



## 1. Types of tax

### 1.1 Inheritance tax

The Japanese Inheritance Tax Law (sozoku zei ho) covers inheritance tax (souzoku zei) and gift tax (zoyo zei). Inheritance tax is imposed on an individual who acquires property by inheritance or bequest upon the death of the decedent. Gift tax is imposed on an individual who acquires properties by gift (or economic benefit by deemed gift). Gift tax is a tax supplementary to inheritance tax. Both taxes are national taxes and no local tax is assessed on the transfer of property due to death or a gift.

#### Computation of inheritance tax

The individual heirs are taxed, but not the estate. Inheritance tax is imposed on the aggregate value of all properties acquired by inheritance or bequest. Inheritance tax is calculated separately for each statutory heir and legatee, regardless of how and to whom the property is to be distributed. Then, the total amount of tax calculated is allocated between those who will actually receive the decedent's properties in accordance with his or her will or by agreement of the heirs by portion. The tax is calculated based on the statutory heirs and legatees, whereas the tax liability is attributed to those who actually acquire the properties.

#### Computation

The calculation is based on the following steps:

- ▶ Aggregate the amount of taxable properties acquired by all heirs and legatees (net of the liabilities succeeded).
- ▶ Deduct the basic exemption of ¥50 million plus ¥10 million multiplied by the number of statutory heirs from the amount of 1, "aggregated taxable estate value."
- ▶ Allocate the aggregated taxable estate value to each statutory heir according to the statutory share.
- ▶ Calculate the inheritance tax separately for each statutory heir's portion allocated in 3, by the application of the following progressive tax rates:

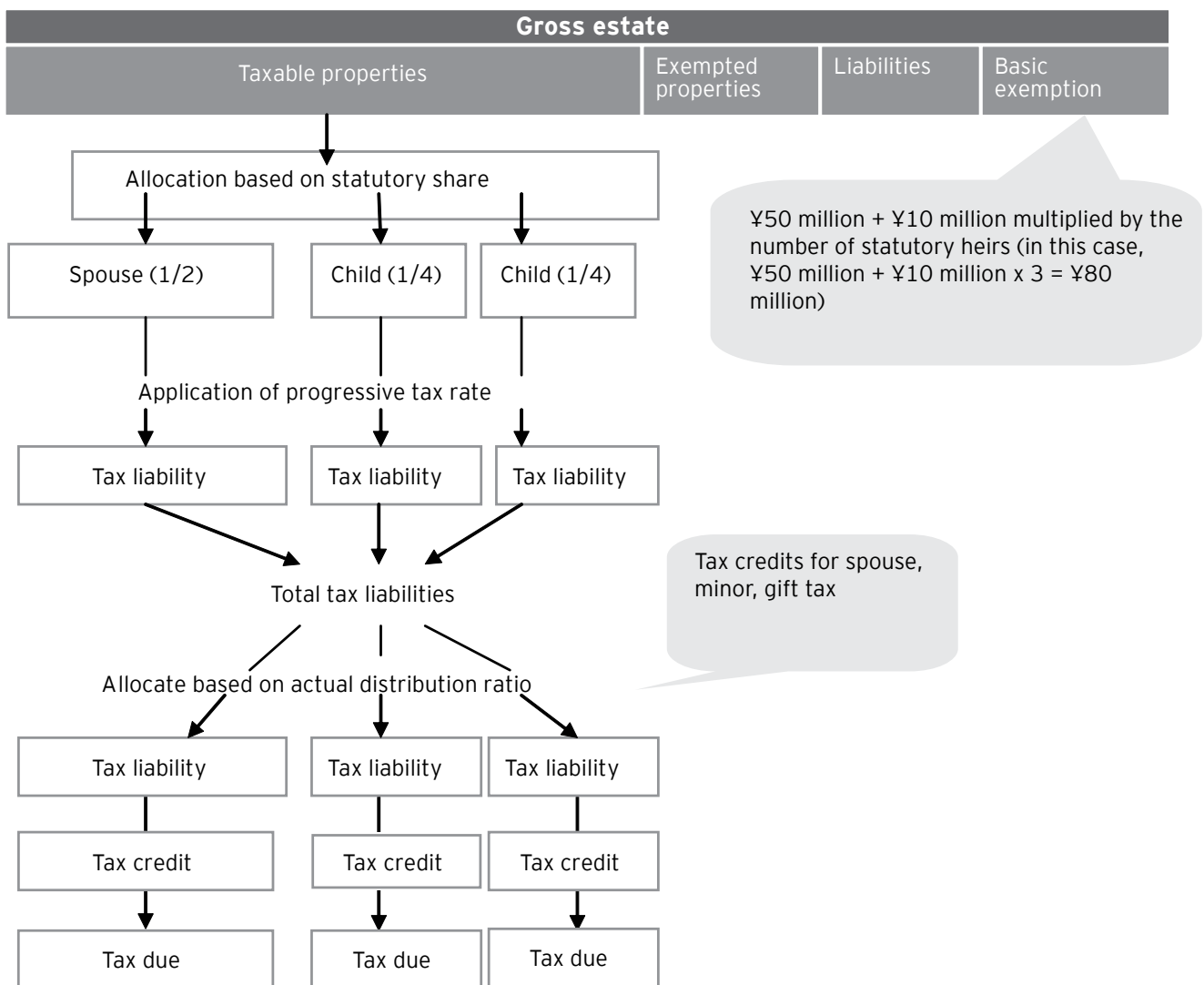
|                                       |     |
|---------------------------------------|-----|
| Up to ¥10 million                     | 10% |
| Above ¥10 million up to ¥30 million   | 15% |
| Above ¥30 million up to ¥50 million   | 20% |
| Above ¥50 million up to ¥100 million  | 30% |
| Above ¥100 million up to ¥300 million | 40% |
| Above ¥300 million                    | 50% |

