritance tax value of the company for all assets and liabilities
- B - Book value of net assets
- C - Number of issued and outstanding shares of the company
- * - 37% is the approximate tax rate applicable on the net appreciation in the company's assets

- c. **Combination.** Under this method, the value is based on the value determined under both the Comparable and Net Asset Value methods, with weighting based on the type and size/scale

of the company. The value of the company is computed as follows:

$$A \times B + C \times (1 - B)$$

A - Value based on the Comparable method

B - Ratio defined as the larger of **X** or **Y** (as determined below)

C - Value based on the Net Asset Value method

X is the ratio under the following applicable category:

Type of Business	Book Value of Total Assets at the End of the Preceding Tax Year and Number of Employees			
	Wholesale	< JP¥70 million or a company which has less than 5 employees	≥ JP¥70 million, but < JP¥200 million (excluding a company which has less than 5 employees)	≥ JP¥200 million, but < JP¥400 million (excluding a company which has less than 20 employees)
Retail and Services	< JP¥40 million or a company which has less than 5 employees	≥ JP¥40 million, but < JP¥250 million (excluding a company which has less than 5 employees)	≥ JP¥250 million, but < JP¥500 million (excluding a company which has less than 20 employees)	≥ JP¥500 million (excluding a company which has less than 35 employees)
Other than the above	< JP¥50 million or a company which has less than 5 employees	≥ JP¥50 million, but < JP¥250 million (excluding a company which has less than 5 employees)	≥ JP¥250 million, but < JP¥500 million (excluding a company which has less than 20 employees)	≥ JP¥500 million (excluding a company which has less than 35 employees)
Ratio	0.50	0.60	0.75	0.90

Y is the ratio under the following applicable category:

Type of Business	Gross Income of the Preceding Tax Year			
	Wholesale	< JP¥200 million	≥ JP¥200 million, but < JP¥3.5 billion	≥ JP¥3.5 million, but < JP¥700 million
Retail and Services	< JP¥60 million	≥ JP¥60 million, but < JP¥250 million	≥ JP¥250 million, but < JP¥500 million	≥ JP¥500 million, but < JP¥2.0 billion
Other than the above	< JP¥80 million	≥ JP¥80 million, but < JP¥200 million	≥ JP¥200 million, but < JP¥400 million	≥ JP¥400 million, but < JP¥1.5 billion
Ratio	0.50	0.60	0.75	0.90

- d. Actual Dividends.** Based on the capitalized value (10%) of the average of the actual annual dividends of the company during the three years prior to the year of death.

F. Deductions.

1. **Debts, funeral expenses** – Generally, allocated to the successor assuming the debt.
2. **Estate administration, including legal, tax, and other professional fees** – Not deductible.
3. **Charitable gifts** – Allocated to the charitable successor. Only charities qualifying as such under Japan law are eligible.
4. **Life insurance proceeds** (¥5 million × number of statutory successors) – Allocated to each beneficiary receiving insurance proceeds.
5. **Retirement allowance, Pension benefits, etc.** (¥5 million × number of statutory successors) – Allocated to each beneficiary receiving the benefits.

G. Basic Exemption. A basic exemption in the amount of ¥30 million, plus ¥6 million for each statutory successor, applies to inheritances. For example, the exemption for the inheritance from a decedent survived by a spouse and two children is ¥48 million (¥30 million, plus ¥6 million × 3 statutory successors).

H. Inheritance Tax Rates.

INHERITANCE TAX ON TAXABLE AMOUNTS -		
OVER	BUT NOT OVER	RATE
¥ 0	¥ 10,000,000	10%
¥ 10,000,000	¥ 30,000,000	15%
¥ 30,000,000	¥ 50,000,000	20%
¥ 50,000,000	¥ 100,000,000	30%
¥ 100,000,000	¥ 200,000,000	40%
¥ 200,000,000	¥ 300,000,000	45%
¥ 300,000,000	¥ 600,000,000	50%
¥ 600,000,000	-	55%

Note that the marginal tax rates are applied to each successor's inheritance, rather than to the decedent's estate as a whole. Thus, the more successors, the lower the overall tax.

I. Surtax on Certain Inheritances (*Sozoukuzeigaku no Kasan*). A surtax of 20% on amounts inherited by persons other than the deceased's spouse, parents by blood, and children by blood.

