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114TH CONGRESS
1ST SESSION

S. 915

[Report No. 114–25]

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 SENATE OF THE UNITED STATES

APRIL 14, 2015

Mr. HATCH, from the Committee on Finance, reported the following original bill; which was read twice and placed on the calendar

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Real Estate Investment and Jobs Act of 2015".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

(a) MODIFICATIONS OF OWNERSHIP RULES.—

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

''(k) SPECIAL RULES RELATING TO REAL ESTATE INVESTMENT TRUSTS.—

''(1) INCREASE IN PERCENTAGE OWNERSHIP FOR EXCEPTIONS FOR PERSONS HOLDING PUBLICLY TRADED STOCK.—

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

''(B) DISTRIBUTIONS.—In the case of any distribution from a real estate investment trust, subsection (h)(1) shall be applied by substituting '10 percent' for '5 percent'.

"(2) STOCK HELD BY QUALIFIED SHAREHOLDERS NOT TREATED AS USRPI.—

"(A) IN GENERAL.—Except as provided in subparagraph (B)—

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

"(ii) notwithstanding subsection (h)(1), any distribution to a qualified shareholder shall not be treated as gain recognized from the sale or exchange of a United States real property interest to the extent the stock of the real estate investment trust held by such qualified shareholder is not treated as a United States real property interest under clause (i).

"(B) EXCEPTION.—In the case of a qualified shareholder with 1 or more applicable investors—

"(i) subparagraph (A)(i) shall not apply to so much of the stock of a real estate investment trust held by a qualified shareholder as bears the same ratio to the amount of the interests (other than inter-

ests held solely as a creditor) held by such applicable investors in the qualified shareholder bears to all such interests in the qualified shareholder, and

"(ii) a percentage equal to the ratio determined under clause (i) of the amounts realized by the qualified shareholder with respect to any disposition of stock in the real estate investment trust or with respect to any distribution from the real estate investment trust attributable to gain from sales or exchanges of a United States real property interest shall be treated as amounts realized from the disposition of United States real property interests.

"(C) APPLICABLE INVESTOR.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'applicable investor' means, with respect to any qualified shareholder holding stock in a real estate investment trust, a person (other than a qualified shareholder) which—

"(I) holds an interest (other than an interest solely as a creditor) in such qualified shareholder, and

"(II) holds more than 10 percent of the stock of such real estate investment trust (whether or not by reason of the person's ownership interest in the qualified shareholder).

"(ii) CONSTRUCTIVE OWNERSHIP RULES.—For purposes of this subparagraph, the constructive ownership rules under subsection (c)(6)(C) shall apply.

"(3) QUALIFIED SHAREHOLDER.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified shareholder' means a foreign person—

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

"(ii) which is a qualified collective investment vehicle,

"(iii) the principal class of interests of which is listed and regularly traded on 1 or more recognized stock exchanges (as de-

fined in such comprehensive income tax treaty), and

"(iv) which maintains records on the identity of each person who, at any time during the foreign person's taxable year, holds directly more than 10 percent of the class of interest described in clause (iii).

"(B) QUALIFIED COLLECTIVE INVESTMENT VEHICLE.—For purposes of this subsection, the term 'qualified collective investment vehicle' means a foreign person—

"(i) which, under the comprehensive income tax treaty described in subparagraph (A)(i), is eligible for a reduced rate of withholding with respect to ordinary dividends paid by a real estate investment trust and continues to be so eligible even if such person holds more than 10 percent of the stock of such real estate investment trust,

"(ii) which, if such person were a United States person, would be classified as a United States real property holding corporation (determined without regard to paragraph (2)) at any time during the 5-

year period ending on the date of any disposition of, or distribution with respect to, the person's interests in a real estate investment trust, or

"(iii) which is designated as a qualified collective investment vehicle by the Secretary and is either—

"(I) fiscally transparent within the meaning of section 894, or

"(II) required to include dividends in its gross income, but entitled to a deduction for distributions to persons holding interests (other than interests solely as a creditor) in such foreign person.".

