

Invest in America Act

Under present law, a foreign person is generally not taxed on capital gains from U.S. sources. The *Foreign Investment in Real Property Tax Act of 1980* (“*FIRPTA*”) presents an exception to this general rule. *FIRPTA* generally causes a foreign person’s gain or loss from the disposition of a U.S. real property interest (“USRPI”) to be subject to U.S. federal income tax. USRPIs generally include (i) interests in real property located in the United States and (ii) stock of a domestic U.S. real property holding company.

By creating a tax burden that only applies to a single asset class, real property, *FIRPTA* discourages capital formation and investment in U.S. real estate and infrastructure. This artificial tax barrier results in foreign investment flowing to other markets around the world, rather than the United States. University of California-Berkeley professor and economist Ken Rosen estimates that *FIRPTA* costs the United States between \$65-125 billion in lost real estate investment and between 147,000-284,000 in lost jobs.¹

The *Invest in America Act* (the “Act”) would repeal *FIRPTA*. Under the Act, gains from dispositions of USRPIs would generally no longer be subject to U.S. federal income tax unless, as before *FIRPTA*, they were effectively connected with a U.S. trade or business or were realized by a nonresident alien individual who was present in the United States for 183 or more days during the year. In so doing, the Act would spur job creation and productive investment through the construction and improvement of U.S. real estate and infrastructure.

The amendments contained in the Act would be effective after the date of enactment.

¹ Kenneth T. Rosen & Randall Sakamoto, *Unlocking Foreign Investment in U.S. Commercial Real Estate*, TAX NOTES (Oct. 16, 2017), p. 405.