J. Tax Credits.

1. **Spousal.** Generally, equal to the greater of the first ¥160 million of net taxable assets (before the Basic Exemption), or the total inheritance tax times the spouse's statutory share (usually 50%).

2. **Minor Child.** ¥100,000 times the number of years until the child reaches age 20.
 3. **Disabled Person.** ¥100,000 or ¥200,000 times the number of years until the person reaches age 85.
 4. **Gift Tax Paid.** Any gift tax paid on gifts made within 3 years of death.
 5. **Transfers from a Prior Decedent Within 10 Years.** A credit is available for inheritance tax paid on a prior inheritance of property by the decedent within 10 years of the decedent's death, based on the number of years between the prior inheritance and decedent's death.
 6. **Foreign Tax Credit.** Credit for inheritance, estate, and similar taxes paid to foreign governments on non-Japan situs property subject to inheritance tax is generally permitted subject to certain limitations.
- K. Tax Basis of Inherited Assets.** Heirs take a carryover adjusted tax basis in property received by inheritance (the same tax basis that the decedent had at death). Unlike U.S. tax rules, the tax basis does not step-up (step-down) to the fair market value at the date of death. However, if the inherited property is sold or otherwise disposed of within three years of the due date of the inheritance tax return, the portion of inheritance tax attributable to the property is deductible in computing gain or loss on the sale or other disposition.
- L. Tax Deferral for Succession of Unlisted Family Companies.** A Principal Heir may defer payment of inheritance tax on up to 100% of the taxable value of the issued and outstanding voting shares held by a Qualifying Decedent in a Qualifying Company and received by way of inheritance until the death of the Principal Heir; provided certain requirements for providing collateral are met. Similarly, an heir of the Principal Heir may upon the death of the Principal Heir also defer the tax under the same conditions, such that the tax deferral becomes permanent.
1. **Qualifying Company.** Any Small or Medium Enterprise ("SME"), the shares of which have been certified by the Minister of Economy, Trade and Industry, other than one that: is publicly-listed, involved in adult entertainment, asset management company (70% or more of the assets consists of real estate, securities, cash, commodities, etc., based on the book value, or at least 75% of its revenue is from such passive assets), has no revenue in the tax year immediately before the year of death, or has no employees at the date of death.
 2. **Small or Medium Enterprise ("SME").** Depending on the industrial classification (wholesale, services, retail, rubber products manufacturing, software, hotel and hospitality, and others), an SME is any company with not more than a maximum of 900 employees and JP¥300 million in stated capital (*shihonkin*).

3. **Principal Heir.** Any family member of the decedent who is a representative of the company and who holds the most voting rights among all family members (who together must hold more than 50% of the voting rights in the company). A family member is any individual who is within six degrees of relationship by blood (or three by marriage).
 4. **Qualifying Decedent.** Any representative of the company who at the date of death held, together with his or her family, more than 50% of the total voting rights in the company and who, excluding the Principal Heir, held the most voting rights.
 5. **Collateral to Secure Payment of Tax.** The Principal Heir must pledge to the shares of the company, or provide some other collateral, to the government to secure any future payment of the inheritance tax.
 6. **Period of Deferral.** The inheritance tax continues as long as the Principal Heir holds the shares in the Qualifying Company, the company continues to meet the requirements for a Qualifying Company, etc.
- M. Inheritance Tax Return.** Generally, all heirs must file an inheritance tax return with respect to the assets and liabilities inherited.
1. **Joint Return.** Successors may choose to file jointly, or separately.
 2. **Due Date for Return and Tax Payment.** Ten (10) months after date of death. Generally, no extensions permitted.
 3. **Payment in-Kind (*Butsu Nou*).** Instead of paying the tax in cash, certain property may be used to pay in-kind the tax due in lieu of cash upon approval of the tax authorities.
 4. **Penalties.** For failure to timely pay tax (10%-40%).
- IV. Japanese Gift Tax (*Zoyozei*).** The tax is imposed on the *donee* on donative transfers made during life, rather than on the donor. The gift tax applies only to transfers between individual persons.
- A. **Scope of Gift Tax.** Same as for inheritance tax (*see* Section III.A above).
 - B. **Gifts in Trust (From September 30, 2007).** Under the current law, the taxation of trusts is divided into three main categories:
 1. **Beneficiary-Taxed (General) Trust.** If there is a current beneficiary and the trust does not satisfy the requirements for the special rules for integrated trusts or corporation-taxed trusts explained below, the beneficiary is treated as if he owns all of the trust property for most taxation purposes (the "beneficiary-taxed trust").
 2. **Integrated Trust.** Generally, these types of trusts, typically investment trusts and pension trusts, have many beneficiaries and/or

