X. Does New Legislation Mean the End of Profitable REIT Spinoffs?

A. Introduction

On December 18, 2015, President Obama signed into law a tax and spending bill that spanned 887 pages and a wide variety of topics, referred to as the Consolidated Appropriations Act, 2016 (CAA 2016).[1] The Federal Government included in the bill a number of new laws regarding Real Estate Investment Trusts (REITs).[2] A REIT is essentially a real estate mutual fund.[3] More technically, "a REIT is a corporation, trust, or association that meets the requirements of section 856 of the Internal Revenue Code . . . ."[4] REITs provide an investment vehicle that allows individuals to pool their resources, purchase rental real estate, and avoid paying taxes on the returns they receive.[5]

The CAA 2016 REIT laws most notably limit REIT spinoffs, which became increasingly attractive to businesses in the last few years.[6] In a REIT spinoff, "a corporation distributes a subsidiary corporation holding real estate to the distributing corporation's shareholders in a tax-free spinoff."[7] The corporation often subsequently rents the real estate from the REIT, allowing the

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[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015); Mary Troyan, *President Obama Signs Massive Spending Bill, Tax Measures into Law*, USA TODAY (Dec. 18, 2015, 6:14 PM), http://www.usatoday.com/story/news/politics/2015/12/18/congress-poised-pass-spending-tax-measures/77495592/ [https://perma.cc/AR5Z-VDA3].

[2] Liz Moyer & Michael J. de la Merced, *House Approves Bill to End Tax-Free Real Estate Spinoffs*, N.Y. TIMES, Dec. 17, 2015, at B5 ("On Thursday, the House of Representatives approved legislation including provisions that would remove the tax advantages of spinning off corporate real estate into a separate, publicly traded real estate investment trust.").

[3] Richard Gore and Robert J. Lauer, *Realty Corps. Benefit by Tax-Free REIT Conversion*, 54 TAX'N FOR ACCT. 97, 97 (1995).

[4] 26 U.S.C. § 856 (2012); Russell J. Singer, *Understanding REITs, UPREITs, and Down-REITs, and the Tax and Business Decisions Surrounding Them*, 16 VA. TAX REV. 329, 330 (1996).

[5] Gore & Lauer, *supra* note 3, at 97.

[6] *See* Moyer & Merced, *supra* note 2.

[7] Caroline H. Ngo & Britt Haxton, *IRS Issues Another Significant Ruling on Spin-Off of Real Estate*, MCDERMOTT WILL & EMERY (2014), https://www.mwe.com/en/thought-leadership/publications/2014/06/irs-issues-another-significant-ruling-on-spin-off [https://perma.cc/EN3M-SCR5].

corporation to avoid taxation on real estate income and removing taxable income from the corporation's revenue.[8] CCA 2016 seems to have made such spinoffs taxable.[9] This article will study the potential implications of CCA 2016's REIT provisions, including, but not limited to, those related to REIT spinoffs.

B. Background

1. History of REITs

The REIT structure began in the U.S. with the passage of the Real Estate Investment Trust Act of 1960.[10] Wall Street investment banks lobbied for new investment products during a U.S. bull market and legislators gave them REITs in response.[11] REITs did not have much success in their first thirty years of existence.[12] REITs could not manage their own property, greatly diminishing their ability to expand.[13] In 1986, this changed with the Real Estate Investment Trust Modernization Act, dubbed "the single most important change in the REIT tax regime that has permitted the explosive growth of the REIT industry in the 1990s and to REITs becoming real operating companies."[14] This legal change, along with economic conditions that disfavored real estate partnerships,[15] caused the number of REITs to

