

Tax Problems Concerning Personal Trust under the New Trust Law

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The Japanese Trust Law was reformed in 2006. Under the new Trust Law, provisions concerning successive beneficiary trusts, as well as those regarding substitution of will and the power to appoint or change trust beneficiaries were established. In addition, a reexamination of the powers of the settler was conducted.

Revisions made to tax laws in 2007, such as those regarding securitized beneficial interest trusts and trusts with no beneficiary, also support the reforms made to the Trust Law.

With regard to new tax laws, the Inheritance Tax Law provides a definition for “successive beneficiary trust” and clarifies how such successive beneficiary trusts are treated under tax purpose. Successive beneficiary trusts as proscribed in Article 91 of the new Trust Law, trusts with retained power of appointment of beneficiary as prescribed in Article 89 of the new Trust Law, and other trusts resembling these trusts are deemed as being successive beneficiary trusts under tax laws. In successive beneficiary trusts, a beneficiary receives all trust assets as gift or bequest, and when the beneficiary dies or a change in the beneficiary occurs, the remaining trust assets are transferred from the preceding beneficiary to the subsequent beneficiary as a gift or inheritance. However, if multiple beneficiaries exist at the same time, income, costs, assets, and debts are considered as belonging to the beneficiaries in accordance with the beneficiary interests, and gift or inheritance taxes are imposed when the trust enters into force.

The Income Tax Law also provides that if multiple beneficiaries exist at the same time, all income and costs, as well as assets and debts belong to the beneficiaries according to beneficial interest.

In this article, the provisions of the new Trust Law and tax laws are surveyed. In cases where trusts are used for succession of assets and for management and conservation of assets, it is considered that the following issues remain.

- 1 Demarcation of successive beneficiary trust from other multiple beneficiary trusts
- 2 Trust income taxation of principal and income beneficiaries; in particular, allocation of depreciation costs or other costs for beneficiaries
- 3 Trust income taxation of a unitrust type trust.
- 4 Income taxation, gift and inheritance taxation of discretionary trust

In this article, it is stated that trust income should be taxed during the current period to the beneficiary, in accordance with beneficial interest regarding trust income, and by considering that all trust income and costs as well as other taxation characteristics are attributed to the beneficiary.