

113TH CONGRESS
1ST SESSION

H. R. 2870

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

JULY 31, 2013

Mr. BRADY of Texas (for himself, Mr. CROWLEY, Ms. JENKINS, Mr. BLUMENAUER, Mr. RANGEL, Mr. ROSKAM, Mr. PASCRELL, Mr. VAN HOLLEN, Mr. SAM JOHNSON of Texas, Mr. LARSON of Connecticut, Mr. SESSIONS, Mr. GERLACH, Mr. KIND, and Mr. KING of New York) 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.**

4 This Act may be cited as the “Real Estate Invest-
5 ment and Jobs Act of 2013”.

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

3 (a) IN GENERAL.—Paragraph (3) of section 897(c)
 4 of the Internal Revenue Code of 1986 is amended—

5 (1) by striking all that precedes “If any class”
 6 and inserting the following:

7 “(3) EXCEPTIONS FOR CERTAIN STOCK.—

8 “(A) EXCEPTION FOR STOCK REGULARLY
 9 TRADED ON ESTABLISHED SECURITIES MAR-
 10 KETS.—”,

11 (2) by inserting before the period the following:
 12 “. In the case of any class of stock of a real estate
 13 investment trust, the preceding sentence shall be ap-
 14 plied by substituting ‘10 percent’ for ‘5 percent’”,
 15 and

16 (3) by adding at the end the following new sub-
 17 paragraph:

18 “(B) EXCEPTION FOR CERTAIN STOCK IN
 19 REAL ESTATE INVESTMENT TRUSTS.—

20 “(i) IN GENERAL.—Stock of a real es-
 21 tate investment trust held by a qualified
 22 shareholder shall not be treated as a
 23 United States real property interest except
 24 to the extent that an investor in the quali-
 25 fied shareholder (other than an investor
 26 that is a qualified shareholder) holds (di-

rectly or indirectly through the qualified shareholder) more than 10 percent of the stock of such real estate investment trust.

“(ii) QUALIFIED SHAREHOLDER.— For purposes of this subparagraph, the term ‘qualified shareholder’ means an entity—

“(I) that is eligible for benefits of a comprehensive income tax treaty with the United States which includes an exchange of information program,

“(II) that is a qualified collective investment vehicle,

“(III) whose principal class of interests is listed and regularly traded on one or more recognized stock exchanges (as defined in such comprehensive income tax treaty), and

“(IV) that maintains records on the identity of each person who, at any time during the qualified shareholder’s taxable year, is the direct owner of more than 10 percent of the class of interest described in clause (III).

1 “(iii) QUALIFIED COLLECTIVE IN-
2 VESTMENT VEHICLE.—For purposes of
3 this subparagraph, the term ‘qualified col-
4 lective investment vehicle’ means an entity
5 that—

6 “(I) would be eligible for a re-
7 duced rate of withholding under such
8 comprehensive income tax treaty with
9 respect to ordinary dividends paid by
10 a real estate investment trust, even if
11 such entity holds more than 10 per-
12 cent of the stock of such real estate
13 investment trust,

14 “(II) is a corporation (other than
15 a corporation that is entitled to a de-
16 duction or exclusion for dividends paid
17 to its shareholders or subject to a re-
18 quirement to distribute any portion of
19 its taxable income annually) engaged
20 primarily in the trade or business of
21 operating or managing real estate en-
22 tities or assets either directly or
23 through entities under common con-
24 trol (within the meaning of sub-
25 sections (a) and (b) of section 52), or

1 “(III) is designated as a qualified
 2 collective investment vehicle by the
 3 Secretary and is either—

4 “(aa) fiscally transparent
 5 within the meaning of section
 6 894, or

7 “(bb) required to include
 8 dividends in its gross income, but
 9 is entitled to a deduction for dis-
 10 tributions to its investors.”.

11 (b) DISTRIBUTIONS BY REAL ESTATE INVESTMENT
 12 TRUSTS.—Paragraph (1) of section 897(h) of the Internal
 13 Revenue Code of 1986 is amended—

14 (1) by striking “Any distribution” and inserting
 15 the following:

16 “(A) IN GENERAL.—Except as provided in
 17 subparagraph (B), any distribution”,

18 (2) by inserting “(10 percent in the case of
 19 stock of a real estate investment trust)” after “5
 20 percent of such class of stock”,

21 (3) by inserting “, and any distribution to a
 22 qualified shareholder (as defined in subsection
 23 (c)(3)(B)(ii)) shall not be treated as gain recognized
 24 from the sale or exchange of a United States real
 25 property interest to the extent that the stock of the

1 real estate investment trust held by such qualified
2 shareholder is not treated as a United States real
3 property interest under subsection (c)(3)(B)” before
4 the period at the end of the second sentence, and

5 (4) by adding at the end the following new sub-
6 paragraph:

7 “(B) SPECIAL RULE.—Subparagraph (A)
8 shall not apply to distributions which are treat-
9 ed as a sale or exchange of stock or property
10 pursuant to section 301(c)(3), 302, or 331.”.

11 (c) DEFINITION.—Paragraph (4) of section 897(h) of
12 the Internal Revenue Code of 1986 is amended by adding
13 at the end of subparagraph (B) the following: “In deter-
14 mining whether a qualified investment entity is domesti-
15 cally controlled, any stock in the qualified investment enti-
16 ty held by another qualified investment entity shall be
17 treated as held by a foreign person unless such other
18 qualified investment entity is domestically controlled. In
19 making such a determination, a qualified investment enti-
20 ty shall be permitted to presume that stock held by a hold-
21 er of less than 5 percent of a class of stock regularly trad-
22 ed on an established securities market in the United
23 States is held by United States persons throughout the
24 testing period except to the extent that the qualified in-

1 vestment entity has actual knowledge regarding stock
2 ownership.”.

3 (d) CONFORMING AMENDMENT.—Subparagraph (C)
4 of section 897(c)(6) of the Internal Revenue Code of 1986
5 is amended—

6 (1) by striking “more than 5 percent” and in-
7 serting “more than 5 or 10 percent, whichever is ap-
8 plicable,” and

9 (2) by striking “substituting ‘5 percent’ for ‘50
10 percent’)” and inserting “substituting ‘5 percent or
11 10 percent, whichever is applicable’ for ‘50 per-
12 cent’)”.

13 (e) EFFECTIVE DATES.—

14 (1) IN GENERAL.—The amendments made by
15 subsection (a) shall apply to dispositions on and
16 after the date of the enactment of this Act.

17 (2) DISTRIBUTIONS.—The amendments made
18 by subsection (b) shall apply to any distribution by
19 a real estate investment trust on or after the date
20 of the enactment of this Act which is treated as a
21 deduction for a taxable year of such trust ending
22 after such date.

23 (3) DEFINITIONS.—The amendments made by
24 subsections (c) and (d) shall take effect on the date
25 of the enactment of this Act.

1 **SEC. 3. UNITED STATES REAL PROPERTY INTEREST.**

2 (a) UNITED STATES REAL PROPERTY INTEREST.—
3 Subparagraph (B) of section 897(c)(1) of the Internal
4 Revenue Code of 1986 is amended by striking all that pre-
5 cedes “(i) as of the date of the disposition” and inserting
6 the following:

7 “(B) EXCLUSION FOR INTEREST IN CER-
8 TAIN CORPORATIONS.—The term ‘United States
9 real property interest’ does not include any in-
10 terest in a corporation (other than a qualified
11 investment entity (as defined in subsection
12 (h)(4)(A)(i)) if—”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall take effect on the date of the enactment
15 of this Act.

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