(2) CONFORMING AMENDMENTS.—

(A) Section 897(c)(1)(A) is amended by inserting "or subsection (k)" after "subparagraph (B)" in the matter preceding clause (i).

(B) Section 857(b)(3)(F) is amended by inserting "or section 897(k)(2)(A)(ii)" after "897(h)(1)".

(b) DETERMINATION OF DOMESTIC CONTROL.—

(1) SPECIAL OWNERSHIP RULES.—

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

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

"(i) in the case of any class of stock of the qualified investment entity which is regularly traded on an established securities market in the United States, a person holding less than 5 percent of such class of stock at all times during the testing period shall be treated as a United States person unless the qualified investment entity has actual knowledge that such person is not a United States person,

"(ii) any stock in the qualified investment entity held by another qualified investment entity—

"(I) any class of stock of which is regularly traded on an established securities market, or

"(II) which is a regulated investment company which issues redeemable securities (within the meaning of

section 2 of the Investment Company Act of 1940),

shall be treated as held by a foreign person, except that if such other qualified investment entity is domestically controlled (determined after application of this subparagraph), such stock shall be treated as held by a United States person, and

''(iii) any stock in the qualified investment entity held by any other qualified investment entity not described in subclause (I) or (II) of clause (ii) shall only be treated as held by a United States person in proportion to the stock of such other qualified investment entity which is (or is treated under clause (ii) or (iii) as) held by a United States person.''.

(B) CONFORMING AMENDMENT.—The heading for paragraph (4) of section 897(h) is amended by inserting ''AND SPECIAL RULES'' after ''DEFINITIONS''.

(2) TECHNICAL AMENDMENT.—Clause (ii) of section 897(h)(4)(A) is amended by inserting ''and for purposes of determining whether a real estate investment trust is a domestically controlled qualified

investment entity under this subsection'' after ''real estate investment trust''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall take effect on the date of enactment and shall apply to—

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

(B) any distribution by a real estate investment trust on or after the date of the enactment of this Act which is treated as a deduction for a taxable year of such trust ending after such date.

(2) DETERMINATION OF DOMESTIC CONTROL.—The amendments made by subsection (b)(1) shall take effect on the date of the enactment of this Act.

(3) TECHNICAL AMENDMENT.—The amendment made by subsection (b)(2) shall take effect on January 1, 2015.

SEC. 3. INCREASE IN RATE OF WITHHOLDING OF TAX ON DISPOSITIONS OF UNITED STATES REAL PROPERTY INTERESTS.

(a) IN GENERAL.—Subsections (a), (e)(3), (e)(4), and (e)(5) of section 1445 are each amended by striking ''10 percent'' and inserting ''15 percent''.

(b) EXCEPTION FOR CERTAIN RESIDENCES.—Section 1445(c) is amended by adding at the end the following new paragraph:

"(4) REDUCED RATE OF WITHHOLDING FOR RESIDENCE WHERE AMOUNT REALIZED DOES NOT EXCEED $1,000,000.—In the case of a disposition—

"(A) of property which is acquired by the transferee for use by the transferee as a residence,

"(B) with respect to which the amount realized for such property does not exceed $1,000,000, and

"(C) to which subsection (b)(5) does not apply,

subsection (a) shall be applied by substituting '10 percent' for '15 percent'.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions after the date which is 60 days after the date of the enactment of this Act.

SEC. 4. REQUIRED NOTIFICATION OF STATUS AS UNITED STATES REAL PROPERTY HOLDING CORPORATION.

(a) NOTIFICATION OF STATUS AS UNITED STATES REAL PROPERTY HOLDING CORPORATION.—

(1) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 is amended by inserting before section 6039C the following new section:

"SEC. 6039B. NOTIFICATION OF STATUS AS UNITED STATES REAL PROPERTY HOLDING CORPORATION.

