

# South Korea

## Contacts

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## 1. Types of tax

Inheritance tax is imposed on inherited property that is transferred upon the death of an individual. Such property includes a testamentary gift, a donation becoming effective at the death of an individual, and a divisional donation, which is inherited to a special party under certain circumstances stipulated in the Civil Act.

Gift tax is imposed on a transfer (including a transfer at a price significantly lower than the fair market value) of property by one person to another with no compensation. With the comprehensive taxation principle adopted in 2004, gift tax is imposed based on the economic substance of the transaction regardless of its title, form or objective.

### 1.1 Inheritance tax

#### Taxpayer

A beneficiary or a person who receives a testamentary gift (hereafter referred to as a beneficiary or testamentary donee) is obligated to pay inheritance taxes, in proportion to the properties received or to be received by each beneficiary or testamentary donee out of the total properties inherited from the decedent. When the beneficiary or testamentary donee is a for-profit corporation, the for-profit corporation is exempted from inheritance taxes. However, when the beneficiary or testamentary donee is a for-profit corporation and shareholders of the for-profit corporation include beneficiaries, testamentary donee or lineal descendants of the deceased, the shareholders (who are also the beneficiaries, testamentary donee or lineal descendants of the deceased) shall be liable for inheritance tax corresponding to his or her stake in the for-profit corporation whose inheritance tax was exempted.

Beneficiaries or testamentary donees are jointly and severally obligated to pay the inheritance tax within limits of the property received or to be received by each beneficiary or testamentary donee.

#### Scope of inherited property

The inheritance tax is assessed on all properties bequeathed by a resident and all properties within the territory of South Korea bequeathed by a nonresident.



The inherited property includes all properties that may be realized as money or having economic value and all *de facto* or *de jure* rights having asset value.

From the date of the commencement of the succession, the following assets are deemed taxable:

- ▶ Inherited property (including donated property transferred upon the death of an individual)
- ▶ Property donated within 10 years prior to the commencement date of the succession by the deceased to the beneficiary
- ▶ Property donated within five years prior to the commencement date of the succession by the deceased to a person other than the beneficiary

In case of the death of a nonresident, only those donated properties that are located within the territory of South Korea are deemed taxable.

## 1.2 Gift tax

### **Taxpayer**

A person who receives donated property (hereafter referred to as a donee) is obligated to pay gift taxes. Generally, if the donee is a for-profit corporation, the donee is exempt from gift tax liability.

A donee who is a nonresident on the day of the donation is obligated to pay gift taxes only in respect of that donated property located within the territory of South Korea. However, a nonresident donee will be liable to pay gift tax if he or she receives from a South Korean resident the following assets that are not located in South Korea:

- ▶ Assets held in an overseas financial account (e.g., savings in an overseas bank account)
- ▶ Shares in a foreign company whose assets located in South Korea account for 50% or more of its total assets

In case a resident donor makes a gift of any property or asset located outside of South Korea to a nonresident donee (excluding gift effected by the death of a donor), a resident donor is obligated to pay gift tax. However, in case other gift taxes are imposed on the same property pursuant to the law of the relevant foreign country, then the donor is exempt from South Korean gift tax.

The donor is jointly and severally liable to pay the gift tax in cases where it is difficult to secure the gift tax claim, due to reasons such as when the domicile or temporary domicile of the donee is unknown or when the donee is deemed not to have the ability to pay the gift tax even after taking measures against the donee to recover taxes in arrears. Even when the conditions for a donor's joint and several liability for the gift tax are not met, the donor is jointly and severally liable to pay the gift tax when the donee is a nonresident.

### **Scope of Tax**

The gift tax covers all property donated to a resident and all property within the territory of South Korea donated to a nonresident.

The gift property refers to all property donated to a donee that may be realized as money or having economic value and all *de facto* or *de jure* rights having asset value.



