NAR Issue Summaries

Federal Tax / Foreign Investment in Real Property Tax Act (FIRPTA)

NAR Committee:

Federal Taxation Committee

What is the fundamental issue?

The Foreign Investment in Real Property Tax Act (FIRPTA) was enacted in 1980, initially as a response by Congress to public concerns about increasing foreign ownership of farmland in the United States. The major purpose of FIRPTA was to establish equity of tax treatment of ownership in U.S. real property between foreign and domestic investors.
Before the enactment of FIRPTA, foreign investors were often able to avoid paying
U.S. capital gains tax on gains when they sold U.S. assets, such as real estate, stocks, bonds, and U.S. Treasury securities.

FIRPTA changed this for gains on real property held by foreign investors by requiring the buyer of such property to withhold a portion of the proceeds and remit it to the IRS as a proxy tax. If the foreign investor owed less than the amount withheld, he or she could file a tax return and claim a refund for the difference. FIRPTA thus helped to level the tax playing field between U.S. and foreign investors

In the 116th Congress, a bill to repeal FIRPTA was introduced in the House of Representatives that has attracted the support of many commercial real estate stakeholders in the country, as well as a high number of bipartisan cosponsors on the Ways and Means Committee. Proponents of this bill, the "Invest in America Act" (H.R. 2210), believed it would increase the amount of foreign capital invested in real estate in the U.S. and also create jobs.

No FIRPTA repeal bills have yet been introduced in the 118th Congress.

I am a real estate professional. What does this mean for my business?

Some economists believe that FIRPTA has harmed the U.S. commercial real estate industry and held back economic growth. The United States trails other major industrial nations in the amount of commercial real estate investment from foreign sources. Moreover, the U.S. real estate sector enjoys just a fraction of the amount of foreign dollars invested into other parts of our economy, such as manufacturing and financial services. In a survey done in early 2014, three-quarters of foreign investors who responded indicated that FIRPTA relief or repeal would have a major or a positive effect on U.S. real estate investment activity. Repeal of FIRPTA thus may increase investment in U.S. commercial real estate, which in turn could have positive growth effects on residential real estate as well.

NAR Policy:

NAR policy provides that "we believe all U.S. investors and foreign investors in U.S. real estate should be subject to similar sets of rules under the U.S. tax system. NAR is thus not supportive of repealing FIRPTA.

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However, NAR supports policies that improve reporting and disclosure requirements regarding foreign ownership of U.S. real estate by eliminating the compliance burden on buyers and placing it on sellers and/or their agents.

Opposition Arguments:

Proponents of repealing FIRPTA believe that such a change would result in significantly increased foreign investment in U.S. real estate, along with increased economic and job growth.

Legislative/Regulatory Status/Outlook

It is presently unclear if or when the Invest in America Act will be reintroduced in the current (119th Congress), or if there will be a legislative vehicle that could carry the bill to enactment.

Current Legislation/Regulation (bill number or regulation)

None at this time.

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