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**Evaluation of Foreign Property in Japanese
Inheritance Tax Law: Uniform or Unique**

Yuya Suzuki

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Eva Eberhartinger, Erich Kirchler, Michael Lang, Rupert Sausgruber, and Martin Zagler

Research Papers

Evaluation of foreign property in Japanese inheritance tax law: Uniform or unique

SUZUKI Yuya¹

Abstract

This paper presented Japanese experience in evaluating properties outside of Japan and analyzed it in light of Japanese inheritance tax law. The Japanese tax system uses market value as an evaluation principle. Instead of laws, the detailed circular mentions tax practices for reaching this value. This circular seeks to provide a uniform evaluation of the property. Prior to its amendment in 2000, the circular was viewed as irrelevant to foreign property, and market value was considered the controlling principle in light of tax legislation. Following the amendment, the newly introduced practice replaced the previous position, and the circular was characterized as providing practices of foreign property. However, it was acknowledged that totally domestic situations differed from foreign ones. For example, there is no information about housing lands. This is why the circular's application is limited to *mutatis mutandis*. For example, one of the new practices is to adjust the cost basis or alienation price to reflect succession. However, this practice is inappropriate if the basis or price is not based on reliable balance sheet data. A more distinct practice was required. For example, the actual buying and selling prices are investigated, and an expert's opinion is sought. Although these practices are based on the market value principle of relevant legislation, the circular has always aimed for uniform evaluation. Throughout this paper, we will notice that property evaluation presents a serious dilemma between two different principles.

¹ Professor of Law, Graduate Institute for Entrepreneurial Studies (JPN); DOCTOR OF LAWS, Yokohama National University (JPN, 2013); Visiting Research Scholar, Institute for Austrian and International Tax Law, Vienna University of Economics and Business (2012–2014). The author can be contacted via suzuki.yuya@jigyo.ac.jp.

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1. Preface

When individuals receive something other than money, they must have it evaluated for income or property tax purposes.² If people have to pay money as a burden,³ they must know how much they earned. For example, the tax authorities must know how wealthy one became by owning a tract of land. By evaluation, benefit in-kind is converted into monetary value. This process is central to calculating the tax base.

In light with the principle of “statute-based taxation,” laws should determine the tax base. Evaluation is not an exception. However, in Japan, the inheritance tax law (ITL)⁴ provides for only one thing. According to ITL art 22, the evaluation is based on the property’s market value (MV)⁵ as of the acquisition. Except for it,⁶ the Chief of the National Tax Agency issues a detailed circular, known as the *Property Evaluation Basic Circular* (PEBC). It describes how to evaluate properties individually. Indeed, the circular does not legally bind taxpayers. However, it practically works because tax administrators are required to follow it.

² Indeed, if a Japanese resident receives a euro as payment, he or she must convert it to yen. This is an important topic in Japanese taxation not covered in this paper.

³ Some Japanese taxes allow individuals to partially pay the burden in kind.

⁴ This paper covers legislative developments through July 20, 2024. A preliminary English translation of Japanese law is available at <https://www.japaneselawtranslation.go.jp/ja>.

⁵ On market value (MV) as an evaluation principle compared to others, see Shiba, *Evaluation of foreign property in accordance with Inheritance Tax Law*, 5:1 J. OF PROPERTY ASSESSMENT POLICY 25, 28–29 (2002).

⁶ To be honest, ITL arts 23–26 specify how to evaluate several specific properties. This paper does not cover them.

There have been numerous discussions about property evaluation. Among them, this paper discusses the international aspects. Japanese practices have generally aimed for uniform evaluation.⁷ However, when it comes to foreign property, they are unique. This trend can be observed by introducing and analyzing Japanese experiences.

2. Background

ITL covers inheritance and gift tax. Concerning the former, ITL implements the so-called “inheritance tax.” In other words, calculating the tax burden begins with determining how much an individual benefited from the deceased’s death.⁸

The ITL classifies taxpayers into two groups. One group is responsible for “worldwide” properties. They must pay inheritance or gift tax on all properties they acquire, regardless of location.⁹ The latter is distinct from the former. In other words, they are only in charge of domestic Japanese properties.¹⁰

One of the most serious issues is to which groups an individual belongs. For a long time, if a person was resident in Japan, he or she belonged to the former group. This group was slightly

⁷ H. KANEKO, TAX LAW 735 (24th ed. 2021).