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## Non-taxed donated property

Generally, the amounts of gifts or donated properties in any of the following cases are non-taxable:

1. The value of property received as a donation from the state or local government
2. The difference between the acquisition value and market value of shares when the employee (who is also a minority shareholder) of a domestic corporation has acquired relevant shares through employee's stockholder association
3. The value of donated property received by a political party
4. The value of donated property received by the intracompany labor welfare fund or another similar association
5. Socially accepted and recognized funds (e.g., disaster relief funds and goods, medical fees, dependents' living expenses and education expenses)
6. The value of donated property received by the Credit Guarantee Fund or other similar associations
7. The value of donated property received by the state, local government or a public organization
8. Insurance proceeds capped at the maximum of KRW40 million per year where an insured beneficiary is disabled

### 1.3 Real estate transfer tax

Generally, gains arising from the transfer of real estate are subject to capital gains tax rather than gift tax, under the Individual Income Tax Law. However, gift tax would apply for a transfer of real estate when the transfer is deemed as a gift, despite its possible form as a sale, in accordance with the Inheritance and Gift Tax Law (IGTL). Examples of such cases are as follows:

- ▶ Properties transferred or taken over at a remarkably lower or higher price than the market value without any justifiable reasons in the common practices of transactions would be deemed as a gift.
- ▶ Properties transferred to the spouse or lineal ascendants/descendants (hereafter referred to as spouse, etc.) shall be deemed as a gift, and the value of the transferred properties would be viewed as the value of gift properties.

### 1.4 Endowment tax

This is not applicable in South Korea.

### 1.5 Transfer duty

This is not applicable in South Korea.

### 1.6 Net wealth tax

This is not applicable in South Korea.

## 2. Who is liable?

### 2.1 Residency

Residency of a decedent is determined pursuant to the Individual Income Tax Law. Generally, an individual who holds domicile or has held temporary domicile in South Korea for 183 days or longer is considered a tax resident of South Korea, while an individual who is not a tax resident shall be treated as a nonresident of South Korea.



## Inheritance tax

Residency determines the scope of reportable inherited properties and allowable deductions. Inheritance tax is assessed on all properties bequeathed by a resident and all properties within the territory of South Korea bequeathed by a nonresident. More expenses and deductions are permitted to residents than to nonresidents.

## Gift tax

Gift tax applies to all property donated to a resident and all property within the territory of South Korea donated to a nonresident, including assets held in an overseas financial account and shares in a foreign company whose domestic assets account for 50% or more of its total assets.

## 2.2 Domicile

### Inheritance tax

Inheritance tax shall be levied by the tax office having jurisdiction over the place of the domicile of the decedent. In cases where the place of the commencement of succession is overseas, inheritance tax shall be levied by the tax office having jurisdiction over the location of the property that is within the territory of South Korea. In cases where the inherited property is within two or more jurisdictions, inheritance tax shall be levied by the tax office having jurisdiction over the location of the main property.

### Gift tax

Gift tax shall be levied by the tax office having jurisdiction over the place of the domicile of the donee. In cases where the donee is a nonresident or the domicile or temporary domicile of the donee is unknown, gift tax shall be levied by the tax office having jurisdiction over the place of the domicile of the donor.

## 3. Rates

### 3.1 Inheritance tax

Inheritance tax is calculated by applying the marginal tax rates, ranging between 10% and 50%, to the tax base, as in the following table:

Tax base	Tax rates
KRW100 million or less	10%
Above KRW100 million to KRW500 million	KRW10 million + (20% x the excess above KRW100 million)
Above KRW500 million to KRW1 billion	KRW90 million + (30% x the excess above KRW500 million)
Above KRW1 billion to KRW3 billion	KRW240 million + (40% x the excess above KRW1 billion)
More than KRW3 billion	KRW1.04 billion + (50% x the excess above KRW3 billion)

### Generation-skipping inheritance tax

When the beneficiary or testamentary donee is a lineal descendant other than a son or daughter of the deceased, a surtax of 30% is levied in addition to inheritance tax. In cases where the beneficiary or testamentary donee is a minor and lineal descendant other than son or daughter of the deceased, a surtax of 40% is levied when the total value of properties received or to be received exceeds KRW2 billion.





