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REAL ESTATE INVESTMENT AND JOBS ACT OF 2015

APRIL 14, 2015.—Ordered to be printed

Mr. HATCH, from the Committee on Finance, submitted the following

R E P O R T

[To accompany S. 915]

The Committee on Finance, having considered an original bill, S. 915, 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, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

49–010

I. LEGISLATIVE BACKGROUND

The Committee on Finance, having considered S. 915, the "Real Estate Investment and Jobs Act of 2015" 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, reports favorably thereon without amendment and recommends that the bill do pass.

Background and need for legislative action

Background.—Based on a proposal recommended by Senators Menendez and Enzi, the Committee on Finance marked up original legislation (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), on February 11, 2015, and, with a majority present, ordered the bill favorably reported.

The bill contains some provisions that are similar to the following bills introduced by Senator Menendez:

In the 113th Congress, S. 1181, cosponsored by Senators Enzi, Schumer, Barrasso, Begich, Boozman, Bennett, Cornyn, Boxer, Crapo, Cantwell, Isakson, Cardin, Roberts, Carper, Thune, Coons, Gillibrand, Hagan, Nelson, Shaheen, Stabenow, Tester, and Wyden; and

In the 112th Congress, S. 1616, cosponsored by Senator Enzi.

Need for legislative action.—It is essential to increase foreign investment in U.S. real estate. Increased investment in building and infrastructure will create American jobs. Increased investment will also provide equity capital for existing U.S. real estate ventures that have outstanding loans that are maturing, and will thus reduce the potential for foreclosures. The Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA") contains tax rules that impose significant penalties on foreign investment in domestic real estate through REITs that do not exist in other types of U.S. corporate investments such as corporate stocks and bonds.

At the same time, there are weaknesses in the ability to collect FIRPTA tax that is due. Increasing the ability to collect such tax can partially offset the estimated budget cost of the needed legislation. Certain other provisions related to the use of REITs and RICs should also be modified, to provide more appropriate treatment for such entities, which deduct distributions to their shareholders and thus generally do not pay U.S. tax on income or gain.

In addition, it has been reported that many thousands of Medicare providers and suppliers have outstanding Federal employment and income tax liability, which contribute to the tax gap. The permissible percentage of payments to a Medicare provider subject to levy should be increased.

II. EXPLANATION OF THE BILL

A. Background and Present Law Relating to Real Estate Investment Trusts (REITs), Regulated Investment Companies (RICs), and the Foreign Investment in Real Property Tax Act (FIRPTA)

General rules relating to FIRPTA

A foreign person that is not engaged in the conduct of a trade or business in the United States (and is not an individual who is present in the U.S. at least 183 days in the year) generally is not subject to any U.S. tax on capital gain from U.S. sources, including capital gain from the sale of stock or of other capital assets.[1]

However, the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA")[2] generally treats a foreign person's gain or loss from the disposition of a U.S. real property interest ("USRPI") as income that is effectively connected with the conduct of a U.S. trade or business, and thus taxable at the income tax rates applicable to U.S. persons, including the rates for net capital gain.[3] With certain exceptions, if a foreign corporation distributes a USRPI, gain is recognized on the distribution (including a distribution in redemption or liquidation) of a USRPI, in an amount equal to the excess of the fair market value of the USRPI (as of the time of distribution) over its adjusted basis.[4] A foreign person subject to tax on this income is required to file a U.S. tax return under the normal rules relating to receipt of income effectively connected with a U.S. trade or business.[5] In the case of a foreign corporation, the gain from the disposition or distribution of a USRPI may also be subject to the branch profits tax at a 30-percent rate (or lower treaty rate).

The payer of amounts that FIRPTA treats as effectively connected with a U.S. trade or business ("FIRPTA income") to a foreign person generally is required to withhold U.S. tax from the payment. Withholding generally is 10 percent of the sales price, in the case of a direct sale by the foreign person of a USRPI (but withholding is not required in certain cases, including on any sale of stock that is regularly traded on an established securities mar-

[1] Secs. 871(b), 882(a). Property is treated as held by a person for use in connection with the conduct of a trade or business in the United States, even if not so held at the time of sale, if it was so held within 10 years prior to the sale (sec. 864(c)(7)). Also, all gain from an installment sale is treated as from the sale of property held in connection with the conduct of such a trade or business if the property was so held during the year in which the installment sale was made, even if the recipient of the payments is no longer engaged in the conduct of such trade or business when the payments are received. Sec. 864(c)(6). Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

[2] Pub. L. No. 96–499. The rules governing the imposition and collection of tax under FIRPTA are contained in a series of provisions enacted in 1980 and subsequently amended. See secs. 897, 1445, 6039C, and 6652(f).

[3] Except to the extent otherwise provided in regulations, gain is recognized notwithstanding any nonrecognition provision unless the USPRI is exchanged for other property that would be subject U.S. taxation on sale. Sec. 897(e).

[4] Except to the extent otherwise provided in regulations, gain is recognized on the distribution of a USRPI from such foreign corporation notwithstanding any other provision of Chapter 1 of the Code (e.g, notwithstanding any otherwise applicable nonrecognition provision), unless the distributee would be subject to U.S, tax on subsequent disposition of the property and the basis of the distributed USRPI is no greater than the basis prior to the distribution, increased by any gain recognized on the distribution, or unless nonrecognition is otherwise permitted under regulations under section 897(e)(2). Sec. 897(d).

[5] Sec. 897(a). In addition, section 6039C authorizes regulations that would require a return reporting foreign direct investments in U.S. real property interests. No such regulations have been issued, however.

ket),[6] and 10 percent of the amount realized by the foreign shareholder in the case of certain distributions by a corporation that is or has been a U.S. real property holding corporation during the applicable testing period.[7] The withholding is generally 35 percent of the amount of a distribution to a foreign person of net proceeds attributable to the sale of a USPRI from an entity such as a partnership, real estate investment trust ("REIT") or regulated investment company ("RIC").[8] The foreign person can request a refund with its U.S. tax return, if appropriate, based on that person's total U.S. effectively connected income and deductions (if any) for the taxable year.

