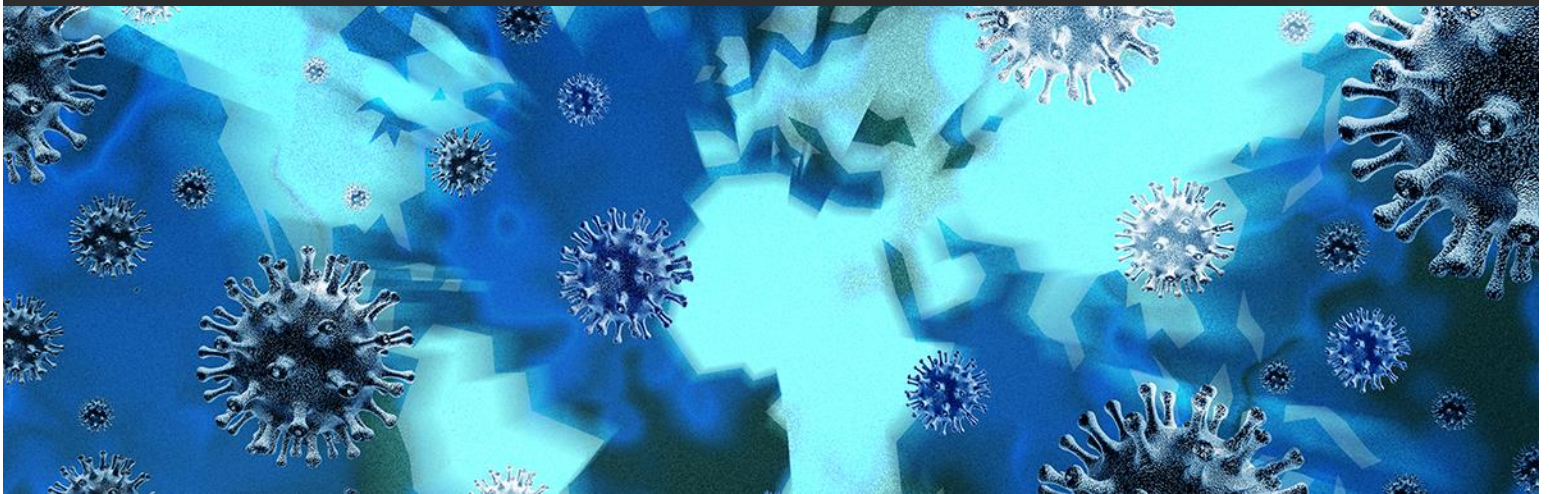


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



May 7, 2020

IRS Provides Temporary Relief to Certain REITs and RICs with Revenue Procedure 2020-19

On May 4, 2020, the IRS issued [Revenue Procedure 2020-19](#), which provides temporary relief to certain real estate investment trusts (REITs) and regulated investment companies (RICs) with respect to their annual distribution requirements by reducing the minimum amount of cash required to be offered to shareholders, in connection with elective distributions of cash and stock, to 10%. REITs and RICs generally are required to distribute at least 90% of their taxable income each year and generally satisfy this requirement through a distribution of cash to their shareholders. However, Rev. Proc. 2017-45 provides a safe harbor that allows publicly offered REITs and RICs the ability to satisfy their distribution requirements through distributions of a combination of cash and stock, provided that (i) each shareholder has the right to elect to receive all or a part of their distribution in cash or stock, (ii) the amount of cash offered to all shareholders in the aggregate is not less than 20% of the total distribution and (iii) certain other requirements are met. Rev. Proc. 2020-19 modifies this safe harbor by lowering the minimum cash component to 10% of the total distribution for distributions declared on or after April 1, 2020 and on or before December 31, 2020. The temporary modification is intended to allow publicly offered REITs and RICs to “conserve capital and thereby enhance their liquidity” in deference to the financial pressures arising out of the Coronavirus Disease 2019 (COVID-19) crisis. The availability of the temporary relief is based upon the time frame in which the dividend is declared, and therefore may apply, depending on the facts surrounding a specific dividend, to a variety of situations including any of the following:

- dividends declared in 2020 with respect to the 2020 tax year;

- so-called “throwback” or “spillover” dividends under Sections 855 and 858 that are declared in 2020 with respect to the 2019 tax year;
- deficiency dividends under Section 860 that are declared in 2020 and relate to a determination (e.g., following an audit adjustment or tax litigation) with respect to a prior tax year; and
- so-called “January dividends” under Sections 852(b)(7) and 857(b)(9) that are declared in the fourth quarter of 2020 and payable to shareholders of record as of a specified date during that quarter, with the dividend paid in January 2021.

Similar to the statutory exemption from the preferential dividend rule, the safe harbor provided in Rev. Proc. 2017-45, as modified by Rev. Proc. 2020-19, only applies to REITs and RICs that are “publicly offered.” A REIT is considered “publicly offered” if it is required to file annual and periodic reports with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, such as Forms 10-Q and 10-K. A RIC is considered “publicly offered” if its shares are (i) continuously offered pursuant to a public offering, (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. Accordingly, this relief is not applicable to private REITs or public REITs that are not subject to SEC reporting (e.g., those whose shares are listed only on non-U.S. exchanges). To take advantage of elective cash/stock dividends that are deductible by the payor, a private REIT or RIC that is not eligible to rely on Rev. Procs. 2020-19 and 2017-45 may either (i) pay a dividend that offers shareholders an unrestricted election of cash or stock (i.e., no cap on cash), such as via a dividend reinvestment plan, or (ii) consider seeking a private letter ruling from the IRS permitting such treatment. Prior to the grant of broad-based relief under Rev. Procs. 2020-19 and 2017-45, the IRS issued a number of private letter rulings to specific taxpayers granting similar relief.

For more information and updates on the developing COVID-19 situation, visit [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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