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Questionnaire for National Reporters

Private Client and Immigration Working Session

**Movement of High Net Worth Individuals
Localisation et Délocalisation des Clients Privés Fortunés**

General Reporters/Rapporteurs généraux: Michael Wells-Greco (Speechly Bircham) and Firuza Ahmed (Kingsley Napley)

Background

As certain governments around the world struggle with fiscal deficits, their attention has turned to international tax evasion (illegal) and the perceived shortcomings of the international tax system from the point of view of tax avoidance (legal). In other regions we have seen unsettled economies combined with civil unrest. Families are seeking safer, more stable jurisdictions not just for themselves but for future generations as they look for long term security and are increasingly looking overseas for a solution.

How do our immigration, legal and tax systems cope with the realities and complexities of 21st century aging family life and the demand for economic security/stability? What are the particular challenges for practitioners in assisting these families? How does increasing governmental exchange of information and compliance requirements affect strategies for investment, tax planning and personal security. How does the global citizen manage a world of overlapping, often conflicting regulation?

1. PRELIMINARY MATTERS

We would ask that you return completed the Questionnaire and your answers to the case studies below by **Friday, 28 February 2014** (earlier if possible please).

Prior to dealing with the legal problems thrown up by the case studies, could you please deal with the following questions with reference, where relevant, to any recent case law or general practice. If you need to clarify the answer to a question, please do so. If a question is not an issue in your country, please provide an explanation as to why it is not.

If you are a delegate responding as part of the Immigration Commission, please respond **only** to sections 1.1 and 2.1.

1.1 Immigration and Nationality [for Immigration Commission only]

- 1.1.1 Briefly outline any immigration, residency or citizenship programmes your jurisdiction has to attract high net-worth individuals (HNWIs).

In Japan if a foreigner starts a business with investment of 5million yen, and has spent or is sure to spend at least 5million yen yearly for the business, the foreigner is qualified for a resident visa, of which type is Investor/ Operator visa. But there is no type of visa which gives foreigners residency only on the grounds of the foreigner's asset, which means that no matter how much money the foreigner has, the foreigner cannot get residency unless the foreigner do business activity as an operator. (Shusaku Kimura, an immigration lawyer in Japan)

- 1.1.2 Are there any proposed changes to the programmes outlined in 1.1.1?

Yes, it is. Now the government considers introducing a new type of visa which gives HNWIs residency without requirement of any business activity in order to activate the economy. (Shusaku Kimura, an immigration lawyer in Japan)

- 1.1.3 Is there a dichotomy between your Government's wish to attract HNWIs as against public perception of immigration?

I have not seen any survey only focusing on HNWIs. But a survey shows that about 50% are strongly opposed and 20% are rather opposed to receiving immigrants in general. I suppose that the proportion should drop if the survey focuses on HNWIs, but it should still be high because I see many negative opinions against more and more foreigners buying properties in Japan.

On the other hand, the government think of it as crucial to boost the economy. (Shusaku Kimura, an immigration lawyer in Japan)

1.2 Cross-border succession

- 1.2.1 Is testamentary freedom a right recognised by national law or public policy?

(A) Yes (B) No

Because the constitution of Japan stipulates that the right to own or to hold property is inviolable.

1.2.2 Can those entitled to the reserved portion (heirship entitlement), during the life of the donor, waive their rights to a reserved share?

(A) Yes (B) No (C) Not relevant to your country

If so, please briefly set out the options.

1.2.3 Can an individual resident in your country elect the law applicable to his/her succession? If relevant/applicable, please consider your answer in the context of Brussels IV (Regulation (EU) 650/2012) and/or the 1989 Hague Convention on the Law Applicable to the Estates of Deceased Persons.

(A) Yes (B) No

Under Japanese law, Inheritance shall be governed by the national law of the decedent.

If yes, is this election limited to the law of the deceased's:

(A) Nationality (B) Habitual Residence (C) Other

1.3 Personal taxation and compliance

1.3.1 Please provide a brief summary on the current rules as to liability to tax (e.g. residence, nationality, domicile (if applicable)).

Non-resident will be generally taxed to the income from domestic source in Japan but not be taxed to the income from foreign source. Resident will be taxed to the income from both domestic source and foreign source, provided there is an exception regarding a non-permanent resident's foreign source income that is paid in abroad (This opinion is supported by Toshinori Uneki, an attorney-at-law in Japan, specializing in Tax Laws. His address is t_uneki@jurists.co.jp).