U.S. real property holding corporations and five-percent public shareholder exception

USRPIs include not only interests in real property located in the United States or the U.S. Virgin Islands, but also stock of a domestic U.S. real property holding corporation ("USRPHC"), generally defined as any corporation, unless the taxpayer establishes that the fair market value[9] of the corporation's USRPIs was less than 50 percent of the combined fair market value of all its real property interests (U.S. and worldwide) and of all its assets used or held for use in a trade or business, at all times during a "testing period," which is the shorter of the duration of the taxpayer's ownership of the stock since June 18, 1980, or the five-year period ending on the date of disposition of the stock.[10]

Under an exception, even if a corporation[11] were a USRPHC, a shareholder's shares of a class of stock that is regularly traded on

[6] Sec. 1445(b). Other excepted circumstances include the sale of a personal residence where the amount realized does not exceed $300,000.

[7] Sec. 1445(e)(3). Withholding at 10 percent of a gross amount may also apply in certain other circumstances under regulations. See Sec. 1445(e)(4) and 1445(e)(5).

[8] Sec. 1445 and Treasury regulations thereunder. The Treasury Department is authorized to issue regulations that would reduce the 35 percent withholding on distributions to 20 percent during the time that the maximum income tax rate on dividends and capital gains of U.S. persons is 20 percent.

[9] Treasury regulations provide an alternative for testing whether corporations are USRPHCs. Under this test, a corporation is presumed not to be a USRPHC if the accounting book value of its USRPIs is 25 percent or less of the total accounting book values of its USRPIs, foreign real property, and trade or business assets ("alternative book value test"). The alternative book value test allows corporations not viewed as traditional real estate holding companies to utilize existing financial accounting and reporting data for purposes of determining USRPHC status, thereby avoiding a potentially costly exercise of regularly establishing the fair market value of its real estate and business assets. Treas. Reg. sec. § 1.897–2(b)(2)(i).

For purposes of the alternative book value test, for assets that are held directly by the corporation, the regulations define "book value" as the value at which an asset is carried on the financial accounting records of the corporation, if such value is determined in accordance with generally accepted accounting principles applied in the United States. Additional rules are provided to account for assets that may be held indirectly through partnership, corporate, and other entities. Treas. Reg. sec. § 1.897–2(b)(2)(ii).

The regulations provide that under certain circumstances, the IRS may rebut the presumption that a corporation is allowed to make under the alternative book value test. Specific rules are provided regarding the form of such IRS rebuttal and manner and timing of response by the corporation based on updated determinations as to its USRPHC status. If the corporation determines that it was not a USRPHC under the general 50 percent test, it may continue to rely upon the alternative book value test unless, on the basis of additional information, the IRS again challenges its USRPHC status. However, if the corporation determines that it was a USRPHC on its most recent determination date, then by the 180th day following receipt of the IRS's notification, the domestic corporation must notify each of its interest holders that, contrary to any prior representations, it was a USRPHC as of its most recent determination date. Treas. Reg. sec. § 1.897–2(b)(2)(iii).

[10] Secs. 897(c)(1)(A)(ii) and 897(c)(2).

[11] Treasury regulations provide that, in the case of a partnership or trust that is publicly traded, for purposes of section 897(g) and the withholding rules of section 1445, an interest in the entity shall not be treated as an interest in a partnership or trust, but shall be subject to rules applicable to interests in publicly traded corporations including the exception from USRPI status in the hands of a person that owns no more than 5 percent of a publicly traded class of

an established securities market are not treated as USRPIs if the seller shareholder held (applying attribution rules) no more than five percent of that class of stock at any time during the testing period.[12] Among other things, the relevant attribution rules require attribution between a corporation and a shareholder that owns five percent or more in value of the stock of such corporation.[13] The attribution rules also attribute stock ownership between spouses and between children, grandchildren, parents, and grandparents.

"Cleansing rule" exception where corporate gain recognized

An interest in a corporation is not a USRPI if, as of the date of disposition of such interest, such corporation did not hold any USRPIs and all of the USRPIs held by such corporation during the shorter of (i) the period of time after June 18, 1980, during which the taxpayer held such interest, or (ii) the five-year period ending on the date of disposition of such interest, were either disposed of in transactions in which the full amount of the gain (if any) was recognized, or ceased to be USRPIs by reason of the application of this rule to one or more other corporations.[14]

FIRPTA rules for foreign investment through REITS and RICs

Special FIRPTA rules apply to foreign investment through a "qualified investment entity", which includes any real estate investment trust ("REIT"). Prior to January 1, 2015, the term also included certain regulated investment companies ("RICs") that invest largely in U.S. real property interests (including stock of one or more REITs). On and after that date, such RICs are treated as qualified investment entities under FIRPTA only for the purpose of applying FIRPTA to certain distributions the RIC receives or makes that are attributable to its interest in a REIT.[15]

REITs and RICs must satisfy a number of requirements, and are generally taxable as U.S. domestic corporations, but are subject to a modified corporate tax regime that permits the corporation to deduct amounts distributed to shareholders. The shareholders generally include such distributions in income.

Stock of domestically controlled qualified investment entities not a USRPI

If a qualified investment entity is "domestically controlled" (defined to mean that less than 50 percent in value of the qualified investment entity has been owned (directly or indirectly) by foreign

interests. Solely for purposes of determining whether greater than 5 percent interests in such an entity constitute USRPIs the disposition of which is subject to tax, the entity is required to determine whether the assets it holds would cause it to be classified as a USRPHC if it were a corporation. Treas. Reg. Sec. 1.897–1(c)(iv).

[12] Sec. 897(c)(3). The constructive ownership attribution rules are specified in section 897(c)(6)(C).

[13] If a person owns, directly or indirectly, five percent or more in value of the stock in a corporation, such person is considered as owning the stock owned directly or indirectly by or for such corporation, in that proportion which the value of the stock such person so owns bears to the value of all the stock in such corporation. (Sec. 318(c)(2)(C) as modified by section 897(c)(6)(C)). Also, if five percent or more in value of the stock in a corporation is owned directly or indirectly, by or for any person, such corporation shall be considered as owning the stock owned, directly or indirectly, by or for such person. (Sec. 318(c)(3)(C) as modified by section 897(c)(6)(C)).

[14] Sec. 897(c)(1)(B).