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[8] Bradley T. Borden, *Rethinking the Tax-Revenue Effect of REIT Taxation*, 17 FLA. TAX REV. 527, 572 (2015).
[9] Moyer & Merced, *supra* note 2.
[10] Dirk Brounen & Sjoerd de Koning, *50 Years of Real Estate Investment Trusts: An International Examination of the Rise and Performance of REITs*, 20 J. REAL EST. LITERATURE 197, 197 (2012) ("In 1960, the U.S. Congress passed the Real Estate Investment Trust (REIT) Act to expand the investment universe beyond securities such as stocks and bonds.").
[11] Richard Graff, *Economic Analysis Suggests that REIT Investment Characteristics are Not as Advertised*, 7 J. REAL EST. PORTFOLIO MGMT. 99, 99 (2001).
[12] *Id*. at 100.
[13] *Id*. ("One of the reasons for the slow growth of the REIT industry before 1986 was the restriction of REITs to passive investment activities, and in particular the prohibition against real estate self-management.").
[14] W.B. KING, *REITs as Legal Entities*, *in* REAL ESTATE INVESTMENT TRUSTS 31, 39 (R.T. Garrigan & J.F.C. Parsons eds., 1998).
[15] Graff, *supra* note 11, at 101 ("The end of the era of cheap and generously allocated insurance industry loans suggested that leveraged real estate investors would have to respond by reducing debt-to-equity ratios as existing

"soar" in 1993.[16] REITs became extremely popular as real estate became an increasingly important asset class.[17]

2. Current REIT Status Definition Under 26 U.S.C. § 856

26 U.S.C. § 856 defines a "real estate investment trust" as a corporation, trust, or association:

> (1) which is managed by one or more trustees or directors; (2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest; (3) which (but for the provisions of this part) would be taxable as a domestic corporation; (4) which is neither (A) a financial institution referred to in section 582(c)(2), nor (B) an insurance company to which subchapter L applies; (5) the beneficial ownership of which is held by 100 or more persons; (6) subject to the provisions of subsection (k), which is not closely held (as determined under subsection (h)); and (7) which meets the requirements of subsection (c).[18]

Section 856(c) limits the assets and income of REITs.[19] First, 95% of the REIT's gross income must come from dividends, interest, rents from real property, gain from the sale of stock, securities, and real property, abatements and refunds of taxes on real property, income and gain derived from foreclosure, and a few other passive activities.[20] Most of REITs' income comes from rents from real property.[21] Second, 856(c) limits the composition of REITs' assets to 75% real

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debt matured. This created a problem for a number of large private real estate partnerships . . . .").

[16] *Id*. at 102.

[17] Brounen & Koning, *supra* note 10, at 197-98.

[18] 26 U.S.C. § 856(a) (2012).

[19] 26 U.S.C. § 856(c).

[20] *Id*.

[21] Graff, *supra* note 11, at 104 ("In the case of commercial real estate, expected net cash flows can be separated into two components: the present value of expected net cash flows from current leases and the present value of expected net cash flows from future leases.").

estate, cash and Government securities, and not more than 25% of non-government securities.[22]

3. Taxation of REITs under 26 U.S.C. § 857

26 U.S.C. § 857 notes that REITs are subject to corporate taxation under 26 U.S.C. § 11.[23] Section 11 contains the much maligned corporate tax rate of 34% for corporations with taxable income in excess of $75,000 and 35% if taxable income exceeds $10,000,000.[24] However, REITs can avoid all of this "entity" taxation if they distribute 90% of their income to shareholders in dividends.[25] Therefore, where most corporate shareholders face double taxation when distributing dividends, suffering both a corporate entity tax and a personal income tax, shareholders of REITs only pay the personal income tax.[26] Interestingly, REITs also get the advantage of "deficiency dividends" or a dividend that is made after the IRS has told the company that taxes are owed, but before the taxes are paid.[27] It seems to give the REIT a second chance to avoid taxation by distributing any amount that is owed in taxes before the taxes are paid.[28] Many people call REITs "conduit entities," because they pass taxable income onto REIT shareholders without an additional level of taxation, as do partnerships.[29]

This may sound like a great deal, but because REITs have to distribute almost all of their income in order to avoid the corporate tax, they can hardly reinvest, or retain, any of their revenue.[30] This limits the growth of REITs, which have "[l]ess latitude in retaining income to finance portfolio expansion."[31] Congress intended this limitation to

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[22] 26 U.S.C. § 856(c) (2012).
[23] 26 U.S.C. § 857 (2012).
[24] 26 U.S.C. § 11 (2012).
[25] 26 U.S.C. § 857(a)(1)(A).
[26] Graff, *supra* note 11, at 109 ("Accordingly, REITs are taxed only on the undistributed portion of REIT earnings. In granting an exemption from double taxation to investors in any corporation-like entity, Congress takes the risk that ingenious corporate managers will find ways to turn the business activities of such entities in directions that Congress does not intend.").
[27] 26 U.S.C. § 860 (2012).
[28] *Id.*
[29] Borden, *supra* note 8, at 541.
[30] *See* 26 U.S.C. § 857(a)(1)(A).
[31] Graff, *supra* note 11, at 109.