1.3.2 Have there been any changes introduced in the last 24 months to the definition of who is a "taxpayer" e.g. "resident", "habitually resident" or "domiciled" in your country?

(A) Yes (B) No

If yes, please briefly summarise the changes.

1.3.3 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for residents?

(A) Yes (B) No

If yes, please briefly set out the key provisions.

A resident that has overseas assets of which total value exceeds 50 million yen at the end of year shall submit the Tax Office an overseas asset report including a taxpayers name, address, a type of the overseas assets, number, value (This opinion is supported by Toshinori Uneki, an attorney-at-law in Japan, specializing in Tax Laws. His address is t_uneki@jurists.co.jp).

- 1.3.4 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for non-residents with assets located in your country?

(A) Yes (B) No

If yes, please briefly set out the key provisions.

- 1.3.5 Has your country undertaken (or proposed the introduction of) any legislative steps in the last 24 months to promote transparency in tax reporting obligations and to combat international tax evasion in the context of private wealth?

(A) Yes (B) No

If yes, please briefly set out the key measures.

However, the government has proceeded to agree new tax treaties that include a clause to exchange taxpayer related information between both governments (This opinion is supported by Toshinori Uneki, an attorney-at-law in Japan, specializing in Tax Laws. His address is t_uneki@jurists.co.jp).

- 1.3.6 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for holding structures with assets or “beneficiaries” located in your country?

(A) Yes (B) No

If yes, please briefly set out the key measures.

1.4 **Mental capacity of adults**

- 1.4.1 What system is in place in your country to deal with an individual who has lost capacity?

In Japan, there is a system of Adult Ward, Curatorship, and Assistance.

(1)A juristic act performed by an adult ward, to certain exceptions, may be rescinded.

(2) A person under curatorship, to certain exceptions, must obtain the consent of his/her curator if he/she intends to perform any of the particular acts.

(3) The family court may make the ruling that the person under assistance must obtain the consent of his/her assistant if he/she intends to perform any particular juristic act.

1.4.2 Does your country provide for Powers of Representation/Lasting Powers of Attorney/Mandats de protection future in relation to an incapacitated adult's personal welfare and/or property and affairs?

(A) Personal welfare only (B) Property and affairs only (C) Both personal welfare and property and affairs

1.4.3 Will your country recognise and enforce a form of Power of Representation or Attorney intended to have effect after the onset of mental incapacity valid in the state in which it is prepared?

A guardianship agreement shall be made by notarial deed of formats that are stipulated in the Ordinance of the Ministry of Justice in Japan.

1.4.4 Are there proposals for legislative change in the field of mental capacity?

(A) Yes (B) No

If yes, what are the proposals?

1.4.5 Is your country a party to the Hague Convention XXXV for the International Protection of Adults of 13 January 2000?

(A) Yes (B) No

1.4.6 Is your country a party to the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol 2006?

(A) Yes (B) No

QUESTIONS FOR CASE STUDIES

2. CASE STUDY A: ROBERTA AND PAUL

Roberta and Paul married in the Netherlands in 2008. Roberta is Brazilian and Paul is Dutch. Roberta, an IT specialist, was offered a job with Pear Inc in Silicon Valley and she and Paul moved to California (USA) in 2011. The family grows with twin boys and life is good.

Roberta's mother, Gloria, who is in her 70s, wants to live with Roberta (her only child) and Paul so that she can spend more time with her grandchildren. Interested in moving to your country, Roberta and Paul come to see you for advice.

2.1 Immigration law [for Immigration Commission only]

2.1.1 Roberta and Paul are exceptionally wealthy. What immigration categories (e.g. investor type programmes) might apply to HNWIs such as Roberta and Paul to:

- (a) move firstly to the US (please omit this if you do not advise on US immigration law);
- (b) and then secondly to your country?

If your advice would change if Paul was not a Dutch national, please explain.

If she starts any type of legal business with investment of 5million yen, and have spent or is sure to spend at least 5million yen yearly for the business, she are qualified for a resident visa, of which type is Investor/ Operator visa.