the beneficial entitlements can be bought and sold frequently. As it is impossible to tax the beneficiaries as if they own the trust property itself, it is convenient and even appropriate to tax them on the actual receipt of the income, subject to some measures which prevent the tax deferral from being too large. Thus, beneficiaries of an integrated trust are taxed when they actually receive income from the trust.

3. **Corporation-Taxed Trust.** The third scheme applies to trusts which are treated as if they were an independent corporation. As compared to an actual corporation, the difference is that the trustee, rather than the trust itself, is liable for tax because a trust has no legal personality under the Japanese civil laws. It should be noted that the trustee of a corporation-taxed trust is generally treated as a corporation for most taxation purposes, even if the trustee is an individual. This type of trust is divided into of three groups:
 - a. **Securitized Beneficial Entitlements.** These consist of trusts with securitized beneficial entitlements other than integrated investment trusts, pension trusts, and certified public trusts. Because the beneficial entitlements are securitized, it would be difficult to tax the trust income in the hands of the beneficiaries as if they own the trust property itself. On the other hand, without some measure against large tax deferrals it would not be appropriate from the viewpoint of equity to tax only the actual receipts of the beneficiaries. This group, therefore, is taxed in the same way as corporations.
 - b. **Corporation Tax Avoidance.** These consist of trusts which are deemed to be used for corporation tax avoidance and are generally taxed as corporations, including:
 - (i) a trust, the grantor of which is a corporation, the trust property of which is the whole or an important part of the business of the grantor corporation and more than 50% of the beneficial entitlements in which is given to the shareholders of the grantor corporation;
 - (ii) a trust created by a corporate grantor if the trustee is the grantor or a special related person of the grantor, as specified in the relevant Cabinet Order, and the trust term is more than 20 years (unless the trust property is of only one kind and it will likely take more than 20 years to control or manage that property); and
 - (iii) a trust created by a corporate grantor if the trustee is the grantor or a special related person of the grantor, as specified in the relevant Cabinet Order, if the beneficiaries are also a special related person of the grantor and the trustee has the right to alter the ratio of the distributions to the beneficiaries. As these trusts have current beneficiaries they would, without special

rules, be treated as beneficiary-taxed trusts. It is, however, thought to be inequitable to treat them in that way, because in that case the substantial corporate income of the grantor would be taxed only in the hands of the beneficiary and the corporation tax would be avoided.

- c. **No [Current] Beneficiary Trust.** Generally, trusts in which there is no beneficiaries eligible to receive benefits currently.

C. Trusts Used for Estate Planning. The taxation of trusts used in estate planning are as follows for trusts that are effective (generally, when the trust agreement is entered into) on or after the implementation of substantial amendments to the Trust Law (*Shintaku Hou*) on September 30, 2007:

- 1. **No [Current] Beneficiary, Etc., Trust (*Jyuekisha Tou Ga Sonshinai Shintaku*).** A trust is a No Beneficiary Trust if no beneficiary, or other person (who can receive trust assets) with the power to amend the terms of the trust so as to violate the purpose of the trust, is specified. Upon the transfer of property into such trust:
 - a. the settlor/transferor is deemed to have sold the property (and thus, may be subject to income tax on any gain on the deemed sale);
 - b. the trustee is deemed to have received a donation (which is treated as donation income), as if the trustee were a corporation under the Corporation Tax Law; and
 - c. if a beneficiary is related to the settlor, the trustee is also deemed to have received a gift as if the trustee were a Japanese national under the Gift Tax Law (however, any corporation tax in (b) is creditable against the gift tax).

In the future, the trustee is deemed the owner of the trust assets as if the trustee was a corporation for corporation and income tax purposes. In addition, beneficiaries are deemed to be the shareholders of such deemed corporation. If a beneficiary of a No Beneficiary Trust is determined, then such trust ceases to be a No Beneficiary Trust and thus, the trust assets are deemed to be transferred to the beneficiary at their adjusted tax basis and the beneficiary is not subject to income tax on the deemed receipt of such assets; provided that, the beneficiary is in being at the time the trust came into effect. A beneficiary not in being at such time is subject to Gift Tax on such distribution.