[15] Sec. 897(h)(4)(A)(ii). The provision that expired after December 31, 2014, more generally treating such RICs as qualified investment entities, has expired previously but has subsequently been reinstated through December 31, 2014.

persons during the relevant testing period[16]), stock of such entity is not a USRPI and a foreign shareholder can sell the stock of such entity without being subject to tax under FIRPTA, even if the stock would otherwise be stock of a USRPHC.[17] Treasury regulations provide that for purposes of determining whether a REIT is domestically controlled, the actual owner of REIT shares is the "person who is required to include in his return the dividends received on the stock."[18] The IRS has issued a private letter ruling concluding that the term "directly or indirectly" for this purpose did not look through corporate entities that, in the facts of the ruling, were represented to be fully taxable domestic corporations for U.S. federal income tax purposes "and not otherwise a REIT, RIC, hybrid entity, conduit, disregarded entity, or other flow-through or look-through entity."[19]

FIRPTA applies to qualified investment entity (REIT and certain RIC) distributions attributable to gain from sale or exchange of USRPI's, except for distributions to certain five-percent or smaller shareholders

Code section 897(h) provides that a distribution by a REIT or other qualified investment entity, to the extent attributable to gain from the entity's sale or exchange of USRPIs, is treated as FIRPTA income.[20] The FIRPTA character is retained if the distribution occurs from one qualified investment entity to another, through a tier of U.S. REITs or RICs.[21] An IRS notice (Notice 2007–55) states that this rule retaining the FIRPTA income character of distributions attributable to the sale of USRPIs applies to any distributions under sections 301, 302, 331, and 332 (i.e., to both nonliquidating and liquidating distributions, and to distributions treated as sales or exchanges of stock by the investor as well as to dividend distributions) and that the IRS will issue regulations to that effect.[22]

Code section 897(h)(1) provides an exception to this rule in the case of distributions to certain public shareholders. If an investor has owned no more than five percent of a class of stock of a REIT

[16] The testing period for this purpose if the shorter of (i) the period beginning on June 19, 1980, and ending on the date of disposition or distribution, as the case may be, (ii) the five-year period ending on the date of the disposition or distribution, as the case may be, or (iii) the period during which the qualified investment entity was in existence. Sec. 897(h)(4)(D).

[17] As noted previously, after December 31, 2014, a RIC is not included in the definition of a qualified investment entity for purposes of this rule permitting stock of a "domestically controlled" qualified investment entity to be sold without FIRPTA tax. Sec. 897(h)(4)(A)(ii).

[18] Treas. Reg. Sec. 1.897–1(c)(2)(i) and Treas. Reg. Sec. 1.857–8(b).

[19] PLR 200923001. A private letter ruling may be relied upon only by the taxpayer to which the ruling is issued. However, private letter rulings provide some indication of administrative practice.

[20] Sec. 897(h)(1). In addition, on the distribution of a USRPI by a domestically controlled qualified investment entity, gain is recognized with respect to the foreign ownership percentage, notwithstanding any otherwise applicable nonrecognition provision of the Code, under rules similar to the rules applicable to distributions by foreign corporations. Sec. 897(h)(3). The foreign ownership percentage is the percentage of the stock of the qualified investment entity which was held (directly or indirectly) by foreign persons at the time during the testing period during which the direct and indirect ownership of stock by foreign persons was greatest. Sec. 897(h)(4)(C).

[21] In 2006, the Tax Increase Prevention and Reconciliation Act of 2005 ("TIPRA"), Pub. L. No. 109–222, sec. 505, specified the retention of this FIRPTA character on a distribution to an upper-tier qualified investment entity, and added statutory withholding requirements.

[22] Notice 2007–55, 2007–2 C.B. 13. The Notice also states that in the case of a foreign government investor, because FIRPTA income is treated as effectively connected with the conduct of a U.S. trade or business, proceeds distributed by a qualified investment entity from the sale of U.S. real property interests are not exempt from tax under section 892. The Notice cites and compares existing temporary regulations and indicates that Treasury will apply those regulations as well to certain distributions. See Temp. Treas. Reg. secs. 1.892–3T, 1.897–9T(e), and 1.1445–10T(b).

or other qualified investment entity that is regularly traded on an established securities market located within the U.S., during the one-year period ending on the date of the distribution, then amounts attributable to gain from entity sales or exchanges of USRPIs can be distributed to such a shareholder without being subject to FIRPTA tax.[23] Such distributions that are dividends are treated as dividends from the qualified investment entity,[24] and thus generally would be subject to U.S. dividend withholding tax (as reduced under any applicable treaty), but are not treated as income effectively connected with the conduct of a U.S. trade or business. An IRS Chief Counsel advice memorandum concludes that such distributions that are not dividends are not subject to tax under FIRPTA.[25]

FIRPTA withholding and reporting of information regarding USRPHC status

Tax that may be due with respect to cross-border payments made to a foreign person is collected under withholding rules established in Chapter 3 of the Code. In addition to a number of generally applicable withholding rules, a special section of Chapter 3, section 1445 relating to FIRPTA, requires a purchaser of a USRPI from any person to withhold 10 percent of gross purchase price unless certain exceptions apply.[26]

Under the generally applicable rules, foreign persons are subject to 30-percent withholding at the source on cross-border payments that are fixed, determinable, annual or periodic income from U.S. sources.[27] The withholding agent that makes such payments to a foreign person is required to report and pay over any amounts of U.S. tax withheld by March 15 of the calendar year following the year in which the payment is made. Two types of reports are required: (1) a summary of the total U.S.-source income paid and withholding tax withheld on foreign persons for the year and (2) a report to both the IRS and the foreign person of that person's U.S.-source income that is subject to reporting.[28] The nonresident withholding rules apply broadly to any person, whether or not foreign, that has custody, control or payment of an item of income of a foreign person, and may include brokers.[29] To avoid cascading imposition of the withholding tax as payments move through intermediaries to the beneficial owner, the regulations outline the specific rules relating to situations whereby an intermediary may take

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[23] Sec. 897(h)(1), second sentence. As noted previously, after December 31, 2014, a RIC is not a qualified investment entity for this purpose.

[24] Secs. 852(b)(3)(E) and 857(b)(3)(F).

[25] AM 2008–003, February 15, 2008.

