Private Client
2021

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Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the ninth edition of *Private Client*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Bermuda, Cayman Islands, Cyprus, Guernsey, Switzerland and the United States.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Anthony Thompson and Nicole Aubin-Parvu of Forsters LLP, for their continued assistance with this volume.

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Getting The Deal Through

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For further information please contact editorial@gettingthedealthrough.com

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Japan

Akira Tanaka and Kenichi Sadaka
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TAX

Residence and domicile

1 | How does an individual become taxable in your jurisdiction?

The main tax imposed on an individual's income is income tax under the Income Tax Act. An individual's taxability is generally determined by the location of his or her residence and the source of income.

A resident individual is defined as a natural person who is domiciled in Japan, or a natural person who has resided in Japan continuously for more than one year. Resident individuals are further classified into permanent residents and non-permanent residents. A non-resident individual is defined as a natural person other than a resident individual. Income taxation for these groups is applied as follows:

- permanent resident individuals are taxed on a worldwide income basis. Non-Japanese citizens residing in Japan are presumed to be permanent residents when they have resided in Japan for a cumulative period of five years (measured within a 10-year time period). Japanese citizens are presumed to be permanent residents from the moment they reside in Japan;
- non-permanent resident individuals are subject to Japanese taxation with regard to Japan-sourced income and non-Japan-sourced income paid in or remitted to Japan. Non-Japanese citizens who have resided in Japan for less than five years on a cumulative basis (measured within a 10-year time period) are treated as non-permanent resident individuals; and
- non-resident individuals are taxed on Japan-sourced income only.

Upon the death of an individual, inheritance tax will be imposed on the legal heirs and the testamentary donees (in this chapter, the word testamentary donees shall refer to individuals entitled to receive testamentary gifts, irrespective of whether they are the legal heirs, and shall not include any legal entities) under the Inheritance Tax Act. The tax liability of legal heirs and testamentary donees of the deceased is generally determined by the location of their residence, their nationality, the location of the deceased's residence and the location of the assets. The 2017 tax reform amended the rules concerning the tax liability of legal heirs and testamentary donees of the deceased in order to achieve two goals.

1 preventing wealthy people, in particular, Japanese people who have lived in Japan for many years, from avoiding inheritance tax imposed by the Japanese government; and
2 encouraging foreign people, especially highly skilled foreign professionals, to live and work in Japan without being too concerned about inheritance tax in Japan.

To achieve (1), the 2017 tax reform has made it difficult to meet the requirements for benefiting from limited taxation, which may be applicable to assets located outside Japan. To achieve (2), the 2017 tax reform introduced a relief for foreigners who hold a work-related visa and temporarily reside (ie, less than 10 years living in Japan within the 15 years preceding his or her death) in Japan. The effect of such reform is that assets located outside Japan that are owned by such foreigners are exempt from inheritance tax, even if such foreigners die during their stay in Japan and are, thus, presumed to be permanent residents. In addition, the 2018 tax reform introduced a relief for foreigners who had lived in Japan for more than 10 years and then left Japan, to eliminate a disincentive for highly skilled professionals to live and work in Japan. The effect of that reform is that assets located outside Japan that are owned by such foreigners are, in principle, exempt from inheritance tax, even if such foreigners die within five years of leaving Japan.

Income

2 | What, if any, taxes apply to an individual's income?

In addition to income tax (imposed at a national level), a special reconstruction tax (also imposed at a national level), equivalent to 2.1 per cent of income tax, is payable from 1 January 2013 to 31 December 2037. Local inhabitant taxes will also apply to an individual's income if the individual resides in Japan. There are two categories of local inhabitant tax: the prefectural level and the municipal level. The tax base for income tax and the local inhabitant taxes are almost identical. The overall income-based tax rate (including national tax and local taxes) is progressive and reaches a maximum rate, which is currently 55.945 per cent (comprising a 45 per cent income tax rate, a 0.945 per cent special reconstruction tax rate and a 10 per cent local inhabitant tax rate).

In the case of an individual entrepreneur operating a business in Japan, a local enterprise tax will also be imposed on his or her business income by the prefectural tax authorities where his or her office is located. The applicable tax rate differs based on the category of business operated by the sole entrepreneur, as well as the location of his or her office, but it generally ranges from between 3 and 5 per cent.

Capital gains

3 | What, if any, taxes apply to an individual's capital gains?

Capital gains are derived from the sale of assets. Assets from the viewpoint of capital gains include real properties, land lease rights, shares of corporations, certain kinds of bonds, gold bullion, jewels, vessels and ships, machines and equipment, golf course membership and intellectual property.

Income tax at the national level and local inhabitant taxes are applicable to capital gains. Tax preferential treatments are available for certain capital gains, such as gains as a result of the rise in value of shares of corporations. With regard to individuals, capital gains derived from the sale of shares or derived from the sale of bonds are taxed at a rate of 20.315 per cent (comprising a 15 per cent income tax rate, a 0.315 per cent special reconstruction tax rate and a 5 per cent local

inhabitant tax rate) until 31 December 2037. Capital gains derived from the sale of real property will be subject to tax at the rate of 20.315 per cent (comprising a 15 per cent income tax rate, a 0.315 per cent special reconstruction tax rate and a 5 per cent local inhabitant tax rate) from present until 31 December 2037 if the real property is held for more than five years. Reduced tax rates will be applicable to capital gains derived from the sale of land for residential purposes if certain requirements are met. Capital gains derived from the sale of real property held for five years or less will be taxed at 39.63 per cent (comprising a 30 per cent income tax rate, a 0.63 per cent special reconstruction tax rate and a 9 per cent local inhabitant tax rate).