⁸ On comparison between “inheritance” taxation and “estate” one, *see* Maisto, *General Report* in 95b CAHIERS DE DROIT FISCAL INTERNATIONAL: DEATH AS A TAXABLE EVENT AND ITS INTERNATIONAL RAMIFICATIONS 17, 28 (2010). On Japanese branch report, *see* Miyamoto, *Japan* in *Id.* at 489.

⁹ ITL, art 2 (1) and 2-2 (1).

¹⁰ ITL, art 2 (2) and 2-2 (2).

expanded to include some Japanese after its reformation in 2000.^{1 1} Subsequently, this group became complicated due to the addition of many elements.^{1 2}

Tax burdens vary depending on the attributes of taxpayers. As previously stated, some taxpayers only pay taxes on domestic properties. Regarding land or buildings, deciding between “domestic” options may not be difficult. However, concerning other properties, it could be. ITL art 10 lists the situs of each property. For example, if a corporation issues a bond or stock with its headquarters in Japan, it is considered domestic. A debt claim exists if the debtor has a domicile in Japan. Meanwhile, a savings account is one in which money is deposited with a bank whose headquarters are located in Japan. If not, ITL classifies them as “foreign” properties.

3. Evaluation

3.1. Premise

Regardless of whether the property is domestic or foreign, evaluation is required to determine the tax base. As aforementioned, ITL art 22 states that the monetary value of property is its MV at the time of acquisition. Before getting there, the following two questions must be answered.

The first is when a succession or a gift was. When interpreting ITL, one must consider the concepts of the *Civil Code*. Under Civil Code art 882, Bob succeeds Olivia when she dies. In terms of “inheritance tax,” he can readjust his tax burden based on the actual allocation of her property.^{1 3} Meanwhile, under the *Civil Code* art 549, a gift is effective if Olivia has made her will apparent and Bob has agreed with her.

^{1 1} *Special Tax Measures Law*, Law No 13 of 31 March 2000, art 69 (1) and (2). By reformation on 2003, these articles were transferred to ITL. On legislative history, see 1 DHC COMMENTARY ON INHERITANCE TAX LAW 562, 623 (M. Takeda ed. 2023).

^{1 2} The following two judgments on tax avoidance schemes prompted these reforms; Supreme Court, 18 February 2011, 59:3 SHOMU GEPPU 864; Nagoya High Court, 3 April 2013, 60:3 SHOMU GEPPU 618.

^{1 3} ITL, art 32 (1) (i) and 55.

The second is what one acquired. The succession of the deceased's property is the most important aspect of inheritance.^{1 4} A problem could arise in a marginal situation. Suppose Olivia agreed to sell her land but died before the delivery date. In this case, Bob eventually succeeded her. The following two scenarios may be available.^{1 5} First, he inherited her land because she still owned it at the time of her death. Second, he succeeded in her claim of considerations because she had already made agreement before death.^{1 6}

3.2. Overview

As aforementioned, ITL requires that the evaluation consider MV. However, it does not stipulate how to reach MV. Instead, PEBC refers to the relevant tax practices.

According to PEBC art 1, MV refers to what would be considered appropriate if property was traded among public parties without any pressure.^{1 7} This definition presupposes that “public parties” are unknown to one another and are not subject to undue influence. Moreover, if they were to engage in any transaction, they would seek to minimize losses while maximizing profits. They would be sensitive to value or price because it is one of the conditions.

In some cases, MV, in the right meaning, can be reached. First, independent parties buy and sell a particular property daily. In other words, there is a market. Moreover, the value or price is apparent to everyone. For example, if several housing lots face the same public street, their individual values

^{1 4} See T. UCHIDA, CIVIL LAW IV: RELATIVES AND INHERITANCE 323 (supp.ed. 2004).

