

114TH CONGRESS
1ST SESSION

H. R. 2128

To amend the Internal Revenue Code of 1986 to exempt certain stock of real estate investment trusts from the tax on foreign investments in United States real property interests, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2015

Mr. BRADY of Texas (for himself, Mr. CROWLEY, Mr. McDERMOTT, Mr. REICHERT, Mr. MARCHANT, Mr. YOUNG of Indiana, Mr. ROSKAM, Mr. MEEHAN, Ms. LINDA T. SÁNCHEZ of California, Mr. RENACCI, Mr. REED, Mr. TIBERI, Mr. BLUMENAUER, Mr. RANGEL, Mr. THOMPSON of California, Mr. LARSON of Connecticut, Mr. NEAL, Mr. KIND, Mr. KING of New York, Mr. SESSIONS, Mr. SAM JOHNSON of Texas, Mr. DOLD, Mr. BUCHANAN, and Ms. JENKINS of Kansas) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to exempt certain stock of real estate investment trusts from the tax on foreign investments in United States real property interests, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Real Estate Investment and Jobs Act of 2015”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-
2 wise expressly provided, whenever in this Act an amend-
3 ment or repeal is expressed in terms of an amendment
4 to, or repeal of, a section or other provision, the reference
5 shall be considered to be made to a section or other provi-
6 sion of the Internal Revenue Code of 1986.

7 **SEC. 2. EXCEPTION FROM FIRPTA FOR CERTAIN STOCK OF**
8 **REAL ESTATE INVESTMENT TRUSTS.**

9 (a) MODIFICATIONS OF OWNERSHIP RULES.—

10 (1) IN GENERAL.—Section 897 is amended by
11 adding at the end the following new subsection:

12 “(k) SPECIAL RULES RELATING TO REAL ESTATE
13 INVESTMENT TRUSTS.—

14 “(1) INCREASE IN PERCENTAGE OWNERSHIP
15 FOR EXCEPTIONS FOR PERSONS HOLDING PUBLICLY
16 TRADED STOCK.—

17 “(A) DISPOSITIONS.—In the case of any
18 disposition of stock in a real estate investment
19 trust, paragraphs (3) and (6)(C) of subsection
20 (c) shall each be applied by substituting ‘more
21 than 10 percent’ for ‘more than 5 percent’.

22 “(B) DISTRIBUTIONS.—In the case of any
23 distribution from a real estate investment trust,
24 subsection (h)(1) shall be applied by sub-
25 stituting ‘10 percent’ for ‘5 percent’.

1 “(2) STOCK HELD BY QUALIFIED SHARE-
2 HOLDERS NOT TREATED AS USRPI.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B)—

5 “(i) stock of a real estate investment
6 trust which is held directly by a qualified
7 shareholder shall not be treated as a
8 United States real property interest, and

9 “(ii) notwithstanding subsection
10 (h)(1), any distribution to a qualified
11 shareholder shall not be treated as gain
12 recognized from the sale or exchange of a
13 United States real property interest to the
14 extent the stock of the real estate invest-
15 ment trust held by such qualified share-
16 holder is not treated as a United States
17 real property interest under clause (i).

18 “(B) EXCEPTION.—In the case of a quali-
19 fied shareholder with 1 or more applicable in-
20 vestors—

21 “(i) subparagraph (A)(i) shall not
22 apply to so much of the stock of a real es-
23 tate investment trust held by a qualified
24 shareholder as bears the same ratio to the
25 value of the interests (other than interests

1 held solely as a creditor) held by such ap-
2 plicable investors in the qualified share-
3 holder bears to value of all interests (other
4 than interests held solely as a creditor) in
5 the qualified shareholder, and

6 “(ii) a percentage equal to the ratio
7 determined under clause (i) of the amounts
8 realized by the qualified shareholder with
9 respect to any disposition of stock in the
10 real estate investment trust or with respect
11 to any distribution from the real estate in-
12 vestment trust attributable to gain from
13 sales or exchanges of a United States real
14 property interest shall be treated as
15 amounts realized from the disposition of
16 United States real property interests.