To prevent wealthy resident individuals from avoiding tax on capital gains by moving out of Japan with appreciated financial assets (eg, securities) and subsequently selling those assets overseas, the 2015 tax legislation has amended the Income Tax Act and introduced a new exit tax, which imposes income tax on unrealised capital gains on certain financial assets at the time of departure. Under the new rule, a resident individual is subject to income tax on capital gains on financial assets at the time of their departure (as if the individual sold the securities or settled the derivative transactions at the fair market value) if he or she satisfies both of the following conditions:

- the total value of certain financial assets held by the person as of departure from Japan is ¥100 million or more; and
- the person has lived in Japan for more than five of the last 10 years prior to departure.

For a similar purpose, income tax shall also be imposed on unrealised capital gains on certain financial assets if a resident individual who satisfies the conditions stated above donates certain financial assets to non-residents, or if a resident individual who satisfies the conditions stated above dies and, in a succession procedure, his or her legal heirs and testamentary donees who are non-residents of Japan come to acquire the financial assets.

Lifetime gifts

4 | What, if any, taxes apply if an individual makes lifetime gifts?

If an individual makes lifetime gifts, different tax consequences will arise between:

1 an individual who makes gifts to another individual; and
2 an individual who makes gifts to a legal entity.

In the case of (1), the recipient will be subject to a gift tax under the Inheritance Tax Act. As set out in the table below and the table in question 5, the gift tax rate is much higher than the inheritance tax rate. When certain requirements are met (such as where the provider of the gift is a parent or grandparent who is aged 60 or older and the recipient of the gift is at least age 20), the recipient can elect to enjoy the reduced gift tax rate and to credit such gift tax against the inheritance tax after the death of the donor.

The donor will not generally be subject to tax. However, if the recipient does not pay the gift tax, the donor will be jointly liable.

The present gift tax rate is as in the following chart. However, it should be noted that reduced rates are applicable to gifts from lineal ascendants to lineal descendants who are 20 years of age or older.

Tax base after basic deduction* applicable to all gifts	Tax rate
¥2 million or less	10%
¥3 million or less	15%
¥4 million or less	20%
¥6 million or less	30%
¥10 million or less	40%
¥15 million or less	45%
¥30 million or less	50%
More than ¥30 million	55%

* Basic deduction is ¥1.1 million (ie, no tax is payable for gifts of amounts up to ¥1.1 million).

In the case of (2), the recipient legal entity will be subject to corporate income tax. The tax base is the fair market value of the gifts. The donor is also subject to income tax (deemed capital gains tax) if the gifts provided are property other than cash. The tax base is unrealised capital gains (ie, the fair market value less acquisition costs and other related expenses). However, if the recipient legal entity falls within the category of certain charities, deemed capital gains tax will not be levied.

Inheritance

5 | What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

If an estate is gifted to a legal entity on the death of the testator, the recipient legal entity and the individual testator will be subject to corporate income tax and deemed capital gains tax, respectively. The tax obligation of the individual testator will be borne by his or her heirs.

Inheritance tax will be imposed upon each of the legal heirs and testamentary donees and not upon the estate itself. The basic method of calculating inheritance tax where an estate is gifted to individuals and inheritance tax is payable is as follows:

1 The tax base must be determined. The total value of the estate less debts incurred by the decedent, untaxable properties, and costs incurred for the funeral plus gifts made within three years of death will be the tax base.
2 A deduction of ¥30 million and ¥6 million multiplied by the number of legal heirs will be applied to the tax base. Legal heirs in this case include illegitimate children and adopted children. However, there are certain restrictions on the number of adopted children who may be included in this calculation to prevent inheritance tax avoidance.
3 Assuming that the tax base determined in (1) and (2) above is divided among the legal heirs pursuant to the legal inheritance ratio provided in the Civil Code, the total amount of inheritance tax to be imposed is then calculated. Inheritance tax is allocated based on the actual assets acquired by each of the heirs and the testamentary donees. If the amount of the assets acquired by a certain legal heir is more or less than his or her legal inheritance ratio, then the inheritance tax to be imposed upon him or her will increase or decrease accordingly. Nonetheless, the total amount of inheritance tax to be imposed upon all the legal heirs will, in principle, remain the same as that where the division is faithful to each legal heir's legal inheritance ratio.
4 In calculating the amount of inheritance tax, special deductions or exemptions are available. In particular, the surviving spouse can be exempted if the amount of the assets he or she acquires is less than ¥160 million or less than the amount of the spouse's legal inheritance ratio. If gift tax has already been paid for gifts made within three years of death, such gift tax is creditable against the inheritance tax to be paid by the gift tax payer. On the other hand, a person who receives assets by inheritance or testament and is not a spouse or a first-degree family member (including an heir per stirpes) of the decedent will be liable for an additional 20 per cent of inheritance tax.
5 As stated above, inheritance tax is imposed upon each of the heirs and testamentary donees of a decedent. However, in the event that a certain heir or testamentary donee does not pay the inheritance tax due, the other heirs and testamentary donees are jointly and severally liable to a certain extent.

