

INTERNATIONAL REAL ESTATE TAX SERVICES



KEY CONTACTS:

VINCE HOUK

PARTNER-IN-CHARGE, INTL TAX SERVICES
O: 972.448.9882
VINCE.HOUK@WEAVER.COM

CRAIG EPSTEIN

DIRECTOR, INTL TAX SERVICES
O: 832.320.3436
CRAIG.EPSTEIN@WEAVER.COM

The Foreign Investment in Real Property Tax Act (FIRPTA) imposes a tax on gains from a disposition of a U.S. real property interest by a foreign person. As a general rule, to help ensure foreign persons pay income tax on their sale of U.S. property, withholding tax on the amount realized from a disposition of a U.S. real property interest is required at the time of sale, and the tax payment must be sent to the IRS within 20 days subsequent to closing.

For international real estate transactions, certain rules may apply regardless of whether you are a U.S. citizen or foreign person.

There are a number of rules and exceptions that can be daunting to navigate and could create obstacles at the closing of a deal. The structure of every deal depends on specific facts and individual circumstances, such as whether the foreign investor is a resident of a country with an applicable income tax treaty with the U.S.

Whether you are a buyer, a seller or a real estate professional, Weaver's International Tax Group

will work with you at every step and guide you through the FIRPTA maze.

U.S. and foreign persons (including entities) that purchase U.S. real property may be liable for withholding and remitting tax equal to 15% of the purchase price. This also applies to the purchase of a business if a significant amount of the value is related to U.S. real property, (including property connected to the real property). In order to not be liable for withholding the tax, purchasers who are U.S. persons (including entities) will be required, at a minimum, to obtain documentation from the seller (regardless of whether the seller is a U.S. or foreign person).

For foreign buyers purchasing U.S. real estate, several other tax considerations may come into play, which can significantly impact the economics of the investment. How the investment is structured is key to managing the tax cost and the planning opportunities can vary significantly based on many factors, including the country of the foreign investor and the type of investment. It is important that foreign investors assess these

Weaver offers a variety of tax consulting services that cater specifically to the tax and compliance needs of foreign-owned companies and individual international real estate investors. Our professionals recognize the challenges and opportunities of working toward international growth. We have a deep understanding of the complex rules and regulations surrounding foreign investment in U.S. real estate.

FOREIGN BUYERS OF U.S. REAL ESTATE TURN TO WEAVER FOR ASSISTANCE WITH:

- ▶ Choosing the appropriate entity structure in U.S. real estate investments to help minimize tax and tax compliance burdens
 - ▶ This may include modeling to account for the expected income or losses of the U.S. business and intended asset mix of any entity holding the real property investments. Additional analysis is also typically conducted to review the financing and cash flow requirements of the proposed real property purchase arrangement.
- ▶ FIRPTA reporting and compliance, including preparation of FIRPTA withholding forms and guidance for remittance of withheld tax
- ▶ Other reporting and compliance requirements including Effectively Connected Income analysis, filing of U.S. tax returns for foreign investors, application of U.S. Identification numbers, and IRS representation

CLEARING THE WAY FOR A SUCCESSFUL FOREIGN REAL ESTATE SALE

Weaver's international FIRPTA professionals assisted a U.S. investment fund with a large foreign investor base structure in a recent acquisition of U.S. real property assets. The foreign investors wanted to ensure that they would not have a U.S. tax filing obligation and achieve a single layer of taxation after the closing of their investment. This was important for marketing to foreign investors, many of whom resided in countries that did not have income tax treaties with the U.S. In addition to designing and implementing a tax-efficient structure, Weaver's tax team provided written advice of the associated U.S. tax consequences, including the FIRPTA considerations.



FOREIGN SELLERS OF U.S. REAL ESTATE TURN TO WEAVER FOR:

- ▶ Restructuring current investments in U.S. real estate and analyzing the tax obligations post disposition
- ▶ FIRPTA reporting and compliance, including preparation of applications for lower and nil withholding certificates
- ▶ Filing U.S. tax returns for foreign entities and non-resident taxpayers and IRS representation for tax refunds

WORKING AROUND CASH CONSTRAINTS TO CLOSE THE DEAL

Weaver's tax team assisted a leading foreign-owned international supplier of hydrocarbon specialty products in divesting to a third-party buyer several of the company's U.S. real property assets. Both the buyer and seller had cash constraints, and there were concerns about producing sufficient cash to cover the FIRPTA withholding obligation and remitting to the IRS within 20 days of closing the deal. After determining that the maximum FIRPTA tax obligation was less than the withholding amount, Weaver's team helped the parties file for an application for a withholding certificate with the IRS and prepare supporting documentation. Securing this certificate resolved the client's immediate cash flow issues and the deal was successfully closed.



Weaver supports real estate professionals by explaining the FIRPTA regime and its applicability to real estate clients and preparing FIRPTA documentation.