## Tax credits

The following gift tax credits are available mainly for the purpose of avoiding double taxation:

1. *Credit for previously paid gift taxes*: The amount of gift tax paid previously or to be paid with respect to the value of property received from the same donor during the past 10 years (aggregated amount of the values of donated properties if there are more than two donations) can be claimed as a tax credit, if the value of property received previously is added to the taxable amount of gift tax.
2. *Foreign tax credit*: A foreign tax credit is granted for the amount paid on the donated property in a foreign country as a gift tax.
3. *Tax credit for filing on time*: A 10% tax credit is available for those taxpayers filing tax returns on time.

## 4. Exemptions and reliefs

### 4.1 Inheritance tax

#### Inheritance deductions

Among the various deductions stated below, only a basic deduction is applied if the deceased is a nonresident, while all of the deductions are applied if the deceased is a resident.

#### Itemized deductions

1. KRW200 million of basic deduction.
2. In addition to the basic deduction, the following can be deducted from the taxable amount if the inheritance falls under any of the following categories:
  - ▶ Inherited family business (a small-to-medium business that has been run by the deceased for 10 years or longer) – the amount of deduction is 100% of property value of an inherited family business capped at the maximum KRW20 billion (capped at the maximum of KRW30 billion for a business run for 15 years or longer and at the maximum of KRW50 billion for a business run for 20 years or longer)
  - ▶ Inherited farming business (including livestock-raising, fishing and forest management) – the value of the inherited farming business, capped at the maximum of KRW1.5 billion
3. The actual amount inherited by the spouse is deductible. The amount of spousal deduction is allowed between the minimum of KRW500 million and the maximum of KRW3 billion.
4. If the beneficiary falls under any of the following categories, the sum of amounts allowed for each category is added together and deducted from the taxable amount:
  - ▶ With respect to a child of the deceased, KRW50 million
  - ▶ With respect to a minor (excluding the spouse), who is either a beneficiary or a family member of the beneficiary, an annual deduction of KRW10 million is granted until the minor reaches 19 years of age
  - ▶ With respect to a beneficiary or a family member of the beneficiary (excluding the spouse), who is 65 years old or older, KRW50 million
  - ▶ With respect to a disabled person (including a spouse), who is either a beneficiary or a family member of the beneficiary, an annual deduction of KRW10 million is granted until he or she reaches their expected remaining years as announced by Statistics Korea