The current basic inheritance tax rates are as follows:

Tax base after applicable deduction	Tax rate
¥10 million or less	10%
¥30 million or less	15%
¥50 million or less	20%
¥100 million or less	30%
¥200 million or less	40%
¥300 million or less	45%
¥600 million or less	50%
More than ¥600 million	55%

It should be noted that preferential tax treatments apply to cases of inheritance involving business succession. Such preferential treatment is intended to facilitate business succession by reducing the inheritance tax burden. This treatment may be applied to the inheritance of medium- to small-sized businesses (defined as, for example, a business of which the stated capital is a specified amount or less, and the number of employees is a specified number or less). Under such preferential treatment, 80 per cent of the inheritance tax will be deferred upon certain requirements being met (such as obtaining the approval of the Minister of Economy, Trade and Industry, the decedent being a representative of a business who held at least 50 per cent of the shares or interest in that business, and the heir or the testamentary donee succeeding the business as such a representative). In addition to the above preferential tax treatment, the 2018 tax reform introduced a more preferential tax regime for business succession, which will apply to shares donated or inherited until 31 December 2027. Under this tax regime, 100 per cent of the inheritance tax will be deferred upon certain requirements being met, such as submission of a business succession plan to the prefectural government. The 2019 tax reform also introduced a preferential tax regime for business succession, which will apply to assets for business use donated or inherited until 31 December 2028 to foster the succession of the businesses of sole proprietors. Under this tax regime, 100 per cent of the inheritance tax will be deferred upon certain requirements being met, such as submission of a business succession plan to the prefectural government and a provision of collateral.

Real property

6 | What, if any, taxes apply to an individual's real property?

Upon acquisition, a real property acquisition tax will be imposed. The tax rate is generally 3 or 4 per cent. Upon registration, a registration and licence tax will be imposed. The tax rate varies depending on the type of registration made. For example, if the registration relates to the transfer of ownership, the tax rate is 2 per cent of the value of the real property (reduced tax rates may apply depending on the type of real property, eg, land and dwelling house). If the ground for the acquisition of real property is inheritance, inheritance tax will be imposed as described above, and registration and licence tax will also be imposed (the tax rate is 0.4 per cent of the value of the real property), while real property acquisition tax will not be imposed.

In the period in which real property is held, a fixed assets tax will be imposed at a general rate of 1.4 per cent of the value of such real property. Various tax preferential treatments are available for a fixed assets tax. In addition, real property located in certain areas, such as Tokyo, will be subject to urban planning tax at a rate of 0.3 per cent of the value of real property.

When disposing of real property, a capital gains tax (income tax and local inhabitant tax) will be imposed.

Non-cash assets

7 | What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

There are neither taxes nor duties on exportation.

Regarding importation, customs and duties are levied depending on the goods to be imported. In addition, upon importation, a consumption tax will be levied at a rate of 10 per cent. Certain products, such as food and non-alcoholic beverages, may enjoy a reduced tax rate of 8 per cent.

The rates of customs and duties are provided in the Customs Tariff Act. Certain economic partnership agreements (EPAs) to which Japan is a signatory (such as those signed with Indonesia, Malaysia, Singapore, Thailand, Vietnam, other Association of Southeast Asian Nations' countries, Chile, India, Mexico, Switzerland and the EU) provide preferential treatment in terms of tariff rates. Customs and duties are applicable regardless of the purpose of importation (ie, duties and customs are applicable even if the importation is for personal use and enjoyment). However, if goods are imported using general cargo or postal package and the value of such goods is less than ¥200,000, a simplified tariff code will be applied. No customs and duties are payable on imported goods that have a value of ¥10,000 or less, except for alcohol and cigarettes.

Other taxes

8 | What, if any, other taxes may be particularly relevant to an individual?

Consumption tax may be relevant to an individual. The present rate is 10 per cent. Certain products, such as food and non-alcoholic beverages, may enjoy a reduced tax rate of 8 per cent. The payer of consumption tax is:

- a person or a legal person who, as a business, with consideration, sells or leases assets and provides services within Japan; or
- a person or a legal person who receives goods from a bonded area.

Therefore, an individual who purchases goods or receives services is not a taxpayer under the Consumption Tax Act. Generally speaking, such an individual simply bears the economic burden of the consumption tax passed onto consumers by businesses.

Trusts and other holding vehicles

9 | What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

For Japanese tax purposes, there are generally three types of trusts:

1 transparent trusts;
2 non-transparent trusts; and
3 corporate trusts.

Transparent trusts are disregarded in the taxation process, and the beneficiaries may directly obtain gains and losses at the time such gains and losses are realised (ie, gains and losses attributable to the trust are considered to be gains and losses of the beneficiaries). All trusts other than the trusts classified into (2) and (3) are included in this category.

Beneficiaries of non-transparent trusts are taxed at the time when the distribution of profits is made to the beneficiaries. This type of trust includes collective investment trusts, retirement pension trusts and qualified public interest trusts.

The treatment of corporate trusts is largely similar to the treatment of ordinary corporations. Therefore, corporate trusts are taxable entities. Corporate trusts include certain securities-issued trusts, trusts with no beneficiaries, certain trusts in which the trustee is a corporation, and certain specific purpose trusts.

Charities

10 | How are charities taxed in your jurisdiction?

Various types of charities are recognised as long as the respective legal requirements are met. Generally speaking, charities are tax-exempt entities, including the donations and charitable contributions they receive. However, if such charities have certain premises established as an office and continuously conduct business in certain areas for profit as stipulated in the Corporate Tax Act, such businesses are taxable to the extent profits are derived from such businesses. Such businesses include the sale of goods and real properties, money lending, leasing of real property, manufacturing, communication services, transportation, warehousing, printing, publishing, photography, the hotel industry, agency, commissionaire-related businesses, restaurants, mining, hairdressing, medical insurance businesses, and the provision of parking spaces.

