

# South Korea

## Contacts

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## 1. Types of tax

Inheritance tax is imposed on inherited property, which is transferred upon death of an individual without consideration. It 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 the ratio calculated on the basis of the property, among inherited properties received or to be received by each person. However, if the beneficiary or testamentary donee is a for-profit corporation, the for-profit corporation is exempted from inheritance taxes.

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.

### **Administrative expense deductions**

In cases where the deceased is a resident, the following expenses relating to the deceased or the inherited property on the commencement date of the inheritance are subtracted from the value of the inherited property:

- Public imposts, including taxes and public utility expenses transferred to the beneficiary that were due to the deceased as of the date of the commencement of the inheritance.
- Funeral expenses based on actual costs incurred from the date of death through the date of the funeral:
  - KRW5 million, if the actual cost incurred is KRW5 million or below.
  - Actual amount, if the actual cost incurred is above KRW5 million to KRW10 million.
  - KRW10 million, if the actual cost incurred exceeds KRW10 million.
  - Actual burial chamber usage fee incurred up to KRW5 million, if any.
- Debts left by the deceased for which the beneficiary is able to prove that he or she is responsible to settle upon the commencement of the inheritance.
- In cases where the deceased is a nonresident, the following expenses are deducted from the value of the inherited property:
  - Public imposts, including taxes and public utility expenses relating to the inherited property.
  - Debts secured with liens, pledges, right to lease on a deposit basis, right of lease, right to property transferred for security or mortgages for the purposes of the inherited property.
  - Debts and public imposts, confirmed in accordance with books and records, of the business place(s) within the territory of South Korea.

## **1.2 Gift tax**

### **Taxpayer**

A person or a company who receives donated property (hereafter referred to as a donee) is obligated to pay gift taxes. However, if the donee is a for-profit corporation, the for-profit corporation is exempted from gift taxes.

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. In addition, such a donee is subject to gift taxes on the following assets donated by a resident:

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



However, except for the foregoing cases, where any property or asset located abroad is donated to a nonresident (excluding a donation affected by the death of a donor), the donor is obligated to pay the gift tax, unless other gift taxes are imposed on the same property pursuant to the law of the relevant foreign country (including cases where the tax is exempt).

The donor is jointly obligated to pay the gift tax in cases where it is difficult to secure the gift tax claim, because the domicile or temporary domicile of the donee is unknown or the donee is deemed not to have the ability to pay the gift tax by instituting a process against the donee for the recovery of taxes in arrears. Even in cases where such joint obligation conditions are not met, the donor is obligated to pay the gift tax jointly with the donee who is a nonresident.

### Tax base

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 includes all gift properties that may be changed to certain monetary or economic forms and the economic value of legal and actual rights to the gift property.

### Non-taxed donated property

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

1. The value of property received as a donation from the state or a local government.
2. Acquired shares through an employer's stockholder association by a domestic corporation employee.
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 costs).
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 at the maximum of KRW40 million per year where an insured beneficiary is disabled.

## 1.3 Real estate transfer tax

Generally, gains arising from real estate transfer tax are subject to capital gains tax under the Individual Income Tax Law rather than gift tax, unless the transfer, despite its possible form of sale, is deemed as a gift in substance in accordance with the Inheritance Tax and Gift Tax Law, including the following cases:

- ▶ The property is transferred or taken over at a remarkably lower or higher price than market values without any justifiable reasons in the common practices of transactions.
- ▶ The Properties transferred to the spouse or lineal ascendants/descendants (hereafter referred to as spouse, etc.) shall be deemed to be the value of donated properties of the spouse, etc. by presuming that the spouse, etc. have obtained donations of the value of such 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 is determined pursuant to the Individual Income Tax Law. Generally, an individual who holds domicile or has held temporary domicile in South Korea for one year 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. As summarized earlier, more expenses and deductions are permitted to residents than to nonresidents.

##### **Gift tax**

Gift tax covers all property donated to a resident and all property within the territory of Korea donated to a nonresident. (e.g., 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 beneficiary. 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, and 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.