Alternatively if she is hired as an IT specialist by a business entity in Japan, she can be qualified for a resident visa of which type is "Engineer". The main requirement is to have majored in what is related to IT in university or college, alternatively, to have at least 10 years experiences in IT field.

Her spouse and children can obtain a resident visa of which type is "Dependent" if she can obtain either of them.

2.1.2 What immigration options does Gloria have to move to your country on a long term basis?

Gloria can be given a resident visa of which type is "Designated Activities" if she has no family members in her country to take care of her. She should meet the requirement as Roberta is her only child. (Shusaku Kimura, an immigration lawyer in Japan)

2.1.3 What, if any, are the residency requirements for a long term move to your country for Roberta, Paul and Gloria?

If Roberta intends to obtain Engineer visa, she is required to be hired as an IT specialist by a business entity in Japan and to have majored in which is related to IT in university or college, alternatively, having at 10 years experiences in IT field.

If Roberta intends to get Investor/Operator visa, she is required to start any type of legal business with investment of 5million yen, and have spent or be sure to spend at least 5million yen yearly for the business.

Paul can obtain Dependent visa unless the immigration authority doubt the credibility of the marriage.

Gloria should acquire Designated activity visa as Roberta is her only child. (Shusaku Kimura, an immigration lawyer in Japan)

2.1.4 Are there are any long term requirements that the family should be aware of in order to maintain their immigration status in your country?

Each person needs to keep meeting the requirements and engaging in the activity of the visa in Japan. Thus the following cases for example, each person may not be able to renew the visa.

(c) The family didn't stay in Japan most of the time even after they obtained the resident visa.

(d) Robert is not hired as an IT specialist or not doing any business as an operator at the time of renewing the visa.

(Shusaku Kimura, an immigration lawyer in Japan)

2.1.5 Will any of the members of the family be able to acquire citizenship of your country?

Regarding nationality, if all of the family member live in Japan for 5 years continuously with resident visa and have income or asset to survive in Japan and have basic Japanese language skill, all of them can acquire citizenship. But they are required to abandon their original nationality instead.

Regarding permanent residency, even basic Japanese language skill is unnecessary and of course they are not required to abandon their original nationality. But the requirement of the duration is not 5years but 10years basically. But the duration can be relaxed to 5years If Roberta are granted as Highly Skilled Foreign Professionals. For that she needs to acquire 70 points prescribed in terms of academic background, income and so on. (Shusaku Kimura, an immigration lawyer in Japan)

Now settled into the hustle and bustle of life in your capital city, Roberta and Paul (who are very happy together and, incidentally, exceptionally wealthy), having purchased rental properties in Brazil and invested wisely in stocks and bonds, they are looking to buy a US\$ 20 million Penthouse Duplex in the hipster district of your

capital city. They believe it is time to consider tax and estate planning opportunities and come to see you.

During the meeting you are also told that:

- Roberta is likely to inherit family assets - principally artwork - from Gloria. The family want to ensure that upon Gloria's death, the family assets will not be considered a "matrimonial asset" and that the assets, to the extent possible, can pass to the grandchildren (**the Inheritance**).
- Paul's father has been diagnosed with a degenerative medical condition, which may lead to a loss of mental capacity. Paul has been told that the condition is likely to be hereditary.

2.2 Real estate planning

What structuring and/or tax planning opportunities should Paul and Roberta consider with respect to the purchase of the Penthouse Duplex (i.e. to mitigate taxation in your country)?

There is no special effective structuring/ tax planning regarding to acquire (and transfer in future) a real property in Japan under the domestic tax laws (This opinion is supported by Toshinori Uneki, an attorney-at-law in Japan, specializing in Tax Laws. His address is t_uneki@jurists.co.jp).

2.3 Succession law and mental capacity

2.3.1 What would you advise with respect to the Inheritance?

If the family assets are owned by Gloria, she should make a will to inherit to her grandchildren.

The formation and effect of a will shall be governed by the national law of a testator at the time of the formation.

2.3.2 What steps can Paul take to ensure that Roberta has full authority to take decisions on his behalf and deal with their assets in the event that Paul loses his mental capacity?

Paul may make a guardianship agreement with Roberta before he loses his mental capacity.

2.3.3 More generally, with a shared wish to keep matters "simple", what estate and succession planning opportunities should Roberta and Paul consider?