distinguish REITs from "actively managed real estate businesses."[32] At least one scholar has noted that corporations offer two tax advantages that suggest real estate may receive a lower tax rate if held by a corporation rather than a REIT: 1) corporation shareholders qualify for a qualified-dividend-income favorable tax rate; and 2) corporations may reinvest their taxable income without extra taxation by retaining income.[33]

Legislators built this rather complex combination of limitations and privileges so that "a REIT remains predominately a real estate entity, that its real estate is professionally managed, that the REIT itself . . . minimizes the risks of conducting an active business outside of real estate investment, and that the fruits of the investments are distributed to the investors regularly."[34]

C. REIT Spinoffs

1. Introduction

There are five major steps to a REIT spinoff: (1) a corporation (Parent) forms a subsidiary; (2) the Parent exchanges its real estate assets for all shares in the subsidiary; (3) the Parent distributes the subsidiary shares to the Parent's shareholders "in a transaction intended to qualify as a tax free reorganization under 368(a)(1)(D) and 355"; (4) the subsidiary becomes a REIT; (5) the subsidiary REIT may rent property to the Parent corporation.[35]

The Parent benefits by removing taxable income from its balance sheet, and placing the income into the REIT subsidiary, which passes the income onto the shareholders without suffering an entity income tax.[36] Similar transactions have taken place since the beginning of the 21st century,[37] but the recent movement began to attract attention in 2013 after Penn National Gaming, Inc. (PNG)

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[32] *Id.*
[33] Borden, *supra* note 8, at 541-44.
[34] Michael K. Carnevale et al., "Real Estate Investment Trusts," 742-3rd Tax Mgmt. (BNA) U.S. Income, at 2.
[35] Richard M. Nugent, *REIT Spinoffs: Passive REITs, Active Businesses*, TAX NOTES 1513, 1513-14 (2015).
[36] Borden, *supra* note 8, at 551.
[37] Nugent, *supra* note 35, at 1514 n.9; Georgia-Pacific Corp., Annual Report (Form 10-K), at 1 (Mar. 22, 2002); Plum Creek Timber Co. Inc., Annual Report (Form 10-K), at 3 (Mar. 5, 2001).

received a private letter ruling from the IRS approving PNG's REIT spinoff.[38] With the growing popularity of the REIT spinoff, some began criticizing such spinoffs as "unjustified methods of tax avoidance."[39] Although some scholars have called this criticism "misguided" or "misplaced hysteria,"[40] congress seemed to heed the calls of critics to limit such rules that favor certain qualifying tax payers.[41] Thus, in December of 2015, Congress passed and President Obama signed into law new REIT statutes in the Consolidated Appropriations Act, 2016.[42]

2. CCA 2016 Changes

As mentioned above, the IRS did not tax the REIT spinoff process.[43] Section 355 allows corporations to distribute securities in other corporations to shareholders without taxing the distribution as a dividend, if the parent corporation controlled the distributed corporation "immediately before the distribution."[44] Section 355 used to make step three of the REIT spinoff process tax free, as shown in the process list above.[45] Note that Section 355 requires that the distributed corporation conducts an active trade or business.[46] This seems antithetical to the purpose of REITs as passive, conduit

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[38] *Id*. at 1514 ("Since some had argued that it would be difficult to observe both the tax-free spinoff rules, which require the conduct of an active business, and the REIT rules, which historically limited REITs to passive operations, the Penn National transaction attracted significant attention.").
[39] *Id*. at 1516.
[40] Borden, *supra* note 8, at 530.
[41] *See* Gretchen Morgenson, *A Tax Break That's Closer to Home,* N.Y. TIMES, Aug. 10, 2014, at BU1.
[42] Moyer & Merced, *supra* note 2.
[43] 26 U.S.C. § 355(a) (2012).
[44] *Id*.
[45] *Id*.
[46] 26 U.S.C. § 355(b) (2012) ("(b) Requirements as to active business.--(1) In general.--Subsection (a) shall apply only if either--(A) the distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations), is engaged immediately after the distribution in the active conduct of a trade or business, or (B) immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.").