[26] Section 1445 also can impose 10 percent withholding in certain other circumstances. See secs. 1445(e)(3), 1445(e)(4), and 1445(e)(5). Section 1445 requires withholding of 35 percent of the gain (which can be reduced to 20 percent under regulations) in the case of certain dispositions by domestic partnerships, estates, or trusts, and certain distributions by qualified investment entities. In addition, 35 percent of gain is required to be withheld in the case of certain taxable distributions by a foreign corporation. Secs. 1445(e)(1), 1445(e)(2), and 1445(e)(6).

[27] Such income does not include capital gains, for example, from the sale of stock, including USRPHC stock, or any other USRPI. These items are subject to FIRPTA withholding under section 1445. In the case of a partnership, withholding with respect to a foreign partner's share of income that FIRPTA treats as effectively connected income is imposed under section 1446. If the partnership is a publicly traded partnership taxed as a partnership under section 7704, the withholding is required only on distributions. Treas. Reg. sec. 1.1446–4.

[28] Treas. Reg. sec. 1.1461–1(b), (c).

[29] See Treas. Reg. secs. 1.1441–7(a) (definition of withholding agent includes foreign persons).

on the responsibility to withhold and the withholding agent may rely upon the intermediary to do so.[30]

With respect to FIRPTA withholding by the purchaser of a USPRI, the obligation to withhold does not apply if the transferor furnishes an affidavit that the transferor is not a foreign person. Even absent such an affidavit, the obligation does not apply to the purchase of publicly traded stock.[31] The obligation also does not apply to the purchaser of stock of a domestic corporation that is not publicly traded, if the corporation furnishes the transferee with an affidavit stating the corporation is not and has not been a USRPHC during the applicable period (unless the transferee has actual knowledge or receives a notification that the affidavit is false).[32]

Treasury regulations[33] generally provide that a domestic corporation must, within a reasonable period after receipt of a request from a foreign person holding an interest in it, inform that person whether the interest constitutes a USRPI.[34] No particular form is required. The statement must be dated and signed by a responsible corporate officer who must verify under penalties of perjury that the statement is correct to his knowledge and belief. If a foreign investor requests such a statement, then the corporation must provide a notice to the IRS that includes the name and taxpayer identification number of the corporation as well as the investor, and indicates whether the interest in question is a USRPI. However, these requirements apply neither to a domestically controlled REIT, nor to a corporation that has issued any class of stock which is regularly traded on an established securities market at any time during the calendar year. In such cases a corporation may voluntarily choose to comply with the notice requirements that would otherwise have applied.[35]

FIRPTA withholding by a transferee in the case of a purchase from a foreign transferor is reduced or eliminated to the extent the IRS issues a withholding certificate indicating that the 10 percent withholding on gross proceeds is greater than the transferor's tax liability. In order to obtain such a certificate, the transferor must apply to the IRS and provide relevant information (such as the transferor's basis in the property sold, or whether the transferor's disposition is exempt from U.S. tax for any reason). In certain circumstances the certificate may also be issued where either the transferor or the transferee enters into an agreement with the IRS to assure payment of tax due, and provides adequate security.[36]

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[30] Treas. Reg. sec. 1.1441–1(b)(1). The procedures necessary to comply with the Chapter 3 withholding and reporting obligations are detailed in IRS Publication 515, available at *http://www.irs.gov/publications/p515/ar02.html#en*_US_2015_publink1000224806.

[31] Sec. 1445(b)(6).

[32] Sec. 1445(b)(3). Other exceptions also apply. Sec. 1445(b).

[33] Treas. Reg. Sec. 1.897–2(h).

[34] As described previously, stock of a U.S. corporation is not generally a USRPI unless it is stock of a U.S. real property holding corporation ("USRPHC"). However, all U.S. corporate stock is deemed to be such stock, unless it is shown that the corporation's U.S. real property interests do not amount to the relevant 50 percent or more of the corporation's relevant assets. However, even if a REIT or other qualified investment entity is a USRPHC, if it is domestically controlled its stock is not a USRPI.

In addition to these exceptions that might be determined at the entity level, even if a corporation is a USRPHC, its stock is not a USRPI in the hands of the seller if the stock is of a class that is publicly traded and the foreign shareholder disposing of the stock has not owned (applying attribution rules) more than five percent of such class of stock during the relevant period.

[35] Treas. Reg. sec. 1.897–2(h)(3).

[36] Treas. Reg. sec. 1.1445–3.

General Code authorization of certain returns by foreign persons

Present law section 6039C provides for returns by foreign persons holding direct investments in U.S. real property interests for the calendar year, to the extent provided by regulations. No regulations have been issued under this section.

Corporate dividends-received deduction for certain U.S. source dividends received from foreign corporations

A corporation is generally allowed to deduct a portion of the dividends it receives from another corporation. The deductible amount is a percentage of the dividends received. The percentage depends on the level of ownership that the corporate shareholder has in the corporation paying the dividend. The dividends-received deduction is 70 percent of the dividend if the recipient owns less than 20 percent of the stock of the payor corporation, 80 percent if the recipient owns at least 20 percent but less than 80 percent of the stock of the payor corporation, and 100 percent if the recipient owns 80 percent or more of the stock of the payor corporation.[37]

Dividends from REITs are not eligible for the corporate dividends received deduction.[38] Dividends from a RIC are eligible only to the extent attributable to dividends received by the RIC from certain other corporations, and are treated as dividends from a corporation that is not 20-percent owned.[39]

Dividends received from a foreign corporation are not generally eligible for the dividends-received deduction. However, section 245 provides that if a U.S. corporation is a 10-percent shareholder of a foreign corporation, the U.S. corporation is generally entitled to a dividends-received deduction for the portion of dividends received that are attributable to the post-1986 undistributed U.S. earnings of the foreign corporation. The post-1986 undistributed U.S. earnings are measured by reference to earnings of the foreign corporation effectively connected with the conduct of a trade or business within the United States, or received by the foreign corporation from an 80-percent-owned U.S. corporation.[40] A 2013 IRS chief counsel advice memorandum advised that dividends received by a 10-percent U.S. corporate shareholder from a foreign corporation controlled by the shareholder are not eligible for the dividends-received deduction if the dividends were attributable to interest income of an 80-percent owned RIC.[41] Treasury regulations section 1.246–1 states that the deductions provided in sections “243 . . . 244 . . . and 245 (relating to dividends received from certain foreign corporations)” are not allowable with respect to any dividend received from certain entities, one of which is a REIT.