Anti-avoidance and anti-abuse provisions

11 | What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

The Inheritance Tax Act has some anti-avoidance and anti-abuse tax provisions. For example, in order to restrict aggressive or abusive tax planning by using a closely-held company, article 64 of the Inheritance Tax Act provides that if a transaction or calculation conducted by a closely-held company unreasonably reduces the burden of inheritance tax or gift tax on its shareholders, etc, the tax authorities are entitled to deny such a transaction or calculation and levy an appropriate amount of tax.

To restrict aggressive or abusive tax planning, such as making a bequest or donation to a certain corporation substantially controlled by the person who made the bequest or donation or a family member of that person, article 65 of the Inheritance Tax Act provides that inheritance tax or gift tax shall be levied on a person who receives special benefits from the corporation.

To restrict aggressive or abusive tax planning, such as making a bequest or donation to a non-juridical entity substantially controlled by the person who made the bequest or donation or a family member of that person, article 66 of the Inheritance Tax Act provides that the non-juridical entity shall be deemed to be an individual for the purposes of inheritance tax and gift tax and that inheritance tax or gift tax shall be levied on the non-juridical entity, with some exceptions.

TRUSTS AND FOUNDATIONS

Trusts

12 | Does your jurisdiction recognise trusts?

Trusts are recognised in Japan and are regulated by the Trust Act. In general, trusts can be established by settlors transferring their properties to trustees, who then hold legal title to the properties for the benefit of the beneficiaries, who may or may not be the settlors. Trust properties, the legal title of which has been transferred from settlors to trustees, become remote from the settlors' bankruptcy. If the property to be transferred to a trustee falls under a category of assets that are capable of being registered in Japan (such as real property and patents), then the transfer of titles to such assets must, for purposes of perfection against third parties, be registered.

Trustees manage or dispose of trust property in accordance with certain trust objectives and carry out the necessary acts to achieve such objectives in accordance with the trustees' duties, such as the duties of care and loyalty. Although trust properties are incapable of being legal entities, they must be segregated from the trustees' own properties, and they must be kept free from seizure by the trustees' own creditors and bankruptcy. There are three methods by which a trust may be established:

- by way of a contract between the settlor and the trustee;
- by way of the will of the settlor; and
- by way of a declaration whereby the settlor declares, in a notarised deed or another prescribed form, that it will manage or dispose of property in accordance with certain objectives and will carry out the necessary acts to achieve such objectives.

Additionally, trusts governed by the laws of another jurisdiction may be recognised in Japan; however, the validity of such trusts is ultimately determined by a Japanese court in the event of disputes regarding these trusts.

Private foundations

13 | Does your jurisdiction recognise private foundations?

A general incorporated foundation (GIF), which is a legal personality, can be established under the Act on General Incorporated Associations and General Incorporated Foundations. There are no limits to the objectives of a GIF, whose objectives can be driven by, among others, public interest, mutual benefit for specified members, and commercial purposes, as long as such objectives are legal. A GIF can be established by one or more founders contributing ¥3 million or more. A founder can also establish a GIF by way of a will, in which case the executor carries out the procedures necessary to establish the GIF. A GIF can be operated by a representative director or an operating director depending on the determination of a board of directors. A board of councillors determines certain fundamental matters in relation to the GIF, such as the election of directors and amendments to the GIF's articles of incorporation, in accordance with applicable law or the GIF's articles of incorporation.

Private foundations governed by the laws of another jurisdiction may also be recognised in Japan. However, the validity of such foundations is ultimately determined by a Japanese court in the event of disputes regarding the foundations.

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

14 | Does your jurisdiction have any form of legally recognised same-sex relationship?

Same-sex marriage is treated as invalid. If a person with gender identity disorder changes his or her gender pursuant to the Gender Identity Disorder Act, then such person may enter into a marriage with a person who is biologically the same sex as such person was before he or she changed his or her gender. The Gender Identity Disorder Act stipulates requirements if a person with gender identity disorder wishes to legally change his or her gender. The requirements are as follows:

- the person is at least 20 years old (this will be changed to 18 years old on 1 April 2022);
- the person is unmarried at the time he or she wishes to legally change his or her biological gender;
- the person does not have a child under 20 years old (this will be changed to 18 years old on 1 April 2022;);
- the person does not have reproductive organs or reproductive ability; and
- the person has external genital organs similar to the opposite sex.

Under the current Civil Code, an individual attains legal capacity for the purposes of holding and managing property at the age of 20. However, if a minor is married, he or she will be deemed to have attained majority. The minimum legal age of marriage for a man is 18 and for a woman, 16. A minor who is permitted to carry out business has the same capacity to

act as a person who has reached the age of 20, as far as such business is concerned.

In June 2018, a bill of amendment to the Civil Code passed the Diet. Under the revised Civil Code, an individual will attain legal capacity for the purposes of holding and managing property at the age of 18. The minimum legal age of marriage for a woman will be raised from 16 to 18. The revised Civil Code will take effect on 1 April 2022.

These requirements may be hard for a person with gender identity disorder to satisfy.

Under Japanese tax law, the term 'spouse' has the same meaning as in the Civil Code (ie, a spouse in a marital relationship). Accordingly, a person in a same-sex relationship is not eligible for tax benefits granted to a spouse or a marital relationship, such as spouse tax deductions under the Income Tax Act and a spouse's amount of tax reductions under the Inheritance Tax Act.

