

§ 855. Dividends paid by regulated investment company after close of taxable year

(a) General rule

For purposes of this chapter, if a regulated investment company—

(1) declares a dividend on or before the later of—

(A) the 15th day of the 9th month following the close of the taxable year, or

(B) in the case of an extension of time for filing the company's return for the taxable year, the due date for filing such return taking into account such extension, and

(2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first dividend payment of the same type of dividend made after such declaration,

the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b) and (c). For purposes of paragraph (2), a dividend attributable to any short-term capital gain with respect to which a notice is required under the Investment Company Act of 1940 shall be treated as the same type of dividend as a capital gain dividend.

(b) Receipt by shareholder

Except as provided in section 852(b)(7), amounts to which subsection (a) is applicable shall be treated as received by the shareholder in the taxable year in which the distribution is made.

(c) Foreign tax election

If an investment company to which section 853 is applicable for the taxable year makes a distribution as provided in subsection (a) of this section, the shareholders shall consider the amounts described in section 853(b)(2) allocable to such distribution as paid or received, as the case may be, in the taxable year in which the distribution is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 274; Pub. L. 86-779, §10(b)(2), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 88-272, title II, §229(a)(5), Feb. 26, 1964, 78 Stat. 99; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-514, title VI, §§651(b)(1)(B), 655(a)(5), Oct. 22, 1986, 100 Stat. 2296, 2299; Pub. L. 100-647, title I, §1006(l)(1)(B), Nov. 10, 1988, 102 Stat. 3413; Pub. L. 111-325, title III, §§301(g), 304(a)-(c), Dec. 22, 2010, 124 Stat. 3547-3549; Pub. L. 113-295, div. A, title II, §205(b), Dec. 19, 2014, 128 Stat. 4026.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113-295 inserted “on or” before “before” in introductory provisions.

2010—Subsec. (a). Pub. L. 111-325, §304(c), in concluding provisions, inserted at end “For purposes of paragraph (2), a dividend attributable to any short-term capital gain with respect to which a notice is required under the Investment Company Act of 1940 shall be treated as the same type of dividend as a capital gain dividend.”

Pub. L. 111-325, §301(g)(2), substituted “and (c)” for “, (c) and (d)” in concluding provisions.

Subsec. (a)(1). Pub. L. 111-325, §304(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and”.

Subsec. (a)(2). Pub. L. 111-325, §304(b), substituted “the first dividend payment of the same type of dividend” for “the first regular dividend payment”.

Subsecs. (c), (d). Pub. L. 111-325, §301(g)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c). Text of former subsec. (c) read as follows: “In the case of amounts to which subsection (a) is applicable, any notice to shareholders required under this part with respect to such amounts shall be made not later than 60 days after the close of the taxable year in which the distribution is made.”

1988—Subsec. (b). Pub. L. 100-647 substituted “section 852(b)(7)” for “section 852(b)(6)”.

1986—Subsec. (b). Pub. L. 99-514, §651(b)(1)(B), substituted “Except as provided in section 852(b)(6), amounts” for “Amounts”.

Subsec. (c). Pub. L. 99-514, §655(a)(5), substituted “60 days” for “45 days”.

1976—Subsec. (a). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1964—Subsec. (c). Pub. L. 88-272 substituted “45 days” for “30 days”.

1960—Subsec. (c). Pub. L. 86-779 substituted “this part” for “this subchapter”.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective as if included in the provision of the Regulated Investment Company Modernization Act of 2010, Pub. L. 111-325, to which such amendment relates, with savings provision in certain cases of an election by a regulated investment company under section 852(b)(8) of this title, see section 205(f) of Pub. L. 113-295, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(g) of Pub. L. 111-325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111-325, set out as a note under section 852 of this title.