entities.[47] Indeed, this became an important argument against REIT spinoffs and against the liberalization of REIT laws in general.[48]

In CCA 2016, Congress made a big change to the REIT spinoff game.[49] Now, § 355 "shall not apply to any distribution if either the distributing corporation or controlled corporation is a real estate investment trust."[50] While Section 311 of the CCA 2016 contains certain exceptions to this prohibition, REIT spinoffs as accomplished by Penn and others during the past few years will no longer be possible without significant tax costs.[51]

3. New Cost of REIT Spinoffs

Professor Bradley Borden gives a very helpful REIT spinoff hypothetical in "Rethinking the Tax-Revenue Effect of REIT Taxation."[52] Filling in the above process list with his hypothetical numbers gives a better picture of the process, and provides a basis for analyzing the new cost of REIT Spinoffs:

> (1) A corporation (Parent) receives $1 billion in gross income from real estate assets, with $516 million in deductions from interest payments and depreciation. It forms a subsidiary;
> (2) The Parent exchanges its real estate assets (worth $3.3 billion with $3.2 billion in liabilities) for all shares in the subsidiary;

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[47] Carnevale, *supra* note 34.

[48] David M. Einhorn, *Unintended Advantage: Equity REITs vs. Taxable Real Estate Companies*, 51 TAX L. 203, 203 (1998) ("Contrary to the purposes of the original Real Estate Investment Trust Act of 1960 (the '1960 REIT Act'), REITs are now active business entities that compete with taxable corporations and expose their shareholders to business risks. It is the proposition of this Article that the tax law, by permitting equity REITs to expand beyond the passive investment vehicles contemplated by the 1960 REIT Act, has started a cycle in which the expectations of the stock market will continually exert pressure on publicly traded equity REITs to take actions that will conflict with the limitations placed on REITs by the tax law.").

[49] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, sec. 311, § 355, 129 Stat. 2242, 3090 (2015).

[50] *Id*.

[51] *See id*.; Moyer & Merced, *supra* note 2.

[52] Borden, *supra* note 8, at 548-51.

> (3) The Parent distributes the subsidiary shares (worth approximately $2.68 billion in total)[53] to the Parent's shareholders,
> (4) The subsidiary becomes a REIT;
> (5) The subsidiary REIT may rent property to the Parent corporation (REIT's taxable income of $134 million consists of $650 million in rents from Parent minus $516 million in deductions).[54]

In this example, the REIT removes $134 million of taxable income from the Parent corporation.[55] At a tax rate of 35%, that equates to annual savings of approximately $47 million.[56] However, now that the distribution of step 3 has become taxable under CCA 2016, the IRS may consider it a capital gain for shareholders, subject to taxes of 23.8% for qualified dividend income.[57] If the IRS taxes the $2.68 billion distribution at 23.8%, that will cost the shareholders about $638 million in taxes. The annual tax savings of $47 million from the spinoff would take approximately 23 years to fully compensate for this initial $638 million in taxes.[58] With such a long

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[53] Borden, *supra* note 8, at 551. Borden estimates that the REIT would have a taxable income of $134 million. Assumptions: (1) zero growth (assuming REITs have zero growth is usually a fine assumption, because by definition growth requires retained earnings, and REITs are meant to retain as little earnings as possible); (2) the REIT distributes this entire amount as a dividend to its investors, and; (3) the required rate of return is 5%, the dividend discount model will give you a value (market capitalization) of $2.68 billion (134,000,000/.05). Myron J. Gordon & Eli Shapiro, *Capital Equipment Analysis: The Required Rate of Profit*, 3 MGMT. SCI. 102, 105 (1956).

[54] *Id*. at 548-51; Nugent, *supra* note 35, at 1514.

[55] Borden, *supra* note 8, at 551.

[56] *Id*. at 557.

[57] *Id*. at 542-43. ("Assuming the highest capital gains rate and Medicare surtax apply to corporate dividends, the tax rate on a typical corporate dividend paid to an individual includes the 20 percent qualified-dividend-income rate and the 3.8 percent Medicare surtax, for a total tax rate of 23.8 percent.").