3. QUESTIONS FOR CASE STUDY B

3.1 Case Study B: Bruce and Megan

Bruce, who has been given your contact details from an AIJA member, comes to see you for advice. Bruce gives you his background:

- 30 years old;
- Australian resident, national (and, if relevant to your country) “domiciled in a state of Australia”;
- Single;
- Commodities trader;
- Family wealth from mining opals;
- Bruce has an Aus\$15 M portfolio in Switzerland;
- Bruce also has shares in family mining company in Australia.

Bruce is looking to move to your country for 3-5 years.

3.2 Pre-arrival planning

3.2.1 What pre-arrival tax planning opportunities would you advise?

Nothing special.

3.2.2 What are Bruce’s tax, residence or other reporting obligations upon becoming resident in your country?

When you next meet Bruce 3 years later, life is looking good. He has met fellow Australian Kylie and they are expecting their first child (Jason). Bruce is looking to start his own commodities business and wants to know whether he can invest part of his foreign income or gains in the target company.

Bruce also tells you that his grandfather died in 2011 and that he (together with his 3 cousins) is a beneficiary of a trust structure with a bank account in a sun kissed jurisdiction. The bank account has not been reported in his tax return and he now wonders whether it should have been.

3.3 Lifetime matters

3.3.1 With respect to the commodities business, how would you advise Bruce in relation to:

- (a) the most tax efficient way to make the inward investment?
- (b) any planning and structuring opportunities (including the use of double tax treaties) that Bruce should consider in order to minimise any tax leakage?

Whether this structuring work well depends on multiple factors including the amount of profit, but Bruce may establish a company and he himself is employed by it - the company may deduct a salary payment and other payment as costs from its income, and Bruce may enjoy salary income deduction (This opinion is supported by Toshinori Uneki, an attorney-at-law in Japan, specializing in Tax Laws. His address is t_uneki@jurists.co.jp).

- (c) eventually exiting the business. In particular, are there any structuring or other opportunities that Bruce should consider either at the inception of the business or in the run-up to an exit?

Whether this structuring work well depends on multiple factors including the amount of profit, but at the exit stage, by receiving higher amount of retirement payment from the established company, not an ordinary salary payment, the total tax amount may reduce because the tax base of the retirement income is more limited than that of ordinary salary income or business income (This opinion is supported by Toshinori Uneki, an attorney-at-law in Japan, specializing in Tax Laws. His address is t_uneki@jurists.co.jp).

3.3.2 As to the unreported bank account:

- (a) what would you advise Bruce?

Assuming Bruce is a resident in Japan, he shall file a tax return every year if he receives any profit from the unreported account. In addition, he shall submit an overseas asset report to the Tax Office (see 1.3.3) (This opinion is supported by Toshinori Uneki, an attorney-at-law in Japan, specializing in Tax Laws. His address is t_uneki@jurists.co.jp).

- (b) what are the Trustee's reporting obligations in your country?

Nothing special assuming the Trustee is not a resident in Japan.

Tragically, some years later still resident - and wealthy - in your country, Bruce dies without making a Will.

3.4 Succession law

3.4.1 Do Kylie and Jason have a financial claim against Bruce's estate?

Under Japanese law, inheritance shall be governed by the national law of the decedent.

3.4.2 What inheritance or estate tax (if any) is to be paid and by whom? What steps could Bruce and Kylie have taken in order to mitigate/reduce this tax charge?

Inheritors shall pay the inheritance tax to the Tax Authority in Japan. The Inheritance Tax Law was amended in 2013 - it provides that if a resident foreigner (even only two or three year stay in Japan) passes away during his stay, the Japanese Inheritance Tax will apply to the decedent's all assets including those outside Japan, although the successors may enjoy foreign tax credit if applicable foreign inheritance tax laws allow. This amendment does not work as a way of mitigation or reduction - it rather may work as an incremental of tax burden (This opinion is supported by Toshinori Uneki, an attorney-at-law in Japan, specializing in Tax Laws. His address is t_uneki@jurists.co.jp).

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Please return by email to:

Michael Wells-Greco
michael.wells-greco@speechlys.com
[for Private Client Commission Delegates]

Firuzah Ahmed
fahmed@kingsleynapley.co.uk
[for Immigration Commission Delegates]