Foreign Investment in U.S. Real Property Tax Services

Most investors (both U.S. and foreign) are unaware that special tax and withholding rules apply to every foreign person's disposition of stock in a domestic corporation, unless an exemption applies. The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) imposes U.S. income tax on a foreign person's gain attributable to the disposition of a direct or indirect interest in U.S. real property (USRPI). A foreign person that disposes of a USRPI (whether directly or through one or more partnerships) must file a U.S. income tax return, unless a special exemption applies. FIRPTA also imposes a withholding tax on any person (U.S. or foreign) who actually or constructively acquires a USRPI from a foreign person.

A USRPI includes a direct or indirect interest in real property located in the United States and includes stock of all nonpublicly traded domestic corporations, unless the domestic corporation conducts a special analysis of its relevant assets and provides timely notice of its findings to its foreign investors and to the Internal Revenue Service (IRS).

Proper tax planning and timely notification and filing is essential when any foreign person sells, exchanges, transfers, distributes, or otherwise disposes of a USRPI. Corporate acquisition and reorganization transactions present particularly vexing traps for the unwary in the FIRPTA context because these transactions often involve several constructive exchanges of stock of domestic corporations. You need a tax adviser who understands the tax implications of these activities. That adviser is KPMG LLP (KPMG).

How KPMG can help

FIRPTA imposes substantive tax and compliance costs in connection with inbound investments. KPMG's FIRPTA Services Group can help clients reduce these costs, reduce tax risk exposure by identifying tax and withholding obligations, and help ensure compliance with all notice and filing requirements.

KPMG's FIRPTA Services Group consists of professionals that focus on U.S. tax, valuation, and other necessary data and analytical services. KPMG's FIRPTA Services Group project managers are trained to assess the proper scope and assemble the right team for each project. Because FIRPTA projects tend to evolve as information develops and priorities change, KPMG believes that early issue identification and cross-functional coordination is of paramount importance in FIRPTA projects, and we strive to ensure that each project meets the client's specific needs.

Detailed services

KPMG's FIRPTA Services Group can help clients with USRPIs navigate the complex tax withholding and compliance rules. Services include assisting clients to:

- Structure inbound investments in U.S. real property to help reduce tax and compliance burdens
- Perform analyses, including conducting asset valuations, financial modeling assistance, and drafting opinions
- Analyze the tax consequences of mergers, reorganizations, refinancings, and nonrecognition transactions involving the disposition of a USRPI
- Conduct buy-side due diligence; analyze withholding obligations
- Comply with the various filing obligations, including assistance in preparing FIRPTA forms; seeking relief from the IRS for missed, incomplete, or late FIRPTA filings.

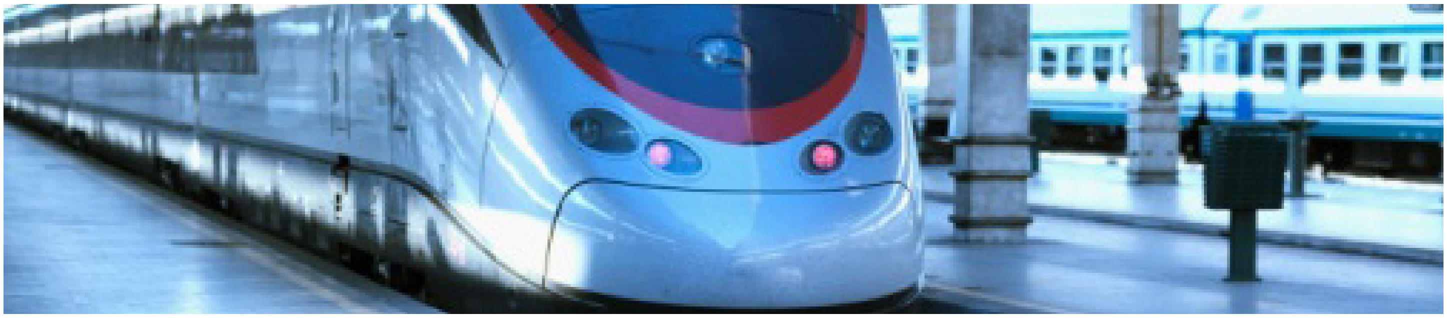
Case studies

Global manufacturer

KPMG's FIRPTA Services Group helped a global manufacturer reduce the FIRPTA tax triggered by a reorganization of the foreign parent's U.S. subsidiaries, which involved the otherwise tax-free transfer of domestic corporate stock that was a USRPI. The team prepared a valuation, a tax-basis calculation, and a tax opinion, as well as the required U.S. income tax filings, to support the withholding and remittance of less than the statutorily required amount.

U.S. Investment Fund

KPMG's FIRPTA Services Group helped a major U.S. investment fund restructure an inefficiently designed inbound investment to ensure that none of the fund's foreign investors would have a U.S. income tax return filing obligation when the foreign investors exited the investment or the fund disposed of the underlying USRPI. This potential income tax return filing requirement created a significant investor relations issue. The team prepared a tax opinion addressing the corporate tax and FIRPTA tax and withholding implications of the restructuring, helping to reduce the U.S. income filing obligations, as well as retrofitting the existing structure to make it tax efficient for future USRPI investment.



Contact us

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