"(a) IN GENERAL.—Any corporation which is a United States real property holding corporation shall make the following notifications:

"(1) DISCLOSURE TO THE SECRETARY.—Not later than the due date for its return of tax (including extensions) for the taxable year, the corporation shall disclose the information described in subsection (b) to the Secretary in such form and manner as the Secretary may require.

"(2) DISCLOSURE ON PAYEE STATEMENTS.—The corporation shall include on any statement required to be made under section 6042(c) the information described in subsection (b).

"(3) DISCLOSURE TO THE PUBLIC.—The corporation shall disclose to the public the information described in subsection (b)—

"(A) in any annual report made by such corporation, or

"(B) in the case of a corporation which does not file an annual report for any year, on

its website or through such other media as determined appropriate by the Secretary in the interests of tax administration.

"(b) INFORMATION DESCRIBED.—The information described in this subsection is—

"(1) a statement that such corporation is a United States real property holding corporation, and

"(2) such other information as may be required by the Secretary.

"(c) UNITED STATES REAL PROPERTY HOLDING CORPORATION.—

"(1) IN GENERAL.—For purposes of this section, a corporation is a United States real property holding corporation if—

"(A) such corporation meets the requirements of section 897(c)(2) at any time during the applicable period, or

"(B) any officer of such corporation has actual knowledge that such corporation meets such requirements at any time during the period beginning on the first day after the end of the applicable period and ending on the date the notification required under subsection (a) is made.

"(2) APPLICABLE PERIOD.—For purposes of paragraph (1), the applicable period is—

"(A) in the case of any notice required under subsection (a)(1), the 5-year period ending on the last day of the taxable year for which a disclosure was required to be made under such subsection,

"(B) in the case of any notice required under subsection (a)(2), the 5-year period ending on the last day of the calendar year for which a disclosure was required to be made under such subsection, and

"(C) in the case of any notice required under subsection (a)(3), the 5-year period ending on the last day of the year for which a disclosure was required to be made under such subsection.

"(d) APPLICATION TO PUBLICLY TRADED PARTNERSHIPS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (a) shall apply to any publicly traded partnership (as defined in section 7704(b)) which—

"(1) is not treated as a corporation under section 7704(a), and

"(2) would be a United States real property holding corporation if such publicly traded partnership were a corporation.".

(2) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by inserting before the item relating to section 6039C the following new item:

"Sec. 6039B. Notification of status as United States real property holding corporation.".

(b) NOTIFICATION OF DOMESTIC CONTROL.—Subparagraph (B) of section 897(h)(4) is amended by adding at the end the following new sentence: "Notwithstanding the preceding sentence, a qualified investment entity shall not be treated as a domestically controlled qualified investment entity for any period unless such entity makes a disclosure that such entity is domestically controlled on any annual report made by such entity on or after January 1, 2016 (or, in the case of an entity which does not file an annual report for the year, on its website or through such other media as determined appropriate by the Secretary in the interests of tax administration).".

(c) PENALTY FOR FAILURE TO MAKE NOTIFICATION OF STATUS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 is amended by adding at the end the following new section:

"SEC. 6720D. FAILURE TO MAKE NOTIFICATION OF STATUS AS UNITED STATES REAL PROPERTY HOLDING COMPANY.

"(a) IN GENERAL.—Any person required to make a notification under section 6039B who—

"(1) fails to disclose to the Secretary the information required under section 6039B(a)(1) for any taxable year,

"(2) fails to substantially comply with the requirements of section 6039B(a)(2) for any calendar year, or

"(3) fails to make the disclosure required under section 6039B(a)(3) for any year,

shall pay a penalty with respect to each such failure in the amount determined under subsection (b).

"(b) AMOUNT OF PENALTY.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amount of the penalty under this subsection shall be $1,500,000.

