

## Chapter 478

**(Senate Bill 968)**

AN ACT concerning

**Income Tax – Captive Real Estate Investment Trusts – Alterations**

FOR the purpose of altering the definition of “captive REIT” for purposes of a certain addition modification under the Maryland income tax in the amount of the federal dividends paid deduction for captive real estate investment trusts to exclude, under certain circumstances, corporations, trusts, or associations owned or controlled by certain qualified foreign entities and certain trusts owned or controlled by a listed Australian property trust; and generally relating to an addition modification under the Maryland income tax for captive real estate investment trusts.

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 10–306.2

Annotated Code of Maryland

(2022 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article – Tax – General**

10–306.2.

(a) **(1)** In this section[;] **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**[(1)] (2) (I)** [“captive] **“CAPTIVE REIT”** means a corporation, trust, or association:

**[(i)] 1.** that is considered a real estate investment trust for the taxable year under § 856 of the Internal Revenue Code;

**[(ii)] 2.** that is not regularly traded on an established securities market; and

**[(iii)] 3.** **OF WHICH** more than 50% of the voting power or value of the beneficial interests or shares [of which], at any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a single entity that is subject to the provisions of Subchapter C of Chapter 1 of the Internal Revenue Code[; and].

**[(2)] (II) [“captive] “CAPTIVE REIT” does not include:**

**[(i)] 1. a corporation, trust, or association [more than 50% of the voting power or value of the beneficial interests or shares] of which, at any time during which the corporation, trust, or association satisfies [item (1)(iii) of this subsection] SUBPARAGRAPH (I)3 OF THIS PARAGRAPH, MORE THAN 50% OF THE VOTING POWER OR VALUE OF THE BENEFICIAL INTERESTS OR SHARES OF THE CORPORATION, TRUST, OR ASSOCIATION is owned or controlled, directly or indirectly, by:**

**[1.] A. a real estate investment trust other than a real estate investment trust described in [item (1) of this subsection] SUBPARAGRAPH (I) OF THIS PARAGRAPH;**

**[2.] B. a person exempt from taxation under § 501 of the Internal Revenue Code; [or]**

**[3.] C. a listed Australian property trust, OR AN ENTITY ORGANIZED AS A TRUST IN WHICH A LISTED AUSTRALIAN PROPERTY TRUST OWNS OR CONTROLS, DIRECTLY OR INDIRECTLY, 75% OR MORE OF THE VOTING POWER OR VALUE OF THE BENEFICIAL INTERESTS OR SHARES OF THE TRUST; or**

**D. A QUALIFIED FOREIGN ENTITY; OR**

**[(ii)] 2. subject to regulations that the Comptroller adopts, a real estate investment trust that is intended to become regularly traded on an established securities market and that satisfies the requirements of § 856(a)(5) and (6) of the Internal Revenue Code by reason of § 856(h)(2) of the Internal Revenue Code.**

**(3) “QUALIFIED FOREIGN ENTITY” MEANS A CORPORATION, TRUST, ASSOCIATION, OR PARTNERSHIP THAT IS ORGANIZED UNDER THE LAWS OF A FOREIGN GOVERNMENT AND:**

**(I) AT LEAST 75% OF THE TOTAL ASSET VALUE OF THE ENTITY AT THE CLOSE OF THE ENTITY’S TAXABLE YEAR IS REPRESENTED BY REAL ESTATE ASSETS, AS DEFINED IN § 856 OF THE INTERNAL REVENUE CODE, CASH AND CASH EQUIVALENTS, AND UNITED STATES GOVERNMENT SECURITIES;**

**(II) 1. IS NOT SUBJECT TO TAX ON AMOUNTS DISTRIBUTED TO THE ENTITY’S BENEFICIAL OWNERS; OR**

**2. IS EXEMPT FROM ENTITY-LEVEL TAXATION;**

**(III) ON AN ANNUAL BASIS, DISTRIBUTES AT LEAST 85% OF THE TAXABLE INCOME OF THE ENTITY, AS COMPUTED IN THE JURISDICTION IN WHICH**

**THE ENTITY IS ORGANIZED, TO THE HOLDERS OF THE SHARES OR CERTIFICATES OF THE BENEFICIAL INTERESTS OF THE ENTITY;**

**(IV) 1. OF WHICH NOT MORE THAN 10% OF THE VOTING POWER OR VALUE OF THE BENEFICIAL INTERESTS OR SHARES OF THE ENTITY IS OWNED OR CONTROLLED DIRECTLY, INDIRECTLY, OR CONSTRUCTIVELY BY A SINGLE ENTITY OR INDIVIDUAL; OR**

**2. THE BENEFICIAL INTERESTS OR SHARES OF THE ENTITY ARE REGULARLY TRADED ON AN ESTABLISHED SECURITIES MARKET; AND**

**(V) THE ENTITY IS ORGANIZED IN A FOREIGN COUNTRY THAT HAS A TAX TREATY WITH THE UNITED STATES GOVERNMENT.**

(b) In addition to the modifications under §§ 10–305 through 10–306.1 of this subtitle, an amount equal to the amount of the dividends paid deduction allowed under the Internal Revenue Code for the taxable year is added to federal taxable income to determine the Maryland modified income of a captive REIT.

(c) For purposes of this section, the constructive ownership rules prescribed under § 318(a) of the Internal Revenue Code, as modified by § 856(d)(5) of the Internal Revenue Code, shall apply in determining the ownership of stock, assets, or net profits of any person.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2023, and shall be applicable to all taxable years beginning after December 31, 2022.

**Approved by the Governor, May 8, 2023.**