AHN TAX & BUSINESS ADVISORS

114 W Magnolia, Suite #202
Bellingham, WA 98225
(360) 746-6023
www.atbapllc.com

Increased rate of withholding on foreign dispositions of U.S. real property

New Law – Effective February 17, 2016 the rate of withholding on dispositions of United States real property interests (USRPI) is increased from 10 percent to 15 percent. There is an exception from the increased rate of withholding on the sale of real estate when the amount realized is $1 million or less and the purchaser is using as a primary residence. The exemption from withholding tax remains available on the sale of a real estate when the amount realized is $300,000 or less and the purchaser signs a primary residence affidavit.

- Sale of U.S. property by a non-U.S. person – 15% withholding
- Gross proceeds $300,001 - $1,000,000 and purchaser uses as a primary residence – 10% withholding
- Gross proceeds $300,000 or less and purchaser uses as a primary residence – exemption available

How this affects non-U.S. investors – Non-U.S. investors anticipating a sale of a USRPI (including interests in partnerships and corporations with material U.S. real property interests) after February 16, 2016 should review the sale agreement and other related documents to determine the increased withholding rate is reflected and review options for reducing or eliminating the withholding tax due at the time of sale.

The new rate will apply to gross proceeds from:

- dispositions of USRPIs including dispositions of the stock of a domestic corporation that is or is presumed to be a U.S. real property holding corporation
- certain redemption distributions by current (and certain former) USRPHCs;
- distributions of USRPIs by partnerships, trusts and estates to their foreign partners or beneficiaries; and
- dispositions by foreign partners of interests in partnerships, 50% or more of the value of the gross assets of which consists of USRPIs and 90% or more of the value of the assets of which consists of USRPIs, cash and cash equivalents.

Background – The PATH (Protecting Americans from Tax Hikes) Act made significant changes to the Foreign Investment in Real Property Tax Act ("FIRPTA"), including an increase in the rate of withholding on dispositions of USRPIs subject to FIRPTA. FIRPTA subjects non-U.S. investors to U.S. income tax on gains realized from the disposition of any USRPI. A USRPI includes any interest in U.S. real property, whether owned directly or indirectly through a partnership, as well as shares of stock in a U.S. real property holding corporation. A U.S. income tax return is required to report the sale of U.S. real property, even if withholding is completed. In addition, state income tax may apply.

If you have any questions on the changes to the FIRPTA or related matters, please contact us.