

115TH CONGRESS
2D SESSION

S. 2688

To amend the Internal Revenue Code of 1986 to provide for the indexing
of certain assets for purposes of determining gain or loss.

IN THE SENATE OF THE UNITED STATES

APRIL 17, 2018

Mr. CRUZ (for himself and Mr. INHOFE) 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
for the indexing of certain assets for purposes of deter-
mining gain or loss.

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 “Capital Gains Inflation
5 Relief Act of 2018”.

6 **SEC. 2. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF**
7 **DETERMINING GAIN OR LOSS.**

8 (a) IN GENERAL.—Part II of subchapter O of chap-
9 ter 1 of the Internal Revenue Code of 1986 (relating to
10 basis rules of general application) is amended by redesign-

1 nating section 1023 as section 1024 and by inserting after
 2 section 1022 the following new section:

3 **“SEC. 1023. INDEXING OF CERTAIN ASSETS FOR PURPOSES**
 4 **OF DETERMINING GAIN OR LOSS.**

5 “(a) GENERAL RULE.—

6 “(1) INDEXED BASIS SUBSTITUTED FOR AD-
 7 JUSTED BASIS.—Solely for purposes of determining
 8 gain or loss on the sale or other disposition by a tax-
 9 payer (other than a corporation) of an indexed asset
 10 which has been held for more than 3 years, the in-
 11 dexed basis of the asset shall be substituted for its
 12 adjusted basis.

13 “(2) EXCEPTION FOR DEPRECIATION, ETC.—
 14 The deductions for depreciation, depletion, and am-
 15 ortization shall be determined without regard to the
 16 application of paragraph (1) to the taxpayer or any
 17 other person.

18 “(3) WRITTEN DOCUMENTATION REQUIRE-
 19 MENT.—Paragraph (1) shall apply only with respect
 20 to indexed assets for which the taxpayer has written
 21 documentation of the original purchase price paid or
 22 incurred by the taxpayer to acquire such asset.

23 “(b) INDEXED ASSET.—

24 “(1) IN GENERAL.—For purposes of this sec-
 25 tion, the term ‘indexed asset’ means—

1 “(A) common stock in a C corporation
2 (other than a foreign corporation), or

3 “(B) tangible property,
4 which is a capital asset or property used in the trade
5 or business (as defined in section 1231(b)).

6 “(2) STOCK IN CERTAIN FOREIGN CORPORA-
7 TIONS INCLUDED.—For purposes of this section—

8 “(A) IN GENERAL.—The term ‘indexed
9 asset’ includes common stock in a foreign cor-
10 poration which is regularly traded on an estab-
11 lished securities market.

12 “(B) EXCEPTION.—Subparagraph (A)
13 shall not apply to—

14 “(i) stock of a foreign investment
15 company,

16 “(ii) stock in a passive foreign invest-
17 ment company (as defined in section
18 1296),

19 “(iii) stock in a foreign corporation
20 held by a United States person who meets
21 the requirements of section 1248(a)(2),
22 and

23 “(iv) stock in a foreign personal hold-
24 ing company.

1 “(C) TREATMENT OF AMERICAN DEPOSI-
 2 TORY RECEIPTS.—An American depository re-
 3 ceipt for common stock in a foreign corporation
 4 shall be treated as common stock in such cor-
 5 poration.

6 “(c) INDEXED BASIS.—For purposes of this sec-
 7 tion—

8 “(1) GENERAL RULE.—The indexed basis for
 9 any asset is—

10 “(A) the adjusted basis of the asset, in-
 11 creased by

12 “(B) the applicable inflation adjustment.

13 “(2) APPLICABLE INFLATION ADJUSTMENT.—
 14 The applicable inflation adjustment for any asset is
 15 an amount equal to—

16 “(A) the adjusted basis of the asset, multi-
 17 plied by

18 “(B) the percentage (if any) by which—

19 “(i) the gross domestic product
 20 deflator for the last calendar quarter end-
 21 ing before the asset is disposed of, exceeds

22 “(ii) the gross domestic product
 23 deflator for the last calendar quarter end-
 24 ing before the asset was acquired by the
 25 taxpayer.

