

# Japan

## Contacts

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## 1. Types of tax

### 1.1 Inheritance tax

The Japanese Inheritance Tax Law (*sozoku zei ho*) covers inheritance tax (*sozoku 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 supplementary to inheritance tax. Both taxes are national taxes and no local tax is assessed on the transfer of property due to inheritance or a gift.

#### Computation of inheritance tax

Inheritance tax is imposed on the aggregate value of all properties acquired by inheritance or bequest. However, the individual heirs are taxed, not the estate. 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 actually received the decedent's properties in accordance with his or her will or as agreed upon by the heirs. The tax is calculated based on the statutory heirs and legatees, whereas the tax liability is attributed to those who actually acquired the properties.



## Computation

The computation 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 ¥30 million plus ¥6 million multiplied by the number of statutory heirs from the above “aggregated taxable estate value”
- ▶ Allocate the aggregated taxable estate value to each statutory heir according to their statutory share
- ▶ Calculate the inheritance tax separately for each statutory heir’s portion allocated above, 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 ¥200 million	40%
Above ¥200 million up to ¥300 million	45%
Above ¥300 million up to ¥600 million	50%
Above ¥600 million	55%

- ▶ Aggregate the inheritance tax calculated 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 or 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 for each heir (see Section 4)

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





## 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 Unlimited liability

### Nationality and domicile

An heir or donee who is domiciled in Japan upon acquisition of property by inheritance, bequest of a decedent or by gift has unlimited liability for inheritance tax or gift tax, regardless of his or her nationality. In cases where an heir or 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 at any time within 10 years immediately before the time of death of the decedent or at the time of the gift (unlimited liability taxpayer with Japanese nationality). In cases where an heir or donee without Japanese nationality is not domiciled in Japan, he or she is also subject to unlimited liability if the deceased or the donor is domiciled in Japan at the death of the decedent or at the time of the gift or had a domicile in Japan anytime within the 10 years preceding the inheritance or gift.

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.

A person without Japanese nationality who lives temporarily in Japan is subject to inheritance tax or gift tax only on properties located in Japan (i.e., limited liability taxpayer). A person without Japanese nationality having a visa issued under table 1 of the Immigration Act is considered temporarily staying in Japan if the total period of being domiciled in Japan is, in aggregate, less than 10 years within the past 15 years before the inheritance or gift.

### 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, although 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 one year or less

## 2.2 Limited liability

If a deceased or a donor has not been domiciled in Japan in the last 10 years and is: i) an heir or donee who is of Japanese nationality and has not been domiciled in Japan in the last 10 years; ii) an heir or donee who is without Japanese nationality and does not have a domicile in Japan at the time of death of the decedent or at the time of the gift, then the heir or donee 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.



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 of the coast 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 the principal office
Interests in collective investment trusts or taxable trusts	Location of the trustee's office
Patents, trademarks, etc.	Place where they are registered
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	Country of issuance
Others	The domicile of the deceased or the donor

This is not applicable in Japan.

## Exemptions and tax credits

### Main items of exemptions

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- ▶ ¥5 million per statutory heir for 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 330 sq. meters of land used as a residence and a maximum of 400 sq. meters of land used for business qualifies for this 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.
- ▶ For minor heirs under 20 years old, ¥100,000 x (20 - heir's age).
- ▶ For handicapped heirs, ¥100,000 (¥200,000 in the case of special disabilities) x (85 - heir's age).
- ▶ If a decedent has paid by himself or herself inheritance tax for the acquisition of property within 10 years immediately preceding his or her death, a portion of the heir's inheritance tax will be creditable according to a certain formula.
- ▶ A foreign tax credit is available in order to avoid double taxation on the inheritance.

#### 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 ¥395 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., ¥197.5 million; ¥395 million x ¥500 million/¥1,000 million) and the same amount of the credit is applied. The child will have a tax liability of ¥197.5 million (i.e., ¥395 million x ¥500 million/¥1,000 million).

#### Gift tax exemptions

The following are exempt from gift tax:

- ▶ Gifts from a corporation, which are subject to income tax
- ▶ Gifts to dependents for living expenses and education
- ▶ Gifts of education funds up to ¥15 million to dependents, made from 1 April 2013 to 31 March 2019, subject to certain conditions
- ▶ Gifts of child-rearing and marriage funds up to ¥10 million to dependents, made from 1 April 2015 to 31 March 2019, subject to certain conditions
- ▶ 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 ¥7 million (per donee) during 2017 for gifts made in cash by parents to their children of age 20 years or older to acquire a residential house



## 5. Filing procedures

### Filing procedures

The inheritance tax return must be filed within 10 months from the time that the taxpayers become aware of the opening of the succession, with the relevant tax office having jurisdiction over the domicile of the deceased. Where two 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 his or her tax return with the tax office having jurisdiction over his or her domicile. If neither the decedent nor heir is domiciled in Japan, the heir may elect any tax office for filing purposes.

