

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

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

A resident refers to a person who holds his address in Korea or has held his temporary domicile in Korea for 183 days or more (Article 1 (2) of Income Tax Act).

- The address 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 “domicile” means the place where a person has lived for a long time besides his/her address, and in which there is no general living relationship as close as an address (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 lives in Korea falls under any of the following subparagraphs, he/she shall be deemed to have his/her address in Korea (Article 2 (3) of Enforcement Decree of the Income Tax Act).

1. When a person has an occupation which requires him/her to continually reside in Korea for 183 days or longer; and

2. When a person has family members living with him/her in Korea, and is deemed to continually reside in Korea for 183 days or longer in view of his/her occupation or property status.

(2) Public officials or residents working overseas, or executives or employees dispatched to places of business abroad of a domestic corporation or foreign subsidiaries (limited to cases where an investing domestic corporation has invested directly or indirectly 100/100 of the total issued equity stocks or equity investment shares), etc. shall be deemed as residents (Article 3 of Enforcement Decree of the Income Tax Act)

Criteria for Individuals not to be considered a tax resident:

When a person living or working overseas with a foreign nationality or denizenship under foreign laws has no family living together with him/her in Korea and is not deemed to return home again to reside mainly in Korea in view of his/her occupation or property status, he/she shall be deemed to have no address in Korea.

Determination of residents based on his/her usual domicile:

In cases of a crew member of a vessel or aircraft serving an overseas route, if the domicile of his/her family living together with the relevant crew member, or his/her usual domicile in the period other than duty hours, is located in Korea, the address of relevant crew member shall be deemed to be in Korea; and when such place is located overseas, the address of the relevant crew member shall be deemed 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 business management place located in the Republic of Korea are deemed to have a tax residence in the Republic of Korea (Article 1 (1) 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 2-2 (6) 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 3(2) of Enforcement Decree of the 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 2(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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