

MEMO# 33928

December 1, 2021

IRS Re-Issues Elective Stock Dividend Relief for Publicly Offered RICs and REITs

[33928]

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TO: ICI Members

Tax Committee SUBJECTS: Tax RE: IRS Re-Issues Elective Stock Dividend Relief for Publicly Offered RICs and REITs

The Internal Revenue Service (IRS) has issued temporary guidance regarding the treatment of certain stock distributions by publicly offered regulated investment companies (RICs) and real estate investment trusts (REITs). [Revenue Procedure 2021-53](#) temporarily reduces the minimum required aggregate amount of cash that the RIC and REIT shareholders receive to not less than 10 percent of the total distribution. This guidance, like Revenue Procedure 2020-19,[\[1\]](#) modifies Revenue Procedure 2017-45, which provides a safe harbor under which publicly offered RICs and REITs may permit shareholders to elect to receive stock in lieu of cash, provided that the RICs and REITs make at least 20 percent of the aggregate distribution in cash.

If a RIC or REIT satisfies the conditions in Rev. Proc. 2017-45, the IRS will treat the stock distribution as a distribution of property under section 301 by reason of section 305(b), thus qualifying for the section 561 dividends paid deduction. The value of the stock received by any shareholder in lieu of cash will be considered equal to the amount of cash that could have been received instead. Thus, under Rev. Proc. 2021-53, a publicly offered RIC or REIT temporarily may pay up to 90 percent of its required distributions in stock.

A RIC is publicly offered under section 67(c)(2)(B) if the shares of the RIC are: (i) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended); (ii) regularly traded on an established securities market; or (iii) held by or for no fewer than 500 persons at all times during the taxable year. A REIT is publicly offered under section 562(c)(2) if it is required to file annual and periodic reports with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Rev. Proc. 2021-53 is effective only with respect to distributions declared by a publicly offered RIC or REIT on or after November 1, 2021, and on or before June 30, 2022.

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endnotes

[1] See Institute Memorandum No. 32439, dated May 5, 2020, which can be found at:
<https://www.ici.org/memo32439>.

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