

Announcement No. 2001-34
Administration

U.S. – Korean Agreement

On June 23, 1999, the Internal Revenue Service and the Korean Ministry of Finance and Economy entered into a mutual agreement pursuant to Article 27 of the U.S. – Republic of Korea Income Tax Convention regarding gains from the disposition of shares of certain Korean real property corporations by U.S. persons.

Under the Individual Income Tax Act and Corporate Income Tax Act of Korea, the income from the disposition of shares of a corporation are treated as derived from the transfer of real property if three conditions are met. The three conditions that must exist are: (1) that the value of the real property held by the corporation in the country equals or exceeds 50 percent of the value of all the property held by the corporation; (2) that the shareholder (and related parties) hold at least 50 percent of the shares of the corporation; and (3) that the shareholder transfers at least 50 percent of the corporation. Korea treats the income attributable to the gain on such transfers of a Korean corporation as Korean source, for both nonresident aliens and foreign corporations.

The U.S. and Korea have agreed that gains derived from the disposition of shares of such a Korean corporation would be sourced in the situs country of the real property in order to prevent double taxation for purposes of Article 6(9) and Article 27(2)(9)(c) of the Convention.