1 The percentage under subparagraph (B) shall be
2 rounded to the nearest $\frac{1}{10}$ of 1 percentage point.

3 “(3) GROSS DOMESTIC PRODUCT DEFLATOR.—

4 The gross domestic product deflator for any cal-
5 endar quarter is the implicit price deflator for the
6 gross domestic product for such quarter (as shown
7 in the last revision thereof released by the Secretary
8 of Commerce before the close of the following cal-
9 endar quarter).

10 “(d) SUSPENSION OF HOLDING PERIOD WHERE DI-
11 MINISHED RISK OF LOSS; TREATMENT OF SHORT
12 SALES.—

13 “(1) IN GENERAL.—If the taxpayer (or a re-
14 lated person) enters into any transaction which sub-
15 stantially reduces the risk of loss from holding any
16 asset, such asset shall not be treated as an indexed
17 asset for the period of such reduced risk.

18 “(2) SHORT SALES.—

19 “(A) IN GENERAL.—In the case of a short
20 sale of an indexed asset with a short sale period
21 in excess of 3 years, for purposes of this title,
22 the amount realized shall be an amount equal
23 to the amount realized (determined without re-
24 gard to this paragraph) increased by the appli-
25 cable inflation adjustment. In applying sub-

section (c)(2) for purposes of the preceding sentence, the date on which the property is sold short shall be treated as the date of acquisition and the closing date for the sale shall be treated as the date of disposition.

“(B) SHORT SALE PERIOD.—For purposes of subparagraph (A), the short sale period begins on the day that the property is sold and ends on the closing date for the sale.

“(e) TREATMENT OF REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

“(1) ADJUSTMENTS AT ENTITY LEVEL.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the adjustment under subsection (a) shall be allowed to any qualified investment entity (including for purposes of determining the earnings and profits of such entity).

“(B) EXCEPTION FOR CORPORATE SHAREHOLDERS.—Under regulations—

“(i) in the case of a distribution by a qualified investment entity (directly or indirectly) to a corporation—

“(I) the determination of whether such distribution is a dividend shall be

1 made without regard to this section,
2 and

3 “(II) the amount treated as gain
4 by reason of the receipt of any capital
5 gain dividend shall be increased by the
6 percentage by which the entity’s net
7 capital gain for the taxable year (de-
8 termined without regard to this sec-
9 tion) exceeds the entity’s net capital
10 gain for such year determined with re-
11 gard to this section, and

12 “(ii) there shall be other appropriate
13 adjustments (including deemed distribu-
14 tions) so as to ensure that the benefits of
15 this section are not allowed (directly or in-
16 directly) to corporate shareholders of quali-
17 fied investment entities.

18 For purposes of the preceding sentence, any
19 amount includible in gross income under section
20 852(b)(3)(D) shall be treated as a capital gain
21 dividend and an S corporation shall not be
22 treated as a corporation.

23 “(C) EXCEPTION FOR QUALIFICATION
24 PURPOSES.—This section shall not apply for
25 purposes of sections 851(b) and 856(c).

1 “(D) EXCEPTION FOR CERTAIN TAXES IM-
2 POSED AT ENTITY LEVEL.—

3 “(i) TAX ON FAILURE TO DISTRIBUTE
4 ENTIRE GAIN.—If any amount is subject to
5 tax under section 852(b)(3)(A) for any
6 taxable year, the amount on which tax is
7 imposed under such section shall be in-
8 creased by the percentage determined
9 under subparagraph (B)(i)(II). A similar
10 rule shall apply in the case of any amount
11 subject to tax under paragraph (2) or (3)
12 of section 857(b) to the extent attributable
13 to the excess of the net capital gain over
14 the deduction for dividends paid deter-
15 mined with reference to capital gain divi-
16 dends only. The first sentence of this
17 clause shall not apply to so much of the
18 amount subject to tax under section
19 852(b)(3)(A) as is designated by the com-
20 pany under section 852(b)(3)(D).

21 “(ii) OTHER TAXES.—This section
22 shall not apply for purposes of determining
23 the amount of any tax imposed by para-
24 graph (4), (5), or (6) of section 857(b).

