

# South Korea

## Contacts

### Seoul

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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.

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.





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A new exit (or departure) tax regime has been introduced as part of the IITL. Under this regime, which will apply to departures occurring on or after 1 January 2018, an exit tax will be imposed on the unrealized capital gains of Korean shares held by Korean tax residents who emigrate to a foreign country.

The exit tax will be assessed as if the shares are sold on the day the emigration takes place. The regime applies to domestic shares and to majority shareholders (1% or more ownership in the case of listed corporations) who have had a domicile or place of residence in Korea for five years or more during the past 10 years. The tax rate is 20% (22% including local income tax), which is the capital gains tax rate applicable to majority shareholders in Korea.

To prevent double taxation, those subject to the exit tax will be able to claim a foreign tax credit for tax paid in a foreign country in case of an actual share transfer. An additional tax credit may be claimed if the share price on the actual transfer date is lower than at the time the exit tax was levied. In addition, if certain requirements are met, such as pledging collateral security for tax payment and appointing a tax agent, the tax payment can be postponed for five years. The exit tax paid will be refunded if the taxpayer re-enters Korea and becomes a resident of Korea.

## 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.

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.





## Tax credits

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

1. *Gift tax credit*: In case the inherited property includes donated property for the purpose of calculating the inheritance tax base, gift tax computed from the donated property is available as tax credit.
2. *Foreign tax credit*: If inheritance tax was paid on the inherited property in a foreign country, the inheritance tax paid in the foreign country is available as a tax credit.
3. *Tax credit for short-time re-succesion*: In cases where inheritance recommences due to the death of a beneficiary within 10 years of the commencement of the earlier inheritance, the phase-out credit is available for the second generation beneficiary, as in the following table:

Re-succesion period	Credit percentage
Within 1 year	100%
Within 2 years	90%
Within 3 years	80%
Within 4 years	70%
Within 5 years	60%
Within 6 years	50%
Within 7 years	40%
Within 8 years	30%
Within 9 years	20%
Within 10 years	10%

4. *Tax credit for filing on time*: A 7% tax credit is available for those taxpayers filing tax returns on time.

## 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)
Above KRW3 billion	KRW1.04 billion + (50% x the excess above KRW3 billion)







- ▶ 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 net value of the inherited house (including the value of the land attached to the house) less relevant debt, but the deduction amount would be 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

#### **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.

#### **Administrative expense deductions**

In cases where the deceased is a resident, the following expenses relating to the deceased or the inherited property as of 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







### Determination by tax office

The district 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.

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, the taxpayer shall provide security.

### 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.

## 6. Assessments and valuations

### 6.1 Inheritance tax

In principle, the value of inherited property is assessed based on its current market value (e.g., acquisition price, appraised value) on the commencement date of inheritance. The following methods of valuation are applied when the market value is not available:

- ▶ Land: publicly notified individual land price in accordance with the Public Notice of Values and Appraisal of Real Estate Act
- ▶ Buildings: the value determined and published by the Commissioner of the National Tax Service (NTS) every year
- ▶ Listed stocks: four-month average closing market price (two months prior to and two months after the valuation date)
- ▶ Non-listed stocks: the value of unlisted shares shall be calculated based on the weighted average of the adjusted net income value per share and the adjusted net asset value per share in the proportion of 3 to 2. Please see below for the definition of net asset value and net income value for IGTL valuation purposes. If the value of non-listed stock computed based on the method prescribed under the IGTL is less than 80% of the adjusted net asset value, 80% of the adjusted net asset value would be deemed as the value of the non-listed stock.
  - ▶ Net asset value = total net assets on the valuation date after adjustments (including goodwill computed under the IGTL)
  - ▶ Net income value = weighted average adjusted after-tax net income during the preceding three years/discount rate (currently, 10%)

Different weighted ratios may apply for companies that own certain percentages of real estate among the total asset.

### 6.2 Gift tax

The same rules described in Section 6.1 apply to assessments and valuations for gift tax purposes.





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 or academic purposes, 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.