- 2. **Sequential Beneficiary Trust (*Jyuekisha Renzokugata Shintaku*).** A sequential beneficiary trust is a trust, the terms of which:
 - a. provide that the beneficial right expires on the beneficiary's death and another person becomes the new beneficiary in sequence;

- b. provide that the beneficial right expires upon the beneficiary's death or upon the happening of other circumstances, at which time another person will obtain new beneficial rights;
- c. provide that the beneficial right will be transferred to another person upon the beneficiary's death or upon the happening of other circumstances;
- d. provide that a person has the right to change or name beneficiaries; or
- e. are similar to the above.

For Gift Tax purposes, the initial beneficiary is deemed to receive a gift from the settlor upon the establishment of the trust (unless the settlor is the initial beneficiary), and the subsequent beneficiary is deemed to receive a gift upon succeeding to or receiving the subsequent beneficial interest; provided, however, that the initial beneficiary is not a "corporation" for Japan tax purposes. Where there is potentially more than one beneficiary, it is unclear how to allocate the trust assets deemed received by gift. Unless a trust provides for a specific allocation or apportionment of trust assets/income among the potential successor beneficiaries, a reasonable method of allocation would generally be equally among all beneficiaries in being or, in the case of family Beneficiaries, in accordance with their statutory (intestacy) shares.

3. **General Trust.** A beneficiary-taxed (general) trust is a trust which is not a sequential trust (or any other type of business trusts, collective investment trust, pension trust). A beneficiary of a general trust is deemed to receive a gift, unless the settlor is also the beneficiary (in which case there are no tax consequences to the settlor or trustee). The deemed beneficiary of a general trust ("Beneficial Owner") is deemed to be owner of the trust assets and so, is generally deemed to directly earn the income, gain, and loss from the trust assets on current basis. In the future, additional or replacement beneficiaries would be treated as having received a gift or inheritance from the then existing beneficiary(ies). For example, where A is the sole beneficiary for five years, after which both A and B become beneficiaries, then at such time, A is deemed to make a gift of half (or some other appropriate portion of) the trust assets to B.

- a. **"Beneficial Owner."** Generally, the Japan tax law treats a person holding a trust beneficial entitlement as determined under the Japan Trust Law. Under the Trust Law, a beneficial entitlement consists of two rights: (I) the right to claim trust property from the trustee on the basis of the trust deed (beneficial claim); and (II) the right to demand that the trustee or another person does whatever is necessary to secure the above claim on the basis of the law.

The law provides the beneficiary with many rights to enable him to control the trustee in order to secure his beneficial claim. For example, the beneficiary has the right to demand that the trustee reports on the trust property and trust debts, the right to revoke actions of the trustee that violate the trustee's duty or in some cases the trust deed, and the right to demand an injunction compelling the trustee to act in accordance with his duty or the trust deed. Thus, a person holding such rights may be deemed to be a Beneficial Owner even if he does not have other rights (such as the right to distributions of trust income or principal).

In addition, under the Japan tax law, a person who currently has the right to alter the trust and to receive distributions from the trust is treated a Beneficial Owner. Under the relevant Cabinet Orders (regulations), the "right to alter the trust" includes both the right to alter the trust unilaterally (usually by the grantor) or by agreement with others. However, the "right to alter the trust" generally excludes alterations clearly not contrary to the purpose of the trust, such as when necessary to comply with changes in the regulations or responses to regulatory actions. In addition, under the relevant Cabinet Orders, the "right to receive distributions from the trust" includes the right to receive a payment from the trust subject to a condition precedent.

- b. **Settlor As "Beneficial Owner."** In practice, a settlor is treated as the Beneficial Owner, unless the trust agreement explicitly provides that he has no right to alter the trust agreement or receive distributions from the trust. Unless provided otherwise in the trust agreement, the settlor is usually deemed to have the right to alter the trust because the Japan Trust Law provides that a trust can be altered with the agreement of the settlor, trustee, and beneficiary. In addition, the settlor is generally deemed to have the right to receive distributions of trust property subject to a condition precedent because the Japan Trust Law provides that the settlor receives the residual property of a trust if all of the final beneficiaries and beneficiaries on liquidation abandon their rights on the termination of the trust.

