

105TH CONGRESS
1ST SESSION

S. 815

To amend the Internal Revenue Code of 1986 to provide tax treatment for foreign investment through a United States regulated investment company comparable to the tax treatment for direct foreign investment and investment through a foreign mutual fund.

IN THE SENATE OF THE UNITED STATES

MAY 23, 1997

Mr. BAUCUS (for himself, Mr. GORTON, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide tax treatment for foreign investment through a United States regulated investment company comparable to the tax treatment for direct foreign investment and investment through a foreign mutual fund.

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.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Investment Competitiveness Act of 1997”.

6 (b) AMENDMENT OF 1986 CODE.—Whenever in this
7 Act an amendment or repeal is expressed in terms of an

1 amendment to, or repeal of, a section or other provision,
 2 the reference shall be considered to be made to a section
 3 or other provision of the Internal Revenue Code of 1986.

4 **SEC. 2. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**
 5 **LATED INVESTMENT COMPANIES.**

6 (a) TREATMENT OF CERTAIN DIVIDENDS.—

7 (1) NONRESIDENT ALIEN INDIVIDUALS.—Sec-
 8 tion 871 (relating to tax on nonresident alien indi-
 9 viduals) is amended by redesignating subsection (k)
 10 as subsection (l) and by inserting after subsection (j)
 11 the following new subsection:

12 “(k) EXEMPTION FOR CERTAIN DIVIDENDS OF REG-
 13 ULATED INVESTMENT COMPANIES.—

14 “(1) INTEREST-RELATED DIVIDENDS.—

15 “(A) IN GENERAL.—Except as provided in
 16 subparagraph (B), no tax shall be imposed
 17 under paragraph (1)(A) of subsection (a) on
 18 any interest-related dividend received from a
 19 regulated investment company.

20 “(B) EXCEPTIONS.—Subparagraph (A)
 21 shall not apply—

22 “(i) to any interest-related dividend
 23 received from a regulated investment com-
 24 pany by a person to the extent such divi-
 25 dend is attributable to interest (other than

1 interest described in subparagraph (E) (i)
2 or (iii)) received by such company on in-
3 debtedness issued by such person or by any
4 corporation or partnership with respect to
5 which such person is a 10-percent share-
6 holder,

7 “(ii) to any interest-related dividend
8 with respect to stock of a regulated invest-
9 ment company unless the person who
10 would otherwise be required to deduct and
11 withhold tax from such dividend under
12 chapter 3 receives a statement (which
13 meets requirements similar to the require-
14 ments of subsection (h)(5)) that the bene-
15 ficial owner of such stock is not a United
16 States person, and

17 “(iii) to any interest-related dividend
18 paid to any person within a foreign coun-
19 try (or any interest-related dividend pay-
20 ment addressed to, or for the account of,
21 persons within such foreign country) dur-
22 ing any period described in subsection
23 (h)(6) with respect to such country.

24 Clause (iii) shall not apply to any dividend with
25 respect to any stock which was acquired on or

1 before the date of the publication of the Sec-
2 retary's determination under subsection (h)(6).

3 “(C) INTEREST-RELATED DIVIDEND.—For
4 purposes of this paragraph, an interest-related
5 dividend is any dividend (or part thereof) which
6 is designated by the regulated investment com-
7 pany as an interest-related dividend in a writ-
8 ten notice mailed to its shareholders not later
9 than 60 days after the close of its taxable year.
10 If the aggregate amount so designated with re-
11 spect to a taxable year of the company (includ-
12 ing amounts so designated with respect to divi-
13 dends paid after the close of the taxable year
14 described in section 855) is greater than the
15 qualified net interest income of the company for
16 such taxable year, the portion of each distribu-
17 tion which shall be an interest-related dividend
18 shall be only that portion of the amounts so
19 designated which such qualified net interest in-
20 come bears to the aggregate amount so des-
21 ignated.

22 “(D) QUALIFIED NET INTEREST IN-
23 COME.—For purposes of subparagraph (C), the
24 term ‘qualified net interest income’ means the
25 qualified interest income of the regulated in-

1 vestment company reduced by the deductions
2 properly allocable to such income.

3 “(E) QUALIFIED INTEREST INCOME.—For
4 purposes of subparagraph (D), the term ‘quali-
5 fied interest income’ means the sum of the fol-
6 lowing amounts derived by the regulated invest-
7 ment company from sources within the United
8 States:

9 “(i) Any amount includible in gross
10 income as original issue discount (within
11 the meaning of section 1273) on an obliga-
12 tion payable 183 days or less from the date
13 of original issue (without regard to the pe-
14 riod held by the company).

15 “(ii) Any interest includible in gross
16 income (including amounts recognized as
17 ordinary income in respect of original issue
18 discount or market discount or acquisition
19 discount under part V of subchapter P and
20 such other amounts as regulations may
21 provide) on an obligation which is in reg-
22 istered form; except that this clause shall
23 not apply to—

24 “(I) any interest on an obligation
25 issued by a corporation or partnership

1 if the regulated investment company
 2 is a 10-percent shareholder in such
 3 corporation or partnership, and

4 “(II) any interest which is treat-
 5 ed as not being portfolio interest
 6 under the rules of subsection (h)(4).

