



KPMG Japan Tax Newsletter

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2018 TAX REFORM

INHERITANCE TAX/GIFT TAX – AMENDMENTS TO SCOPE OF TAX PAYMENT OBLIGATIONS OF FOREIGN NATIONALS

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Inheritance tax and gift tax are levied on an heir who acquired properties by inheritance and an individual (a donee) who acquired properties from another individual (a donor) as a gift, respectively. The scope of taxable properties depends on whether the individuals have or had domicile in Japan and whether they hold Japanese nationality.

Under the 2017 tax reform, the scope of the tax payment obligations of inheritance tax/gift tax was amended in that inheritance tax/gift tax will not be imposed on properties located outside Japan with respect to inheritance/gifts involving foreign nationals living or having lived temporarily in Japan under certain conditions in order to encourage foreign nationals to live and work in Japan. On the other hand, certain cases have been added to those where inheritance tax/gift tax is imposed on all properties in order to deter tax saving by Japanese wealthy people through relocating outside Japan.

The 2017 tax reform also included amendments to expand the scope of taxable properties for cases where a foreign national living outside Japan (an heir/donee) obtains properties from a foreign national who had lived in Japan for more than 10 years (a decedent/donor) within 5 years after the decedent/donor left Japan. The new tax treatment has caused concern that it would work to discourage foreign nationals from working in Japan on long-term assignments.

In consideration of the above concern, by virtue of the 2018 tax reform, properties located outside Japan will be treated in principle as non-taxable properties for inheritance tax/gift tax purposes where a decedent/donor is a foreign national who has already left Japan.

I. Scope of Tax Payment Obligations (After 2017 Tax Reform)

The scope of the tax payment obligations of inheritance tax/gift tax after the 2017 tax reform is as follows:

(The following matrix is applied to inheritance tax/gift tax levied on properties acquired on or after 1 April 2017 by inheritance/gifts.)

| Decedent Donor \ Heir Donee | | Domicile in Japan | | No domicile in Japan | | |
|-----------------------------|---|-------------------|---|---|--|--------------------|
| | | E | F | Japanese national | | Foreign national I |
| | | | | G Domicile in Japan within past 10 years | H No domicile in Japan within past 10 years | |
| Domicile in Japan | | A | | | | |
| | | B | | | | |
| No domicile in Japan | Domicile in Japan within past 10 years | C | | | | |
| | No domicile in Japan within past 10 years | D(1) | | | | |
| | | D(2) | | | | |

[Scope of taxable properties]

- All properties
- Only properties located in Japan

| | |
|---|---|
| B | <p>Decedent/donor</p> <ul style="list-style-type: none"> who has domicile in Japan and a resident status under Table 1 of the Immigration Control and Refugee Recognition Act when an event causing the inheritance/gift occurs and whose total period of having domicile in Japan is 10 years or less within the past 15 years before an event causing the inheritance/gift occurs |
| D | <p>Decedent/donor</p> <ul style="list-style-type: none"> who does not have domicile in Japan when an event causing the inheritance/gift occurs, who had been domiciled in Japan at a point in time within 10 years before an event causing the inheritance/gift occurs, whose total period of having domicile in Japan is 10 years or less within the past 15 years before an event causing the inheritance/gift occurs and who does not have Japanese nationality for the period of having domicile in Japan |
| | <p>Decedent/donor</p> <ul style="list-style-type: none"> who does not have domicile in Japan when an event causing the inheritance/gift occurs and who had never been domiciled in Japan within 10 years before an event causing the inheritance/gift occurs |
| F | <p>Heir/donee</p> <ul style="list-style-type: none"> who has domicile in Japan and a resident status under Table 1 of the Immigration Control and Refugee Recognition Act when an event causing the inheritance/gift occurs and whose total period of having domicile in Japan is 10 years or less within the past 15 years before an event causing the inheritance/gift occurs |

[Transitional measure]

Where a foreign national living outside Japan (an heir/donee categorized in 'I') obtains properties located outside Japan from a foreign national who left Japan before 1 April 2017 by inheritance/gifts during the period from 1 April 2017 to 31 March 2022, inheritance tax/gift tax will not be imposed on the properties under the 2017 tax reform transitional measure so that the scope of the taxable properties for such cases should remain the same as the prior rules.