^{1 5} This example is an imitation of Japanese Supreme Court Judgment, 5 December 1986, 154 ZEIMU SOSHO SIRYO 781.

^{1 6} Furthermore, ITL arts 3–9 consider specific property or benefit acquired by succession or gift when a specific event occurs.

^{1 7} Regarding the relevant lower court decision, see Tokyo High Court, 13 December 1995, 46:12 GYOSYU 1143. For the definition of financial area, see DICTIONARY OF FINANCE AND INVESTMENT TERMS 442 (J. Dones and J. E. Goodman ed. 9th ed. 2014).

can be considered nearly equal. In this case, the Chiefs of Regional Taxation Bureaus provide relevant information about their evaluation.^{1 8} Moreover, one can determine the value of listed stocks using an index.^{1 9}

For others, however, MV is not an option. If the housing land is on such a large scale, there may be fewer buyers.^{2 0} There is nothing to say about private stocks.^{2 1} In either case, there are no real markets. This is why MV deviates from the right path. If one reaches it, he must act as if numerous buy-and-sell transactions involving these lands or stocks exist. Of course, the most important question is whether this hypothesis is appropriate to reach MV.

3.3 Prior to the relevant circular

3.3.1 Some concerns

In terms of foreign property, the situation is essentially identical. As we will see later, no special measures were in place before 2000.

However, there were some concerns. As previously stated, Chiefs of Regional Taxation Bureaus provide relevant information on evaluating certain housing lands. Of course, this information applies

^{1 8} PEBC, art 13 and 14.

^{1 9} As for relevant tax practice, *see* PEBC, art 169.

^{2 0} PEBC, art 20-2.

^{2 1} PEBC, art 179.

only to domestic lands. It was impossible to evaluate foreign ones by directly referring to the current PEBC.^{2 2} Based on this fundamental understanding, the following viewpoints are presented^{2 3}:

* The PEBC does not address foreign property. Under article 5 of the PEBC, PEBC applies to it *mutatis mutandis*.

*Foreign property may also be subject to foreign taxation. Even if that country assesses the property for inheritance or estate taxation, the evaluation is not always pursued in reference to MV. As a result, local evaluations may be unreliable in terms of Japanese taxation.

*For example, the MV of foreign land is reached in a variety of ways. If a land adjacent to it was sold or purchased on nearly the same date of succession, the price of that transaction can be calculated as MV. If not, real estate agents may be able to provide pricing information for local land transactions. If not, officers travel to that country and conduct an investigation.

*If Japan has an embassy or a consulate, the MV of the local property is grasped by Japanese institutions' personnel. In particular, the National Tax Agency and the Internal Revenue Service agreed on information gathering.

*In relation to foreign property, MV is considered to be safe harbor.

*The property's location in the country does not affect reaching MV.

*Chiefs of Regional Taxation Bureaus are not permitted to publicize information on MV for foreign land of housing. As a result, it is impossible to issue detailed circulars like domestic property. Of course, it could be desirable.

^{2 2} Some references stated that evaluation of domestic property was covered by PEBC but that of foreign one was by ITL art 22. See Ozawa, *infra* note 26 at 55; Fujimagari, *Problems on tax practices surrounding Inheritance tax on foreign property and points to remember in filing a return*, 43:6 ZEIRI 120, 137 (2000).

^{2 3} Takeda, *Evaluation of foreign property in accordance with Inheritance Tax Law*, 32:14 ZEIRI 211, 213–15 (1989).

According to these viewpoints, PEBC could not mention foreign properties. As a result, it clearly excludes foreigners. The application to them is limited to *mutatis mutandis*. Based on this understanding, these perspectives suggested some practical methods of evaluation.

There were some comments about the second view above. An author stated that it was necessary to consider the legal meaning of local evaluation when applying Japanese ITL.^{2 4} According to another author,^{2 5} the US Estate Tax also uses MV evaluation. Thus, the US evaluation can be converted to Japanese yen. It is necessary to confirm whether or not the evaluation principle adopts MV. Nevertheless, observing how one property is evaluated is necessary. At the bottom, foreign evaluation does not always exist. Even so, Japan must assess foreign property to implement worldwide inheritance or gift taxation.

