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(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. R. _____

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

Mr. BRADY of Texas introduced the following bill; which was referred to the Committee on _____

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; ETC.**

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

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment
2 to, or repeal of, a section or other provision, the reference
3 shall be considered to be made to a section or other provi-
4 sion of the Internal Revenue Code of 1986.

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

7 (a) MODIFICATIONS OF OWNERSHIP RULES.—

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

10 “(k) SPECIAL RULES RELATING TO REAL ESTATE
11 INVESTMENT TRUSTS.—

12 “(1) INCREASE IN PERCENTAGE OWNERSHIP
13 FOR EXCEPTIONS FOR PERSONS HOLDING PUBLICLY
14 TRADED STOCK.—

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

20 “(B) DISTRIBUTIONS.—In the case of any
21 distribution from a real estate investment trust,
22 subsection (h)(1) shall be applied by sub-
23 stituting ‘10 percent’ for ‘5 percent’.

24 “(2) STOCK HELD BY QUALIFIED SHARE-
25 HOLDERS NOT TREATED AS USRPI.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B)—

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

7 “(ii) notwithstanding subsection
8 (h)(1), any distribution to a qualified
9 shareholder shall not be treated as gain
10 recognized from the sale or exchange of a
11 United States real property interest to the
12 extent the stock of the real estate invest-
13 ment trust held by such qualified share-
14 holder is not treated as a United States
15 real property interest under clause (i).

16 “(B) EXCEPTION.—In the case of a quali-
17 fied shareholder with 1 or more applicable in-
18 vestors—

19 “(i) subparagraph (A)(i) shall not
20 apply to so much of the stock of a real es-
21 tate investment trust held by a qualified
22 shareholder as bears the same ratio to the
23 value of the interests (other than interests
24 held solely as a creditor) held by such ap-
25 plicable investors in the qualified share-

1 holder bears to value of all interests (other
2 than interests held solely as a creditor) in
3 the qualified shareholder, and

4 “(ii) a percentage equal to the ratio
5 determined under clause (i) of the amounts
6 realized by the qualified shareholder with
7 respect to any disposition of stock in the
8 real estate investment trust or with respect
9 to any distribution from the real estate in-
10 vestment trust attributable to gain from
11 sales or exchanges of a United States real
12 property interest shall be treated as
13 amounts realized from the disposition of
14 United States real property interests.

15 “(C) APPLICABLE INVESTOR.—For pur-
16 poses of this paragraph, the term ‘applicable in-
17 vestor’ means, with respect to any qualified
18 shareholder holding stock in a real estate in-
19 vestment trust, a person (other than a qualified
20 shareholder) which—

21 “(i) holds an interest (other than an
22 interest solely as a creditor) in such quali-
23 fied shareholder, and

24 “(ii) holds more than 10 percent of
25 the stock of such real estate investment

1 trust (whether or not by reason of the per-
2 son's ownership interest in the qualified
3 shareholder).

4 “(D) CONSTRUCTIVE OWNERSHIP
5 RULES.—For purposes of subparagraphs (B)(i)
6 and (C), the constructive ownership rules under
7 subsection (c)(6)(C) shall apply.

8 “(3) QUALIFIED SHAREHOLDER.—For purposes
9 of this subsection—

10 “(A) IN GENERAL.—The term ‘qualified
11 shareholder’ means a foreign person—

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

16 “(ii) which is a qualified collective in-
17 vestment vehicle,

18 “(iii) the principal class of interests of
19 which is listed and regularly traded on 1 or
20 more recognized stock exchanges (as de-
21 fined in such comprehensive income tax
22 treaty), and

23 “(iv) which maintains records on the
24 identity of each person who, at any time
25 during the foreign person's taxable year,

1 holds directly 5 percent or more of the
2 class of interest described in clause (iii).

3 “(B) QUALIFIED COLLECTIVE INVEST-
4 MENT VEHICLE.—For purposes of this sub-
5 section, the term ‘qualified collective investment
6 vehicle’ means a foreign person—

7 “(i) which, under the comprehensive
8 income tax treaty described in subpara-
9 graph (A)(i), is eligible for a reduced rate
10 of withholding with respect to ordinary
11 dividends paid by a real estate investment
12 trust even if such person holds more than
13 10 percent of the stock of such real estate
14 investment trust, or

15 “(ii) which is designated as a qualified
16 collective investment vehicle by the Sec-
17 retary and is either—

18 “(I) fiscally transparent within
19 the meaning of section 894, or

20 “(II) required to include divi-
21 dends in its gross income, but entitled
22 to a deduction for distributions to per-
23 sons holding interests (other than in-
24 terests solely as a creditor) in such
25 foreign person.”.

1 (2) CONFORMING AMENDMENTS.—

2 (A) Section 897(c)(1)(A) is amended by in-
3 serting “or subsection (k)” after “subparagraph
4 (B)” in the matter preceding clause (i).