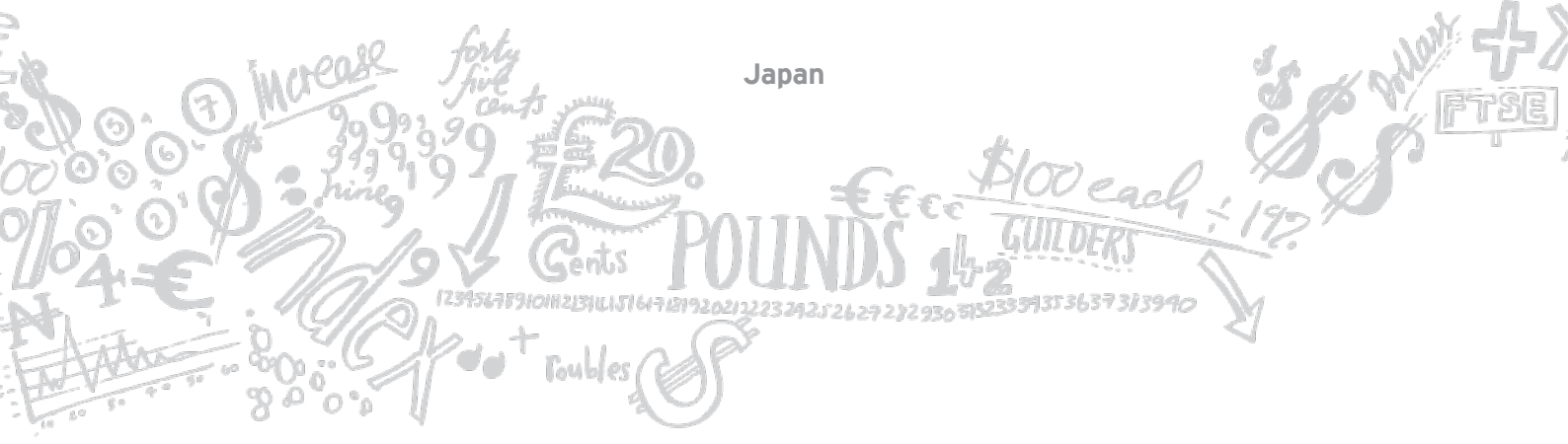
- ▶ Aggregate the inheritance tax calculated in 4 above, "aggregated inheritance tax."
- ▶ Allocate the aggregated inheritance tax to each of the heirs and legatees based on the ratio of the value of the taxable properties actually acquired by him or her against the aggregated taxable estate value.

