

News & Types: Real Estate Update

# Foreign Investment in Real Property Tax Act ("FIRPTA") Update

6/24/2015

By: Keith W. Groebe, Timothy J. Hammersmith

Practices: Real Estate

Pending legislation, in the form of United States Senate Bill S. 915 and United States House of Representatives Bill H.R. 2128, collectively known as the "Real Estate Investment and Jobs Act of 2015," (the "Act") seeks to amend the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"). FIRPTA may impact the value of real estate and the decision to purchase real estate by, foreign person, including nonresident alien individuals and foreign corporations, due to the burden it places on foreign owners when they dispose of their U.S. real estate investments. Under current law, foreign persons are excepted from FIRPTA withholding taxes for dispositions of a class of publicly-traded stock of a defined U.S. real property holding corporation (including a REIT); provided the seller-shareholder held no more than five percent of that class of stock at any time during a certain defined period. The Act proposes to increase the FIRPTA exception to dispositions of up to 10% ownership of a class of such stock. In addition, the Real Estate Investment and Jobs Act proposes to create a FIRPTA exception for dispositions of U.S. real estate interests held by foreign pension funds.

One additional feature of the Act to be aware of is that it proposes to increase the withholding tax amount for non-exempt dispositions from 10% to 15%. Experts believe the prospects for the Act to pass both chambers of Congress and become signed into law this year are good, and are optimistic about the Act's potential positive effects upon the U.S. real estate industry.

We will keep you advised of the status of amendments to the Act.