

Taxation of Intra-Family Transfers

Keigo Fuchi
(Kobe University)

In this presentation, I will point out that the taxation on various modes of intra-family transfer of wealth is not consistent with each other in Japan. In some cases, both income tax and succession tax are imposed on the transfer. In other cases, only one of the taxes is imposed. In still others, none of the taxes are levied. This inconsistency gives rise to a distortion of the behavior of the would-be decedents in choosing the modes of transfer.

In the first part of this presentation, I will explain the basic rules of taxation with regard to the various measures in transferring family wealth including the use of family (or civil) trusts. There are three kinds of taxes working in this regard. The first is the income tax on the accrual of the property held in trust, such as interests and dividends. The second is the income tax on capital gain levied when the property held in trust is transferred to another entity. The last and the most important is the succession tax or gift tax imposed on the transferee when the property held in trust is transferred through succession, gift, and other similar occasions. As I have indicated in my previous presentation in a former meeting of this association, we have to make use of the succession tax as far as possible rather than the gift tax. The reason is that the succession tax is superior to the gift tax in measuring the ability to pay of the transferers/transferees.

In the second part, I will compare the tax rules of various measures for transfer of wealth in a family, including but not limited to family (or civil) trusts, life insurance policies, retirement payments,

and damages. The comparison makes clear that the level of taxation on family (or civil) trusts is almost the same as that of the plain-vanilla succession. In this case, income tax is imposed on the accrual to the property held in trust and succession tax is imposed on the transfer of the same property. However, in some other cases, either one or both of the taxes are exempt. For example, in the case of life insurance, the proceeds from the insurance policy is in part or totally exempt from income tax, although succession tax is fully imposed.

To conclude, I will draw attention to the importance of consistency of the rules in the field of taxation on the intra-family transfers and the necessity of a new legislation to clarify the principle behind the rules.