- ▶ A 20% surtax is imposed on heirs or legatees of anyone who is not the decedent's spouse, the decedent's parents and the decedent's children. Where the decedent's grandchild became the decedent's adopted child, he or she is also subject to a 20% surtax.
- ▶ Deduct applicable tax credits to each heir (see Section 4).

The property acquired by a gift from the deceased within 3 years of the death of the deceased is regarded as estate property. Any gift tax imposed on the acquisition of such property is creditable against the inheritance tax liability.

Sample case where the heirs consist of spouse and 2 children:





## 1.2 Gift tax

Gift tax is imposed on individuals who acquire property by gift during the lifetime of the donee. Gift tax is also imposed on economic benefits received by deemed gift.

### Computation of gift tax

The taxable base of gift tax is determined as the value of properties obtained by a gift (or by a deemed gift) during each calendar year, after an annual basic exemption of ¥1.1 million. The applicable tax rates are as follows:

|                                    |     |
|------------------------------------|-----|
| Not more than ¥2 million           | 10% |
| Above ¥2 million up to ¥3 million  | 15% |
| Above ¥3 million up to ¥4 million  | 20% |
| Above ¥4 million up to ¥6 million  | 30% |
| Above ¥6 million up to ¥10 million | 40% |
| Above ¥10 million                  | 50% |

## 1.3 Real estate transfer tax

### Registration and license tax

The registration of the transfer of ownership of real property by inheritance or bequest is subject to registration and license tax at the rate of 0.4% of assessed value of the land and building. The registration of the transfer of ownership by gift or sales is generally subject to registration and license tax at a standard rate of 2%. At present, the rate for land and residential buildings is tentatively reduced.

### Real estate acquisition tax

The acquisition of real property by gift or sales is generally subject to real estate acquisition tax at 4%. At present, the rate for land and residential buildings is tentatively reduced. The acquisition of real property by inheritance or bequest is exempt from real estate acquisition tax.

## 1.4 Endowment tax

There is no endowment tax in Japan. As described in Section 4, if the heir makes donations of property to certain specified nonprofit organizations or foundations of the Japanese government, a local public organization by the filing due date of the inheritance tax, the property is exempt from the inheritance tax.

## 1.5 Transfer duty

There is no transfer duty other than real estate transfer taxes (see Section 1.3).

## 1.6 Net wealth tax

There is no tax imposed on net wealth in Japan.



## 2. Who is liable?

### 2.1 Who is liable – unlimited liability

#### Nationality and domicile

The heir or the donee who is domiciled in Japan when acquiring property at the death of the deceased or by gift has unlimited liability for inheritance tax or gift tax, regardless of his or her nationality. In addition, in cases where the heir or the donee has Japanese nationality, but is not domiciled in Japan at the time of property acquisition, he or she will still be subject to unlimited liability if either the heir or the deceased or the donee or the donor has been domiciled in Japan any time within 5 years immediately before the time of death of the deceased or at the time of the gift (unlimited liability taxpayer with Japanese nationality). Unlimited liability taxpayers are subject to inheritance tax or gift tax on all of the properties acquired regardless of whether the properties are located in or outside Japan.

#### Domicile

For the purposes of inheritance tax and gift tax, a “domicile” is defined as the principal base of living, which is determined based on facts and circumstances. The following individuals (as heirs or donees) will be treated as being domiciled in Japan, though they are actually located outside Japan:

