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IMPORTANT UPDATE ON NEW FIRPTA CHANGE EFFECTIVE 2/17/2016

On December 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act of 2015 (the "Act"). The Act includes significant changes to several tax laws. In particular, the Act contains important modifications to the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"). The changes for FIRPTA are effective 60 days after enactment which is February 17, 2016.

This newsletter is to advise that for closings scheduled on or after February 17, 2016 settlement agents are required to withhold **15%** of the gross proceeds from the sale of real estate property by foreign persons. Please see the following for a summary of the changes with significant changes **in red**:

1. Unless an exemption or reduced rate applies, the withholding amount has been increased from 10% to **15%.**
2. If the property is not being acquired as a residence or the transaction exceeds **$1 million** fo sales price, **15%** of the gross proceeds must be withheld.
3. For properties being acquired by the transferee for use as a residence and *which are **$1 Million in gross sales price** or less,* **and for which a "Statement of Intent to Reside" is signed by the transferee**, the following rates apply:

    a. If the sales price is $300,000 or less, withholding is not required (0%) (See: 26 U.S.C. § 1445(b) (5)).
    b. If the sales price is **greater than $300,000, but not more than $1 million 10% must be withheld** (See: 26 U.S.C. 1445(c) (4)). (note that the 10% withholding is on the full amount of the gross proceeds)
    Note: Although we believe the instructions will be further updated, currently the instructions indicate that checking the reduced withholding box is adequate and the IRS is not currently requiring additional backup.

THERE ARE THREE GENERAL WAYS OF DEALING WITH THE FIRPTA WITHHOLDING:

- Having the **15%** withheld and file a non-resident income tax return for a refund in the year following the sale.
- File an application for reduced rate of withholding with the IRS, on or **by the date of closing**, (also referred to as a "Withholding Certificate").
    - The seller is mandatorily required to file a non-resident income tax return the following year.
- The buyer chooses to sign a "Statement of Intent to Reside" on properties **$1,000,000 or less** which triggers one of the steps listed above in number three. Please note that under current law, the Transferee (buyer) is the statutory withholding agent and assumes risk with the taking on this position.
    - The seller is mandatorily required to file a non-resident income tax return and pay any tax due, plus penalties for underpayment of estimated taxes.

The IRS has updated Form 8288 and the instructions, although we believe there will be further modifications. We are encouraged by the addition of a process to follow when receiving IRS notifications or late filings. We continue to monitor for further updates and will send out additional information as it becomes available. If you have any questions or clients with concerns on this issue, please contact us at the numbers below.

Very truly yours,

Susan Inez Poskus, CPA
President