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[37] Sec. 243.

[38] Secs. 243(d)(3) and 857(c)(1).

[39] Secs. 243(d)(2) and 854(b)(1)(A) and (C).

[40] Sec. 245.

[41] IRS CCA 201320014. The situation addressed in the memorandum involved a controlled foreign corporation that had terminated its CFC status before year end, through a transfer of stock to a partnership. The advice was internal IRS advice to the Large Business and International Division. Such advice is not to be relied upon or cited as precedent by taxpayers, but may offer some indication of administrative practice.

B. Provisions Relating to REITs, RICs, and FIRPTA (secs. 1 through 7 of the bill, secs. 897, 1445, 245, and new sec. 6039B of the Code)

1. Publicly traded REITs and certain publicly traded qualified shareholder entities that hold REIT stock

REASONS FOR CHANGE

The Committee wishes to encourage equity investment in U.S. real estate. The Committee believes that increasing the amount of stock of a publicly-traded REIT that a foreign investor may hold without becoming subject to FIRPTA on the disposition of that REIT stock will encourage greater foreign ownership of REIT stock, which in turn may contribute to greater underlying REIT investment in U.S. real property.

The Committee further believes that foreign investment in REITs should be encouraged by removing FIRPTA concerns when REIT stock is owned by certain foreign publicly traded entities.

EXPLANATION OF PROVISION

In the case of REIT stock only, the provision increases from five percent to 10 percent the maximum stock ownership a shareholder may have held, during the testing period, of a class of stock that is publicly traded, to avoid having that stock be treated as a USRPI on disposition.

The provision likewise increases from five percent to 10 percent the percentage ownership threshold that, if not exceeded, results in treating a distribution to holders of publicly traded REIT stock, attributable to gain from sales of exchanges of U.S. real property interests, as a dividend, rather than as FIPRTA gain. Any distributions to such 10 percent (or less) shareholders that are not dividends (for example, if the qualified investment entity surrendered its stock in a redemption that was not treated as a dividend) would be exempt from U.S. tax.[42]

For these purposes, the attribution rules of section 897(c)(6)(C) are modified to refer to the determination of whether a person holds more than 5 percent of a class of stock that is publicly traded (in the case of a non-REIT shareholder) or more than 10 percent (in the case of a REIT shareholder), as applicable. For purposes of either determination, however, however, the provision retains the present law attribution rules of section 897(c)(6)(C) that trigger attribution between a shareholder and a corporation if the shareholder owns five percent or more of a class of stock of the corporation.

The provision also provides that REIT stock directly (without application of any attribution rules) held by a qualified shareholder is not a USRPI in the hands of such qualified shareholder, except to the extent that an investor in the qualified shareholder (other than an investor that is a qualified shareholder) holds an interest (other than an interest solely as a creditor) in such qualified shareholder and holds more than 10 percent of the stock of such REIT (whether or not by reason of the person's ownership interest in the

[42] This result would follow from application of the conclusion of AM 2008–83, Feb. 15, 2008. See Present Law, FIRPTA rules for foreign investment through REITs and RICs, supra.

qualified shareholder), determined by application of the constructive ownership rules of section 897(c)(6)(C)). In addition, any distribution to a qualified shareholder shall not be treated as gain from the sale or exchange of a USRPI to the extent the stock of a REIT held by such qualified shareholder is not treated as a USRPI under this rule. Such a distribution is instead subject to the rule of section 857(b)(3)(F), generally treating any amount distributed with respect to the sale of a USRPI as a dividend to the qualified shareholder. Thus, so long as no investor in the qualified shareholder owns more than 10 percent of the REIT stock under the foregoing rules, a qualified shareholder may own and dispose of any amount of stock of a REIT (including stock of a privately held, non-domestically controlled REIT that is owned by such qualified shareholder) without the application of FIRPTA. Also, the REIT may sell its assets and distribute the proceeds in a transaction that is treated as a sale of the qualified shareholder's REIT stock, without the application of FIRPTA.

If an investor in the qualified shareholder (other than an investor that is a qualified shareholder) does hold more than 10 percent of the REIT stock (an "applicable investor"), then a percentage of the interests in REIT stock held by the qualified shareholder equal to such investor's percentage ownership of the qualified shareholder is treated as a USRPI in the hands of the qualified shareholder and is subject to FIRPTA. This percentage is applied to treat as gain from the disposition of a USRPI a portion of any amount realized by the qualified shareholder from any disposition any of the REIT stock or any receipt of a distribution attributable to gain from sales or exchanges of USRPIs.[43]

A qualified shareholder is defined as a foreign person that is (i) eligible for the benefits of a comprehensive income tax treaty which includes an exchange of information program, (ii) a qualified collective investment vehicle (as defined below), (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 that principal class of interests.

A qualified collective investment vehicle is defined as a foreign person that (i) is eligible for a reduced rate of withholding under the comprehensive income tax treaty described above, and continues to be so eligible even if such person holds more than 10 percent of the stock of such REIT,[44] (ii) is a foreign person that, if it were a domestic person, would be classified as a U.S. real property holding corporation (determined without regard to the proposal's rules that exempt REIT stock held by the entity from treatment as

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[43] As one example, if an individual shareholder owns 10 percent of a REIT's stock directly and also owns 10 percent of the stock of a qualified shareholder that in turn owns 80 percent of that REIT's stock (thus indirectly owning another 8 percent of such REIT's stock), such shareholder is deemed to own more than 10 percent (i.e., 18 percent) of that REIT's stock under the proposal. Accordingly, 10 percent (the investor's percentage ownership of the qualified shareholder) of the qualified shareholder's interest in any REIT stock held by the qualified shareholder is treated as a U.S. real property interest. Also, if the REIT has gain from the sale of a U.S. real property interest and distributes the gain, the second sentence of section 897(h)(1) will not apply to 10 percent of such gain.

[44] For example, the U.S. income tax treaties with Australia and the Netherlands provide such a reduced rate of withholding under certain circumstances.

a USRPI), or (iii) is designated as such by the Secretary of the Treasury and is either (a) fiscally transparent within the meaning of section 894, or (b) required to include dividends in its gross income, but is entitled to a deduction for distributions to its investors.

