

113TH CONGRESS
2D SESSION

H. R. 5487

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

SEPTEMBER 16, 2014

Mr. BRADY of Texas (for himself and Mr. CROWLEY) 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 2014”.

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 more

1 than 10 percent of the stock of such real
2 estate investment trust (determined by ap-
3 plying the constructive ownership rules of
4 section 897(c)(6)(C)).

5 “(ii) QUALIFIED SHAREHOLDER.—
6 For purposes of this subparagraph, the
7 term ‘qualified shareholder’ means an enti-
8 ty—

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

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

15 “(III) whose principal class of in-
16 terests is listed and regularly traded
17 on one or more recognized stock ex-
18 changes (as defined in such com-
19 prehensive income tax treaty), and

20 “(IV) that maintains records on
21 the identity of each person who, at
22 any time during the qualified share-
23 holder’s taxable year, is the direct
24 owner of 5 percent or more of the

1 class of interest described in clause
2 (III).

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

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

16 “(II) is designated as a qualified
17 collective investment vehicle by the
18 Secretary and is either—

19 “(aa) fiscally transparent
20 within the meaning of section
21 894, or

22 “(bb) required to include
23 dividends in its gross income, but
24 is entitled to a deduction for dis-
25 tributions to its investors.”.

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

4 (1) by inserting “(10 percent in the case of
5 stock of a real estate investment trust)” after “5
6 percent of such class of stock”, and

7 (2) by inserting “, and any distribution to a
8 qualified shareholder (as defined in subsection
9 (c)(3)(B)(ii)) shall not be treated as gain recognized
10 from the sale or exchange of a United States real
11 property interest to the extent that the stock of the
12 real estate investment trust held by such qualified
13 shareholder is not treated as a United States real
14 property interest under subsection (c)(3)(B)” before
15 the period at the end of the second sentence.

16 (c) DEFINITION.—Subparagraph (B) of section
17 897(h)(4) of the Internal Revenue Code of 1986 is amend-
18 ed by adding at the end the following: “In determining
19 whether a qualified investment entity is domestically con-
20 trolled—

21 “(i) a qualified investment entity shall
22 be permitted to presume that stock held by
23 a holder of less than 5 percent of a class
24 of stock regularly traded on an established
25 securities market in the United States is

1 held by United States persons throughout
2 the testing period except to the extent that
3 the qualified investment entity has actual
4 knowledge regarding stock ownership,

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

8 “(I) any class of stock of which
9 is regularly traded on an established
10 stock exchange, or

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

16 shall be treated as held by a foreign person
17 unless such other qualified investment enti-
18 ty is domestically controlled (as determined
19 under this subparagraph) in which case
20 such stock shall be treated as held by a
21 United States person, and

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

1 ed as held by a United States person to
2 the extent that the stock of such other
3 qualified investment entity is (or is treated
4 under this subparagraph as) held by a
5 United States person.”.

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

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

12 (2) by striking “substituting ‘5 percent’ for ‘50
13 percent’)” and inserting “substituting ‘5 percent or
14 10 percent, whichever is applicable’ for ‘50 per-
15 cent’)”.

16 (e) EFFECTIVE DATES.—

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

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

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

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

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

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

16 (b) EFFECTIVE DATE.—The amendment made by
 17 this section shall take effect on the date of the enactment
 18 of this Act.

19 **SEC. 4. REQUIRED NOTIFICATION OF FIRPTA STATUS.**

20 (a) IN GENERAL.—Section 6039C of the Internal
 21 Revenue Code of 1986 is amended by redesignating sub-
 22 section (d) as subsection (e) and by inserting after sub-
 23 section (c) the following new subsection:

24 “(d) REQUIRED NOTIFICATION OF STATUS AS
 25 UNITED STATES REAL PROPERTY HOLDING CORPORA-

1 TION; PRESUMPTION OF FOREIGN CONTROL FOR QUALI-
2 FIED INVESTMENT ENTITIES.—

3 “(1) REQUIRED NOTIFICATION OF STATUS AS
4 UNITED STATES REAL PROPERTY HOLDING COR-
5 PORATION.—Any United States real property hold-
6 ing corporation (as defined in section 897(c)(2)) is
7 hereby required to make its status as a United
8 States real property holding corporation readily ac-
9 cessible, and in the case of a publicly traded cor-
10 poration, publicly available. Under regulations pre-
11 scribed by the Secretary, such notifications may in-
12 clude disclosure of such status on Form 1099s sent
13 to shareholders, in annual reports, on websites, and,
14 in the case of privately held corporations, on stock
15 certificates.

16 “(2) PRESUMPTION OF FOREIGN CONTROL OF
17 QUALIFIED INVESTMENT ENTITIES.—In the absence
18 of disclosure to the contrary (in such form and man-
19 ner as the Secretary may prescribe), any qualified
20 investment entity (as defined in section
21 897(h)(4)(A)) will be presumed for purposes of sec-
22 tion 897 to be foreign controlled.