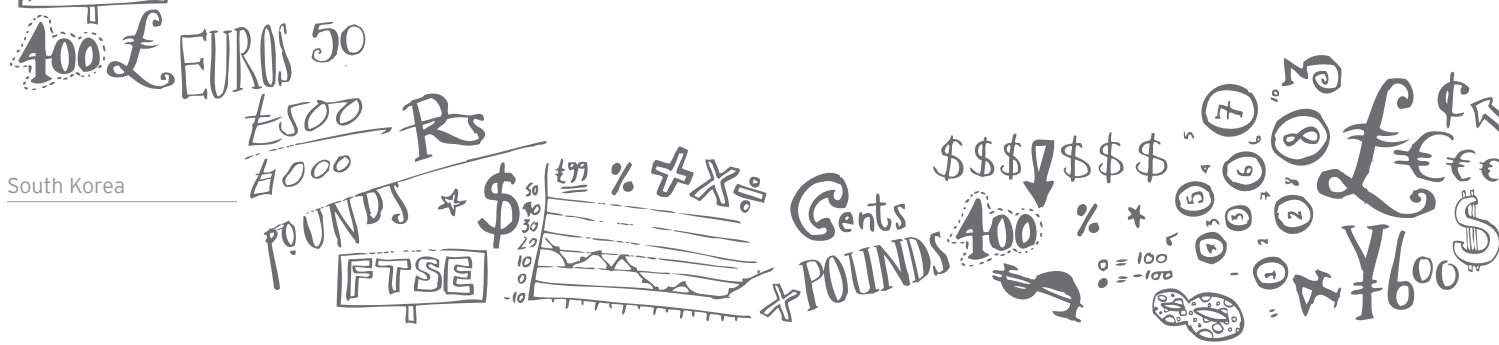




- ▶ With respect to the beneficiary satisfying all of the following conditions, 80% of the value of the inherited house (including the value of the land attached to the house) capped at the maximum of KRW500 million:
  - (i) Beneficiary is a lineal descendant of the deceased and had resided in the same house with the deceased for 10 years or longer (excluding periods when the beneficiary was minor) immediately before the commencement of the inheritance.
  - (ii) Beneficiary and the deceased formed a single household, as prescribed by the Individual Income Tax Law, for 10 years or longer immediately before the commencement of the inheritance.
  - (iii) Beneficiary does not own a house as of the date of the commencement of the inheritance.







When the gift tax to be paid exceeds KRW10 million, a part of the total due may be paid in installments within two months after the payment due date, unless payment by annual installments is permitted. When the gift tax to be paid is in excess of KRW20 million, the head of the district tax office may permit payment by annual installments upon filing of an application. In such cases, taxpayer shall provide security.



## 8.1 Inheritance tax

Property contributed by the deceased or the beneficiary to a person operating a public service corporation shall not be included in the taxable amount of inheritance tax, if the contribution is made within six months from the commencement of inheritance. When shares with voting rights or equity shares of a domestic corporation are contributed and the aggregate of the shares to be contributed exceeds 5% (10% in cases of contributions to conscientious public service corporation as prescribed by the Presidential Decree of the IGTL) of the total number of the shares, the excess shall be added to the taxable amount of inheritance tax.

In cases where property is not included in the taxable amount of inheritance tax and all or part of the benefits arising from such property belong to the beneficiary or a person(s) having a special relationship with the beneficiary, inheritance tax shall be immediately levied on the amount.

Inherited property contributed by the deceased or the beneficiary to a public service corporation as a public trust pursuant to the Trust Act, through a trust for religious, charitable, academic or other purposes of public good, shall not be included in the taxable amount of inheritance taxes.

## 8.2 Gift tax

Donated property contributed to a public service corporation shall not be included in the taxable amount of gift tax. When shares with voting rights or equity shares of a domestic corporation are contributed and the aggregate of the shares to be contributed exceeds 5% of the total number of stocks (10% in cases of a conscientious public service corporation, etc.), the excess shall be added to the taxable amount of gift tax.

In cases where property is not included in the taxable amount of gift tax and all or part of the benefits arising from such property are not being operated pursuant to the Presidential Decree of the IGTL (e.g., the property is being used for purposes other than for the public good), gift tax shall be immediately levied on the amount.

Donated property contributed by the donor to a public service corporation as a public trust pursuant to the Trust Act, through a trust for religious, charitable, academic or for purposes other than for the public good, shall not be included in the taxable amount of gift taxes.

# 9. Life insurance

## 9.1 Inheritance tax

When the beneficiary receives insurance proceeds from life or accident insurance due to the death of the policyholder, insurance proceeds shall be regarded as an inherited property if i) the policyholder is the deceased, or ii) the deceased has paid the insurance premium even when the deceased is not the policyholder.

## 9.2 Gift tax

If the beneficiary of insurance proceeds and the payer of premiums are different in a life insurance or non-life insurance policy, the insurance money shall be deemed to be donated to the beneficiary as of the date when the incident triggering the payment of insurance proceeds happens (including the expiration of the insurance policy).

# 10. Civil law on succession

This is not applicable for individuals in South Korea.

# 11. Estate tax treaties

South Korea has not entered into any estate tax treaties.