Furthermore, this author stated that evaluation by local specialists may be reliable in reaching MV.^{2 6}

3.3.2. National Tax Tribunal decision on local evaluation

^{2 4} Kawabata, *infra* note 42, at 11. The Japanese Supreme Court ruled that the LPs established by State law in the United States were judicial entities in applying Japanese tax law. *See* Supreme Court Judgment, 17 July 2015, 69:5 MINSHU 1253.

^{2 5} Ozawa, *Evaluation of foreign property for Inheritance Taxation*, 20:5 ANALYSIS OF TAX CASES AND RULING 38, 41 (1988).

^{2 6} Ozawa, *Alienation of foreign immovable property by individual and evaluation of foreign property for Inheritance Tax under yen appreciation*, 27:8 ANALYSIS OF TAX CASES AND RULING 54, 55 (1995).

As for other publications on this era, *see* Sakai, *Inheritance tax on foreign property as well as evaluation and conversion*, 42:9 ZEIRI 120 (1999).

Against these backgrounds, the *National Tax Tribunal* (NTT)²⁷ processed a decision. According to the facts, a Hong Kong resident had died. The successors were X, A, and B. X was a Japanese resident, but A and B were Hong Kong ones. Because they all inherited properties in Japan, they filed Japanese inheritance tax returns. Afterward, A provided information on Hong Kong properties to the tax authority and paid estate duty.²⁸ According to that information, Hong Kong properties included private equities, household durables, and apartments. The information also included the property's price in Hong Kong dollars.

The following are the relevant rules on evaluation in Hong Kong:

*As a general principle, evaluation is pursued in accordance with the value at the time of death as if estate were sold on open markets.

*Private stocks are evaluated based on the balance sheet (B/S) immediately before death.

*On immovable properties, the tax authority and the taxpayer negotiate and reach an agreement.

The Hong Kong tax authority did not object to A's payment in light of these rules. However, the Japanese authorities stated that X was required to pay the inheritance tax on Hong Kong properties. In the assessment, the Hong Kong dollars included in A's information were converted into

²⁷ 8 December 1998, 56 SAIKETSU JIREI SYU 291. As for comments, see Funahasi, 31:12 ANALYSIS OF TAX CASES AND RULING 35 (1999); Kawada, 20:12 INTERNATIONAL TAXATION 41 (2000).

Tax disputes in Japan typically proceed to court following an administrative review by NTT. It is an external organization of the National Tax Agency with the jurisdiction to rule on tax complaints independently. If taxpayers are dissatisfied with the decision, they can seek judicial remedies in the courts. See *Administrative Case Litigation Act*, art 8 (1); *Act on General Rules for National Taxes*, art 115 (1). See also Masui, *The Responsibility of Judges in Interpreting Tax Legislation: Japan's Experience*, 52:2 OSGOODE HALL L. J. 491, 495 (2015).

²⁸ Hong Kong abolished Estate Duty on 11 February 2006. See <https://www.ird.gov.hk/eng/tax/edu.htm#a04>.

yen in reference to *Telegraphic Transfer Buying rate* (TTB) at the time of death and allocated to X following the Japanese *Civil Code*.

NTT determined that the sales value in the open markets at the time of death was appropriate for ITL because Japan and Hong Kong used the same valuation principle. It also ruled that because there was no disagreement between the parties, Hong Kong dollars could be considered to reflect the shared principle.

As previously stated, there were different perspectives on local evaluation. This decision adopted the one that is suitable for ITL purposes. This viewpoint is based on recognizing that MV is equivalent to open MV. As aforementioned, even if true,^{2 9} each dollar information must be examined in light of MV. Alternatively, there may be some disparity between domestic and foreign evaluations.^{3 0}

This decision addresses the fundamental distinction between “inheritance tax” and “estate tax.”^{3 1} In relation to the former, it is necessary to assess the property in the hands of successors. Meanwhile, the latter is levied against the property as if it were a taxable individual.^{3 2} Of course, both systems require property evaluation, and evaluation is carried out in the same way. However, the process and result may vary. A recent case showed that private stocks may be treated differently when calculating capital gains and inheritance tax.^{3 3}

4. Foreign property

^{2 9} *Contra* Kaneko, *Concept and scope of capital gains: including proposal of dual treatment approach*, in H. KANEKO, *AN INQUIRY INTO TAX UNITS AND CAPITAL GAINS* 113, 243 (1996).