7 “(iii) Any interest referred to in sub-
 8 section (i)(2)(A) (without regard to the
 9 trade or business of the regulated invest-
 10 ment company).

11 “(iv) Any interest-related dividend in-
 12 cludable in gross income with respect to
 13 stock of another regulated investment com-
 14 pany.

15 “(F) 10-PERCENT SHAREHOLDER.—For
 16 purposes of this paragraph, the term ‘10-per-
 17 cent shareholder’ has the meaning given such
 18 term by subsection (h)(3)(B).

19 “(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—

20 “(A) IN GENERAL.—Except as provided in
 21 subparagraph (B), no tax shall be imposed
 22 under paragraph (1)(A) of subsection (a) on
 23 any short-term capital gain dividend received
 24 from a regulated investment company.

1 “(B) EXCEPTION FOR ALIENS TAXABLE
2 UNDER SUBSECTION (a)(2).—Subparagraph (A)
3 shall not apply in the case of any nonresident
4 alien individual subject to tax under subsection
5 (a)(2).

6 “(C) SHORT-TERM CAPITAL GAIN DIVI-
7 DEND.—For purposes of this paragraph, a
8 short-term capital gain dividend is any dividend
9 (or part thereof) which is designated by the reg-
10 ulated investment company as a short-term cap-
11 ital gain dividend in a written notice mailed to
12 its shareholders not later than 60 days after the
13 close of its taxable year. If the aggregate
14 amount so designated with respect to a taxable
15 year of the company (including amounts so des-
16 ignated with respect to dividends paid after the
17 close of the taxable year described in section
18 855) is greater than the qualified short-term
19 gain of the company for such taxable year, the
20 portion of each distribution which shall be a
21 short-term capital gain dividend shall be only
22 that portion of the amounts so designated
23 which such qualified short-term gain bears to
24 the aggregate amount so designated.

“(D) QUALIFIED SHORT-TERM GAIN.—For purposes of subparagraph (C), the term ‘qualified short-term gain’ means the excess of the net short-term capital gain of the regulated investment company for the taxable year over the net long-term capital loss (if any) of such company for such taxable year. For purposes of this subparagraph—

“(i) the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain, and

“(ii) the excess of the net short-term capital gain for a taxable year over the net long-term capital loss for a taxable year (to which an election under section 4982(e)(4) does not apply) shall be determined without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of such year, and any such net capital loss or net short-

1 term capital loss shall be treated as arising
 2 on the 1st day of the next taxable year.

3 To the extent provided in regulations, clause
 4 (ii) shall apply also for purposes of computing
 5 the taxable income of the regulated investment
 6 company.”

7 (2) FOREIGN CORPORATIONS.—Section 881 is
 8 amended by redesignating subsection (e) as sub-
 9 section (f) and by inserting after subsection (d) the
 10 following new subsection:

11 “(e) TAX NOT TO APPLY TO CERTAIN DIVIDENDS
 12 OF REGULATED INVESTMENT COMPANIES.—

13 “(1) INTEREST-RELATED DIVIDENDS.—

14 “(A) IN GENERAL.—Except as provided in
 15 subparagraph (B), no tax shall be imposed
 16 under paragraph (1) of subsection (a) on any
 17 interest-related dividend (as defined in section
 18 871(k)(1)) received from a regulated investment
 19 company.

20 “(B) EXCEPTION.—Subparagraph (A)
 21 shall not apply—

22 “(i) to any dividend referred to in sec-
 23 tion 871(k)(1)(B), and

24 “(ii) to any interest-related dividend
 25 received by a controlled foreign corporation

(within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company from a person who is a related person (within the meaning of section 864(d)(4)) with respect to such controlled foreign corporation.

“(C) TREATMENT OF DIVIDENDS RECEIVED BY CONTROLLED FOREIGN CORPORATIONS.—The rules of subsection (c)(5)(A) shall apply to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company which is described in clause (ii) of section 871(k)(1)(E) (and not described in clause (i) or (iii) of such section).

“(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—No tax shall be imposed under paragraph (1) of subsection (a) on any short-term capital gain dividend (as defined in section 871(k)(2)) received from a regulated investment company.”

(3) WITHHOLDING TAXES.—

1 (A) Subsection (c) of section 1441 is
2 amended by adding at the end the following
3 new paragraph:

4 “(12) CERTAIN DIVIDENDS RECEIVED FROM
5 REGULATED INVESTMENT COMPANIES.—

6 “(A) IN GENERAL.—No tax shall be re-
7 quired to be deducted and withheld under sub-
8 section (a) from any amount exempt from the
9 tax imposed by section 871(a)(1)(A) by reason
10 of section 871(k).

