



Increased Dividend Potential for REITs in Korea

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There have been a couple of recent developments that affect REITs' ability to pay dividends. One is an amendment to the Real Estate Investment Company Act ("REIT Act") to exclude unrealized loss when calculating the maximum distributable amount ("Distributable Amount"). The other is a recent decision by the National Tax Service not to impose income tax in relation to depreciation. These are positive developments for creating more demand for REITs and are expected to compliment other measures by the government to encourage investment in REITs.

1. Amendment to the REIT Act

In Korea, REITs take the form of joint stock company instead of trust. So, unless otherwise provided for in the REIT Act, those provisions of the Commercial Code that apply to joint stock companies also apply to REITs.

The REIT Act does have a provision that regulates dividends by REITs. It has been amended so that REITs can exclude cumulative unrealized losses when calculating the maximum distributable amount after each fiscal year. This amendment came into effect in February 2024. It now allows REITs to pay dividends out of net lease income without being affected by any drop in the market value of its property holdings.

2. Income Tax on Depreciation

According to a number of media reports, including one by the Korea Economic Daily on April 1, 2024¹, the National Tax Service withdrew its retroactive imposition of additional corporate income taxes on certain REITs.

The authority's reasoning was that since REITs distributed dividends out of depreciations instead of creating reserves for such depreciations, REITs should not be able to deduct depreciations for corporate income tax purposes, resulting in underpayment of taxes. REITs (which were all managed by the same asset management company) countered that the authority's position contravenes the dividend provision of the REIT Act that specifically allows REITs to pay dividends out of depreciations notwithstanding the dividend provision in the Commercial Code that does not allow such practice.

REITs purportedly have received an interpretive ruling from the Ministry of Land, Infrastructure and Transportation, which is responsible for overseeing and enforcing the REIT Act, to the effect that REITs, unlike other companies, should be able to deduct depreciations for income tax purposes even if dividends are paid out of such amounts. The tax authority seems to have accepted the Ministry's position, which is received as a positive development for REITs in Korea.

¹ <https://www.hankyung.com/article/202403319401i> (in Korean)

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