## 3.2 Gift tax

Gift 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 surtax

Where the donee is a lineal descendant other than a son or daughter of the donor, a surtax of 30% is levied in addition to gift tax.

### Tax credits

The following tax credits are available as gift tax credit provided mainly for the purpose of avoiding double taxations:

1. *Credit for previously paid gift taxes:* The amount of gift tax paid previously or to be paid with respect to the value of donated property (aggregated amount of the values of donated properties if there are more than two donations), which was added to the taxable amount of gift tax, is deducted from the gift tax amount calculated.
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. Deductions

### 4.1 Inheritance tax

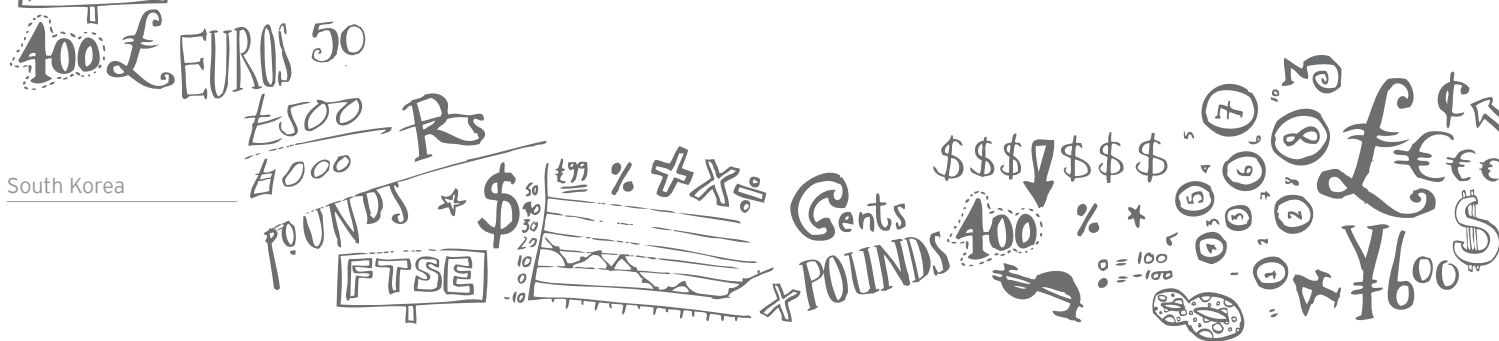
#### Inheritance deductions

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. Basic deduction, KRW200 million.
2. In addition to the basic deduction provided, if the succession falls under any of the following categories, the following is deducted from the taxable amount:
  - ▶ 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 up to KRW20 billion (up to KRW30 billion for a business run for 15 years or longer and up to 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, up to KRW500 million.
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, KRW30 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 minor KRW5 million is granted until the minor reaches 20 years of age.
- ▶ With respect to a beneficiary or a family member of the beneficiary (excluding the spouse), who is 60 years old or older, minor KRW30 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 KRW5 million is granted until he or she reaches their expected remaining years as announced by the Statistics South Korea.
- ▶ With respect to the beneficiary who had resided in the same house as the deceased for 10 years or longer immediately before the commencement of the inheritance and did not own a house as of the date of the commencement of the inheritance, if the house is for one family as prescribed by the Individual Income Tax Law, 40% of the value of the inherited house (including the value of the land attached to the house), but up to KRW500 million.

#### Lump-sum deduction option

The taxpayer has an option to deduct either the sum of (1) and (4) (stated in Section 4.1) or a lump-sum amount of KRW500 million, whichever is greater. If the deduction option is not reported, the deductible amount is fixed at KRW500 million. In case the spouse alone receives the inheritance, a lump sum option is not available.

#### Deductions for financial property

If the inherited property includes a value of net financial property, which is a value obtained by deducting a financial debt from the value of financial property, the following would be deducted from the taxable amount of inheritance taxes:

- ▶ Where the value of the net financial property is less than KRW20 million, the total amount of the net financial property.
- And
- ▶ Where the value of the net financial property ranges between KRW20 million and KRW100 million, KRW20 million.
- Or
- ▶ Where the value of the financial property amounts to more than KRW100 million, 20% of the total inherited financial property value, but up to KRW200 million.