Moreover, a settlor is treated as the Beneficial Owner even if there is a current beneficiary of the trust, and any person other than the settlor can be treated as the Beneficial Owner if such person has both the right to alter and receive distributions. For example, a beneficiary on liquidation who is given the right to alter the trust by his own act or by agreement with another person is generally considered to possess both rights to be treated as a Beneficial Owner.

- c. **Discretionary Trusts.** If a trustee has the sole discretion to determine whether and to what extent a beneficiary receives a

distribution of Trust assets or income, such beneficiary will still likely be deemed to be a beneficiary of the Trust and so, to own a portion of the Trust assets. Under the Japan trust law, a current beneficiary whose receipt of a distribution depends on some person's discretion is generally considered to have a beneficiary's right to control the trustee (and so, for Japan tax purposes, would presumably be the beneficial owner of the trust assets from which he might receive a distribution) *even if he does not actually receive any distribution* of trust property. This is contrasted with a person who acquires a beneficial entitlement at some person's discretion as a condition precedent, in which case such person is not treated as holding a beneficiary's right to control the trustee (and so, for Japan tax purposes, would be deemed to have received a gift of trust assets upon obtaining the beneficial entitlement). It is possible to argue that the determination (exercise of discretion) of the trustee is a condition precedent or that a potential beneficiary is not a trust beneficiary because he does not have any right to receive trust information from the trustee and so, is not a Beneficial Owner. However, it is unlikely that the Japan tax authorities would accept such arguments.

D. Gifts in Trust Before September 30, 2007. For trusts which became effective (generally, when the trust agreement is entered into) before September 30, 2007, a beneficiary of a trust is deemed to have received a gift when a:

1. Beneficiary other than the settlor is named at the time the trust is created;
2. New beneficiary is added to a trust where the settlor was formerly the only beneficiary;
3. Beneficiary confirms the intention to accept an interest in a trust where it was not previously clear that the beneficiary would do so;
4. Beneficiary is specified in a trust which previously did not specify a beneficiary;
5. Designated beneficiary did not previously exist, and the beneficiary comes into existence;
6. Beneficial interest is received upon satisfaction of a condition precedent; or
7. Person other than the settlor receives a distribution of the trust assets due to the termination of the trust before the occurrence of the above described circumstances.

It is not clear whether a gift in trust is deemed made where a beneficiary is specifically named, but the amount that such beneficiary is entitled to is not

fixed (for example, a discretionary trust). Depending on the facts and circumstances, it is possible to take the position that no gift is made until it is determined that a *specific beneficiary* will receive a *specified amount* from the trust. If no gift is deemed made, then the settlor is generally still deemed to own the trust property.

- E. **Valuation.** The valuation of assets is based on the same methods as for Inheritance Tax as discussed above.
- F. **Basic Exemption.** For each donee, JP¥1.1 million per year on all gifts received from all sources. For example, a donee who receives JP¥1 million from each parent in a year has received at least JP¥2 million in gifts and thus, has exceeded the JP¥1.1 million basic exemption.
- G. **Spousal Allowance.** Up to JP¥20 million on a one-time gift of certain residential property to be used by a spouse married for more than 20 years.
- H. **Gifts for Education, Marriage and Child Care Accounts.** With respect to payment of educational expenses, there is a special regime for parents and grandparents to make tax-free gifts up to JP¥15 million for education, and JP¥10 million for marriage and childcare expenses, into special accounts at designated Japan financial institutions for such specified purposes. Generally, the donee must register such special gifting plan with the tax authorities.
- I. **Gift Tax Rates.**

GIFT TAX ON TAXABLE AMOUNTS -		
OVER	BUT NOT OVER	RATE
JP¥ 0	JP¥ 2,000,000	10%
¥ 2,000,000	¥ 3,000,000	15%
¥ 3,000,000	¥ 4,000,000	20%
¥ 4,000,000	¥ 6,000,000	30%
¥ 6,000,000	¥ 10,000,000	40%
¥ 10,000,000	¥ 15,000,000	45%
¥ 15,000,000	¥ 30,000,000	50%
¥ 30,000,000	-	55%

Note that the Gift Tax marginal rates are imposed at a lower amount of gift as compared to the inheritance tax. For example, the maximum 55% rate applies on gifts over JP¥30 million, but only applies to inheritances over JP¥600 million. However, no Surtax applies on gifts to persons other than the donor's spouse, parents, or children.