### Tax payment

In principle, the inheritance tax must be paid in one lump sum in cash by the filing due date. A deferral of the tax payment may be allowed up to 20 years. Furthermore, if a lump-sum cash payment is not possible, inherited property for payment in kind is allowed. The advantage of payment in kind is to avoid income taxation on capital gains, if any, arising from a sale of the inherited property in order to finance the tax 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. Gift tax is in principle settled on a calendar year basis but there is an exception to this general rule, i.e., a special taxation system for settlement at the time of inheritance by election, which was introduced in 2003 in order to promote a smooth hand-down of property through gifts from living parents to their children. When a parent or grandparent who is 60 years of age or older makes a gift to an adult child or grandchild of age 20 years or older, 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 or grandparent's death, the above properties will be added to the taxable estate assets and will be subject to inheritance tax. The child or grandchild who elected the special taxation system will credit the gift tax already paid against his or her inheritance tax due. If the already 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 publish.

## 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 two 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 assets and annual sales.

- ▶ Large company – comparative value of similar company

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

- ▶ Small company – net asset value method

The value of unlisted shares in a small company is calculated based on the net asset revaluated for inheritance tax purposes.

- ▶ Medium company

The value of unlisted shares in a medium company is calculated based on the combination of the comparative value of similar company and net asset value methods.

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 either transparent, not transparent and not a taxable entity, or 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:

- ▶ Trusts substituting testaments
- ▶ Trusts under which the subsequent beneficiaries can be designated in advance

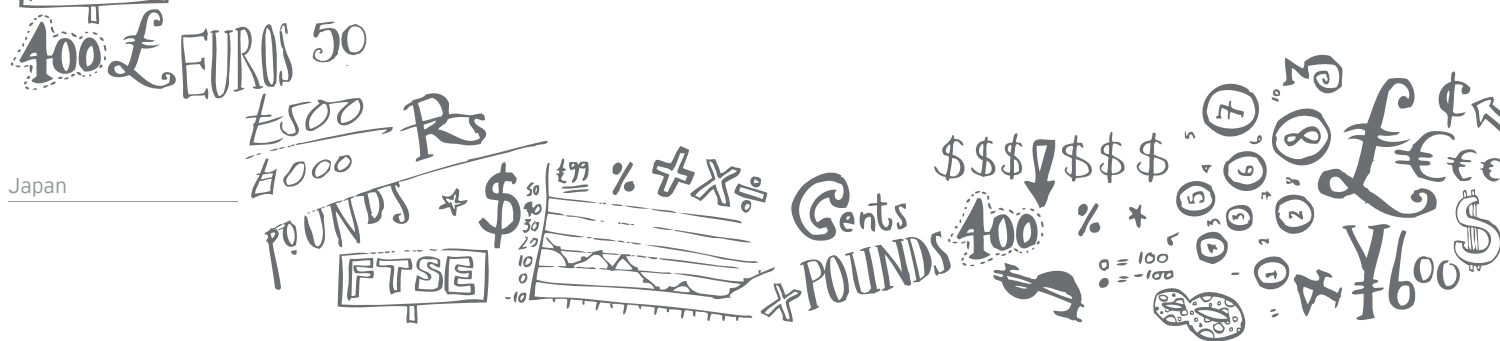
By settling the latter type of trust, for example, the settlor of the trust designates his or her spouse as the beneficiary after his or her death and also designates his or her child as the beneficiary after the spouse's death. This newly introduced arrangement of designating subsequent beneficiaries 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

The properties transferred from the heir to a non-corporate charitable organization, including foundations and private purpose funds, are subject to inheritance or gift tax, but an exemption may be available if the properties transferred from the heir to such 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 the recipient of the gift is an authorized nonprofit organization and its income is derived from nonprofit activities (i.e., charity), such income is exempt from corporate income tax.

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





## 8. Grants

## 9. Life insurance

## 10. Civil law on succession

The Japanese Civil Code prescribes the types of wills.

## 10.2 Japanese civil law on succession

According to the Japanese Civil Code, all rights and obligations of the decedent transfer to heirs automatically and comprehensively at the time of his or her death. For example, at the time of the decedent's death, all heirs jointly own the estate properties, which are then distributed amongst the heirs 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 three 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*)

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 an agreement is not reached among the heirs.

### 10.3 Mandatory heirship – legally secured portion of succession (*iryubun*)

- ▶ 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 mandatory heirship.



#### Priority groups of statutory heirs and mandatory heirship

Order	Statutory heirs	Statutory shares	Mandatory 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 Children: one-half in total (equally for each)	Spouse and children: one-half in total Children only: one-half in total
2	Lineal ascendants of the deceased (i.e., father, mother, grandfather, grandmother)	Spouse: two-thirds Lineal ascendants: one-third in total (equally for each)	Spouse and lineal ascendants: one-half in total 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 Brother(s) and sister(s): one-quarter in total (equally for each)	Spouse, brother(s) and sister(s): one-half for spouse only; no mandatory 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 taxation and the tax liability is allocated among the statutory heirs pursuant to their respective 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 one estate tax treaty; it is with the United States and was agreed in 1955. This tax treaty is not based on the Organisation for Economic Co-operation and Development's inheritance tax treaty model.