

103^D CONGRESS
1ST SESSION

S. 1733

To amend the Internal Revenue Code of 1986 to provide tax treatment for foreign investment through a United States regulated investment company comparable to the tax treatment for direct foreign investment and investment through a foreign mutual fund.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 20 (legislative day, NOVEMBER 2), 1993

Mr. BAUCUS (for himself, Mr. MCCAIN, and Mr. RIEGLE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide tax treatment for foreign investment through a United States regulated investment company comparable to the tax treatment for direct foreign investment and investment through a foreign mutual fund.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Investment Competitiveness Act of 1993”.

6 (b) AMENDMENT OF 1986 CODE.—Whenever in this
7 Act an amendment or repeal is expressed in terms of an

1 amendment to, or repeal of, a section or other provision,
2 the reference shall be considered to be made to a section
3 or other provision of the Internal Revenue Code of 1986.

4 **SEC. 2. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**
5 **LATED INVESTMENT COMPANIES.**

6 (a) GENERAL RULE.—

7 (1) NONRESIDENT ALIEN INDIVIDUALS.—Sec-
8 tion 871 (relating to tax on nonresident alien indi-
9 viduals) is amended by redesignating subsection (k)
10 as subsection (l) and by inserting after subsection (j)
11 the following new subsection:

12 “(k) EXEMPTION FOR CERTAIN DIVIDENDS OF REG-
13 ULATED INVESTMENT COMPANIES.—

14 “(1) INTEREST-RELATED DIVIDENDS.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), no tax shall be imposed
17 under paragraph (1)(A) of subsection (a) on
18 any interest-related dividend received from a
19 regulated investment company.

20 “(B) EXCEPTIONS.—Subparagraph (A)
21 shall not apply—

22 “(i) to any interest-related dividend
23 received from a regulated investment com-
24 pany by a person to the extent such divi-
25 dend is attributable to interest (other than

1 interest described in subparagraph (E) (i)
2 or (iii)) received by such company on in-
3 debtedness issued by such person or by any
4 corporation or partnership with respect to
5 which such person is a 10-percent share-
6 holder,

7 “(ii) to any interest-related dividend
8 with respect to stock of a regulated invest-
9 ment company unless the person who
10 would otherwise be required to deduct and
11 withhold tax from such dividend under
12 chapter 3 receives a statement (which
13 meets requirements similar to the require-
14 ments of subsection (h)(4)) that the bene-
15 ficial owner of such stock is not a United
16 States person, and

17 “(iii) to any interest-related dividend
18 paid to any person within a foreign coun-
19 try (or any interest-related dividend pay-
20 ment addressed to, or for the account of,
21 persons within such foreign country) dur-
22 ing any period described in subsection
23 (h)(5) with respect to such country.

24 Clause (iii) shall not apply to any dividend with
25 respect to any stock which was acquired on or

1 before the date of the publication of the Sec-
2 retary's determination under subsection (h)(5).

3 “(C) INTEREST-RELATED DIVIDEND.—For
4 purposes of this paragraph, an interest-related
5 dividend is any dividend (or part thereof) which
6 is designated by the regulated investment com-
7 pany as an interest-related dividend in a writ-
8 ten notice mailed to its shareholders not later
9 than 60 days after the close of its taxable year.
10 If the aggregate amount so designated with re-
11 spect to a taxable year of the company (includ-
12 ing amounts so designated with respect to divi-
13 dends paid after the close of the taxable year
14 described in section 855) is greater than the
15 qualified net interest income of the company for
16 such taxable year, the portion of each distribu-
17 tion which shall be an interest-related dividend
18 shall be only that portion of the amounts so
19 designated which such qualified net interest in-
20 come bears to the aggregate amount so des-
21 ignated.

22 “(D) QUALIFIED NET INTEREST IN-
23 COME.—For purposes of subparagraph (C), the
24 term ‘qualified net interest income’ means the
25 qualified interest income of the regulated in-

1 vestment company reduced by the deductions
2 properly allocable to such income.

3 “(E) QUALIFIED INTEREST INCOME.—For
4 purposes of subparagraph (D), the term ‘quali-
5 fied interest income’ means the sum of the fol-
6 lowing amounts derived by the regulated invest-
7 ment company from sources within the United
8 States:

9 “(i) Any amount includible in gross
10 income as original issue discount (within
11 the meaning of section 1273) on an obliga-
12 tion payable 183 days or less from the date
13 of original issue (without regard to the pe-
14 riod held by the company).

15 “(ii) Any interest includable in gross
16 income (including amounts recognized as
17 ordinary income in respect of original issue
18 discount or market discount or acquisition
19 discount under part V of subchapter P and
20 such other amounts as regulations may
21 provide) on an obligation which is in reg-
22 istered form; except that this clause shall
23 not apply to any interest on an obligation
24 issued by a corporation or partnership if
25 the regulated investment company is a 10-

1 percent shareholder in such corporation or
2 partnership.