^{3 0} In practice, domestic property is typically valued lower than MV. *See also* Usui, *Tax and Gift Tax: Particularly evaluation of lands*, 7 J. OF JAPAN TAX RESEARCH INSTITUTE 5, 33–34 (1988).

^{3 1} *See* Shiba, *supra* note 5 at 29.

^{3 2} *See* Maisto, *supra* note 8 at 28.

^{3 3} Supreme Court Judgment, 24 March 2020, 66:12 SHOMU GEPPU 1925.

4.1. Relevant circular

PEBC art 5-2 went into effect in 2000. As aforementioned, worldwide taxation was expanded during the same year. This new circular was required as part of the reformation.^{3 4} It mentions the following practices:

*PEBC is applicable for evaluating foreign properties.

*If PEBC does not evaluate some of them, it is applicable *mutatis mutandis*. In other words, it is possible to refer to how much they were sold and purchased and how much experts valued them. Furthermore, the cost basis or alienation price can be adjusted at acquisition time based on the local price trend for similar properties.

In contrast to the aforementioned views, the new circular also allows PEBC to apply to foreign properties.^{3 5} This circular emphasized the positive aspects of PEBC in comparison to foreign ones. However, as previously mentioned, some PEBC practices are not eligible. In that case, this circular enumerates the alternatives. Among them,^{3 6} there are changes to the cost basis or the alienation price. In case of evaluation on foreign property, it can be difficult to obtain relevant documents. As a result, the cost basis can be considered to represent the MV at the time of acquisition, and taxpayers frequently keep records on it. However, the cost basis may not always be reliable. PEBC art 5-2 assumes that there is a local price trend. If not, no adjustments are available. In relation to some private stocks, PEBC art 179 considers them to be listed because the only difference between issuing companies is scale. However, this evaluation is based on information from the Japanese stock

^{3 4} See Kawada, *How to evaluate foreign property?*, 48:10 TAXATION BUSINESS REVIEW 79, 79 (2000).

^{3 5} On explanation of this practice as of introduction, *see Id.* at 86–87; COMMENTARY ON PROPERTY EVALUATION BASIC CIRCULAR 24 (T. Yokoyama ed. 2000). The latter commentary has been updated numerous times until now. The latest version is COMMENTARY ON PROPERTY EVALUATION BASIC CIRCULAR ON 2023 at 26–28 (T. Matsuda ed. 2023) [hereinafter cited as Matsuda explanation]. The relevant explanation is basically not changed.

^{3 6} See Matsuda explanation, *supra* note 35, at 27–28.

markets. This is why it does not apply to foreign private stocks. Meanwhile, the B/S of the issuing company can be referred to.

It also appears that there is no hierarchy of alternatives. However, according to an authoritative explanation,^{3 7} foreign land is primarily evaluated based on the buying and selling price or the opinion of an expert. In addition, the adjustments listed above are sometimes available.

4.2. NTT decision on foreign private equity

After the introduction of PEBC art 5-2, NTT made two decisions. One is concerned with evaluating private equity.^{3 8} In 2006, the taxpayer was gifted the private equity of H, and H owned that of K. H and K were both members of the same group and residents in country P.^{3 9}

At the time of the gift, K was granted access to P's national land until 2053. That land was classified as industrial. Laws in P protect the right to use national land. If K alienates buildings or other immovable properties thereon, his right to use it is also transferred. If P requires K's right for public use, K will receive reasonable compensation based on the number of years remaining until 2053.

The tax payer did not file a return for the Japanese gift tax. The Chief of the Tax Office assessed his tax burden in relation to H's gifted equity. The evaluation referred to K's B/S as of December 31, 2005. In addition to the aforementioned rights, buildings and machinery were debited, and each book value reflected depreciation or amortization of each cost basis. The tax payer insisted that the gifted equity be valued at zero because each asset is at risk of requisition without compensation. NTT ruled as follows:

^{3 7} *See Id.* at 27.