It should be noted, however, that progressive movements in relation to same-sex marriage have been occurring at the local government level. In March 2015, Shibuya, a ward in Tokyo, enacted the same-sex partnership ordinance. Under this ordinance, Shibuya may issue a partnership certificate to same-sex couples who satisfy certain requirements, which will allow such same-sex couples to be treated by Shibuya and business operators located within the ward as equivalent to a formally married couple in limited situations. However, such same-sex couples are not treated as married couples within the meaning of the Civil Code, and accordingly, they do not receive the same legal protection as married couples. Such progressive movements have gradually been expanding to other local governments, including Setagaya, another ward in Tokyo, which enacted an ordinance on 2 March 2018 that prohibits discrimination against LGBT people. However, some people continue to object to same-sex marriage by referring to article 24 of the Constitution of Japan, which provides: 'Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.'

On 18 September 2019, the Mooka branch of the Utsunomiya District Court reached a notable decision on same-sex marriage. The court ruled that the plaintiff, who was a woman, had been in a relationship with a same-sex partner that was similar to a de facto marriage between heterosexual couples, and that she may, thus, claim for damages caused by the infidelity of her same-sex partner. On 4 March 2020, the Tokyo High Court upheld the decision.

Heterosexual civil unions

15 | Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

Heterosexual couples who intend to marry are required to submit a marriage notification to a government office in order for the marriage to be formally admitted as a marital relationship under Japanese law. If a heterosexual couple lives together with the intention to marry but have not submitted a marriage notification, the relationship is not treated as a marital relationship but as a de facto marriage. Nonetheless, such couples are also eligible, to a limited extent, for protections and obligations that are substantially similar to those provided for a marital relationship, for example:

- if a de facto marriage is terminated without justifiable reasons, the terminated party to the de facto marriage may seek damages against the terminating party;
- if a de facto marriage is terminated, a party may ask the other party to distribute community property and joint property;
- partners to the de facto marriage shall share expenses that arise from the relationship, taking into account their property, income and all other circumstances; and
- for social security purposes, a de facto marriage is often treated the same as a marital relationship (eg, a partner to a de facto marriage is eligible to obtain pensions and industrial injury insurance after the death of the other party).

However, there is a notable difference between marriage and de facto marriage: a partner in a de facto marriage is not treated as an heir; however, it is possible to give an estate to the partner by way of testament.

Under Japanese tax law, the term 'spouse' has the same meaning as in the Civil Code (ie, a spouse in a marital relationship). Accordingly, a partner in a de facto marriage is not eligible for tax benefits granted to a spouse or a marital relationship, such as spouse tax deductions under the Income Tax Act and a spouse's amount of tax reductions under the Inheritance Tax Act.

SUCCESSION

Estate constitution

16 | What property constitutes an individual's estate for succession purposes?

In principle, any and all rights and duties attached to the property of the decedent, including a legal title to tangible and intangible property, and co-ownership interest in property, claims and obligations, are succeeded to at the time of the death of the decedent. This, however, shall not apply to rights or duties of the decedent that are purely personal, such as the right to welfare or public assistance.

Disposition

17 | To what extent do individuals have freedom of disposition over their estate during their lifetime?

In principle, individuals may make any and all dispositions over their estate, whether by sale or through gifts, during their lifetime, except where such disposition is against public policy (eg, a lifetime gift for the purposes of maintaining an adulterous relationship) and thus should be considered void. However, if the heirs who are entitled to a statutory reserved share claim for abatement of the gift so requested, the recipient must make monetary compensation equivalent to the statutory reserved share claim.

18 | To what extent do individuals have freedom of disposition over their estate on death?

In principle, individuals have testamentary freedom over their estate, except in cases where such disposition is against public policy. However, if the heirs who are entitled to a statutory reserved share claim for abatement of the gift so requested, the recipient must make monetary compensation equivalent to the statutory reserved share claim.

Intestacy

19 | If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

If the intestate is survived by his or her spouse, such spouse shall, in principle, always be an heir. Other heirs are determined according to who survives the decedent.

Intestate survived by spouse and children

In this case, the spouse and children of the decedent become heirs. If the decedent is survived by his or her spouse and one or more children, the

surviving spouse will take half of the estate, and the surviving children will take the other half in equal shares. If any of the decedent's children died prior to the death of the decedent, or lost the right to inheritance due to disqualification or disinheritance, and if any of his or her lineal descendants is surviving, then such lineal descendant (ie, a grandchild or a further descendant of the decedent) will be an heir per stirpes.

Intestate survived by spouse and lineal ascendants with no surviving children

The lineal ascendants of the decedent, such as his or her father or mother, may become heirs only if the decedent has no children (and no heirs per stirpes). In this case, the surviving spouse will take two-thirds of the estate, and the surviving lineal ascendants will take one-third of the estate in equal shares.

Intestate survived by spouse and siblings with no surviving children or surviving lineal ascendants

The siblings of the decedent may become heirs only if the decedent has neither surviving children (and no heirs per stirpes) nor surviving lineal ascendants. If the decedent is survived by his or her spouse and siblings, the surviving spouse will take three-quarters of the estate, and the surviving siblings will take one-quarter of the estate in equal shares. If any of the decedent's siblings died prior to the death of the decedent, or lost the right to inheritance due to disqualification or disinheritance, and if his or her children are surviving, then the child (ie, a nephew or a niece of the decedent) will be an heir per stirpes.