3 “(iii) Any interest referred to in sub-
4 section (i)(2)(A) (without regard to the
5 trade or business of the regulated invest-
6 ment company).

7 “(F) 10-PERCENT SHAREHOLDER.—For
8 purposes of this paragraph, the term ‘10-per-
9 cent shareholder’ has the meaning given to such
10 term by subsection (h)(3).

11 “(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), no tax shall be imposed
14 under paragraph (1)(A) of subsection (a) on
15 any short-term capital gain dividend received
16 from a regulated investment company.

17 “(B) EXCEPTION FOR ALIENS TAXABLE
18 UNDER SUBSECTION (a)(2).—Subparagraph (A)
19 shall not apply in the case of any nonresident
20 alien individual subject to tax under subsection
21 (a)(2).

22 “(C) SHORT-TERM CAPITAL GAIN DIVI-
23 DEND.—For purposes of this paragraph, a
24 short-term capital gain dividend is any dividend
25 (or part thereof) which is designated by the reg-

1 ulated investment company as a short-term cap-
2 ital gain dividend in a written notice mailed to
3 its shareholders not later than 60 days after the
4 close of its taxable year. If the aggregate
5 amount so designated with respect to a taxable
6 year of the company (including amounts so des-
7 ignated with respect to dividends paid after the
8 close of the taxable year described in section
9 855) is greater than the qualified short-term
10 gain of the company for such taxable year, the
11 portion of each distribution which shall be a
12 short-term capital gain dividend shall be only
13 that portion of the amounts so designated
14 which such qualified short-term gain bears to
15 the aggregate amount so designated.

16 “(D) QUALIFIED SHORT-TERM GAIN.—For
17 purposes of subparagraph (C), the term ‘quali-
18 fied short-term gain’ means the excess of the
19 net short-term capital gain of the regulated in-
20 vestment company for the taxable year over the
21 net long-term capital loss (if any) of such com-
22 pany for such taxable year. For purposes of this
23 paragraph, the excess of the net short-term cap-
24 ital gain for a taxable year over the net long-
25 term capital loss for a taxable year (to which an

1 election under section 4982(e)(4) does not
2 apply) shall be determined without regard to
3 any net capital loss or net short-term capital
4 loss attributable to transactions after October
5 31 of such year, and any such net capital loss
6 or net short-term capital loss shall be treated as
7 arising on the 1st day of the next taxable year.
8 To the extent provided in regulations, the pre-
9 ceding sentence shall apply also for purposes of
10 computing the taxable income of the regulated
11 investment company.”.

12 (2) FOREIGN CORPORATIONS.—Section 881 is
13 amended by redesignating subsection (e) as sub-
14 section (f) and by inserting after subsection (d) the
15 following new subsection:

16 “(e) TAX NOT TO APPLY TO CERTAIN DIVIDENDS
17 OF REGULATED INVESTMENT COMPANIES.—

18 “(1) INTEREST-RELATED DIVIDENDS.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), no tax shall be imposed
21 under paragraph (1) of subsection (a) on any
22 interest-related dividend (as defined in section
23 871(k)(1)) received from a regulated investment
24 company.

1 “(B) EXCEPTION.—Subparagraph (A)
2 shall not apply—

3 “(i) to any dividend referred to in sec-
4 tion 871(k)(1)(B), and

5 “(ii) to any interest-related dividend
6 received by a controlled foreign corporation
7 (within the meaning of section 957(a)) to
8 the extent such dividend is attributable to
9 interest received by the regulated invest-
10 ment company from a person who is a re-
11 lated person (within the meaning of section
12 864(d)(4)) with respect to such controlled
13 foreign corporation.

14 “(C) TREATMENT OF DIVIDENDS RE-
15 CEIVED BY CONTROLLED FOREIGN CORPORA-
16 TIONS.—The rules of subsection (c)(4)(A) shall
17 apply to any interest-related dividend received
18 by a controlled foreign corporation (within the
19 meaning of section 957(a)) to the extent such
20 dividend is attributable to interest received by
21 the regulated investment company which is de-
22 scribed in clause (ii) of section 871(k)(1)(E)
23 (and not described in clause (i) or (iii) of such
24 section).

1 “(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—
2 No tax shall be imposed under paragraph (1) of sub-
3 section (a) on any short-term capital gain dividend
4 (as defined in section 871(k)(2)) received from a
5 regulated investment company.”.

