

## New Horizons in Japanese Wealth Management ~ Why should Wealthy Japanese be Considering Offshore Trust Solutions? ~

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Wealthy Japanese families are well-travelled, and have been diversifying their assets. Since the 1970s, Japanese wealth has taken on an international perspective, with favored wealth planning centers developing in Hong Kong, Singapore and Switzerland.

While other emergent countries in Asia have adapted a “nouveau riche” attitude, wealthy Japanese have chosen to maintain a lowered profile. They prefer not to display their wealth in line with the Japanese stereotype of not wishing to “stand out from the crowd”. Nevertheless, Japanese have taken advantage of wealth planning advice to develop offshore banking facilities as well as complete international property acquisitions, both in Asia and further afield.

Guided by international advisers, wealthy Japanese families are considering broader options for wealth planning and the safeguard of their family’s future. We are now seeing the wealthy considering Offshore Private Trust and Foundation structures which can serve their asset protection, inheritance planning and wealth preservation needs.

### Why are wealthy Japanese turning to Offshore Trust

Offshore private trusts offer a broad range of benefits for Japan’s wealthy, including the following:

**Inheritance Planning.** A well-structured offshore trust offers multiple, flexible options for inheritance planning. Wealthy people who became older are keen to make preparations for the future. In the event that they are no longer here, the wealthy wish to ensure that their fortunes will serve as a legacy for their future generations’ education, maintenance and medical needs.

Many people these days may not wish for assets to pass to heirs according

to rigid legal guidelines, which are known by a legal term “forced heirship”. We are aware of unique family situations among Japan’s wealthy class including the need to provide for “girlfriends” and “multiple families”. If no wealth planning is done, these loved ones will not benefit from a wealthy person’s estate under Japanese law.

**Asset Protection.** Another key benefit is asset protection. A properly structured trust may provide protection against any or all of the following types of claims: (a) protection against creditor’s claims (e.g. bankruptcy, director’s liability or professional liability); (b) protection against divorce claims which involve matrimonial property; and (c) protection against claims regarding an individual’s will. This last point is all the more relevant given that “forced heirship” rules applied in Japan.

**Flexibility.** Offshore trusts offer a mechanism to protect the welfare of vulnerable individuals such as young children, the elderly and disabled persons. Alternatively, an individual may wish to preserve family wealth as a legacy for future generations of his or her family, with the possibility to control and allocate funds according to a plan which is agreed and activated during the individual’s lifetime.

**Tax planning.** Offshore trusts also offer options for tax planning. If an individual and his assets meet specific criteria, a properly structured trust may provide legitimate and substantial savings in Japanese taxes.

### Typical background of people who need wealth planning

Japanese people who need wealth-planning include:

- § Business entrepreneurs who have ventured beyond Japan to establish their business operations in other parts of Asia;
- § Younger generations of Japanese wealthy who have followed their parents’ example and developed offshore wealth management solutions; and
- § Professionals who have made a decision to relocate their families to other parts of Asia, following the Tohoku Earthquake.

The common characteristics include offshore-based assets, an international view, and the desire to take advantage of wealth structuring for their family’s long-term benefit. Some may have already acquired Japanese non-resident tax status, or have plans to do so in the near future. In terms of asset size, they are likely to have ex-Japan assets of USD5 million or more.

Japanese families can benefit from the experience of wealthy families in Asia and the West, who have had a longer exposure to trusts. If there is a concern about “spendthrift” beneficiaries, any trust can be devised as a solution to dispense money as the settlor of a trust may decide.

Trusts can make money available to children, grandchildren, other relatives,

or even non-relatives for educational purposes, such as university tuition, medical care and living expenses. A trust can be used to dispense funds year-by-year to a beneficiary, and then a final sum could be distributed at a certain age when the settlor is comfortable that a beneficiary will be mature enough to protect and value the money.

Alternatively, a settlor may reach the decision that the family fortune should not be divided and distributed, but will only be used as a perpetual “fund”, with the annual “interest” distributed to meet the needs of future generations.

### **General position for Japanese inheritance and gift tax ~Particular advantages for Non-Resident Japanese**

It needs to be clarified that Japanese gift and inheritance taxes are imposed on the beneficiaries (recipients of assets), rather than the person gifting or transferring the property. This means that recipients who are not Japanese residents may still be subject to Japanese taxation.

