

Investment in United States Real Property by Non-U.S. Investors

Certain U.S. Tax Considerations

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Presenter:

Richard M. Lipton / Baker & McKenzie, LLP
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Presenter

Dick Lipton
Baker & McKenzie, LLP
Chicago, IL

richard.lipton@bakermckenzie.com
(312) 861-7590

GENERAL CONCEPTS

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Taxation of Non-U.S. Persons

- U.S. source fixed, determinable, annual or periodical income (i.e., dividends, interest, rents) (“FDAP Income”): typically income not effectively connected with a trade or business in the United States.
- 30% U.S. withholding tax on gross basis, but subject to reduction under applicable tax treaties.
- Generally no U.S. tax return filing obligation for FDAP Income.

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Taxation of Non-U.S. Persons

- Foreign Account Tax Compliance Act (“FATCA”):
 - New reporting and withholding regime.
 - 30% withholding on any “withholdable payment” (i.e., U.S. source FDAP Income, and gross proceeds from the sale or other disposition of a security that can give rise to the payment of FDAP Income) made to “foreign financial institutions” and “non-financial foreign entities” unless they comply with certain due diligence and reporting requirements.
 - Withholdable payments do not include income that is effectively connected with the conduct of a U.S. trade or business.

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Taxation of Non-U.S. Persons

- U.S. source income effectively connected with a trade or business in the United States - subject to U.S. income tax at regular rates.
- Corporations taxed at a maximum rate of 35% under current law on ordinary income and capital gains.
- Individuals taxed at a maximum rate of 39.6% under current law on ordinary income, and 20% on long-term capital gains.

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