1 “(2) ADJUSTMENTS TO INTERESTS HELD IN
2 ENTITY.—

3 “(A) REGULATED INVESTMENT COMPA-
4 NIES.—Stock in a regulated investment com-
5 pany (within the meaning of section 851) shall
6 be an indexed asset for any calendar quarter in
7 the same ratio as—

8 “(i) the average of the fair market
9 values of the indexed assets held by such
10 company at the close of each month during
11 such quarter, bears to

12 “(ii) the average of the fair market
13 values of all assets held by such company
14 at the close of each such month.

15 “(B) REAL ESTATE INVESTMENT
16 TRUSTS.—Stock in a real estate investment
17 trust (within the meaning of section 856) shall
18 be an indexed asset for any calendar quarter in
19 the same ratio as—

20 “(i) the fair market value of the in-
21 dexed assets held by such trust at the close
22 of such quarter, bears to

23 “(ii) the fair market value of all as-
24 sets held by such trust at the close of such
25 quarter.

1 “(C) RATIO OF 80 PERCENT OR MORE.—If
2 the ratio for any calendar quarter determined
3 under subparagraph (A) or (B) would (but for
4 this subparagraph) be 80 percent or more, such
5 ratio for such quarter shall be 100 percent.

6 “(D) RATIO OF 20 PERCENT OR LESS.—If
7 the ratio for any calendar quarter determined
8 under subparagraph (A) or (B) would (but for
9 this subparagraph) be 20 percent or less, such
10 ratio for such quarter shall be zero.

11 “(E) LOOK-THRU OF PARTNERSHIPS.—For
12 purposes of this paragraph, a qualified invest-
13 ment entity which holds a partnership interest
14 shall be treated (in lieu of holding a partnership
15 interest) as holding its proportionate share of
16 the assets held by the partnership.

17 “(3) TREATMENT OF RETURN OF CAPITAL DIS-
18 TRIBUTIONS.—Except as otherwise provided by the
19 Secretary, a distribution with respect to stock in a
20 qualified investment entity which is not a dividend
21 and which results in a reduction in the adjusted
22 basis of such stock shall be treated as allocable to
23 stock acquired by the taxpayer in the order in which
24 such stock was acquired.

1 “(4) QUALIFIED INVESTMENT ENTITY.—For
 2 purposes of this subsection, the term ‘qualified in-
 3 vestment entity’ means—

4 “(A) a regulated investment company
 5 (within the meaning of section 851), and

6 “(B) a real estate investment trust (within
 7 the meaning of section 856).

8 “(f) OTHER PASS-THRU ENTITIES.—

9 “(1) PARTNERSHIPS.—

10 “(A) IN GENERAL.—In the case of a part-
 11 nership, the adjustment made under subsection
 12 (a) at the partnership level shall be passed
 13 through to the partners.

14 “(B) SPECIAL RULE IN THE CASE OF SEC-
 15 TION 754 ELECTIONS.—In the case of a transfer
 16 of an interest in a partnership with respect to
 17 which the election provided in section 754 is in
 18 effect—

19 “(i) the adjustment under section
 20 743(b)(1) shall, with respect to the trans-
 21 feror partner, be treated as a sale of the
 22 partnership assets for purposes of applying
 23 this section, and

24 “(ii) with respect to the transferee
 25 partner, the partnership’s holding period

1 for purposes of this section in such assets
2 shall be treated as beginning on the date
3 of such adjustment.

4 “(2) S CORPORATIONS.—In the case of an S
5 corporation, the adjustment made under subsection
6 (a) at the corporate level shall be passed through to
7 the shareholders. This section shall not apply for
8 purposes of determining the amount of any tax im-
9 posed by section 1374 or 1375.

10 “(3) COMMON TRUST FUNDS.—In the case of a
11 common trust fund, the adjustment made under sub-
12 section (a) at the trust level shall be passed through
13 to the participants.