^{3 8} 1 December 2008, 76 SAIKETSU JIREI SYU 368.

^{3 9} There are no findings on what country P is.

*Debited right, building, and machinery are valued as assets because K will receive reasonable compensation in the event of requisition. Although P will require these assets, there are risks associated with investing.

*It can be difficult to obtain information on the value of foreign assets. However, their cost basis reflects their current MV at the time of acquisition. This is why PEBC art 5-2 allows for adjustments. This practice aligns with the PEBC's principle of uniform evaluation practices.

*It is questionable to evaluate H's equity in relation to the listed stock. This equity can be evaluated using the B/S of K.

*In relation to the debited assets, local price trend cannot be grasped. This is why depreciation is an appropriate way to adjust the cost basis.

This decision involves three points. First, we consider the classification of H. As previously stated, PEBC art 179 stipulates that the evaluation of private stock depends on the scale of the issuing company. Although it is a closed company, the large one is comparable to the listed one. However, a small one is not, so there should be a mention of its B/S. Second, we consider K's equity. Regarding the B/S reference, it is common for B/S to include other private stock.^{4 0} According to that practice, the other stock is evaluated in relation to the B/S of the company that issued it. However, PEBC addresses practices specific to each equity, rather than stock.^{4 1} In this case, the gifted interest in H is neither stock nor appears to fit into the abovementioned category. However, despite the lack of detailed findings, this decision ruled that H was a small company, that its equity should be evaluated in relation to its B/S, and that its evaluation should be pursued in reference to K's B/S because H owned K. These PEBC applications are *mutatis mutandis* in accordance with PEBC art 5-2.

Third, we consider whether the B/S information is reliable for evaluation purposes. As aforementioned, PEBC art 5-2 assumes a general adjustment of the cost basis or alienation price. In

^{4 0} PEBC, art 186-3.

^{4 1} PEBC, art 194–196.

other words, the former represents the amount of assets purchased prior to inheritance or gift. The “past” price is adjusted to match the “future” MV. Conversely, the latter denotes the amount of assets sold following an inheritance or gift. Meanwhile, the “future” price is based on the “past” MV. In this case, K’s B/S date was December 31, 2005, and the gift occurred in 2006. As a result, the B/S information represents the historical cost of each asset.

There are two issues of different types. One question is whether that information reflects each asset’s cost basis. As aforementioned, if the cost basis is unreliable, adjustments are not possible. In particular, K’s B/S indicates a right to use national land. K was granted permission to use P’s national land, but K does not appear to have paid any consideration. If so, it is necessary to examine whether the debited information represents a true cost basis. The next step is to determine whether the book value accurately represents the MV of the assets. As previously stated, PEBC art 5-2 allows adjustments based on local price trends of comparable properties to inherited or gifted ones. If this trend does not exist, it is impossible to adjust the cost basis. NTT acknowledged that this trend could not be found, but that it only reflected depreciation or amortization. If there was no trend, this treatment could be appropriate because there were no markets. According to NTT, adjustments are viewed as one way of the uniform evaluation, but it may be necessary to count some unique elements, depending on the situation.

By the way, this decision did not follow the so-called all-or-nothing approach. The risk of requisition was completely overlooked as a factor in negating or decreasing the property value. The reasoning was that investing is inherently dangerous. However, because H and K were members of the same group, it is unclear whether holding K by H has an investment character.

4.3. NTT decision on two local evaluations

Another example involves two local evaluations of immovable property.^{4 2} In this case, P1 and others established NK in accordance with the *Civil Code* art 667 (1).^{4 3} They used it to run their condominium rental business. It was located in City F, State E of the United States.

Other partners succeeded P1 in 2010. On their request, a local expert gave an opinion on the condominium's evaluation. They were exempt from Federal Estate Tax and only filed a return on E's State estate tax based on that opinion. E accepted their return without objection.