Special benefit and contributory portion

The above-mentioned shares of each heir are subject to adjustment according to the amount of special benefit that the heirs have already received from the decedent, and the contributory portion of heirs who made a special contribution relating to the decedent's business, medical treatment or nursing of the decedent or other means.

Adopted and illegitimate children

20 | In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Adopted and illegitimate children are treated in the same way as natural legitimate children. In the past, article 900 of the Civil Code stipulated that an illegitimate child was only entitled to half the estate to which a legitimate child was entitled. For many years, there were strong criticisms of the fairness of this clause. On 4 September 2013, the Supreme Court of Japan finally decided that such unequal treatment was in violation of article 14 of the Constitution of Japan, which provides for equal protection for all. Following the ruling of the Supreme Court, article 900 was formally amended in December 2013, and the distinction between legitimate and illegitimate children was abolished.

Distribution

21 | What law governs the distribution of an individual's estate and does this depend on the type of property within it?

It depends on the nationality of the decedent. If the decedent's nationality is Japanese, the Civil Code governs the distribution of the individual's estate. The explanations in this section on succession are based on the Civil Code. Even if a foreign law governs the succession or distribution of an individual's estate because of the nationality of the decedent, the heirs, testamentary donees and the recipient legal entities who succeed to real property within Japan must register their share to perfect the changes in rights through the procedure required by the laws of Japan.

Formalities

22 | What formalities are required for an individual to make a valid will in your jurisdiction?

This depends on which law governs the formality of a will. Under Japanese law, a will is considered valid in its formality if it complies with:

- the law of the place where the act was performed;
- the law of the country where the testator had nationality, either at the time he or she made the will, or at the time of his or her death;
- the law of the place where the testator is domiciled, either at the time he or she made the will, or at the time of his or her death;
- the law of the place where the testator was habitually resident, either at the time he or she made the will, or at the time of his or her death; or
- the law of the place where the real property is located in the case of a will concerning real property.

If the Civil Code applies to a will in question, then (1) a holographic document, (2) a notarised document or (3) a sealed and notarised envelope document is considered valid in terms of formality.

With regard to (1), the testator must write the entire text, the date and his or her name in his or her own hand and affix his or her seal. The testator is allowed to prepare the list of assets using a word processor.

With regard to (2), the following requirements must be satisfied:

- no fewer than two witnesses must be in attendance;
- the testator must give oral instruction of the tenor of the will to a notary public;
- the notary public must write the testator's dictation and either read it aloud, or submit it to the testator and witnesses for inspection;
- the testator and witnesses must each sign and affix his or her seal to the certificate after having approved its accuracy; and
- the notary public must provide supplementary registration to the effect that the certificate has been made in compliance with the formalities listed in each of the preceding items, and sign and affix his or her seal thereto.

With regard to (3), the following requirements must be satisfied:

- the testator must sign and affix his or her seal to the certificate;
- the testator must seal the certificate and affix the same seal;
- the testator must submit the sealed certificate before one notary public and no less than two witnesses, with a statement to the effect that it is his or her own will, giving the author's name and address; and
- after having entered the date of submission of the certificate and the statement of the testator upon the sealed document, the notary public must, together with the testator and witnesses, sign it and affix his or her seal thereto.

Apart from a will, which is required to comply with considerable formality in order to be valid, it is possible to make a gift in the form of a gift agreement by and between a donor and a recipient, which will become effective at the time of the donor's death. Gift agreements are required to comply with relatively lower standards of formality in order to be valid.

Foreign wills

23 | Are foreign wills recognised in your jurisdiction and how is this achieved?

The law of the nationality of the testator governs the execution and effect of foreign wills.

Administration

24 | Who has the right to administer an estate?

If there is only one heir and no will, he or she will inherit the entire estate and will be allowed to administer it. If there are two or more heirs and no will, most of the inherited estate, such as real estate, will belong to those heirs in co-ownership, and such co-ownership will only be terminated after it is decided which of the heirs should take which specific assets by effect of an out-of-court agreement or the completion of a formal court procedure. Until such decision is made, the joint heirs administer the inherited estate. However, the family court may appoint a manager of such estate, if it considers it necessary to do so to preserve such estate.

If there is a will, an executor, in principle, has the right and duty to administer the estate until the succession of the estate under the will is fully completed. An executor may be designated by the will itself or be appointed by the family court.

25 | How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

In principle, if a person dies intestate, his or her estate automatically and directly passes to the heirs upon the commencement of the inheritance and, if there are two or more heirs, they will co-own the decedent's assets. However, a bank deposit was not considered to be co-owned, but was automatically divided among the heirs. In this respect, on 19 December 2016, the Supreme Court decided that the court precedent that had treated bank deposits as divisible claims should be revoked, and thus that bank deposits should not treated as divisible claims. Under the new court precedent, no heir is, in principle, able to withdraw deposits of the decedent before the division of the estate without obtaining consent from all the other heirs, regardless of the necessity for withdrawing deposits to pay, for example, expenses for funeral services. This may cause some inconvenience. To address this issue, the revised Civil Code, which, in principle, took effect on 1 July 2019, introduced temporary payment rules such that the court may issue a temporary order to grant partial withdrawal of deposits in a more flexible and expeditious manner than in the case of the formal preliminary injunction procedures. A new measure has also been introduced such that heirs can withdraw certain small deposit amounts without obtaining consent from all the other heirs.

If a person dies testate, his or her estate will be passed to his or her heirs, testamentary donees and recipient legal entities in accordance with his or her will.