14 “(4) INDEXING ADJUSTMENT DISREGARDED IN
15 DETERMINING LOSS ON SALE OF INTEREST IN ENTI-
16 TY.—Notwithstanding the preceding provisions of
17 this subsection, for purposes of determining the
18 amount of any loss on a sale or exchange of an in-
19 terest in a partnership, S corporation, or common
20 trust fund, the adjustment made under subsection
21 (a) shall not be taken into account in determining
22 the adjusted basis of such interest.

23 “(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

24 “(1) IN GENERAL.—This section shall not apply
25 to any sale or other disposition of property between

1 related persons except to the extent that the basis
2 of such property in the hands of the transferee is a
3 substituted basis.

4 “(2) RELATED PERSONS DEFINED.—For pur-
5 poses of this section, the term ‘related persons’
6 means—

7 “(A) persons bearing a relationship set
8 forth in section 267(b), and

9 “(B) persons treated as single employer
10 under subsection (b) or (c) of section 414.

11 “(h) TRANSFERS TO INCREASE INDEXING ADJUST-
12 MENT.—If any person transfers cash, debt, or any other
13 property to another person and the principal purpose of
14 such transfer is to secure or increase an adjustment under
15 subsection (a), the Secretary may disallow part or all of
16 such adjustment or increase.

17 “(i) SPECIAL RULES.—For purposes of this section—

18 “(1) TREATMENT OF IMPROVEMENTS, ETC.—If
19 there is an addition to the adjusted basis of any tan-
20 gible property or of any stock in a corporation dur-
21 ing the taxable year by reason of an improvement to
22 such property or a contribution to capital of such
23 corporation—

24 “(A) such addition shall never be taken
25 into account under subsection (c)(1)(A) if the

1 aggregate amount thereof during the taxable
2 year with respect to such property or stock is
3 less than \$1,000, and

4 “(B) such addition shall be treated as a
5 separate asset acquired at the close of such tax-
6 able year if the aggregate amount thereof dur-
7 ing the taxable year with respect to such prop-
8 erty or stock is \$1,000 or more.

9 A rule similar to the rule of the preceding sentence
10 shall apply to any other portion of an asset to the
11 extent that separate treatment of such portion is ap-
12 propriate to carry out the purposes of this section.

13 “(2) ASSETS WHICH ARE NOT INDEXED ASSETS
14 THROUGHOUT HOLDING PERIOD.—The applicable in-
15 flation adjustment shall be appropriately reduced for
16 periods during which the asset was not an indexed
17 asset.

18 “(3) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a
19 corporation which is not a dividend shall be treated
20 as a disposition.

22 “(4) SECTION CANNOT INCREASE ORDINARY
23 LOSS.—To the extent that (but for this paragraph)
24 this section would create or increase a net ordinary
25 loss to which section 1231(a)(2) applies or an ordi-

1 nary loss to which any other provision of this title
 2 applies, such provision shall not apply. The taxpayer
 3 shall be treated as having a long-term capital loss in
 4 an amount equal to the amount of the ordinary loss
 5 to which the preceding sentence applies.

6 “(5) ACQUISITION DATE WHERE THERE HAS
 7 BEEN PRIOR APPLICATION OF SUBSECTION (a)(1)
 8 WITH RESPECT TO THE TAXPAYER.—If there has
 9 been a prior application of subsection (a)(1) to an
 10 asset while such asset was held by the taxpayer, the
 11 date of acquisition of such asset by the taxpayer
 12 shall be treated as not earlier than the date of the
 13 most recent such prior application.

14 “(j) REGULATIONS.—The Secretary shall prescribe
 15 such regulations as may be necessary or appropriate to
 16 carry out the purposes of this section.”.

17 (b) CLERICAL AMENDMENT.—The table of sections
 18 for part II of subchapter O of chapter 1 of the Internal
 19 Revenue Code of 1986 is amended by striking the item
 20 relating to section 1023 and by inserting after the item
 21 relating to section 1022 the following new item:

 “Sec. 1022. Indexing of certain assets for purposes of determining gain or loss.
 “Sec. 1023. Cross references.”.

22 (c) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to indexed assets acquired by the

- 1 taxpayer after December 31, 2018, in taxable years ending
- 2 after such date.