- J. **JP¥25 Million Exemption and Unified Taxation of Gifts From Lineal Ascendants.** To obtain the benefit of the lower, marginal inheritance tax rates for gifts, a donee aged 20 or older may elect to apply a special unified gift and inheritance tax regime for gifts received from a parent or grandparent donor aged 60 or older. In lieu of the JP¥1.1 million basic exemption, such gifts are allowed a one-time JP¥25 million exemption, after which gifts are tentatively taxed at a flat 20% rate (applicable foreign taxes on such gifts may be

creditable subject to certain limitations). Upon the death of the donor, the excess gifts (over JP¥25 million) are subject to inheritance tax at the lower inheritance tax marginal rate scale, rather than at the higher gift tax marginal rate scale (a credit may be claimed for the initial 20% tax paid at the time the gift was made).

- K. Special Tax Rates on Gifts From Lineal Ascendants.** A donee aged 20 or older may elect a special gift tax rate regime for gifts received from a parent, grandparent, or other lineal ascendant donor, excluding gifts subject to the unified gift taxation regime (*see* Section IV.J immediately above), as follows:

SPECIAL GIFT TAX ON TAXABLE AMOUNTS -		
OVER	BUT NOT OVER	RATE
JP¥ 0	JP¥ 2,000,000	10%
¥ 2,000,000	¥ 4,000,000	15%
¥ 4,000,000	¥ 6,000,000	20%
¥ 6,000,000	¥ 10,000,000	30%
¥ 10,000,000	¥ 15,000,000	40%
¥ 15,000,000	¥ 30,000,000	45%
¥ 30,000,000	¥ 45,000,000	50%
¥ 45,000,000	-	55%

- L. Foreign Tax Credit.** Credit for gift taxes paid to foreign governments on non-Japan situs property subject to gift tax is generally permitted subject to certain limitations.
- M. Tax Basis of Gifted Assets.** Donees take a carryover adjusted tax basis in property received by gift (the same tax basis that the decedent had as of the date of the gift).
- N. Gift Tax Return.**
- 1. Due Date for Return and Tax Payment.** Generally, March 15 following the year in which the gift was made (unless the donee terminates his Japanese domicile and does not appoint an agent to file his tax return, in which case the return is due immediately upon the date of such termination). Generally, extensions are not permitted.
 - 2. Penalties.** For failure to timely pay tax may apply (10%-40%).
- O. Tax Deferral for Succession of Unlisted Family Companies.** A Principal Donee may defer payment of gift tax on up to two-thirds of the issued and outstanding voting shares (including shares already held by the Principal Donee) in a Qualifying Company received by way of gift from a Qualifying Donor; provided certain requirements for providing collateral are met.
- 1. Qualifying Company.** Any Small or Medium Enterprise (“SME”), the shares of which have been certified by the Minister of Economy, Trade and Industry, other than one that: is publicly-listed, involved in adult entertainment, asset management company (70% or more of the

assets consists of real estate, securities, cash, commodities, etc., based on the book value, or at least 75% of its revenue is from such passive assets), has no revenue in the tax year immediately before the year of the gift, or has no employees at the date of the gift.

2. **Small or Medium Enterprise (“SME”).** Depending on the industrial classification (wholesale, services, retail, rubber products manufacturing, software, hotel and hospitality, and others), an SME is any company with not more than a maximum of 900 employees and JP¥300 million in stated capital (*shihonkin*).
3. **Principal Donee.** Any family member of the decedent who is a representative of the company, over 20 years old, must have served as an officer of the company for over three years, and who holds the most voting rights among all family members (who together must hold more than 50% of the voting rights in the company). A family member is any individual who is within six degrees of relationship by blood (or three by marriage).
4. **Qualifying Donor.** Any representative of the company who resigns as an officer of the company prior to the gift, who holds, together with his or her family, more than 50% of the total voting rights in the company, and who, excluding the Principal Heir, held the most voting rights.
5. **Collateral to Secure Payment of Tax.** The Principal Donee must pledge to the shares of the company, or provide some other collateral, to the government to secure any future payment of the inheritance tax.
6. **Period of Deferral.** The deferral of gift tax continues as long as the Principal Donee holds the shares in the Qualifying Company, the company continues to meet the requirements for a Qualifying Company, etc.

