US Inbound Corner | Navigating complexity

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Foreign Investment in Real Property Tax Act (FIRPTA)

Generally, foreign corporations, foreign trusts, and individuals who are neither US citizens nor US residents (collectively referred to as "international investors") are subject to US federal income tax only on income that is either effectively connected with a US trade or business ("effectively connected income," or ECI), regardless of source, or, if not ECI, certain US source income. The Foreign Investment in Real Property Tax Act (FIRPTA) is a special set of rules that imposes a US tax on the gains of international investors when they dispose of US real property interests (USRPI). In general, FIRPTA treats the gain or loss of an international investor from the disposition of a USRPI as income or loss effectively connected with a US trade or business even if the foreign investor is not otherwise engaged in a US trade or business. Consequently, such gain or loss will be included with the international investor's other effectively connected income (if any) and subject to US income tax on a net basis.

A USRPI includes an interest in real property located in the United States and the Virgin Islands. Real property includes land, real property improvements (e.g., buildings), leasehold interests, and unsevered natural products of land (e.g., growing crops, timber, mines, wells, and other natural deposits). It also includes certain personal property associated with the use of real property, such as movable walls, furnishings, mining equipment, farming equipment, drilling rigs, and other personal property associated with the use of real property. USRPIs also include shares and other equity interests in a US corporation (other than solely as a creditor). When international investors own interests in a US corporation either directly or through a partnership, FIRPTA must be considered. Stock in a US corporation is presumed to be a USRPI unless it is established (and certain filings are made) that the corporation was not a US real property holding corporation at any time during a five-year look-back period. Further, FIRPTA will tax USRPI held by or through a partnership by taxing the gain on the disposition of the partnership interest or taxing an international investor's share of income from the partnership's sale of USRPI.

In addition to a substantive tax imposed on an international investor on the disposition of USRPI, withholding tax is also imposed and can be especially burdensome on non-cash transactions and reorganizations. Generally, 15% of the gross amount realized on a disposition of USRPI is withheld by the transferee and is required to be remitted to the IRS within 20 days of the disposition. The onus is on the international investor to obtain a refund for any amount of over withholding.

Finally, special consideration needs to be given when considering transactions that are intended to qualify for non-recognition for US federal income tax purposes. FIRPTA overrides all non-recognition rules, unless FIRPTA provides an exception and allows for non-recognition. If FIRPTA is not addressed, both withholding and substantive tax will be imposed. As noted above, even where there are transactions that do not amount to a gain, a 15% gross withholding tax can apply and could be burdensome. In practice, it is imperative for international investors to understand FIRPTA implications when initially investing in the United States because a delay until such investor wants to dispose of their USRPI may result in unforeseen withholding and substantive tax imposed under the FIRPTA rules.

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Calendars to watch

Each edition, be sure to mark your calendars for some of the more important events (recent and upcoming) as well as tax developments making an impact on businesses investing in the United States.

Deloitte US Inbound Client Roundtables

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City	Date
New York	June 16, 2022
Southern California	June 20, 2022
Detroit	July 26,2022
Atlanta	Late July 2022
Bay Area	July
Dallas	September 20, 2022
Houston	September 21, 2022
Chicago/Milwaukee	Septemer 28, 2022
Mexico City	October 18, 2022
Monterrey	October 20, 2022
Boston	November 8, 2022
United Kingdom/Paris/Germany	Week of November 14, 2022

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July 14
1:00 p.m. ET
Dbriefs webcast: The new frontier of indirect taxes: What's new and what's next
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