If there is only one heir and no will, he or she will inherit the entire estate and will be allowed to administer it. If there are two or more heirs and no will, most of the inherited estate, such as real estate, will belong to those heirs in co-ownership, and such co-ownership will only be terminated after it is decided which of the heirs should take which specific assets by effect of an out-of-court agreement or the completion of a formal court procedure. Until such decision is made, the joint heirs administer the inherited estate. However, the family court may appoint a manager of such estate, if it considers it necessary to do so to preserve such estate.

If there is a will, an executor, in principle, has the right and duty to administer the estate until the succession of the estate under the will is fully completed. An executor may be designated by the will itself or be appointed by the family court.

Challenge

26 | Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

Heirs other than siblings have statutory reserved shares. If only lineal ascendants are heirs, they have statutory reserved shares that are equal to one-third of the decedent's estate. In the other cases, heirs have statutory reserved shares that are equal to half of the decedent's estate. Heirs must claim for monetary compensation equivalent to the statutory reserved shares, in principle, within one year of having knowledge of the commencement of inheritance and the existence of a gift or testamentary gift to be claimed.

CAPACITY AND POWER OF ATTORNEY

Minors

27 | What are the rules for holding and managing the property of a minor in your jurisdiction?

The legal capacity of a person to act is governed, in principle, by his or her national law. In the case of a Japanese citizen, the Civil Code will apply, under which a minor's act without the consent of his or her statutory agent (in principle, his or her parents) may be rescinded unless such act only grants a right, or discharges his or her duty.

Age of majority

28 | At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

Under the current Civil Code, an individual attains legal capacity for the purposes of holding and managing property at the age of 20. However, if a minor is married, he or she will be deemed to have attained majority. The minimum legal age of marriage for a man is 18 and for a woman, 16. A minor who is permitted to carry out business has the same capacity to act as a person who has reached the age of 20, as far as such business is concerned.

In June 2018, a bill of amendment to the Civil Code passed the Diet. Under the revised Civil Code, an individual will attain legal capacity for the purposes of holding and managing property at the age of 18. The minimum legal age of marriage for a woman will be raised from 16 to 18. The revised Civil Code will take effect on 1 April 2022.

Loss of capacity

29 | If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

If an individual loses capacity to discern right and wrong due to any mental disability, the family court may order the commencement of guardianship upon the request of related parties. Acts of an individual under guardianship may, in principle, be rescinded.

If an individual's capacity to appreciate right and wrong is severely insufficient due to any mental disability, the family court may order the commencement of curatorship upon the request of related parties. An individual under curatorship must obtain the consent of his or her curator if he or she intends to do important acts, such as borrowing money. If there is no consent, acts of such individual may, in principle, be rescinded.

If an individual has insufficient capacity to appreciate right or wrong due to any mental disability, the family court may order the commencement of assistance upon the request of related parties. An individual under assistance must obtain the consent of his or her assistant if he or

she intends to do any particular act determined by the court. If there is no consent, such an act of such individual may, in principle, be rescinded.

IMMIGRATION

Visitors' visas

30 | Do foreign nationals require a visa to visit your jurisdiction?

In principle, a visa is required. However, if foreign nationals from certain visa-exempt countries intend to visit Japan for certain purposes (eg, business, conference or sightseeing purposes) for a limited period of time, then a visa is not required.

31 | How long can a foreign national spend in your jurisdiction on a visitors' visa?

It depends on the status of the visitor. Examples of status and permitted terms are as follows:

Status	Term
Short stay	15, 30 or 90 days
Highly skilled foreign professional	Five years for highly skilled foreign professional (i); unlimited for highly skilled foreign professional (ii) (see question 32 for details)
Business manager	Three or four months or one, three or five years
Researcher, instructor, engineer, specialist in humanities, international services, intra-company transferee	Three months or one, three or five years
Nursing care	Three months or one, three or five years
Specified skilled worker	One year, six months or four months for specified skilled worker (1); three years, one year or six months for specified skilled worker (2)
Spouse or child of Japanese national, spouse or child of permanent resident	Six months or one, three or five years
Permanent resident	Permanent

High net worth individuals

32 | Is there a visa programme targeted specifically at high net worth individuals?

A designated activities long-stay visa for sightseeing and recreation became available from 2015. Under this visa, nationals and citizens of visa waiver countries or regions are entitled to stay in Japan for up to one year if they meet certain requirements, such as:

- the individual is aged 18 or older and has savings equivalent to more than ¥30 million owned by him or herself and his or her spouse;
- he or she will come as an accompanying spouse of the individual who is mentioned in the point above (they must have the same place of residence and travel together in Japan); and
- the individual and the accompanying spouse have sufficient medical insurance to cover their stay in Japan.

In addition, significant developments were made to facilitate the acceptance of highly skilled foreign professionals in Japan. Further to the adoption of the points-based system in 2012, a new category of visa status, highly skilled foreign professional, was formally introduced in 2015. The highly skilled foreign professional visa has the following three sub-categories depending upon the activities of the individuals:

- advanced academic research activities;
- advanced specialised or technical activities; and
- advanced business management activities.