23 “(3) PENALTY FOR FAILURE TO MAKE NOTIFI-
24 CATION OF STATUS.—The penalty provided under
25 section 6721 shall apply to any failure to comply

1 with the requirements of paragraph (1), with the fol-
2 lowing modifications—

3 “(A) in the case of a corporation other
4 than a corporation which meets the gross re-
5 ceipts test of section 6721(d)(2), the minimum
6 penalty imposed under such section shall be
7 equal to the maximum penalty provided under
8 section 6721(a)(1),

9 “(B) in the case of a corporation which
10 holds United States real estate with a gross fair
11 market value of at least \$1,000,000,000—

12 “(i) the minimum penalty imposed
13 under such section shall be equal to
14 \$5,000,000, and

15 “(ii) in the case of an intentional fail-
16 ure, the minimum penalty imposed under
17 such section shall be the greater of the
18 penalty provided under section 6721(e) or
19 \$10,000,000.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on the date of the enactment
22 of this Act.

1 **SEC. 5. REQUIRE FIRPTA WITHHOLDING BY BROKERS ON**
2 **SALES BY SHAREHOLDERS OWNING A MORE**
3 **THAN 5 PERCENT INTEREST.**

4 (a) IN GENERAL.—Section 1445(e) of the Internal
5 Revenue Code of 1986 is amended by redesignating para-
6 graph (7) as paragraph (8) and by inserting after para-
7 graph (6) the following new paragraph:

8 “(7) BROKER WITHHOLDING OBLIGATION ON
9 CERTAIN DISPOSITIONS OF NONDOMESTICALLY CON-
10 TROLLED UNITED STATES REAL PROPERTY HOLDING
11 CORPORATIONS.—

12 “(A) IN GENERAL.—In the case of any dis-
13 position of an interest in a United States real
14 property holding corporation (as defined in sec-
15 tion 897(c)(2)) involving a broker (as defined in
16 section 6045(c)), such broker shall be required
17 to deduct and withhold a tax equal to 10 per-
18 cent of the amount realized on the disposition.

19 “(B) EXCEPTIONS.—

20 “(i) DOMESTIC QUALIFIED INVEST-
21 MENT ENTITIES AND REAL ESTATE IN-
22 VESTMENT TRUSTS.—Subparagraph (A)
23 shall not apply to sales of stock of a do-
24 mestically controlled qualified investment
25 entity (as defined in section 897(h)(4)) or
26 stock of a real estate investment trust that

1 is not treated as a United States real prop-
2 erty interest pursuant to section
3 897(c)(3)(B).

4 “(ii) GREATER THAN 5 PERCENT IN-
5 TEREST IN UNITED STATES REAL PROP-
6 ERTY HOLDING CORPORATION.—Subpara-
7 graph (A) shall not apply if the transferee
8 held a greater than 5 percent interest (or
9 in the case of the disposition of any class
10 of stock of a real estate investment trust
11 that is regularly traded on an established
12 securities market, a greater than 10 per-
13 cent interest) in the United States real
14 property holding corporation. In deter-
15 mining whether that threshold is met, bro-
16 kers are permitted to rely on public state-
17 ments made by public companies, including
18 statements related to the status of the
19 company as a United States real property
20 holding corporation or as a domestically
21 controlled qualified investment entity.

22 “(iii) LACK OF BROKER KNOWL-
23 EDGE.—Subparagraph (A) shall apply only
24 if the broker had actual knowledge (or rea-

1 sonably should have known) of their with-
 2 holding obligation.”.

3 (b) CONFORMING AMENDMENT.—Section 1445(b)(6)
 4 of the Internal Revenue Code of 1986 is amended by strik-
 5 ing “This paragraph” and inserting “Except as provided
 6 in subsection (e)(7), this paragraph”.

7 (c) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to dispositions after the date of
 9 the enactment of this Act.

10 **SEC. 6. INTERESTS IN RICS AND REITS NOT EXCLUDED**
 11 **FROM DEFINITION OF UNITED STATES REAL**
 12 **PROPERTY INTERESTS.**

13 (a) IN GENERAL.—Section 897(c)(1)(B) of the Inter-
 14 nal Revenue Code of 1986 is amended by striking “and”
 15 at the end of clause (i), by striking the period at the end
 16 of clause (ii)(II) and inserting “, and”, and by adding at
 17 the end the following new clause:

18 “(iii) neither such corporation nor any
 19 predecessor of such corporation was a reg-
 20 ulated investment company or a real estate
 21 investment company at any time during
 22 the period described in subparagraph
 23 (A)(ii).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to dispositions after the date of
3 the enactment of this Act.

4 **SEC. 7. DIVIDENDS DERIVED FROM RICS AND REITS INELI-**
5 **GIBLE FOR DEDUCTION FOR UNITED STATES**
6 **SOURCE PORTION OF DIVIDENDS FROM CER-**
7 **TAIN FOREIGN CORPORATIONS.**

8 (a) IN GENERAL.—Section 245(a) of the Internal
9 Revenue Code of 1986 is amended by adding at the end
10 the following new paragraph:

11 “(12) DIVIDENDS DERIVED FROM RICS AND
12 REITS INELIGIBLE FOR DEDUCTION.—Regulated in-
13 vestment companies and real estate investment
14 trusts shall not be treated as domestic corporations
15 for purposes of paragraph (5)(B).”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to dividends received from regu-
18 lated investment companies and real estate investment
19 trusts on or after the date of the enactment of this Act.

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