

## **Korea - Information on residency for tax purposes**

### **Section I – Criteria for Individuals to be considered a tax resident**

A resident refers to any individual who has his/her domicile in Korea or maintains a place of residence for at least 183 days therein(Article 1-2 (1) i of Income Tax Act).

- The domicile shall be determined by the objective facts of living relationship, such as the existence of a family living together in Korea and of the property located in Korea. (Article 2 (1) of Enforcement Decree of the Income Tax Act).

- The term “A place of residence” means the place where a person has lived for a long time besides his/her domicile, and in which there is no general living relationship as close as a domicile. (Article 2 (2) of Enforcement Decree of the Income Tax Act).

Criteria for Individuals to be considered a tax resident:

(1) Where a person who resides in Korea falls under any of the following subparagraphs, he/she shall be deemed to have his/her domicile in Korea (Article 2 (3) of Enforcement Decree of the Income Tax Act).

1. Where the person has an occupation which usually requires him/her to continually reside in Korea for at least 183 days; and
2. Where the person has a family member who makes a living together with him/her in Korea and is deemed to continually reside in Korea for at least 183 days in view of his/her occupation or property status.

(2) Executives or employees dispatched to an overseas place of business or an overseas local corporation of a resident or a domestic corporation (limited to where a domestic corporation has directly or indirectly invested in 100/100 of the total number of outstanding stocks or equity shares) or public officials who work abroad shall be deemed residents. (Article 3 of Enforcement Decree of the Income Tax Act)

Criteria for Individuals not to be considered a tax resident:

If a person living or working abroad with the nationality of a foreign country or a permanent residency permit issued by a foreign country has no family member who makes a living together with him/her in Korea and is not deemed to return to Korea to reside mainly in Korea, in view of his/her occupation or property status, the person shall be deemed to have no domicile in Korea. (Article 2 (4) of Enforcement Decree of the Income Tax Act)

Determination of residents based on his/her usual domicile:

In cases of a crew member of a vessel or an aircraft serving an overseas route, if a place of residence of his/her family living together with the relevant crew member, or a place in which he/she usually resides during the period other than duty hours, is located in Korea, the domicile of the relevant crew member shall be deemed to be located in Korea; and if such place is located overseas, the domicile of the relevant crew member shall be deemed to be located overseas. (Article 2 (5) of Enforcement Decree of the Income Tax Act).

### **Section II – Criteria for Entities to be considered a tax resident**

A corporation, corporation-deemed entity (corporation taxation; corporation tax act applies) or other entities (individual taxation; income tax act applies) with its headquarters, main office or

actual place of business management located in the Republic of Korea are deemed to have a tax residence in the Republic of Korea (Article 2 (i) of Corporation Tax Act, Article 2 (3) of Income Tax Act)

### **Section III – Entity types that are as a rule not considered tax residents**

Trust is treated as a fiscally-transparent entity and the beneficiary to receive the profits of the trust is liable to pay taxes and report (Article 2-3 of Income Tax Act, Article 5 of Corporation Tax Act)

Where a joint business including associations of which members are individuals satisfies the following criteria, its joint businessmen are liable to pay taxes and report (an entity is treated as a fiscally transparent entity), and in other cases an association (a representative joint businessman) is liable to pay taxes and report (Article 2 (3) of Income Tax Act)

- There is an agreed method of distributing profits or profit distribution ratio among joint businessmen.

- Although no agreed method of profit distribution or profit distribution ratio is available, it is identified that the profits of the association are actually distributed among its members.

In the case of corporate type investment fund, the relevant entity is liable to pay taxes and report while in the case of trust type or association type investment fund, investors are liable to pay taxes and report since it is treated as a fiscally transparent entity (Article 4(1) and Article 51-2 of Corporation Tax Act, Article 17(1) of Income Tax Act and Article 26-2 of Enforcement Decree of Income Tax Act)

Among entities to which Section II (unlimited partnership company, limited partnership company, etc.) applies, an entity satisfying certain criteria is treated as a fiscally transparent entity based on the taxpayer's election and its members have the duty to report and pay taxes (Articles 100-15 and 100-16 of Special Tax Treatment Control Act)

### **Section IV – Contact point for further information**

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