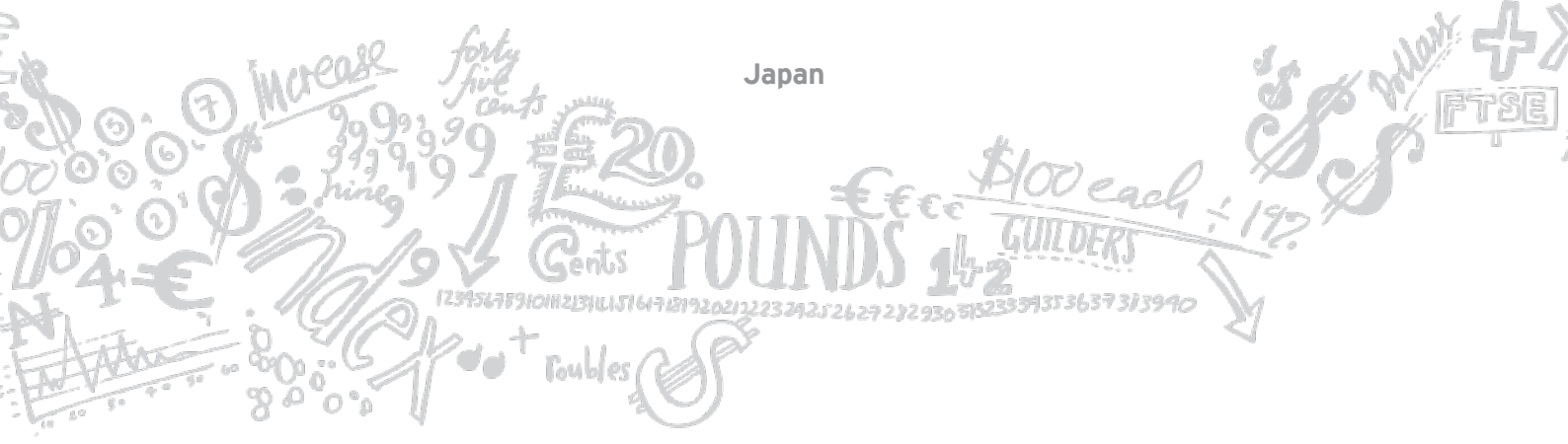
- ▶ An individual who is studying abroad and is treated as a dependent of a Japanese resident for Japanese income tax purposes.
- ▶ An individual who is assigned to work or provide personal services outside Japan for a period of approximately 1 year or less.

### 2.2 Who is liable – limited liability

An individual who is not domiciled in Japan at the time of death of the deceased or at the time of a gift, excluding an unlimited liability taxpayer with Japanese nationality domiciled outside Japan, is categorized as a limited liability taxpayer. The limited liability taxpayer is subject to inheritance tax or gift tax only on the properties situated in Japan.

Whether the property is situated in Japan or not is determined based on the following location rules:

| Kind of property   | Location  |
|--|---|
| Personal property  | Place where the property is located   |
| Real property  | Place where the real property is situated   |
| Ships or aircraft  | Place where they are registered   |
| Mining or quarry rights  | Location of the mine or quarry  |
| Fishing concession rights                                      | Place where the coast is nearest to the fishing grounds   |
| Deposits with a bank   | Location of the office deposited  |
| Insurance proceeds   | Location of the head office or the principal office of the insurance company that issued the policy |
| Retirement allowances  | Location of the head office or the principal office of the payer company                            |
| Loans  | The domicile, the head office or the principal office of the debtor                                 |
| Shares in a company or bond and debentures issued by a company | Place where the issuing company has the head office or its principal office                         |
| Interests in collective investment trusts or taxable trusts    | Location of the trustee's office  |
| Patents, trademarks, etc.                                      | Place where they are registered   |



Japan

| Kind of property   | Location                                    |
|--|---|
| Copyrights or publishing rights  | Location of the publisher's office          |
| Trade receivables, goodwill and other rights related to business operation | Place of business to which they are related |
| Japanese government bonds  | Japan                                       |
| Foreign government bonds   | The issuer's country                        |
| Others   | The domicile of the deceased or the donor   |

### 3. Rates

This is not applicable in Japan.

### 4. Exemptions and reliefs

#### Exemptions and tax credits

There are several asset or purpose-related exemptions and personal exemptions and tax credits.

#### Main items of exemptions

- ▶ Donations of properties to certain specified nonprofit organizations or foundations of the Japanese government; a local public organization if the heir makes the donation by the filing due date of the inheritance tax.
- ▶ ¥5 million per statutory heir of life insurance proceeds (as deemed estate property).
- ▶ ¥5 million per statutory heir of retirement allowance (as deemed estate property).
- ▶ Only a certain portion (e.g., 20%) of the acquisition of small-scale business or residential land is subject to inheritance tax. A maximum of 240 sq.-meters of land used as a residence and a maximum of 400 sq.-meters of land used for a business qualifies for the treatment.