V. Japan Reporting and Disclosure.

- A. **Balance Sheet Reporting Requirement.** Income taxpayers who are required to file an income tax return, and whose income during the year exceeds ¥20 million, who have more than ¥300 million in assets, etc., must include a personal balance sheet, including all assets and liabilities as of December 31. Failure to include such balance sheet may result in the doubling of any penalty tax on underpayment of income tax (generally, 20%), which is related to an item which should have been disclosed on the balance sheet.
- B. **Foreign Asset Reporting Requirement.** Permanent resident income taxpayers with foreign assets in excess of JP¥50 million as of December 31 must file a disclosure statement reporting such overseas assets, including interests in foreign trusts, whether or not such taxpayer is obligated to file an income tax return for that year. Failure to file the statement can result in a fine of up to JP¥500,000 or imprisonment of up to one year. In addition, the penalty on underpayment of income tax (generally, 20%) is increased by 5% if such underpayment is due to an understatement of income from unreported

overseas asset, and decreased by 5% if such underpayment is due to an understatement of income from overseas assets properly disclosed in such statement.

- C. **Foreign Account Tax Compliance Act (“FATCA”).** The Japan-U.S. Intergovernmental Agreement (“IGA”) is effective from June 30, 2014. Japan has a Model 2 IGA (direct reporting by foreign financial institutions to the U.S. tax authorities).
- D. **Common Reporting Standard (“CRS”).** Japan has adopted the CRS automatic exchange of information rules as of 2017, with information exchanges to begin in 2018 with respect to jurisdictions with which CRS exchange of information treaties have been adopted.

VI. Japan-U.S. Estate, Inheritance and Gift Tax Treaty. Japan has in force only one estate, inheritance, and gift tax treaty, which is with the U.S.

- A. **Situs.** The treaty provides various rules for determining the situs (location) of assets. For example, debt, including bank deposits, is located where the debtor resides (which may result in overriding the general U.S. situs rules which treat certain debt as non-U.S. situs assets for U.S. gift and estate tax purposes).
- B. **Pro-Rata Portion of Applicable Credit Amount (Unified Credit).** Under the non-discrimination provisions, Japan resident donees/heirs may claim a proportionate share the U.S. applicable credit amount (US\$11,400,000 in 2019), rather than the US\$60,000 otherwise available on the death of nonresident/non-U.S. citizen decedents.
- C. **Unintended Consequences of Electing Treaty Benefits.** Electing to apply the treaty will re-source certain assets based on the treaty sourcing rules and, in the case of claiming the proportionate share of the U.S. applicable credit amount, will require disclosing the total global assets on a U.S. estate tax return, which must be filed to claim the proportionate credit.

VII. Japan “Exit Tax” on the *Expatriation of Ownership of Securities.* For Japan national income tax purposes, a Japan resident, who:

- (i) Is either a Japanese national or, from July 1, 2020, a “*Deemed Permanent Resident*,” for at least five (5) years during the ten (10)-year period preceding the “*expatriation of ownership*”; and
- (ii) Owns at least JP¥100 million in financial assets (excluding cash, insurance, etc.) on the date of the “*expatriation of ownership*”),

is treated as having sold any securities, such as stocks, bonds, *tokumei kumiai* (TK) interests (and including stock and other securities of any non-Japan company) upon an “*expatriation of ownership*” of such securities. Any net gain on such deemed sale is subject to national income tax at 15.315%.

- A. An “*expatriation of ownership*” occurs upon (1) Termination Japan residency; (b) Gift of such securities by the Japan resident to a non-Japan resident; or (c)

Inheritance of such securities by a non-Japan resident upon the Japan resident's death

- B.** A “*Deemed Permanent Resident*” is a non-Japanese national, Japan resident whose immigration status on the date of the termination of Japan residency, gift, or death, is specified on Table II of the Immigration Control and Refugee Recognition Act (that is, a permanent resident (*eiogyuken*), spouse or child of a Japanese national or permanent resident, etc.).
- C.** The exit tax does not generally apply to non-permanent expatriates with a work (management, specialist, legal/accounting), educational, etc., visa.
- D.** The exit tax applies to the expatriation of the *ownership* of securities and not only to a termination of Japan residency.