They also filed a return for the Japanese inheritance tax. They calculated the tax base using F's property tax evaluation. The Chief of the Tax Office objected to the return and assessed the condominium based on the above State tax assessment. For this purpose, the evaluation is based on the MV at the time of inheritance. It is based on the assumption that parties act prudently and without undue influence in the open market. The preceding expert opinion identified more than three similar transactions close to the date of inheritance and highlighted the influential differences

However, for property tax, revenue from immovable property is a controlling factor. The relevant authority of F issued some remarks regarding this evaluation. According to it, the condominium is likely to be valued at a very low price, which does not reflect the cost of buying and selling one. NTT ruled as follows:

*PEBC is based on Japanese domestic legislation and systems. They are not identical to foreign ones. As a result, PEBC cannot be directly applied to certain foreign properties. This is why PEBC art 5-2 applies *mutatis mutandis* to foreign property. In rare cases, the transactional price is mentioned. On the latter, an expert's opinion is reliable.

^{4 2} 4 February 2016, NTT Website: <https://www.kfs.go.jp/>. On comment, *see* Kawabata, 1502 JULIST 10 (2017).

^{4 3} NK stands for *Nini Kumiai*, and the *Civil Code* classifies it as one of the contracts. Each party agrees to make contributions and form a joint venture. However, NK is considered a business entity. It is true that *Kumiai* is similar to a partnership, but the former differs from the latter in some legal characteristics. *See* T. UCHIDA, CIVIL LAW I: GENERAL RULES AND TITLES 218 (4th.ed. 2008).

*Unlike the domestic situation in Japan, no relevant information is available about this condominium. PEBC is not directly applicable nor *mutatis mutandis*. The current case is unique. It is necessary to refer to the actual price or an expert's opinion.

* The State tax assessment is essentially the same as the MV of ITL. There appear to be no errors in expert opinion. E certainly accepted tax return by the partners.

* However, the evaluation of property tax is not MV.

Like the previous one in Hong Kong, the current case is concerned with whether local evaluation is reliable. However, it applies to two distinct types of taxes. Property evaluation is important in calculating both tax bases, so State tax and property tax do share a feature. However, the decision resulted in adopting the former's evaluation. The partners insisted that taxpayers could choose a favorable evaluation under PEBC art 5-2. However, ITL art 22 requires evaluation in accordance with MV, and PEBC mentions practices for achieving MV. They had to prove that the property tax evaluation could be considered MV. Assuming the facts found, there was an open market for condominiums, with buying and selling transactions occurring. However, for a variety of reasons, revenue from it was limited. For example, considerable borrowings were appropriated to acquire it, as were significant interest payments. Cost depreciation was considerable under the leveraged cost basis.^{4 4}

There was an expert opinion regarding State taxes. In this case, the State law of E used MV as an evaluation principle, and the actual evaluation was pursued in accordance with expert opinion. In comparison to the B/S reference case, the characteristics of practices can be better understood using PEBC art 5-2. Adjustments to cost basis or alienation price are uniform in nature. However, as previously stated, certain peculiar elements may need to be considered. Meanwhile, referring to an expert's opinion is a unique character from the beginning. The decision allows these distinct practices because foreign laws and systems differ from Japanese laws. In other words, because

^{4 4} See JOINT COMMITTEE ON INTERNAL REVENUE TAXATION, TAX SHELTERS: REAL ESTATE (JCS-23-75) (1975).

Chiefs of Regional Taxation Bureaus cannot publicize information on MV for condominiums in the United States, PEBC cannot apply directly to it.

Now suppose Federal Estate Tax was levied. This raises the question of which MV is appropriate under ITL art 22. As aforementioned, MV is a safe harbor, and the difference between two or more MVs may be minimal. However, it is unlikely that two or more MVs will be identical. As a result, MV selection becomes a real problem.

5. Concluding remark

This paper introduced and analyzed Japanese experience in evaluating foreign property using MV as the ITL evaluation principle. ITL specifies the evaluation principle for MV. PEBC mentions the practices thereon. Foreign property evaluations are likely to be unique. However, this means that PEBC deviates from its core principle of uniform evaluation. Nevertheless, under ITL, the evaluation must adhere to MV. Foreign property serves as a reminder of this serious dilemma.