EFFECTIVE DATE

The disposition provisions apply to dispositions on and after the date of enactment. The distribution provisions apply to any distribution by a REIT on or after the date of enactment which is treated as a deduction for a taxable year of such REIT ending after such date.

2. Domestically controlled definition

REASONS FOR CHANGE

The Committee is concerned that there may be uncertainty in determining whether a REIT (or RIC, if such entity is a qualified investment entity for this purpose), is domestically controlled. Uncertainty might affect foreign investment in such entities. The Committee believes that it is impracticable for a publicly traded entity to know the U.S. or foreign status of its less than five-percent shareholders, whose ownership may not be required to be publicly reported. The Committee also believes it is appropriate to count ownership by foreign investors in a privately held REIT or RIC, since such private ownership should be ascertainable.

EXPLANATION OF PROVISION

For purposes of determining whether a qualified investment entity is domestically controlled, and for purposes of determining the foreign ownership percentage that is ineligible for nonrecognition treatment on a distribution by a domestically controlled qualified investment entity, the provision provides a number of new rules and presumptions.

First, in the case of any class of stock of a qualified investment entity which is regularly traded on an established securities market in the United States, a person holding less than five percent of such class of stock at all times during the testing period shall be treated as a U.S. person unless the qualified investment entity has actual knowledge that such person is not a U.S. person. Second, 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 stock exchange, 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 (as determined after applying the new rules), such stock shall be treated as held by a U.S. person. Finally, any stock in a qualified investment entity held by any other qualified investment entity not described in (I) or (II) of the preceding sentence shall only be treated as held by a U.S. person to the extent that the stock of such other qualified investment entity is (or is treated under the new provision as) held by a U.S. person. Although the definition of a RIC as a qualified investment entity expired on December 31, 2014, under the provision, such definition does not expire for purposes of determining whether a REIT is domestically controlled under these rules and presumptions.

EFFECTIVE DATE

The provision is effective on the date of enactment. The definition of a RIC as a qualified investment entity, for purposes of the determination whether a REIT is domestically controlled, did not expire on December 31, 2014.

3. Increase 10 percent FIRPTA withholding to 15 percent

REASONS FOR CHANGE

The Committee is concerned that some foreign persons may fail to file the required U.S. tax returns under FIRPTA. Such persons may escape paying full U.S. tax on their gain from disposition of U.S. real property interests, if the current 10 percent withholding tax on gross sales proceeds is less than the amount of tax that would be due on the actual gain on the disposition.

EXPLANATION OF PROVISION

The provision generally increases the rate of withholding of tax on dispositions and certain distributions of URSPIs, from 10 percent to 15 percent. There is an exception to this higher rate of withholding (retaining the 10 percent withholding tax rate under present law) for sales of residences intended for personal use by the acquirer, with respect to which the purchase price does not exceed $1,000,000. Thus, if the present law exception for personal residences (where the purchase price does not exceed $300,000) does not apply, the 10 percent withholding rate is retained so long as the purchase price does not exceed $1,000,000.

EFFECTIVE DATE

The provision applies to dispositions after the date which is 60 days after the date of the enactment.

4. Required notification of FIRPTA status as a USRPHC, presumption of foreign control of qualified investment entities, and penalty for failure to disclose FIRPTA status

REASONS FOR CHANGE

The Committee believes that it is important to balance the removal of obstacles that foreign persons encounter in investing in United States property with adequate measures to ensure that those foreign investors who are subject to tax on the gain upon disposition of a real property interest satisfy their obligations. Under present law, in the case of a sale of stock of a corporation, the information as to whether or not that corporation is a USRPHC (thus potentially requiring FIRPTA tax, and purchaser withholding unless an exception applies) may be unknown except through time consuming inquiries to the corporation. The Committee believes that requiring corporations routinely to disclose their current or recent status as a USRPHC, with substantial penalties for failure to do so, will give purchasers and sellers access to reliable information and better enable them to discharge their obligations.

EXPLANATION OF PROVISION

Disclosure of USRPHC status

The provision adds a new section 6039B to the Code, which requires any corporation that is or was a USRPHC within an applicable period to disclose such status as a USRPHC to the Secretary of the Treasury (IRS), to its shareholders, and to the public.

First, not later than the due date for its return of tax (including extensions) for the taxable year, the corporation must disclose to the Secretary of the Treasury the information that the corporation is a USRPHC (as well as any other information as may be required by the Secretary of the Treasury), in such form and manner as the Secretary of the Treasury shall require. The applicable period for purposes of this requirement is generally the five-year period ending on the last day of the taxable year for which a disclosure was required to be made.

Second, the corporation must disclose the information on any statement required to be made under section 6042(c). The Committee intends this rule to apply to any payee statement, such as a 1099 information return, otherwise required to be provided, but does not intend to impose a new requirement to provide an information return solely in order to provide this information. The applicable period for purposes of this requirement is generally the five-year period ending on the last day of the calendar year which the disclosure is required to be made.

Third, the corporation must disclose the information to the public in any annual report made by such corporation, or, 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 of the Treasury in the interests of tax administration). The applicable period for purposes of this requirement is generally the five-year period ending on the last day of the year for which the disclosure is required to be made.

For purposes of these requirements, a corporation is a USRPHC, and its status as such must be disclosed, if it meets the requirements of section 897(c)(2) at any time during the relevant applicable period, or if 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 required notification is made.

Publicly traded partnerships

Under regulations prescribed by the Secretary of the Treasury, any publicly traded partnership that is not automatically covered by the provision due to treatment as a corporation under section 7704 shall also be subject to these rules.[45]

[45] The Committee does not intend to restrict the Treasury's ability to continue to apply Treasury regulations section 1.897–1(c)(2)(iv) with respect to all publicly traded partnerships, including those that are not treated as corporations under section 7704. That regulation, or similar concepts, could also be applied after enactment of the provision, to subject such partnerships that are not treated as corporations under section 7704 to the new rules.

Penalties for failure to disclose

Penalties are imposed for failure to comply with the USRPHC notification requirements. Any person who (1) fails to disclose the required information to the Secretary of the Treasury for any taxable year, (2) fails to substantially comply with the required payee notifications on information returns, or (3) fails to make the required public disclosure, shall pay a penalty with respect to each such failure.