(The above transitional measure will be continuously applied to inheritance tax/gift tax after the 2018 tax reform.)

By virtue of the 2017 tax reform, the tax payment obligations of inheritance tax/gift tax for foreign nationals living or having lived temporarily in Japan was generally relaxed. However, where a foreign national living outside Japan (an heir/donee categorized in 'I') obtains properties located outside Japan from a foreign national who had lived in Japan for more than 10 years (a decedent/donor) within 5 years after the decedent/donor left Japan by inheritance/gifts (in this case, a decedent/donor is categorized in 'C'), the properties will be newly subject to inheritance tax/gift tax. The new tax treatment has caused concern that it would work to discourage foreign nationals from working in Japan on long-term assignments.

Therefore, under the 2018 tax reform, the scope of tax payment obligation was amended again so that properties located outside Japan will be treated as non-taxable properties for inheritance tax/gift tax purposes where a foreign national living outside Japan obtains them from a foreign national who has already left Japan, except for properties given by gift during a period when the donor temporarily lives outside Japan.

II. 2018 Tax Reform

1. Inheritance tax

(1) Amendment to categorization of decedents

The definition of 'D(1)' was amended as follows:

| Before amendment | After amendment |
|--|--|
| <p>Decedent</p> <ul style="list-style-type: none"> • who does not have domicile in Japan when an event causing the inheritance occurs, • who had been domiciled in Japan at a point in time within 10 years before an event causing the inheritance occurs, • whose total period of having domicile in Japan is 10 years or less within the past 15 years before an event causing the inheritance occurs and • who does not have Japanese nationality for the period of having domicile in Japan | <p>Decedent</p> <ul style="list-style-type: none"> • who does not have domicile in Japan when an event causing the inheritance occurs, • who had been domiciled in Japan at a point in time within 10 years before an event causing the inheritance occurs and • who does not have Japanese nationality at any time of having domicile in Japan |
| <p style="text-align: center;">[Typical examples]</p> <p>A foreign national who had lived in Japan and left Japan within the past 10 years, where either of the following is met:</p> <ul style="list-style-type: none"> ✓ The period of living in Japan is 10 years or less. ✓ The period of living in Japan is over 10 years and 5 years have passed after leaving Japan. | <p style="text-align: center;">[Typical examples]</p> <p>A foreign national who had lived in Japan and left Japan within the past 10 years</p> |

By virtue of the above amendment, a foreign national who had lived in Japan for more than 10 years, and passes away within 5 years after leaving Japan, will be categorized in 'D(1)', not 'C.'

Thus, for example, where a foreign national living outside Japan (an heir categorized in 'I') obtains properties located outside Japan from a foreign national living outside Japan (a decedent), the properties will be treated as non-taxable properties for inheritance tax purposes regardless of the period when the decedent had domicile in Japan.

(2) Timing of application

The above amendment is applied to inheritance tax levied on properties acquired on or after 1 April 2018 by inheritance.

2. Gift tax

(1) Amendment to categorization of donors

The definition of 'D(1)' was amended as follows:

| Before amendment | After amendment |
|--|---|
| <p>Donor</p> <ul style="list-style-type: none"> • who does not have domicile in Japan at the time of the gift, • who had been domiciled in Japan at a point in time within 10 years before the gift, • whose total period of having domicile in Japan is 10 years or less within the past 15 years before the gift and • who does not have Japanese nationality for the period of having domicile in Japan | <p>Donor</p> <ul style="list-style-type: none"> • who does not have domicile in Japan at the time of the gift, • who had been domiciled in Japan at a point in time within 10 years before the gift and • who falls under either of the following: <ul style="list-style-type: none"> (i) where the total period of having domicile in Japan is 10 years or less within the past 15 years before leaving Japan (the donor does not have Japanese nationality for the period of having domicile in Japan); or (ii) where the total period of having domicile in Japan is more than 10 years within the past 15 years before leaving Japan (the donor does not have Japanese nationality for the period of having domicile in Japan) and 2 years have elapsed after leaving Japan |
| <p style="text-align: center;">[Typical examples]</p> <p>A foreign national who had lived in Japan and left Japan within the past 10 years, where either of the following is met:</p> <ul style="list-style-type: none"> ✓ The period of living in Japan is 10 years or less. ✓ The period of living in Japan is over 10 years and 5 years have passed after leaving Japan. | <p style="text-align: center;">[Typical examples]</p> <p>A foreign national who had lived in Japan and left Japan within the past 10 years, where either of the following is met:</p> <ul style="list-style-type: none"> ✓ The period of living in Japan is 10 years or less. ✓ The period of living in Japan is over 10 years and 2 years have passed after leaving Japan. |

Where a foreign national who had lived in Japan for more than 10 years gives properties to an individual, and it is carried out after 5 years from the donor leaving Japan, the donor would be categorized in 'D' before the amendment. However, such time requirement was shortened from 5 years to 2 years under the above amendment.