Pub. L. 111-325, title III, §304(d), Dec. 22, 2010, 124 Stat. 3549, provided that: “The amendments made by this section [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 651(b)(1)(B) of Pub. L. 99-514 applicable to calendar years beginning after Dec. 31, 1986, see section 651(d) of Pub. L. 99-514, set out as an Effective Date note under section 4982 of this title.

Amendment by section 655(a)(5) of Pub. L. 99-514 applicable to taxable years beginning after Oct. 22, 1986, see section 655(b) of Pub. L. 99-514, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to taxable years of regulated investment companies ending on or

after Feb. 26, 1964, see section 229(c) of Pub. L. 88-272, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86-779, set out as an Effective Date note under section 856 of this title.

PART II—REAL ESTATE INVESTMENT TRUSTS

Sec.	
856.	Definition of real estate investment trust.
857.	Taxation of real estate investment trusts and their beneficiaries.
858.	Dividends paid by real estate investment trust after close of taxable year.
859.	Adoption of annual accounting period.

AMENDMENTS

1978—Pub. L. 95-600, title III, § 362(d)(7), Nov. 6, 1978, 92 Stat. 2852, substituted in item 859 “Adoption of annual accounting period” for “Deduction of deficiency dividends” and struck out item 860 “Adoption of annual accounting period”.

1976—Pub. L. 94-455, title XVI, §§ 1601(a)(2), 1604(i)(2), Oct. 4, 1976, 90 Stat. 1745, 1752, added items 859 and 860.

1960—Pub. L. 86-779, § 10(a), Sept. 14, 1960, 74 Stat. 1003, added part II analysis.

§ 856. Definition of real estate investment trust

(a) In general

For purposes of this title, the term “real estate investment trust” means a corporation, trust, or association—

- (1) which is managed by one or more trustees or directors;
- (2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;
- (3) which (but for the provisions of this part) would be taxable as a domestic corporation;
- (4) which is neither (A) a financial institution referred to in section 582(c)(2), nor (B) an insurance company to which subchapter L applies;
- (5) the beneficial ownership of which is held by 100 or more persons;
- (6) subject to the provisions of subsection (k), which is not closely held (as determined under subsection (h)); and
- (7) which meets the requirements of subsection (c).

(b) Determination of status

The conditions described in paragraphs (1) to (4), inclusive, of subsection (a) must be met during the entire taxable year, and the condition described in paragraph (5) must exist during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months.

(c) Limitations

A corporation, trust, or association shall not be considered a real estate investment trust for any taxable year unless—

- (1) it files with its return for the taxable year an election to be a real estate investment trust or has made such election for a previous taxable year, and such election has not been terminated or revoked under subsection (g);

(2) at least 95 percent (90 percent for taxable years beginning before January 1, 1980) of its gross income (excluding gross income from prohibited transactions) is derived from—

- (A) dividends;
- (B) interest;
- (C) rents from real property;
- (D) gain from the sale or other disposition of stock, securities, and real property (including interests in real property and interests in mortgages on real property) which is not property described in section 1221(a)(1);
- (E) abatements and refunds of taxes on real property;
- (F) income and gain derived from foreclosure property (as defined in subsection (e));

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property);

(H) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction solely by reason of section 857(b)(6); and

(I) mineral royalty income earned in the first taxable year beginning after the date of the enactment of this subparagraph from real property owned by a timber real estate investment trust and held, or once held, in connection with the trade or business of producing timber by such real estate investment trust;

(3) at least 75 percent of its gross income (excluding gross income from prohibited transactions) is derived from—

- (A) rents from real property;
- (B) interest on obligations secured by mortgages on real property or on interests in real property;
- (C) gain from the sale or other disposition of real property (including interests in real property and interests in mortgages on real property) which is not property described in section 1221(a)(1);
- (D) dividends or other distributions on, and gain (other than gain from prohibited transactions) from the sale or other disposition of, transferable shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part;

(E) abatements and refunds of taxes on real property;

(F) income and gain derived from foreclosure property (as defined in subsection (e));

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in