In the case of a corporation with average annual gross receipts of $5,000,000 or less in the most recent five taxable years, the penalty is $500,000. The penalty increases to $1,500,000 for corporations with such average annual gross receipts exceeding $5,000,000. However, in the case of any corporation that holds U.S. real property interests with a gross fair market value of $1 billion or more, then, regardless of the amount of penalty that would otherwise apply under the gross receipts provisions, the penalty is $5 million, increased to $10 million in the case of intentional failure to disclose or report. For purposes of determining gross receipts and gross fair market value under these penalty provisions, the related-party aggregation rules of section 448(c)(2) apply. The penalty amounts and the gross receipts and gross fair market value thresholds will be adjusted for inflation.

Coordination with penalty under section 6722 for failure to file correct payee statements

In case of failure to comply with the payee statement requirement of the provision, if a penalty is imposed under the provision, no penalty is imposed under section 6722 with respect to such failure.

Reasonable cause waiver

No penalty is imposed under the provision with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

Qualified investment entity presumed not domestically controlled absent disclosure to the contrary

A qualified investment entity shall not be treated as domestically controlled 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 of the Treasury in the interests of tax administration). Thus, for example, if a foreign person disposes of the stock of a qualified investment entity that is domestically controlled under the new rules provided under the bill, but that does not disclose its domestically controlled status, the disposition is treated as one of stock of an entity that is not domestically controlled, and hence FIRPTA would generally apply to the disposition unless another exception applied.

EFFECTIVE DATE

The provision takes effect on January 1, 2016.

5. Require FIRPTA withholding by brokers

REASONS FOR CHANGE

The Committee believes that it is important to balance the removal of obstacles that foreign persons encounter in investing in United States property with adequate measures to ensure that those foreign investors who are subject to tax on the gain upon disposition of stock of a USRPHC satisfy their obligations. Under present law, the gross withholding obligation in case of a sale of USRPHC stock falls on the purchaser, and there is no obligation in the case of publicly traded stock. Although certain brokers may also function as withholding agents for clients in certain circumstances, the Committee believes that it is advisable to impose an affirmative liability to withhold on the seller's broker. As the seller's broker, the broker is positioned to know the foreign status, if any, of the seller, and to withhold when appropriate.

EXPLANATION OF PROVISION

In the case of any disposition of stock of a USRPHC 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. Certain exceptions apply.

The broker is not required to withhold on any disposition if the transferee is required to deduct and withhold tax and the transferee furnishes to the broker an affidavit, under penalties of perjury, that the transferee has deducted and withheld such tax.

The broker is not required to withhold with respect to any disposition of any class of stock of a USRPHC which is regularly traded on an established securities market if the transferor, immediately prior to the disposition, holds no more than five percent (10 percent in the case of a REIT) of such class of stock, determined under the rules of section 897(c)(6)(C).

The broker is not required to withhold on a disposition of stock of a domestically controlled qualified investment entity (as defined after application of the new rules relating to determination of domestically controlled status) or on a disposition of stock of a REIT to the extent such stock is not treated as a USRPI under the rules permitting sale by an entity that is a qualified shareholder under the provision.

The broker is also not required to withhold with respect to a disposition of stock of a USRPHC that would not be treated as a USRPI because of the application of the "cleansing rule" (as modified by the bill).

The withholding requirement does 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 USRPHC. For purposes of this rule, a broker may rely on public statements made by a public company, including statements related to the status of the company as a USRPHC or as a domestically controlled qualified investment entity.[46]

[46] Under the immediately preceding provision of the bill, any qualified investment entity is presumed to be foreign controlled unless the entity has made a disclosure to the contrary.

The provision amends the Code provision that currently exempts from withholding the disposition of a share of a class of stock that is regularly traded on an established securities market, to require the broker withholding in accordance with the foregoing provisions.

Under regulations prescribed by the Secretary of the Treasury, similar withholding rules shall apply to brokers in the case of a disposition of a publicly traded partnership interest that is not already treated as stock of a corporation, pursuant to section 7704, where such partnership would be a USRPHC if it were a U.S. corporation.[47]

EFFECTIVE DATE

The provision applies to dispositions after December 31, 2015.

6. Cleansing rule not applicable to RICs or REITs

REASONS FOR CHANGE

The purpose of the "cleansing rule" was to "cleanse" the USRPHC treatment of stock of a domestic corporation if that corporation has recognized all the gain inherent in its U.S. real property interests, and paid U.S. corporate tax on that gain. Because REITs and RICs can deduct their distributions, including those made in liquidation, U.S. tax is not paid on gain recognized from asset sales in liquidation of such entities.[48] Thus, the Committee believes that the cleansing rule should not apply to such entities.

EXPLANATION OF PROVISION

Under the provision, the so-called "cleansing rule" applies to stock of a corporation only if neither such corporation nor any predecessor of such corporation was a RIC or a REIT at any time during the shorter of the period after June 18, 1980 during which the taxpayer held such stock, or the five-year period ending on the date of the disposition of such stock.

EFFECTIVE DATE

The provision applies to dispositions on or after the date of enactment.

7. Dividends derived from RICs and REITs ineligible for deduction for U.S. source portion of dividends from certain foreign corporations

REASONS FOR CHANGE

The purpose of the dividends-received deduction is to provide relief to a corporation that receives dividends from another corporation whose income was subject to U.S. tax. The dividends-received

[47] The Committee does not intend to restrict the Treasury's ability to continue to apply Treasury regulation section 1.897–1(c)(2)(iv) with respect to all publicly traded partnerships, including those that are not treated as corporations under section 7704. That regulation, or similar concepts, could also be applied after enactment of the provision, to impose the withholding rules to brokers in the case of a disposition of a publicly traded partnership interest that is not already treated as stock of a corporation pursuant to section 7704, where such partnership would be a U.S. real property holding corporation if it were a U.S. corporation.

[48] A REIT or RIC might also pay corporate tax on an asset sale, because it did not make a distribution of proceeds to the shareholders, but can designate the gain such that shareholders can receive a credit for the corporate tax paid, negating the collection of U. S. tax on the gain from asset sales.

deduction thus reduces the potential for cascading taxes as corporate income is distributed up a chain of corporations. Unlike other corporations, a corporation that is a RIC or a REIT deducts its income that is distributed to shareholders and thus U.S. corporate level tax typically has not been paid on such distributed income. An IRS chief counsel advisory memorandum concluded that dividends attributable to interest income of an 80-percent owned RIC are not entitled to be counted in determining the dividends received deduction under section 245. Furthermore, an IRS regulation states that REIT dividends are not eligible for section 245. The Committee wishes to preclude any remaining potential that taxpayers might take the position that any RIC or REIT dividends are eligible for the dividends received deduction under section 245.