"(2) LOWER PENALTY FOR PERSONS WITH GROSS RECEIPTS OF NOT MORE THAN $5,000,000.—

"(A) IN GENERAL.—In the case of a person who meets the gross receipts test under subparagraph (B), the amount of the penalty under this subsection shall be $500,000.

"(B) GROSS RECEIPTS TEST.—

"(i) IN GENERAL.—A person meets the gross receipts test of this subparagraph for any calendar year if the average annual gross receipts of such person for the most recent 5 taxable years ending before such calendar year do not exceed $5,000,000.

"(ii) CERTAIN RULES MADE APPLICABLE.—For purposes of clause (i), rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply.

"(3) HIGHER PENALTY FOR PERSONS WITH LARGE UNITED STATES REAL PROPERTY INTERESTS.—

"(A) IN GENERAL.—In the case of a person described in subparagraph (C), the amount of the penalty under this subsection shall be $5,000,000.

"(B) INTENTIONAL DISREGARD.—If a failure is due to intentional disregard, subparagraph (A) shall be applied by substituting '$10,000,000' for '$5,000,000'.

"(C) PERSON DESCRIBED.—

"(i) IN GENERAL.—A person is described in this subparagraph if such person has United States real property interests

(as defined in section 897(c)) with a gross fair market value of $1,000,000,000 or more at any time during the applicable period (as defined in section 6039B(b)(2)).

"(ii) AGGREGATION RULES.—For purposes of this paragraph, rules similar to the rules of paragraph (2) of section 448(c) shall apply.

"(c) COORDINATION WITH PENALTY FOR FAILURE TO FILE CORRECT PAYEE STATEMENTS.—No penalty shall be imposed under section 6722 with respect to any failure to comply with the requirements of section 6039B(a)(2) if a penalty is imposed under subsection (a)(2) with respect to such failure.

"(d) REASONABLE CAUSE WAIVER.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

"(e) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any failure relating to a notice required to be made in a calendar year beginning after 2016, each of the dollar amounts under subsection (b) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3), deter-

mined by substituting 'calendar year 2015' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) ROUNDING.—If any amount adjusted under paragraph (1) is not a multiple of $10,000, such amount shall be rounded to the next lowest multiple of $10,000.".

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end the following new item:

"Sec. 6720D. Failure to make notification of status as United States real property holding company.".

(d) EFFECTIVE DATES.—

(1) NOTIFICATION.—The amendments made by subsections (a) and (b) shall take effect on January 1, 2016.

(2) PENALTIES.—The amendments made by subsection (c) shall apply to notifications required to be made on or after January 1, 2016.

SEC. 5. REQUIRED WITHHOLDING BY BROKERS ON SALES BY SHAREHOLDERS OWNING A MORE THAN 5 PERCENT INTEREST.

(a) IN GENERAL.—Section 1445(e) is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

"(7) BROKER WITHHOLDING OBLIGATION ON DISPOSITIONS OF CERTAIN INTERESTS IN UNITED STATES REAL PROPERTY HOLDING CORPORATIONS AND PUBLICLY TRADED PARTNERSHIPS.—

"(A) IN GENERAL.—In the case of any disposition of stock of a United States real property holding corporation by a foreign person in which the disposition is made through a broker (as defined in section 6045(c)), such broker shall be required to deduct and withhold a tax equal to 15 percent of the amount realized on the disposition.

"(B) EXCEPTIONS.—

"(i) AMOUNTS WITHHELD BY TRANSFEREE.—Subparagraph (A) shall not apply to any disposition if—

"(I) the transferee is required to deduct and withhold tax under subsection (a), and

"(II) the transferee furnishes to the broker an affidavit, under penalty of perjury, that the transferee has deducted and withheld such tax.

