

## Legal Updates & News

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#### IRS Extends Temporary Guidance on REIT/RIC Taxable Stock Dividends

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On December 23, 2009, under Revenue Procedure 2010-12, the Internal Revenue Service (“IRS”) extended the period of temporary guidance regarding certain stock distributions by publicly-traded real estate investment trusts (“REITs”) and regulated investment companies (“RICs”). For stock dividends declared on or after January 1, 2008 and before December 31, 2011, with respect to a taxable year ending on or before December 31, 2011, the IRS will treat a distribution of stock by a publicly traded REIT or RIC pursuant to certain elections to receive stock or cash as a taxable distribution of property, provided that (i) the total amount of cash available for distribution is not less than 10% of the aggregate declared distribution and (ii) if too many shareholders elect to receive cash, each shareholder electing to receive cash will receive a *pro rata* amount of cash corresponding to its respective entitlement under the declaration. The amount of such stock distribution will generally be treated as equal to the amount of cash that could have been received instead.

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Revenue Procedure 2010-12 also clarifies it is permissible for the calculation of the number of shares to be received by any shareholder to be determined, over a period of up to two weeks ending as close as practicable to the payment date, based upon a formula using market prices that is designed to equate in value the number of shares to be received with the amount of money that could be received instead. Revenue Procedure 2010-12 further clarifies that a stock dividend meeting its requirements will generally not be considered a “preferential dividend.”<sup>[1]</sup>

For more information concerning the IRS’s temporary guidance regarding certain stock distributions by publicly traded REITs and RICs, please see our Client Alert, “IRS Issues Temporary Guidance on REIT Taxable Stock Dividends,” dated December 2008.<sup>[2]</sup>

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## Footnotes

[1] In general, “preferential dividends” are not eligible for the dividends-paid deduction. Prior IRS guidance on a publicly-traded REIT’s or RIC’s stock dividends did not address the preferential dividend issue.

[2] Available at: <http://www.mofo.com/news/updates/files/15010.html>.