EXPLANATION OF PROVISION

Under the provision, for purposes of determining whether dividends from a foreign corporation (attributable to dividends from an 80-percent owned domestic corporation) are eligible for a dividends-received deduction under section 245 of the Code, dividends from RICs and REITs are not treated as dividends from domestic corporations.

EFFECTIVE DATE

The provision applies to dividends received from RICs and REITs on or after the date of enactment. No inference is intended with respect to the proper treatment under section 245 of dividends received from RICs or REITs before the date of enactment.

C. INCREASE CONTINUOUS LEVY AUTHORITY ON PAYMENTS TO MEDICARE PROVIDERS AND SUPPLIERS (SEC. 9 OF THE BILL AND SEC. 6331 OF THE CODE)

PRESENT LAW

In general

Levy is the administrative authority of the IRS to seize a taxpayers property, or rights to property, to pay the taxpayer's tax liability.[49] Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[50] the property is not exempt from levy,[51] and the IRS has provided both notice of intention to levy[52] and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")[53] at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.[54] A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and

[49] Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.
[50] Ibid.
[51] Sec. 6334.
[52] Sec. 6331(d).
[53] Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.
[54] Secs. 6331(e) and 6343.

(3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.[55]

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.[56]

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases, however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.[57]

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997[58] authorized the establishment of the Federal Payment Levy Program ("FPLP"), which allows the IRS to continuously levy up to 15 percent of certain "specified payments" by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.[59] For payments to Medicare providers and suppliers, the levy is up to 15 percent for payments made within 180 days after December 19, 2014. For payments made after that date, the levy is up to 30 percent.[60]

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by Treasury's Bureau of Fiscal Service ("BFS"), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct BFS to levy the taxpayer's Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or the IRS releases the levy.

REASONS FOR CHANGE

It has been reported that many thousands of Medicare providers and suppliers have outstanding Federal employment and income tax liability, which contribute to the tax gap. Consequently, the Committee believes that it is appropriate to increase the permissible percentage of payments to a Medicare provider subject to levy.

[55] Sec. 6321.
[56] Secs. 6331(d)(3) and 6861.
[57] Sec. 6330(f).
[58] Pub. L. No. 105–34.
[59] Sec. 6331(h)(3).
[60] Pub. L. No. 113–295, Division B.

EXPLANATION OF PROVISION

The provision provides that the present limitation of 30 percent of certain specified payments be increased by an amount sufficient to offset the estimated revenue loss of the provision described in Part A, above.

EFFECTIVE DATE

The provision is effective for payments made after 180 days after the date of enactment.

III. BUDGET EFFECTS OF THE BILL

A. Committee Estimates

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974, as amended (the "Budget Act"), the following statement is made concerning the estimated budget effects of the revenue provisions of the "FIRPTA" as reported.

The proposals are estimated to reduce Federal fiscal year budget receipts as follows:

ESTIMATED BUDGET EFFECTS OF
THE "REAL ESTATE INVESTMENT AND JOBS ACT OF 2015,"
AS REPORTED BY THE COMMITTEE ON FINANCE

Fiscal Years 2015 - 2025

[Millions of Dollars]

Provision	Effective	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015-20	2015-25
1. Proposals Relating to Real Estate Investment Trusts ("REITs"), Regulated Investment Companies ("RICs"), and the Foreign Investment in Real Property Tax Act ("FIRPTA")	Various	-9	-7	-6	-5	-9	-4	1	1	[1]	1	[2]	-41	-38
2. Increase Continuous Levy Authority to 35% on Payments to Medicare Providers and Suppliers	pma 180da DOE	---	6	6	6	7	7	7	7	7	7	7	32	67
NET TOTAL		**-9**	**-1**	**[3]**	**1**	**-2**	**3**	**8**	**8**	**7**	**8**	**7**	**-9**	**29**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is assumed to be April 1, 2015.

Legend for "Effective" column:
DOE = date of enactment
pma = payments made after
180da = 180 days after

[1] Gain of less than $500,000.
[2] Loss of less than $500,000.
[3] Negligible revenue effect.

B. Budget Authority and Tax Expenditures

Budget authority

In compliance with section 308(a)(1) of the Budget Act, the Committee states that no provisions of the bill as reported involve new or increased budget authority.

Tax expenditures

In compliance with section 308(a)(1) of the Budget Act, the Committee states that no provisions affect the levels of tax expenditures.

C. Consultation with Congressional Budget Office

In accordance with section 402 of the Budget Act, the Committee advises that the Congressional Budget Office has not submitted a statement on the bill. The letter from the Congressional Budget Office will be provided separately.

IV. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that, with a majority present, the "Real Estate Investment and Jobs Act of 2015" was ordered favorably reported by voice vote on February 11, 2015.

V. REGULATORY IMPACT AND OTHER MATTERS

A. Regulatory Impact

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill as amended.

Impact on individuals and businesses, personal privacy and paperwork

The bill imposes new requirements for corporations, including publicly traded corporations, to report their status as a USRPHC within the prior 5 years, and also imposes a withholding obligation on sellers' brokers. These provisions of the bill may impose additional administrative requirements or regulatory burdens on individuals or businesses.

The provisions of the bill do not impact personal privacy.

B. Unfunded Mandates Statement

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the reported bill contains two Federal private sector mandates, but no Federal intergovernmental mandates on State, local, or tribal governments within the meaning of Public Law 104–4, the Unfunded Mandates Reform Act of 1995. The two private sector mandates are (i) the requirement that corporations, including publicly traded corporations, report their status as a USRPHC and (ii) the requirement that sellers' brokers withhold FIRPTA tax. Each of these mandates imposes additional enforceable duties upon the private sector. It is not feasible to estimate the costs that such private sector parties would be required to spend in order to comply.

C. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 ("IRS Reform Act") requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. The staff of the Joint Committee on Taxation has determined that there are no provisions that are of widespread applicability to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

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