17 “(C) APPLICABLE INVESTOR.—For pur-
18 poses of this paragraph, the term ‘applicable in-
19 vestor’ means, with respect to any qualified
20 shareholder holding stock in a real estate in-
21 vestment trust, a person (other than a qualified
22 shareholder) which—

23 “(i) holds an interest (other than an
24 interest solely as a creditor) in such quali-
25 fied shareholder, and

1 “(ii) holds more than 10 percent of
2 the stock of such real estate investment
3 trust (whether or not by reason of the per-
4 son’s ownership interest in the qualified
5 shareholder).

6 “(D) CONSTRUCTIVE OWNERSHIP
7 RULES.—For purposes of subparagraphs (B)(i)
8 and (C), the constructive ownership rules under
9 subsection (c)(6)(C) shall apply.

10 “(3) QUALIFIED SHAREHOLDER.—For purposes
11 of this subsection—

12 “(A) IN GENERAL.—The term ‘qualified
13 shareholder’ means a foreign person—

14 “(i) which is eligible for benefits of a
15 comprehensive income tax treaty with the
16 United States which includes an exchange
17 of information program,

18 “(ii) which is a qualified collective in-
19 vestment vehicle,

20 “(iii) the principal class of interests of
21 which is listed and regularly traded on 1 or
22 more recognized stock exchanges (as de-
23 fined in such comprehensive income tax
24 treaty), and

1 “(iv) which maintains records on the
2 identity of each person who, at any time
3 during the foreign person’s taxable year,
4 holds directly 5 percent or more of the
5 class of interest described in clause (iii).

6 “(B) QUALIFIED COLLECTIVE INVEST-
7 MENT VEHICLE.—For purposes of this sub-
8 section, the term ‘qualified collective investment
9 vehicle’ means a foreign person—

10 “(i) which, under the comprehensive
11 income tax treaty described in subpara-
12 graph (A)(i), is eligible for a reduced rate
13 of withholding with respect to ordinary
14 dividends paid by a real estate investment
15 trust even if such person holds more than
16 10 percent of the stock of such real estate
17 investment trust, or

18 “(ii) which is designated as a qualified
19 collective investment vehicle by the Sec-
20 retary and is either—

21 “(I) fiscally transparent within
22 the meaning of section 894, or

23 “(II) required to include divi-
24 dends in its gross income, but entitled
25 to a deduction for distributions to per-

1 sons holding interests (other than in-
2 terests solely as a creditor) in such
3 foreign person.”.

4 (2) CONFORMING AMENDMENTS.—

5 (A) Section 897(c)(1)(A) is amended by in-
6 serting “or subsection (k)” after “subparagraph
7 (B)” in the matter preceding clause (i).

8 (B) Section 857(b)(3)(F) is amended by
9 inserting “or section 897(k)(2)(A)(ii)” after
10 “897(h)(1)”.

11 (b) DETERMINATION OF DOMESTIC CONTROL.—

12 (1) SPECIAL OWNERSHIP RULES.—

13 (A) IN GENERAL.—Section 897(h)(4) is
14 amended by adding at the end the following
15 new subparagraph:

16 “(E) SPECIAL OWNERSHIP RULES.—For
17 purposes of determining the holder of stock
18 under subparagraphs (B) and (C)—

19 “(i) in the case of any class of stock
20 of the qualified investment entity which is
21 regularly traded on an established securi-
22 ties market in the United States, a person
23 holding less than 5 percent of such class of
24 stock at all times during the testing period
25 shall be treated as a United States person

1 unless the qualified investment entity has
2 actual knowledge that such person is not a
3 United States person,

4 “(ii) any stock in the qualified invest-
5 ment entity held by another qualified in-
6 vestment entity—

7 “(I) any class of stock of which
8 is regularly traded on an established
9 securities market, or

10 “(II) which is a regulated invest-
11 ment company which issues redeem-
12 able securities (within the meaning of
13 section 2 of the Investment Company
14 Act of 1940),

15 shall be treated as held by a foreign per-
16 son, except that if such other qualified in-
17 vestment entity is domestically controlled
18 (determined after application of this sub-
19 paragraph), such stock shall be treated as
20 held by a United States person, and

21 “(iii) any stock in the qualified invest-
22 ment entity held by any other qualified in-
23 vestment entity not described in subclause
24 (I) or (II) of clause (ii) shall only be treat-
25 ed as held by a United States person in

1 proportion to the stock of such other quali-
2 fied investment entity which is (or is treat-
3 ed under clause (ii) or (iii) as) held by a
4 United States person.”.