Jusho is a term under Japanese civil law which refers to an individual's “principal place of residence”. Factors which would be considered to determine jusho, would include location of residence of the beneficiary, and/or family members of the beneficiary; location of the person's employment; and location of assets and properties.

The jusho of a deceased person or beneficiary is critical in determining the scope of Japanese gift and inheritance taxes which can attach to assets located in either Japan (constituting such beneficiary as a “limited taxpayer”) or overseas (constituting such beneficiary as an “unlimited taxpayer”).

Under current laws, Japanese nationals who have left Japan for a 10 year period (before 2017, it was only 5 years) will be classified as a Non-Resident Japanese, and may be specially advantaged from a taxation angle. For example, beneficiaries who hold Non-Resident Japanese status will not need to pay gift or inheritance tax on their non-Japanese assets, although assets located in Japan will still be subject to such taxes.

We are currently working closely with Japanese expatriates who have relocated internationally, as they are able to meet the jusho requirements for Non-Resident Japanese national status. These people are able to significantly benefit from the setting-up of a Foreign Trust structure for their family needs.

Though many people are not aware of the tax context, the new Japanese tax rule applies to foreigners who become long term residents of Japan. Again there is a direct impact of jusho on the tax treatment of such persons. Foreigners who have taken their jusho in Japan and have resided in Japan for more than 10 years of the last 15 years in Japan, will be subject to inheritance and gift tax for both their Japanese and non-Japanese assets. Moreover, once foreigners fall into this category, the Japanese tax exposure will continue for 5 years after they have left Japan.

Foreigners in this position may wish to use trusts as a wealth planning tool. Here, non-Japanese assets would be injected into a Foreign Trust structure, known as a “No Beneficiary Trust” before the foreign national has been a Japanese resident for more than 10 years. This would have the effect of placing non-Japanese assets outside of Japanese tax jurisdiction.

### **Procedure of Trust projects**

The procedure of a trust project includes meetings with trustee, to correctly determine each wealth planning needs, meetings with private bankers for the opening of bank account facilities, and the requirement of specialist tax advice. As Japanese tax is complex, a trustee will also require a tax opinion from a Japanese tax accountant or Japanese lawyer specializing in Japanese tax laws. It will normally take a number of meetings, in Japan and Hong Kong, to finalize trust documents for signing. The process completes in 1 to 3 months, depending on requirements and turnaround.

### **Differences between Foundation and Trust**

Trust is a legal concept developed under English common law, while Foundation is a civil law concept. As Japanese law is based on 19th century German civil law codes, which include foundation concepts, Japanese people sometimes feel more comfortable with an Offshore Private Foundation, rather than a trust solution.

In a Private Foundation, the power of control and administration rests with a foundation board, which resembles the board of directors of a company. Private Foundations require registration of a foundation charter at a public registry. This has the effect of making public certain limited information, such as the foundation’s name, but has a positive effect of granting “independent legal status” to a Private Foundation.

### **Points to consider when appointing a trustee**

The word “trust” is very important. Each settlor will have their own checklist when it comes to choosing a trustee. Ideally, settlors look for trustees with both a global name, as well as a front office presence. Japanese settlors expect a trustee to be able to effectively work with them in the Japanese language. Trustees should be able to understand the Japanese cultural context and specific issues relating to Japanese settlors.

It provides greater comfort to settlors if the trustee comes with a professional background and technical expertise. The best would have a legal and/or tax background. It enables them to readily generate different options for settlors, rather than to sell a single solution or jurisdiction. For trust structures, one size doesn’t fit all.

### **Conclusion**

Offshore Private Trust and Foundation structures offer streamlined methods for holding and preserving family wealth, which are considered seriously as

an option of wealth planning by Japanese high net worth families.

The rise of interest in such structuring parallels current trends which see Japanese families diversify their personal asset portfolios and business empires, across borders. Members of these families are relocating internationally, for the development of their businesses, for their children's education and as a retirement option.

During this internationalization process, Japanese settlors' needs are being met by highly experienced international trustees, who are able to offer tailor-made solutions to meet each family's special circumstances.



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