In determining whether a highly skilled foreign professional visa should be issued, the points-based system shall be used. For example, in the case of an individual applying for the highly skilled foreign professional visa (advanced specialised or technical activities), if he or she is 30 years old, the amount of his or her promised annual salary is ¥10 million and he or she has a doctoral degree, then 10 points, 40 points and 30 points will be given for each element. The applicant may also earn points for other factors listed in the relevant ordinance, such as their academic background, professional career (research or business experience), age, achievements and qualifications. If a total of 70 or more points are awarded, a highly skilled foreign professional visa may be issued, in which case various types of preferential treatment will be available, including:

- permission for multiple-purpose activities during their stay in Japan (ie, permission not only for the intended professional activities, but also for certain other activities that are related to the intended professional activities but may require, in principle, other types of visas);
- the granting of a five-year period of stay;
- relaxed requirements for the granting of permission for permanent residence (from 10 years down to three years (one year if a total of 80 or more points are awarded));
- preferential and expeditious processing of immigration and stay procedures;
- permission for a spouse to work;
- permission to bring a parent under certain circumstances; and
- permission for a domestic servant under certain requirements.

After engaging in activities as a highly skilled professional for three years or more, such individual may be promoted from highly skilled foreign professional (1) (lower status) to highly skilled foreign professional (2) (higher status), in which case additional preferential treatment will be available, including:

- permission for almost all activities during their stay in Japan (ie, permission not only for the intended professional activities, but also for certain other activities that are related or unrelated to the intended professional activities and require, in principle, other types of visas) in addition to those permitted under the highly skilled foreign professional (1) visa; and
- an unlimited period of stay.

33 | If so, does this programme entitle individuals to bring their family members with them? Give details.

A holder of a designated activities long-stay visa for sightseeing and recreation, may bring his or her spouse to Japan under certain circumstances. However, there is no special treatment for children.

A holder of the highly skilled foreign professional visa may bring his or her spouse and children to Japan. It is also possible for such individual to bring his or her parents to Japan for certain reasons and under certain requirements, whereas a foreign national with an ordinary working immigration status is, generally, not allowed to do so.

34 | Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

Holders of the highly skilled foreign professional visa who have engaged in the activities of a highly skilled person in Japan for approximately five consecutive years may apply for a permanent resident visa. Holders of

the highly skilled foreign professional (2) visa can stay in Japan indefinitely without changing his or her visa status.

35 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

Not applicable.

UPDATE & TRENDS

Key developments

36 Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high-net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

Tax Reform on Reporting of Overseas Assets

Individual residents (excluding non-permanent residents) may be required to file a report with the competent tax authorities with respect to properties located outside of Japan ('Overseas Assets'). The reporting requirement for Overseas Assets applies if an individual resident holds Overseas Assets with a total value exceeding ¥50 million as of 31 December of the tax year. The due date of the report is 15 March of the following year.

In principle, where an individual resident properly reports on his or her Overseas Assets but fails to pay applicable income tax or inheritance tax derived from such Overseas Assets, the rate of additional taxes payable by such individual resident is reduced by 5 per cent. Where an individual resident fails to properly report on his or her Overseas Assets and also fails to pay applicable income tax derived from such Overseas Assets, the rate of additional taxes payable by such individual resident is increased by 5 per cent. Even if an individual resident fails to pay applicable inheritance tax on such Overseas Assets, the rate of additional taxes payable by such individual resident is not increased.

Under the 2020 tax reform, in order to strengthen this reporting system, the following specially applicable measures have been introduced:

1 Where an individual resident who properly reports on his or her Overseas Assets but fails to pay applicable income tax or inheritance tax derived from such Overseas Assets, if such individual resident does not submit the documents concerning his or her Overseas Assets by the designated date at the request of the tax authorities, the rate of additional taxes will not be reduced.
2 Where an individual resident fails to properly report on his or her Overseas Assets and also fails to pay applicable income tax, if such individual resident does not submit the documents concerning his or her Overseas Assets by the designated date at the request of the tax authorities, the rate of additional taxes will be increased by 10 per cent. The same rule will also apply to inheritance tax.

Coronavirus

37 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The National Tax Agency (NTA) has extended the filing and payment due dates for individual income tax by one month from 16 March 2020 to 16 April 2020. In addition, if a taxpayer gets infected by covid-19 and cannot file an individual income tax return or pay individual income tax by the due date, the filing and payment due dates may be extended depending on individual circumstances. As to inheritance tax, the filing and payment due dates may also be extended depending on individual circumstances.

Upon application, a taxpayer can obtain a payment deferral of up to one year in cases of financial difficulties involving natural disasters, etc. In consideration of taxpayers in financial difficulties caused by the spread of covid-19, the NTA has issued directions to all tax offices with respect to the simplification of internal procedures for granting payment deferrals.

The Immigration Services Agency (ISA) announced various special treatments of foreign nationals staying in Japan. For example, the ISA issued, on 12 August 2020, an administrative guidance on the treatment of foreign nationals who have difficulty returning to their home countries. Under this administrative guidance, (1) foreign nationals staying with the status of residence of 'short stay' are permitted to extend the period of 'short stay (90 days)'; (2) foreign nationals staying with the status of residence of 'technical intern training' or 'designated activities (foreign construction worker (No.32) or foreign shipbuilding worker (No.35)' are generally permitted to change the status of residence to 'designated activities (six months, work permitted)'; (3) foreign nationals staying with the status of residence of 'student' and who wish to work are generally permitted to change their status of residence to 'designated activities (permitted to work part-time for six months, within 28 hours a week)'; and (4) foreign nationals staying with other status of residence (including foreign nationals in the above (2) or (3) who do not wish to work) are permitted to change their status of residence to 'designated activities (six months, work not permitted)'. With regard to the above (1), (2), (3) and (4), an extension will be permitted if the situation is ongoing and the foreign national is unable to return to his or her home country.

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