[58] This assumes that the initial $638 million would have received 5% returns if invested elsewhere. Number of payments = -log(1-.05*638000000/47000000)/log(1.05)=23.27 years. Stan Brown, *Loan or Investment Formulas*, BROWN MATH (Jan. 3, 2016), http://brownmath.com/bsci/loan.htm [perma.cc/J7UB-SLKU] ("Number of payments on a loan[:] $N = \frac{-\log(1 - iA/P)}{\log(1+i)}$ ").

repayment schedule and uncertainty over how the tax code may change again in the next 23 years, REIT spinoffs have likely become prohibitively expensive after CCA 2016.

D. Other REIT provisions of the CCA 2016

Although Section 311 of the CCA 2016 seems to spell trouble for REIT spinoffs in the next few years, at least one commentator has claimed that the bill "contains much more good news than bad news for REITs and the real estate industry."[59] Edward Glazer of the law firm Goodwin Procter notes that lawmakers included the spinoff section of the CCA 2016 to help mitigate the revenue costs of the other REIT provisions.[60] A few of these positive provisions include allowing preferential dividends of a public REIT to count towards the required 90% dividend distribution (Section 314), including debt instruments issued by publicly offered REITs as qualified assets (Section 317), and giving a tax break to foreign REIT investors (Section 322).[61]

1. Section 314: Preferential Dividend Limitations Eliminated

Recall that REITs can avoid entity taxation if they distribute 90% of their income as dividends.[62] Before the CCA 2016, the

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[59] Moyer & Merced, *supra* note 2.
[60] Edward L. Glazer & Yoel Kranz, *Congress Proposes Legislation Which Would Eliminate REIT Tax-Free Spin-Offs; Provision Would Also Fund FIRPTA Relief,* GOODWIN PROCTER (Dec. 11, 2015), http://www.goodwinprocter.com/Publications/Newsletters/Client-Alert/2015/12_11-Congress-Proposes-Legislation-Which-Would-Eliminate-REIT-Tax_Free-Spin_Offs.aspx?article=1 [https://perma.cc/E5TW-H2JP].
[61] *Id.* ("The Bill encourages foreign investment in U.S. real estate generally and in REITs specifically, by expanding or creating new exceptions to the imposition of the FIRPTA tax on the sale of U.S. real estate or REIT stock by foreign investors. The Bill exempts shareholders of publicly traded REITs owning 10% or less of the REIT stock (up from 5%). In addition, the Bill creates a new FIRPTA exception for real property interests held by certain foreign pension plans. Finally, the Bill includes many of the favorable REIT provisions contained in prior legislative proposals."); Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Sec. 314, 317, & 322 (2015).
[62] 26 U.S.C. § 857(a)(1)(A).

"preferential dividend rule" prevented REITs from counting preferential dividends toward the 90% dividend requirement to escape entity income taxation.[63] Even if a REIT accidentally sent preferential dividends, the error could "cause all of its income to become subject to corporate tax."[64] The CCA 2016 eliminated this concern by repealing the preferential dividend rule for publicly offered REITs.[65] The preferential dividend statute now includes publicly held REITs along with publicly offered regulated investment companies as entities to which the preferential dividend rule does not apply.[66] This should give REITs much more flexibility in offering investors different classes of shares without having to wrestle with the IRS over technical justifications.[67]

2. Section 317: Debt Instruments of Publicly Offered REITs and Mortgages Treated as Real Estate Assets

As mentioned above, 26 U.S.C. 856(c) limits the composition of REITs' assets to 75% real estate, cash and Government securities, with other securities constituting no more than 25% of total assets.[68] Section 856(c) previously defined real estate assets as "real property . . . and shares . . . in other real estate investment trusts."[69] It also included stock or debt instruments "attributable to the temporary

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[63] 26 U.S.C. § 562(c) (2012).
[64] N.Y. STATE BAR ASS'N TAX SEC., REPORT ON THE APPLICATION OF CODE SECTION 562(C) TO REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS, Report No. 1153, 2.
[65] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Sec. 314, § 562, 129 Stat. 2242, 3093(2015).
[66] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Sec. 314, § 562, 129 Stat. 2242, 3093 (2015).
[67] *See PLR 201444022: REIT Preferential Dividends and Management Fee Structures*, PRICEWATERHOUSECOOPERS 2 (2014), https://www.pwc.com/us/en/asset-management/real-estate/publications/assets/pwc-reit-preferential-dividends-management-fee-structures.pdf [https://perma.cc/2WCJ-HUNW] ("REITs . . . may offer investors different classes of shares which, due to differences in administrative expenses and fees associated with each class, result in different amounts of distributions . . . without creating a preferential dividend.").
[68] 26 U.S.C. § 856(c)(4).
[69] 26 U.S.C.A. § 856(c)(5)(B).

