§ 1.858-1 Dividends paid by a real estate investment trust after close of taxable year.

(a) General rule. Under section 858, a real estate investment trust may elect to treat certain dividends that are distributed within a specified period after the close of a taxable year as having been paid during the taxable year. The dividend is taken into account in determining the deduction for dividends paid for the taxable year in which it is treated as paid. The dividend may be an ordinary dividend or, subject to the requirements of sections 857(b)(3)(C) and 858(c), a capital gain dividend. The trust may make the dividend declaration required by section 858(a)(1) either before or after the close of the taxable year as long as the declaration is made before the time prescribed by law for filing its return for the taxable year (including the period of any extension of time granted for filing the return).

(b) Election.—(1) Method of making election. The election must be made in the return filed by the trust for the taxable year. The election shall be made by treating the dividend (or portion thereof) to which the election applies as a dividend paid during the taxable year.

(2) By the operation of section 381 pursuant to a transaction that occurred before December 22, 1992, became the earnings and profits of a corporation to which part II of subchapter M applied and, at all times thereafter, were the earnings and profits of a corporation to which part II of subchapter M applied.

(c) Distribution procedures similar to those for regulated investment companies to apply. Distribution procedures similar to those in section 852(e) for regulated investment companies apply to non-REIT earnings and profits of real estate investment trusts.

(d) Effective date. This regulation is effective for taxable years ending on or after December 22, 1992.