"(ii) INTERESTS REGULARLY TRADED ON AN ESTABLISHED SECURITIES MAR-

KET.—Subparagraph (A) shall not apply to any disposition of any class of stock of a United States real property holding corporation which is regularly traded on an established securities market if the transferor, immediately prior to the disposition, holds 5 percent (10 percent in the case of a real estate investment trust) or less of such class of stock (determined under the rules of section 897(c)(6)(C)).

"(iii) DOMESTICALLY CONTROLLED QUALIFIED INVESTMENT ENTITIES AND REAL ESTATE INVESTMENT TRUSTS.—Subparagraph (A) shall not apply to dispositions of stock of—

"(I) any domestically controlled qualified investment entity (as defined in section 897(h)(4)), or

"(II) any real estate investment trust to the extent that such stock is not treated as a United States real property interest pursuant to section 897(k)(2).

"(iv) INTERESTS IN CERTAIN CORPORATIONS.—Subparagraph (A) shall not

apply to any disposition of stock in a United States real property holding corporation if such stock is not treated as a United States real property interest by reason of section 897(c)(1)(B).

"(v) LACK OF BROKER KNOWLEDGE.—

"(I) IN GENERAL.—Subparagraph (A) shall not apply if the broker had no knowledge, and reasonably could not have been expected to have knowledge, that the disposition was of stock in a United States real property holding corporation.

"(II) SPECIAL RULE.—For purposes of subclause (I), a broker may rely on public statements made by a public company, including statements related to the status of the company as a United States real property holding corporation or as a domestically controlled qualified investment entity.

"(C) APPLICATION TO PUBLICLY TRADED PARTNERSHIPS.—Under regulations prescribed by the Secretary, rules similar to the rules of

subparagraphs (A) and (B) shall apply to the disposition through a broker of any interest in a publicly traded partnership (as defined in section 7704(b)) which—

"(i) is not treated as a corporation under section 7704(a), and

"(ii) would be a United States real property holding corporation if such publicly traded partnership were a corporation.

"(D) UNITED STATES REAL PROPERTY HOLDING CORPORATION.—For purposes of this paragraph, the term 'United States real property holding corporation' means any corporation which was a United States real property holding corporation (as defined in section 897(c)(2)) at any time during the 5-year period ending on the date of the disposition referred to in subparagraph (A).".

(b) CONFORMING AMENDMENT.—Section 1445(b)(6) is amended by striking "This paragraph" and inserting "Except as provided in subsection (e)(7), this paragraph".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions after December 31, 2015.

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

(a) IN GENERAL.—Section 897(c)(1)(B) is amended by striking ''and'' at the end of clause (i), by striking the period at the end of clause (ii)(II) and inserting '', and'', and by adding at the end the following new clause:

''(iii) neither such corporation nor any predecessor of such corporation was a regulated investment company or a real estate investment trust at any time during the shorter of the periods described in subparagraph (A)(ii).''.

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

SEC. 7. DIVIDENDS DERIVED FROM RICS AND REITS INELIGIBLE FOR DEDUCTION FOR UNITED STATES SOURCE PORTION OF DIVIDENDS FROM CERTAIN FOREIGN CORPORATIONS.

(a) IN GENERAL.—Section 245(a) is amended by adding at the end the following new paragraph:

''(12) DIVIDENDS DERIVED FROM RICS AND REITS INELIGIBLE FOR DEDUCTION.—Regulated investment companies and real estate investment

trusts shall not be treated as domestic corporations for purposes of paragraph (5)(B).''.

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

(c) NO INFERENCE.—Nothing contained in this section or the amendments made by this section shall be construed to create any inference with respect to the proper treatment under section 245 of the Internal Revenue Code of 1986 of dividends received from regulated investment companies or real estate investment trusts before the date of the enactment of this Act.

SEC. 8. INCREASE IN CONTINUOUS LEVY.

(a) IN GENERAL.—Paragraph (3) of section 6331(h) of the Internal Revenue Code of 1986 is amended by striking ''30 percent'' and inserting ''35 percent''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after 180 days after the date of the enactment of this Act.

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