investment of new capital."[70] The CCA 2016 now includes "debt instruments issued by publicly offered REITs" in the definition of real estate assets.[71] However, these debt instruments issued by a public REIT may not constitute more than 25 percent of a REIT's total assets.[72] By making it easier for REITs to hold one another's debt securities, this amendment should help REITs both to issue debt instruments and to hold such REIT debt instruments as investments. This will allow REITs to diversify their investments, to expand the base of investors who hold an interest in their assets, and to gather more capital for investment.

3. Section 322: Exception from FIRPTA for Certain Stock of REITs

The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) imposed a tax on nonresident alien individuals or foreign corporations who sold an interest in U.S. real property.[73] The real estate industry has denounced FIRPTA, saying, "FIRPTA has succeeded beyond its enactors wildest dreams in discouraging foreign investment in U.S. real property."[74] In terms of REITs, FIRPTA taxes any REIT distribution to a nonresident alien or foreign corporation to the extent the distribution results from a sale in United States real property interest.[75] Now, Section 322 of the CCA 2016 exempts "qualified shareholders" of REIT stock from the FIRPTA tax on REIT

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[70] *Id.*
[71] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Sec. 317, § 856, 129 Stat. 2242, 3094 (2015).
[72] *Id.*
[73] Willard B. Taylor, *Suppose FIRPTA Was Repealed*, 14 FLA. TAX REV. 1, 2 (2013) ("The Foreign Investment Real Property Tax Act of 1980 ("FIRPTA") amended the Internal Revenue Code to provide that gain realized by a nonresident alien individual or foreign corporation on the sale or other disposition of an interest in U.S. real property would always be income "effectively connected" with the conduct of a U.S. business and thus would be subject to regular rates of tax and possibly also to branch profits tax if the interest was sold or disposed of by a foreign corporation.").
[74] *Hearing on Tax Reform and Foreign Investment in the United States Before the S. Comm. On Select Revenue Measures of the Comm. On Ways and Means*, 112th Cong. 3 (2011) (statement of Jeffrey D. Deboer, President, Real Estate Roundtable).
[75] 26 U.S.C. § 897(h)(1) (2012).

distributions that result from sales in United States real property.[76] A qualified shareholder largely means a foreign person from a country with an income tax treaty with the United States.[77] Many countries have such treaties, so this includes many foreign investors, and should encourage foreign investment in U.S. REITs.[78]

E. Conclusion

The enactors of CCA 2016 have significantly reshaped REITs. However, they have done so only to strengthen the original vision of a REIT mentioned above, where "a REIT remains predominately a real estate entity, that its real estate is professionally managed, that the REIT itself . . . minimizes the risks of conducting an active business outside of real estate investment, and that the fruits of the investments are distributed to the investors regularly."[79] The creators of the REIT did not intend REITs to be predominately spinoff entities that serve larger corporations,[80] and the CCA 2016 effectively ends the use of REITs for such purposes.[81] The CCA 2016 strengthens the REIT as an autonomous entity (Section 311), allowing them to issue more and different kinds of securities (Section 314 and Section 317), to expand their pool of investors with more foreigners and debt investors (Section 317 and Section 322), and to diversify their assets while maintaining their focus on real estate (Section 317).[82]

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[76] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Sec. 322, § 897, 129 Stat. 2242, 3098 (2015).
[77] *Id*. at 3099.
[78] *United States Income Tax Treaties - A to Z*, INTERNAL REVENUE SERV., https://www.irs.gov/Businesses/International-Businesses/United-States-Income-Tax-Treaties---A-to-Z [https://perma.cc/T8PU-ABTT] ("This page provides links to tax treaties between the United States and particular countries . . . Armenia, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Bulgaria, Canada, China, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea . . . .").
[79] Carnevale, *supra* note 34.
[80] *Id*.
[81] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Sec. 311, § 355, 129 Stat. 2242, 3090 (2015).
[82] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Sec. 314, 317, & 322 (2015).

Steven Garza[83]

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[83] Student, Boston University School of Law (J.D. 2017).