Financial properties include deposits, installment savings, trusts, stocks, bonds, equity shares, investment in capital and other marketable securities that are generally handled by financial institutions.

## 4.2 Gift tax – donation deductions

In cases where a resident donee receives donated property from any of the following persons, each amount, based on the following classifications, is deductible from the taxable amount of a gift on the condition that the sum of a deduction already taken within 10 years prior to the relevant donation and the current-year deduction determined from the taxable amount of gift taxes does not exceed the stated deduction in each of the following amounts:

- ▶ Spouse, KRW600 million.
- ▶ Lineal family members, KRW50 million (for a minor, KRW20 million).
- ▶ Relative other than a spouse and a lineal family member, KRW5 million.



## 5. Filing procedures

### 5.1 Inheritance tax

#### Tax returns and payment

A beneficiary or a testamentary donee having an inheritance tax payment obligation must file a tax return within six months of the last day of the month in which the inheritance commenced, together with detailed supporting documentation that can prove the type, quantity, appraised value, distribution of property and all types of deductions of the inherited property necessary for the calculation of the inheritance tax base.

In cases where the total liability is in excess of KRW10 million, a part of the total due may be paid in installments within two months after the elapse of payment term unless payment by annual installments is permitted. Where the amount is in excess of KRW20 million, the head of the district tax office may permit payment by annual installments upon filing of an application by the taxpayer with a guarantee provided.

If the equivalent value of real estate and securities received is more than 50% of the inherited property received, and the amount of the inheritance tax is in excess of KRW10 million, the head of the district tax office may permit a payment in-kind (limited to real estate and securities) upon filing of an application by the taxpayer.

#### Determination by tax office

The head of the tax office determines and notifies the tax base amount, including any adjustments, and the amount of inheritance tax liability within six months from the filing due date of the tax return.

### 5.2 Gift tax

#### Tax returns and payment

A donee having a gift tax liability must file a tax return within three months of the last day of the month in which the donated property was received, together with detailed supporting documentation.

In cases where the total liability is in excess of KRW10 million, a part of the total due may be paid in installments within two months after the elapse of the payment term unless payment by annual installments is permitted. Where the amount is in excess of W20 million, the head of the district tax office may permit payment by annual installments upon filing of an application by the taxpayer with a guarantee provided.

If the equivalent value of real estate and securities received is more than 50% of the donated property received, and the amount of the gift tax is in excess of KRW10 million, the head of the district tax office may permit a payment in-kind (limited to real estate and securities) upon filing of an application by the taxpayer.

#### Determination by tax office

The head of the tax office determines the tax base amount, including any adjustments, and the amount of gift tax liability within three months of the filing due date of the tax return.







## 8.1 Inheritance tax

Inherited 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 the report deadline (in cases where there exists any unavoidable cause, six months from the date of the extinction of such cause). Where stocks with voting rights or equity shares of a domestic corporation are contributed and the aggregate of the stocks to be contributed is in excess of 5/100 (10/100 in cases of contributions to public service corporations in good faith as prescribed by the Presidential Decree) of the total number of stocks, 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. Where stocks with voting rights or equity shares of a domestic corporation are contributed and the aggregate of the stocks to be contributed is in excess of 5% of the total number of stocks (10% in cases of contributions to public service corporations in good faith as prescribed by the Presidential Decree), 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 (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

Insurance money received by the beneficiary from life or accident insurance due to the death of the deceased, in accordance with an insurance contract of which the policyholder is the deceased or of which the insurance premium is paid by the deceased, even though the policyholder is not the deceased, shall be regarded as an inherited property.

## 9.2 Gift tax

If the beneficiary of insurance money and the payer of premiums are different in a life insurance or non-life insurance policy, the insurance money shall be deemed to be a donated property of the beneficiary in case of an occurrence of insurance risk (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.