6 (3) WITHHOLDING TAXES.—

7 (A) Subsection (c) of section 1441 is
8 amended by adding at the end thereof the fol-
9 lowing new paragraph:

10 “(12) CERTAIN DIVIDENDS RECEIVED FROM
11 REGULATED INVESTMENT COMPANIES.—

12 “(A) IN GENERAL.—No tax shall be re-
13 quired to be deducted and withheld under sub-
14 section (a) from any amount exempt from the
15 tax imposed by section 871(a)(1)(A) by reason
16 of section 871(k).

17 “(B) SPECIAL RULE.—For purposes of
18 subparagraph (A), clause (i) of section
19 871(k)(1)(B) shall not apply to any dividend
20 unless the regulated investment company knows
21 that such dividend is a dividend referred to in
22 such clause. A similar rule shall apply with re-
23 spect to the exception contained in section
24 871(k)(2)(B).”.

1 (B) Subsection (a) of section 1442 is
2 amended—

3 (i) by striking “and the references in
4 section 1441(c)(10)” and inserting “the
5 reference in section 1441(c)(10)”, and

6 (ii) by inserting before the period at
7 the end thereof the following: “, and the
8 references in section 1441(c)(12) to sec-
9 tions 871(a) and 871(k) shall be treated as
10 referring to sections 881(a) and 881(e)
11 (except that for purposes of applying sub-
12 paragraph (A) of section 1441(c)(12), as
13 so modified, clause (ii) of section
14 881(e)(1)(B) shall not apply to any divi-
15 dend unless the regulated investment com-
16 pany knows that such dividend is a divi-
17 dend referred to in such clause)”.

18 (b) ESTATE TAX TREATMENT OF INTEREST IN CER-
19 TAIN REGULATED INVESTMENT COMPANIES.—Section
20 2105 (relating to property without the United States for
21 estate tax purposes) is amended by adding at the end
22 thereof the following new subsection:

23 “(d) STOCK IN A RIC.—

24 “(1) IN GENERAL.—For purposes of this sub-
25 chapter, stock in a regulated investment company

1 (as defined in section 851) owned by a nonresident
2 not a citizen of the United States shall not be
3 deemed property within the United States in the
4 proportion that, at the end of the quarter of such in-
5 vestment company's taxable year immediately pre-
6 ceding a decedent's date of death (or at such other
7 time as the Secretary may designate in regulations),
8 the assets of the investment company that were
9 qualifying assets with respect to the decedent bore
10 to the total assets of the investment company.

11 “(2) QUALIFYING ASSETS.—For purposes of
12 this subsection, qualifying assets with respect to a
13 decedent are assets that, if owned directly by the de-
14 cedent, would have been—

15 “(A) amounts, deposits, or debt obligations
16 described in subsection (b) of this section,

17 “(B) debt obligations described in the last
18 sentence of section 2104(c), or

19 “(C) other property not within the United
20 States.”.

21 (c) TREATMENT OF REGULATED INVESTMENT COM-
22 PANIES UNDER SECTION 897.—

23 (1) Paragraph (1) of section 897(h) is amended
24 by striking “REIT” each place it appears and in-
25 serting “qualified investment entity”.

1 (2) Paragraphs (2) and (3) of section 897(h)
2 are amended to read as follows:

3 “(2) SALE OF STOCK IN DOMESTICALLY CON-
4 TROLLED ENTITY NOT TAXED.—The term ‘United
5 States real property interest’ does not include any
6 interest in a domestically controlled qualified invest-
7 ment entity.

8 “(3) DISTRIBUTIONS BY DOMESTICALLY CON-
9 TROLLED QUALIFIED INVESTMENT ENTITIES.—In
10 the case of a domestically controlled qualified invest-
11 ment entity, rules similar to the rules of subsection
12 (d) shall apply to the foreign ownership percentage
13 of any gain.”.

14 (3) Subparagraphs (A) and (B) of section
15 897(h)(4) are amended to read as follows:

16 “(A) QUALIFIED INVESTMENT ENTITY.—
17 The term ‘qualified investment entity’ means
18 any real estate investment trust and any regu-
19 lated investment company.

20 “(B) DOMESTICALLY CONTROLLED.—The
21 term ‘domestically controlled qualified invest-
22 ment entity’ means any qualified investment en-
23 tity in which at all times during the testing pe-
24 riod less than 50 percent in value of the stock

1 was held directly or indirectly by foreign per-
2 sons.”.

3 (4) Subparagraphs (C) and (D) of section
4 897(h)(4) are each amended by striking “REIT”
5 and inserting “qualified investment entity”.

6 (5) The subsection heading for subsection (h) of
7 section 897 is amended by striking “REITS” and
8 inserting “CERTAIN INVESTMENT ENTITIES”.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to dividends with respect to taxable
11 years of regulated investment companies beginning after
12 the date of the enactment of this Act.

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