5 (B) CONFORMING AMENDMENT.—The
6 heading for paragraph (4) of section 897(h) is
7 amended by inserting “AND SPECIAL RULES”
8 after “DEFINITIONS”.

9 (2) TECHNICAL AMENDMENT.—Clause (ii) of
10 section 897(h)(4)(A) is amended by inserting “and
11 for purposes of determining whether a real estate in-
12 vestment trust is a domestically controlled qualified
13 investment entity under this subsection” after “real
14 estate investment trust”.

15 (c) EFFECTIVE DATES.—

16 (1) IN GENERAL.—The amendments made by
17 subsection (a) shall take effect on the date of enact-
18 ment and shall apply to—

19 (A) any disposition on and after the date
20 of the enactment of this Act, and

21 (B) any distribution by a real estate in-
22 vestment trust on or after the date of the en-
23 actment of this Act which is treated as a deduc-
24 tion for a taxable year of such trust ending
25 after such date.

1 (2) DETERMINATION OF DOMESTIC CONTROL.—

2 The amendments made by subsection (b)(1) shall
3 take effect on the date of the enactment of this Act.

4 (3) TECHNICAL AMENDMENT.—The amendment
5 made by subsection (b)(2) shall take effect on Janu-
6 ary 1, 2015.

7 **SEC. 3. EXCEPTION FOR INTERESTS HELD BY FOREIGN RE-**
8 **TIREMENT OR PENSION FUNDS.**

9 (a) IN GENERAL.—Section 897, as amended by sec-
10 tion 2, is amended by adding at the end the following new
11 subsection:

12 “(1) EXCEPTION FOR INTERESTS HELD BY FOREIGN
13 PENSION FUNDS.—

14 “(1) IN GENERAL.—This section shall not apply
15 to any United States real property interest held
16 by—

17 “(A) a qualified foreign pension fund, or

18 “(B) any entity all of the interests of
19 which are held by a qualified foreign pension
20 fund.

21 “(2) QUALIFIED FOREIGN PENSION FUND.—

22 For purposes of this subsection, the term ‘qualified
23 foreign pension fund’ means any trust, corporation,
24 or other organization or arrangement—

1 “(A) which is created or organized under
2 the law of a country other than the United
3 States,

4 “(B) which is established to provide retire-
5 ment or pension benefits to participants or
6 beneficiaries that are current or former employ-
7 ees (or persons designated by such employees)
8 of one or more employers in consideration for
9 services rendered,

10 “(C) which does not have a single partici-
11 pant or beneficiary with a right to more than
12 five percent of its assets or income,

13 “(D) which is subject to government regu-
14 lation and provides annual information report-
15 ing about its beneficiaries to the relevant tax
16 authorities in the country in which it is estab-
17 lished or operates, and

18 “(E) with respect to which, under the laws
19 of the country in which it is established or oper-
20 ates—

21 “(i) contributions to such trust, cor-
22 poration, organization, or arrangement
23 which would otherwise be subject to tax
24 under such laws are deductible or excluded

1 from the gross income of such entity or
2 taxed at a reduced rate, or

3 “(ii) taxation of any investment in-
4 come of such trust, corporation, organiza-
5 tion or arrangement is deferred or such in-
6 come is taxed at a reduced rate.

7 “(3) REGULATIONS.—The Secretary shall pre-
8 scribe such regulations as may be necessary or ap-
9 propriate to carry out the purposes of this sub-
10 section.”.

11 (b) EXEMPTION FROM WITHHOLDING.—Section
12 1445(f)(3) is amended by striking “any person” and all
13 that follows and inserting the following: “any person other
14 than—

15 “(A) a United States person, and

16 “(B) except as otherwise provided by the
17 Secretary, an entity with respect to which sec-
18 tion 897 does not apply by reason of subsection
19 (l) thereof.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to dispositions and distributions
22 after the date of the enactment of this Act.

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