#### Main items of tax credits

- ▶ As for inheritance tax to be paid by a spouse, the portion of tax due attributed to the spouse pursuant to the statutory share (the greater amount of the spouse's statutory share, or ¥ 160 million) is creditable against the spouse's inheritance tax due.

#### Example

Assuming that (i) the heirs are the spouse and a child (in this case, the portion of statutory share is 50% for each), (ii) the aggregated taxable estate value is ¥1 billion and the aggregated inheritance tax due is ¥371 million, respectively, and (iii) the spouse inherits the properties in the amount of ¥500 million, no inheritance tax is payable by the spouse, since tax due attributed to the spouse is based on the statutory share (i.e., ¥185.5 million; ¥371 million x ¥500 million/¥1,000 million) is creditable. The child will have a tax liability of ¥185.5 million (i.e., ¥371 million x ¥500 million/¥1,000 million).

- ▶ For minor heirs under 20 years old, ¥60,000 x 20 - the heir's age.
- ▶ For handicapped heirs with ¥60,000 (¥120,000 in the case of special disabilities) x 85 and - the heir's age when the deceased paid inheritance tax due to estate property's acquisitions within 10 years immediately before the death of the deceased. In such cases, the inheritance tax that the deceased paid can be creditable based on a certain formula.
- ▶ A foreign tax credit is available in order to avoid double taxation on the inheritance.

#### Gift tax exemptions

The following are exempt from gift tax:



- ▶ Gifts from a corporation, which is subject to income tax.
- ▶ Gifts to dependents for the necessity of living and education.
- ▶ Gifts to a person engaged in activities for religious, charitable, scientific, educational or social welfare purposes, to be used for such activities.
- ▶ Gifts of money or goods from a specified public interest trust to students or pupils to support their educational costs.
- ▶ Providing a right to receive a subsidy from a local public organization to a handicapped person.
- ▶ Qualified donations to a candidate for a public election campaign, which are duly reported.
- ▶ Obtaining trust beneficiary rights up to ¥60 million by a special handicapped person according to a special support arrangement.
- ▶ One-time exemption of up to ¥20 million of the value of a residential property transferred from a spouse where the period of marriage is 20 years or more and where the donee uses the property for residential purposes.
- ▶ Exemption of up to cumulative ¥ 5 million (per donee) during 2010 and 2011 (if there is no gift during 2010, up to ¥10 million during 2011) for gifts made in cash by parents to their adult children to acquire a residential home.

## 5. Filing procedures and tax payment of inheritance tax

### Filing procedures

The inheritance tax return must be filed within 10 months of the time that the taxpayers become aware of the opening of the succession, with the relevant tax office located at the domicile of the deceased. Where 2 or more taxpayers are domiciled in Japan, a joint tax return will be filed. If the deceased is not domiciled in Japan at the time of death, each heir domiciled in Japan files the tax return with the tax office at his or her domicile. If the decedent and any heirs are not domiciled in Japan, the heir may elect any tax office to be filed.

### Tax payment

In principle, the inheritance tax must be paid in 1 lump sum in cash by the filing due date. A deferral of the tax payment may be allowed up to 15 years. Furthermore, if a lump-sum cash payment is not possible, inherited property for payment in kind is allowed. The advantage of the property for payment in kind is to avoid income taxation on capital gains, if any, from the transfer of the property as the payment.

