

REAL ESTATE INVESTMENT COMPANIES (REITS)

We should begin by understanding the kind of company that the wording of Law 8 of 2010, as amended by law 114 of 2013 and regulated by Executive Decree 199 of 2014, are referring to, according to the conditions to be met:

1. Incorporate under the laws of the Republic of Panama as a company, partnership, trust and even born of a simple contractual arrangement.
2. Register with the Superintendency of Securities of Panama and list its participation units/shares in exchanges or regulated markets registered with this entity.
3. Attract long-term funds in organized capital markets in order to invest and trade in real estate, securities or property rights in the development, financing and / or management of real estate, commercial, industrial or residential in Panama.
4. Carry out its activity directly or through other companies whose voting shares, issued and outstanding, are wholly or majority owned by another legal person (subsidiary).
5. Having a policy of distribution of not less than 90% of its profits to holders of its participation units/shares each fiscal period.
6. Register as real estate investment company at the Directorate General of Revenue.

The decree 199 of 2014 introduced provisions not contained in the law, namely:


- a) To have a minimum of 5 investors during the first year of its constitution; at least 25 investors during the second year; and a minimum of 50 investors from the third year, whether natural or legal persons.
- b) Issue registered shares or units of participation.
- c) Have at all times a minimum asset of US\$5 million.
- d) To be managed by the board of directors, by trustees licensed by the Superintendency of Banks of Panama, or in any case by investment company managers.
- e) Once the above conditions have been fulfilled, the income tax of the real estate investment company fall on the registered holders of the participation shares, which corresponds to them under Articles 699 and 700 of the Tax Code rates. Previously, the real estate investment company was obliged to withhold 5% of the amount distributed, in anticipation of the income tax, and submit it to the National Treasury retained within 10 days of each distribution.

The tax benefit is on the retention of 5% of distributed profits and that "the taxpayer may elect to treat as final income tax payable on the amount distributed".

To ease the fiscal sacrifice, said legal provision states that if in any fiscal period, the distribution is less than 90% of net income for the same period, "said real estate investment company is subject to the determination of taxable income provided for in

Article 699 of this Code, "referring to the rate of income tax for legal entities of the Tax Code, but not meet the standards and other general provisions to determine their own taxable income.

The original standard for the topic under consideration (Law 8 of 2010) established a 20% withholding tax on amounts distributed under similar conditions and with the same benefit of the final income tax. The amendment produced by Law 114 of 2013 really benefited large real estate investors by reducing the withholding to 5% as the final income tax payable. Medium and small investors were forgotten and subject to pay income tax based on 25% income tax rule.

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