11 “(B) SPECIAL RULE.—For purposes of
12 subparagraph (A), clause (i) of section
13 871(k)(1)(B) shall not apply to any dividend
14 unless the regulated investment company knows
15 that such dividend is a dividend referred to in
16 such clause. A similar rule shall apply with re-
17 spect to the exception contained in section
18 871(k)(2)(B).”

19 (B) Subsection (a) of section 1442 is
20 amended—

21 (i) by striking “and the reference in
22 section 1441(c)(10)” and inserting “the
23 reference in section 1441(c)(10)”, and

24 (ii) by inserting before the period at
25 the end the following: “, and the references

1 in section 1441(c)(12) to sections 871(a)
 2 and 871(k) shall be treated as referring to
 3 sections 881(a) and 881(e) (except that for
 4 purposes of applying subparagraph (A) of
 5 section 1441(c)(12), as so modified, clause
 6 (ii) of section 881(e)(1)(B) shall not apply
 7 to any dividend unless the regulated invest-
 8 ment company knows that such dividend is
 9 a dividend referred to in such clause)”.
 10

11 (b) ESTATE TAX TREATMENT OF INTEREST IN CER-
 12 TAIN REGULATED INVESTMENT COMPANIES.—Section
 13 2105 (relating to property without the United States for
 14 estate tax purposes) is amended by adding at the end the
 15 following new subsection:

16 “(d) STOCK IN A RIC.—

17 “(1) IN GENERAL.—For purposes of this sub-
 18 chapter, stock in a regulated investment company
 19 (as defined in section 851) owned by a nonresident
 20 not a citizen of the United States shall not be
 21 deemed property within the United States in the
 22 proportion that, at the end of the quarter of such in-
 23 vestment company’s taxable year immediately pre-
 24 ceding a decedent’s date of death (or at such other
 25 time as the Secretary may designate in regulations),
 the assets of the investment company that were

1 qualifying assets with respect to the decedent bore
2 to the total assets of the investment company.

3 “(2) QUALIFYING ASSETS.—For purposes of
4 this subsection, qualifying assets with respect to a
5 decedent are assets that, if owned directly by the de-
6 cedent, would have been—

7 “(A) amounts, deposits, or debt obligations
8 described in subsection (b) of this section,

9 “(B) debt obligations described in the last
10 sentence of section 2104(c), or

11 “(C) other property not within the United
12 States.”

13 (c) TREATMENT OF REGULATED INVESTMENT COM-
14 PANIES UNDER SECTION 897.—

15 (1) Paragraph (1) of section 897(h) is amended
16 by striking “REIT” each place it appears and in-
17 serting “qualified investment entity”.

18 (2) Paragraphs (2) and (3) of section 897(h)
19 are amended to read as follows:

20 “(2) SALE OF STOCK IN DOMESTICALLY-CON-
21 TROLLED ENTITY NOT TAXED.—The term ‘United
22 States real property interest’ does not include any
23 interest in a domestically-controlled qualified invest-
24 ment entity.

1 “(3) DISTRIBUTIONS BY DOMESTICALLY-CON-
 2 TROLLED QUALIFIED INVESTMENT ENTITIES.—In
 3 the case of a domestically-controlled qualified invest-
 4 ment entity, rules similar to the rules of subsection
 5 (d) shall apply to the foreign ownership percentage
 6 of any gain.”

7 (3) Subparagraphs (A) and (B) of section
 8 897(h)(4) are amended to read as follows:

9 “(A) QUALIFIED INVESTMENT ENTITY.—
 10 The term ‘qualified investment entity’ means
 11 any real estate investment trust and any regu-
 12 lated investment company.

13 “(B) DOMESTICALLY-CONTROLLED.—The
 14 term ‘domestically-controlled qualified invest-
 15 ment entity’ means any qualified investment en-
 16 tity in which at all times during the testing pe-
 17 riod less than 50 percent in value of the stock
 18 was held directly or indirectly by foreign per-
 19 sons.”

20 (4) Subparagraphs (C) and (D) of section
 21 897(h)(4) are each amended by striking “REIT”
 22 and inserting “qualified investment entity”.

23 (5) The subsection heading for subsection (h) of
 24 section 897 is amended by striking “REITS” and
 25 inserting “CERTAIN INVESTMENT ENTITIES”.

1 (d) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as otherwise pro-
3 vided in this subsection, the amendments made by
4 this section shall apply to dividends with respect to
5 taxable years of regulated investment companies be-
6 ginning after the date of the enactment of this Act.

7 (2) ESTATE TAX TREATMENT.—The amend-
8 ment made by subsection (b) shall apply to estates
9 of decedents dying after the date of the enactment
10 of this Act.

11 (3) CERTAIN OTHER PROVISIONS.—The amend-
12 ments made by subsection (c) (other than paragraph
13 (1) thereof) shall take effect on the date of the en-
14 actment of this Act.

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