### Gift tax settlement at time of inheritance tax

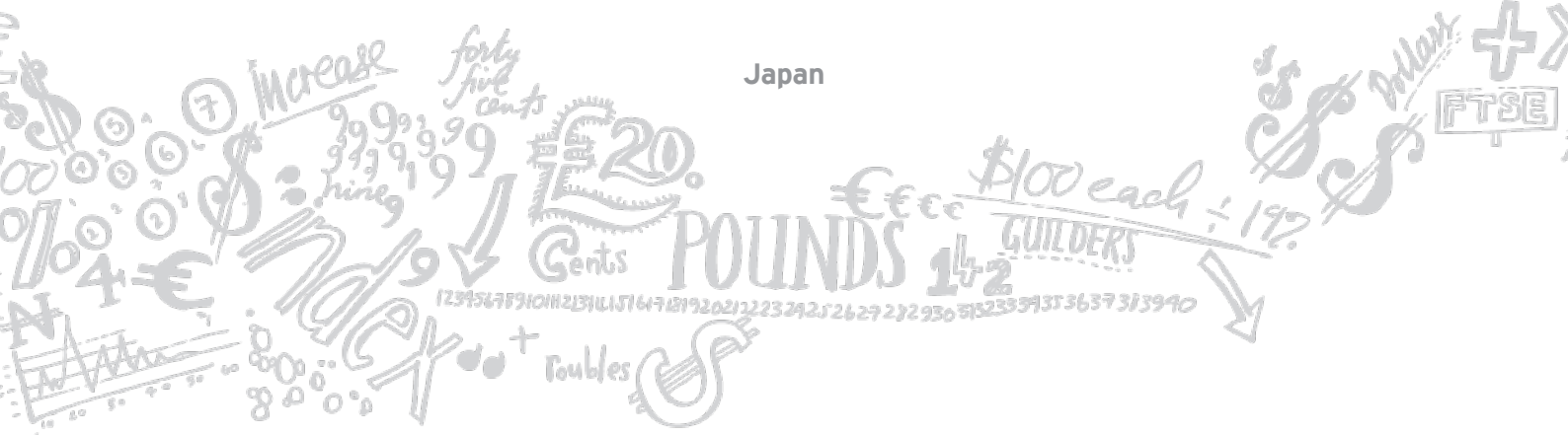
The rates for the gift tax are generally higher than those for inheritance tax. This is intended to prevent the avoidance of inheritance tax. On the other hand, there is an exception to the general method (i.e., calendar year taxation), a special taxation system for settlement at the time of inheritance, by election, which was introduced in 2003 in order to promote smooth passage of gifts from living parents to their children. When a 65-year-old parent (the 2011 tax reform outline proposes the age of the parent or grandparent to be 60) donates properties to an adult child (or grandchild under 2011 tax reform outline), the following can be elected:

- ▶ If the total amount of the donated properties is ¥25 million or less, no gift tax is payable.
- ▶ If the total amount of the donated properties exceeds ¥25 million, a fixed tax rate of 20% is applied to the excess portion to calculate the gift tax due.

At the time of the parent's death, the above properties will be added to the taxable estate assets and will be subject to inheritance tax. The child (or grandchild under the 2011 tax reform outline) who elected the special taxation system will credit the gift tax already paid against their inheritance tax due. If the paid gift tax exceeds the inheritance tax liability, the excess portion will be refunded.

### Filing procedures of gift tax

A gift-tax return must be filed and gift tax must be paid by 15 March of the year following the gift.



## 6. Assessments and valuations

### Valuation of the property

#### Introduction

The taxable base of properties for inheritance-tax and gift-tax purposes is the fair market value at the time of the transfer.

However, the Japanese tax authorities-issued Basic Property Valuation Circular introduced deals with a specific method of valuation for various properties, including land, buildings, tangible and intangible assets, shares in companies, bonds and debentures.

#### Land

The value of land is generally determined based on the assessed value<sup>1</sup> that the tax authorities annually publishes.

#### Shares

The value of listed shares and shares traded over the counter is generally calculated based on the share price on the valuation date. However, the lowest of the monthly average prices for the month, including the valuation date and the 2 preceding months, may be used. The value of unlisted shares is calculated based on the size of the company depending on the number of employees, gross asset and annual sales.

##### ► Large company – comparable similar business method

The value of unlisted shares in a large company is calculated based on the share price of comparable listed companies. The formula is as follows:

$$A \times \left[ \frac{\frac{b}{B} + \frac{c}{C} - x + \frac{d}{D}}{5} \right] \times 0.7$$

1. The average value of the share price of listed comparable companies, published by tax authorities
  2. Dividend of the company per share
  3. Earnings of the company per share
  4. Net asset value, based on book value, of the company per share
  5. Average dividend of comparable companies per share, published by tax authorities
  6. Earnings of comparable companies per share, published by tax authorities
  7. Net asset value, based on book value, of comparable companies per share, published by tax authorities
- Small company – net asset value method
1. The value of unlisted shares in a small company is calculated based on the net asset revaluated for inheritance tax purposes.

<sup>1</sup>Roadside value per square meter of land or *rosenka*.





