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Panel 18: Asian/North American Estate Planning for the Coming Decade

- Korean Perspective -

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Estate Planning – Korea - Generally

- Inheritance: No court procedure needed if no dispute among the heirs.
 - Intestate: resort to statutory inheritance
 - Priority given to “spouse + children” or “spouse + parents”
 - Need the agreement among the heirs as to who takes which property
 - Takes care of the mandatory inheritance (forced heirship) issue
 - Forced heirship: ½ (or 1/3 of the statutory inheritance portion for each heir)
 - Recapture of any gifts provided to heirs during life time
 - Subtraction of the portion of the assets a particular heir contributed in accumulating
 - Wills: 5 types under Korean law
 - “notarized will” commonly used (notary + 2 witnesses)
 - Subject to the forced heirship rules
- Governing law (inheritance): International Private Law (Korean conflict of law rules)
 - Nationality of the decedent
 - If one of the nationalities is Korean, then “Korean law”
 - Exception: unless the decedent specifies the country of her habitual abode in her will (or with respect to real property asset, the country of such property’s location)
 - “Habitual abode” at the time of designation AND through the time of death
- Guardianship, trust, power of attorney: available, but not common yet as advance planning tool

Estate Planning – Korea - Tax

- If a “Korean tax resident,” tax implications
 - Korean income tax on worldwide income
 - 6.6 – 46.2% generally
 - foreign tax credit
 - Korean estate tax
 - 10 – 50% (60%, up to 20% premium on valuation for control)
 - 10% up to KRW 100 million (approx. USD 100k)
 - 20% KRW 100 – 500 million
 - 30% KRW 500 million – 1 billion
 - 40% KRW 1 – 3 billion
 - 50% KRW 3 billion (approx. USD 3 million) or more
 - If the decedent is a Korean resident, tax on inheritance by ALL heirs and of ALL assets
 - Korean gift tax
 - 10 – 50% (60%)
 - If the donor is a Korean resident, tax on gifts to ALL donees and of ALL assets
 - Korean exit tax
 - Was a Korean resident for at least 5 years during the past 10 year-period
 - Owns Korean shares and is a major shareholder (at least 4% or KRW 1.5 billion; 1% or KRW 1.5 billion for listed shares)

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Estate Planning – Korea - Tax

Donor (decedent)	Donee (heir)	Asset	Subject to Korean Estate Tax?	Subject to Korean Gift Tax? (Taxpayer)
Resident	Resident	Korean asset	Tax	Tax (donee)
		Foreign asset	Tax	Tax(donee)
	Non-resident	Korean asset	Tax	Tax (joint)
		Foreign asset	Tax	Tax (donor)
Non-resident	Resident	Korean asset	Tax	Tax (donee)
		Foreign asset	No tax	Tax (donee)
	Non-resident	Korean asset	Tax	Tax (joint)
		Foreign asset	No tax	No tax

Estate Planning – Korea - Tax

- Tax Residency: high-stake question
 - Inheritance/gifting to a nonresident heir or migration of assets alone: Does not work
 - Critical issue: whether he/she remains a “Korean tax resident”
 - Place of abode
 - Domicile
 - Maintains a place of abode in Korea for 183 days or longer
 - Temporary absence not excluded from 183 days
 - If 183 days or longer during the tax year, then a resident
 - Domiciled in Korea (“address” in Korea): profound meaning
 - Immediate family members residing in Korea
 - Job or position requiring him/her to customarily stay in Korea for at least 183 days
 - Other economic, social or personal nexus in Korea
- Dual Residency: treaty tie breaker
 - Tie breaker for dual resident:
 - Permanent home
 - Center of vital interest (the country with which his personal/economic relations are closer)
 - Habitual abode
 - Citizenship
 - Competent authorities to settle via MAP

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