5 (B) Section 857(b)(3)(F) is amended by
6 inserting “or section 897(k)(2)(A)(ii)” after
7 “897(h)(1)”.

8 (b) DETERMINATION OF DOMESTIC CONTROL.—

9 (1) SPECIAL OWNERSHIP RULES.—

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

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

16 “(i) in the case of any class of stock
17 of the qualified investment entity which is
18 regularly traded on an established securi-
19 ties market in the United States, a person
20 holding less than 5 percent of such class of
21 stock at all times during the testing period
22 shall be treated as a United States person
23 unless the qualified investment entity has
24 actual knowledge that such person is not a
25 United States person,

1 “(ii) any stock in the qualified invest-
2 ment entity held by another qualified in-
3 vestment entity—

4 “(I) any class of stock of which
5 is regularly traded on an established
6 securities market, or

7 “(II) which is a regulated invest-
8 ment company which issues redeem-
9 able securities (within the meaning of
10 section 2 of the Investment Company
11 Act of 1940),

12 shall be treated as held by a foreign per-
13 son, except that if such other qualified in-
14 vestment entity is domestically controlled
15 (determined after application of this sub-
16 paragraph), such stock shall be treated as
17 held by a United States person, and

18 “(iii) any stock in the qualified invest-
19 ment entity held by any other qualified in-
20 vestment entity not described in subclause
21 (I) or (II) of clause (ii) shall only be treat-
22 ed as held by a United States person in
23 proportion to the stock of such other quali-
24 fied investment entity which is (or is treat-

1 ed under clause (ii) or (iii) as) held by a
2 United States person.”.

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

7 (2) TECHNICAL AMENDMENT.—Clause (ii) of
8 section 897(h)(4)(A) is amended by inserting “and
9 for purposes of determining whether a real estate in-
10 vestment trust is a domestically controlled qualified
11 investment entity under this subsection” after “real
12 estate investment trust”.

13 (c) EFFECTIVE DATES.—

14 (1) IN GENERAL.—The amendments made by
15 subsection (a) shall take effect on the date of enact-
16 ment and shall apply to—

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

19 (B) any distribution by a real estate in-
20 vestment trust on or after the date of the en-
21 actment of this Act which is treated as a deduc-
22 tion for a taxable year of such trust ending
23 after such date.

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

4 (3) TECHNICAL AMENDMENT.—The amendment
5 made by subsection (b)(2) shall take effect on Janu-
6 ary 1, 2015.

7 **SEC. 3. EXCEPTION FOR INTERESTS HELD BY FOREIGN RE-**
8 **TIREMENT OR PENSION FUNDS.**

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

11 “(k) EXCEPTION FOR INTERESTS HELD BY FOREIGN
12 PENSION FUNDS.—

13 “(1) IN GENERAL.—This section shall not apply
14 to any United States real property interest held
15 by—

16 “(A) a qualified foreign pension fund, or

17 “(B) any entity all of the interests of
18 which are held by a qualified foreign pension
19 fund.

20 “(2) QUALIFIED FOREIGN PENSION FUND.—

21 For purposes of this subsection, the term ‘qualified
22 foreign pension fund’ means any trust, corporation,
23 or other organization or arrangement—

1 “(A) which is created or organized under
2 the law of a country other than the United
3 States,

4 “(B) which is established to provide retire-
5 ment or pension benefits to participants or
6 beneficiaries that are current or former employ-
7 ees (or persons designated by such employees)
8 of one or more employers in consideration for
9 services rendered,

10 “(C) which does not have a single partici-
11 pant or beneficiary with a right to more than
12 five percent of its assets or income,

13 “(D) which is subject to government regu-
14 lation and provides annual information report-
15 ing about its beneficiaries to the relevant tax
16 authorities in the country in which it is estab-
17 lished or operates, and

18 “(E) with respect to which, under the laws
19 of the country in which it is established or oper-
20 ates—

21 “(i) contributions to such trust, cor-
22 poration, organization, or arrangement
23 which would otherwise be subject to tax
24 under such laws are deductible or excluded

1 from the gross income of such entity or
2 taxed at a reduced rate, or

3 “(ii) taxation of any investment in-
4 come of such trust, corporation, organiza-
5 tion or arrangement is deferred or such in-
6 come is taxed at a reduced rate.

7 “(3) REGULATIONS.—The Secretary shall pre-
8 scribe such regulations as may be necessary or ap-
9 propriate to carry out the purposes of this sub-
10 section.”.

11 (b) EXEMPTION FROM WITHHOLDING.—Section
12 1445(f)(3) is amended by striking “any person” and all
13 that follows and inserting the following: “any person other
14 than—

15 “(A) a United States person, and

16 “(B) except as otherwise provided by the
17 Secretary, an entity with respect to which sec-
18 tion 897 does not apply by reason of subsection
19 (k) thereof.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to dispositions and distributions
22 after the date of the enactment of this Act.