► Medium company

The value of unlisted shares in a medium company is calculated based on the combination of 1 and 2.

However, unlisted shares acquired by a certain minority shareholder are calculated based on a dividend discount method.

## 7. Trusts, foundations and private purpose funds

### Trusts

For Japanese tax purposes, a trust is treated as (i) transparent, (ii) not transparent, but not a taxable entity or (iii) a corporation, depending on its legal character. When an individual acquires trust beneficiary interests due to a death or without arm's-length consideration (i.e., by a deemed gift), inheritance tax or gift tax will be assessed on such individual.

Under a 2007 revision of the Japanese Trust Law, new types of trusts have become available: (i) trusts substituting testaments and (ii) trusts under which the subsequent beneficiaries can be designated in advance. By settling the latter type of trust, for example, the settlor of the trust designates his or her spouse as the beneficiary after his or her death and also designates his or her son as the beneficiary after the spouse's death. Such newly introduced arrangement of designating subsequent beneficiaries cannot be done by testament. For inheritance tax purposes, the new beneficiary is regarded as obtaining a beneficiary interest from the preceding beneficiary.

### Foundations and private purpose funds

A noncorporate charitable organization, including foundations and private purpose funds, is subject to inheritance or gift tax, but an exemption may be available if the properties transferred to the charitable organization are to be used only for authorized charity under Japanese laws. A corporate charitable organization is not subject to inheritance or gift tax, but is subject to corporate income tax on gains by the gift. However, if this is an authorized nonprofit organization and the income is derived from nonprofit business (i.e., charity), the income is exempt from corporate income tax.

## 8. Grants

There is no general death grant, but if a burier applies, he or she may be able to receive a payment from a Social Security benefit (i.e., health insurance) to cover the cost of the burial.

## 9. Life insurance

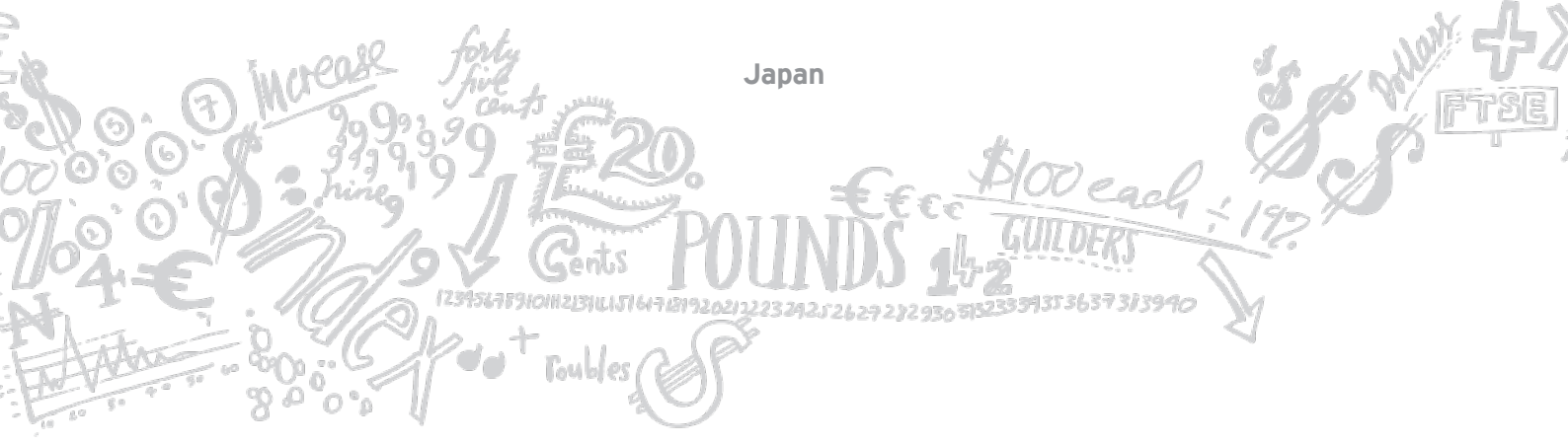
For purposes of the civil law, life insurance proceeds are considered as properties of a recipient. On the other hand, life insurance proceeds are treated as a receipt of the properties on the succession for tax purposes (i.e., subject to inheritance tax).