Therefore, for example, where a foreign national who had lived in Japan for more than 10 years gives properties to a donee that is a foreign national living outside Japan after 2 years from the donor leaving Japan, only properties located in Japan will be subject to gift tax.

Note that a special measure applied for cases where a foreign national who had lived in Japan for more than 10 years gives properties to a foreign national within 2 years after the donor left Japan was introduced under the 2018 tax reform. (Please see (2) for details.)

(2) Special measure for gifts from a foreign national who left Japan within the past 2 years

A special measure applied to gifts from a specified donor to a foreign national living outside Japan (a donee categorized in 'I') was introduced.

A 'specified donor' is a donor categorized in 'C' meeting certain conditions as follows:

| |
|--|
| <p>Donor</p> <ul style="list-style-type: none"> • who does not have domicile in Japan at the time of the gift, • who had been domiciled in Japan at a point in time within 10 years before the gift, • whose total period of having domicile in Japan is more than 10 years within the past 15 years before leaving Japan (who does not have Japanese nationality for the period of having domicile in Japan) and • who left Japan within the past 2 years |
| <p>[Typical example]</p> <p>A foreign national who had lived in Japan for over 10 years and left Japan within the past 2 years</p> |

In principle, where a donee obtains properties by gift, the donee is required to file a gift tax return between 1 February and 15 March of the year following the year in which the donee obtained the properties.

However, where a foreign national living outside Japan (a donee categorized in 'I') obtains properties from a specified donor by gift, the above principle rule does not apply and the donee is required to file a gift tax return in a way discussed below depending whether the specified donor returned to Japan within 2 years after leaving Japan:

| | Cases | Taxable properties | Filing due date |
|-----|---|-----------------------------|--|
| (a) | Where the specified donor returned to Japan within 2 years after leaving Japan | All properties | Between 1 February and 15 March of the year following the year in which the specified donor returned to Japan |
| (b) | Where 2 years elapsed since the specified donor left Japan (without returning to Japan) | Properties located in Japan | Between 1 February and 15 March of the year following the year in which 2 years elapsed since the specified donor left Japan |

By virtue of the introduction of the special measure, where a foreign national who had lived in Japan for more than 10 years gives properties located outside Japan to another foreign national living outside Japan (a donee categorized in 'I') after leaving Japan, such properties will not be subject to gift tax unless the donor returns to Japan within 2 years after leaving Japan.

(3) Timing of application

The above amendments discussed in (1) and (2) are applied to gift tax levied on properties acquired on or after 1 April 2018 by gift.

(4) Transitional measure

Where a foreign national who left Japan before 1 April 2017 gives properties to a foreign national living outside Japan (a donee categorized in 'I') during the period from 1 April 2018 to 31 March 2019, the donor will be categorized in 'D.' This transitional measure would work for the special measure discussed in (2) not to apply to a foreign national who left Japan before 1 April 2017.

[Related information]

Resident status under the Immigration Control and Refugee Recognition Act

| | | |
|---------|-----|---|
| Table 1 | (1) | Diplomat, Official, Professor, Artist, Religious Activities, Journalist |
| | (2) | Highly Skilled Professional, Business Manager, Legal/Accounting Services, Medical Services, Researcher, Instructor, Engineer/Specialist in Humanities/International Services, Intra-company Transferee, Nursing Care, Entertainer, Skilled Labor, Technical Intern Training |
| | (3) | Cultural Activities, Temporary Visitor |
| | (4) | Student, Trainee, Dependent |
| | (5) | Designated Activities |
| Table 2 | | Permanent Resident, Spouse or Child of Japanese National, Spouse or Child of Permanent Resident, Long-Term Resident |

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