## 10. Civil law on succession

### 10.1 Estate planning

The Japanese Civil Code provides the types of wills. A few high-net-worth (HNW) individuals sometimes furnish the will. However, wills are not commonly used in Japan.





## 10.2 Japanese civil law on succession

### Succession

According to the Japanese Civil Code, all rights and obligations of the deceased transfer to heirs automatically and comprehensively at the time of decedent's death. For example, at the time of the deceased's death, all heirs jointly own the estate properties and distributed among each other according to as previously agreed upon. If an heir wants to waive the inheritance or accept the inheritance to the extent of the positive assets, notification to a family court has to be made within 3 months from the date the heir is informed of his or her inheritance.

According to Article 36 of the Act on General Rules of Application Laws, the law of the deceased's home country (nationality) governs succession.

There are no regional rules on succession law (Civil Code) in Japan.

### Statutory heirs (houtei sozokunin)

The Japanese Civil Code prescribes for statutory heirship. The decedent's spouse is always a successor. Other than a spouse, the Civil Code provides 3 priority levels for successors. The spouse always becomes a successor of equal rank to a successor in any of the priority levels. Anyone in the lower priority groups will not become a successor if a higher priority person survives at the time of the opening of the succession.

An individual who waives an inheritance is not regarded as an heir upon waiver.

The actual allocation of estate properties is made based on agreement among the heirs. The above statutory share is applicable in the case where the agreement is not reached among the heirs.

## 10.3 Forced heirship (iryubun)

The Japanese Civil Code provides forced heirship rules enabling certain persons to claim a share of an estate if they are excluded from succession by the decedent's last will. Though the deceased determines the allocation of his or her estate property by testament, the spouse, lineal ascendants and lineal descendants as the heirs have a right to receive the following share, as a total, of the estate under the forced heirship rules:

- ▶ When the heirs do not include the spouse and only lineal ascendants: one-third of the estate property.
- ▶ Other cases: one-half of the estate

Brothers and sisters are not entitled to claim forced heirship

### Priority groups of statutory heirs and forced heirship

| Order | Statutory heirs   | Statutory shares  | Forced heirship   |
|-------|---|---|---|
| 1     | Son(s) and daughter(s) of the deceased (if the sons and daughters are already deceased, lineal descendants of these sons and daughters) | Spouse: one-half<br>Children: one-half in total (equally for each)                          | Spouse and children: one-half in total<br>Children only: one-half in total                                  |
| 2     | Lineal ascendants of the deceased (i.e., father, mother, grandfather, grandmother)  | Spouse: two-thirds<br>Lineal ascendants: one-third in total (equally for each)              | Spouse and lineal ascendants: one-half in total<br>Lineal ascendants only: one-third in total               |
| 3     | Brother(s) and sister(s) of the deceased (if the brothers and sisters are already deceased, their sons and daughters)                   | Spouse: three-quarters<br>Brother(s) and sister(s): one-quarter in total (equally for each) | Spouse, brother(s) and sister(s): one-half for spouse only; no forced heirship for brother(s) and sister(s) |



## 10.4 Matrimonial regimes and civil partnerships

In Japan, the matrimonial property regime of strict separation is applied, under which each spouse holds his or her property independently in separate ownership.

## 10.5 Intestacy

A will is a legal document that regulates an individual's estate after death. Wills are not as commonly used in Japan as in other countries. As Japan has ratified the 1964 Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, the validity of a foreign form will may be admitted.

If there is no will, the estate properties will be allocated among the statutory heirs pursuant to their agreement on the allocation. Until such agreement is reached, the estate properties are treated as being jointly owned by the heirs. Income earned from the properties during such period is subject to income tax and allocated among the statutory heirs pursuant to the statutory shares.

## 10.6 Probate

There is no probate system in Japan. All properties are comprehensively transferred to the heirs at the death.

# 11. Estate tax treaties

## 11.1 Unilateral rules

This is not applicable in Japan.

## 11.2 Double taxation treaties

Japan has concluded only 1 estate tax treaty, which is with the US, agreed to in 1955. This tax treaty is not based on the Organisation for Economic Co-operation and Development's (OECD) inheritance tax model.

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