

NEW TAX WITHHOLDING RULES FOR FOREIGN-OWNED UNITED STATES REAL ESTATE

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I. INTRODUCTION

Under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), a foreign person who sells a United States real property interest (USRPI) generally is required to pay tax on any gain realized on the sale.¹ The scope of real property interests subject to FIRPTA is very broad and includes, for example, mineral and oil rights.² The definition of USRPI includes stock in certain United States corporations whose assets consist or have consisted mainly of United States real estate during the previous five years. These corporations are known as "U.S. real property holding corporations" (USRPHC).³ The applicable tax rate for foreign sellers who are individuals is 20% of the gain;⁴ the maximum rate for foreign corporate sellers is 28%.⁵ As originally enacted, FIRPTA provided for enforcement of the tax through a complicated system of annual information reports designed to identify all foreign owners with ei-

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¹ Pub. L. No. 96-499, §§ 1121-25, 94 Stat. 2599, 2682-91 (1980), amended by Pub. L. No. 97-34, § 831, 95 Stat. 172, 352-55 (1981), and Pub. L. No. 98-369, § 129, 98 Stat. 494, 655-60 (1984) (codified at §§ 897, 1445, 6039C, and 6652(g) of the United States Internal Revenue Code) [hereinafter cited as I.R.C.].

² I.R.C. § 897(c)(1) (West 1982); 49 Fed. Reg. 50,689-717 (1984) (to be codified at 26 C.F.R. § 1.897-1 through 1.897-4) [the Internal Revenue Service Regulations, hereinafter cited as I.R.S. Reg.].

³ Technically, a foreign corporation can be a USRPHC for the limited purpose of defining the status of related entities, but the definition of USRPI includes the stock of only domestic USRPHCs. I.R.C. § 897(c)(2) (West 1982); see I.R.S. Reg. § 1.897-2. The stock of a foreign corporation cannot be a USRPI and its disposition is not subject to FIRPTA, regardless of USRPHC status. I.R.C. § 897(c)(1)(a)(ii) (West 1982); I.R.S. Reg. § 1.897-2(e).

⁴ FIRPTA established a minimum tax for foreign individuals equal to 20% of net United States real property gain. I.R.C. § 897(a)(2) (West 1982). As a result of the general reduction of the maximum tax on income in 1981, the maximum United States tax rate on individual capital gains is now equivalent to the FIRPTA minimum tax rate. I.R.C. §§ 1, 55, 1202(a) (West 1982). The result is, in effect, a flat tax rate of 20% for foreign individuals.

⁵ I.R.C. § 1201(a) (West 1982). Cf. I.R.C. § 56 (West 1982).

ther a direct or indirect interest in United States real estate.⁶

From the beginning, the effectiveness of FIRPTA has been subject to serious question. Since the tax is not due until the foreign owner files a tax return after the end of the year, he might easily sell his United States real estate, take the proceeds out of the United States, decline to pay any tax, and reinvest the untaxed proceeds back in the United States through nominees and foreign corporations established in tax havens.⁷ The reporting system was intended to expose such transactions, but it was never implemented.⁸ The proposed reporting system was strongly criticized as imposing burdensome and complex paperwork on both the United States Internal Revenue Service (I.R.S.) and taxpayers.⁹ In addition, the reporting system was believed to discourage investment by foreign persons who feared disclosure of their United States real estate holdings to political adversaries in their home countries.¹⁰

II. NEW WITHHOLDING RULES

As part of the Deficit Reduction Act of 1984, Congress amended FIRPTA by substituting a withholding system for the reporting system.¹¹ The amendment repeals the FIRPTA reporting requirements, but gives the I.R.S. power to require foreign owners to report a direct investment in United States real estate of \$50,000 or more.¹² The I.R.S. is prohibited, however, from establishing any rules requiring that indirect foreign owners file reports or be identified.¹³ On December 31, 1984, the I.R.S. announced that it will not require annual information reports from either direct or indirect foreign investors.¹⁴

⁶ I.R.C. § 6039C (West Supp. 1984).

⁷ SENATE COMM. ON FINANCE, DEFICIT REDUCTION ACT OF 1984: EXPLANATION OF PROVISIONS APPROVED BY THE COMMITTEE ON MARCH 21, 1984, 98TH CONG., 2D SESS., 406 (Comm. Print 1984) [hereinafter cited as SENATE COMM.].

⁸ Treas. Reg. §§ 6a.6039C-1 through 6a.6039C-5, 47 Fed. Reg. 41532 (1982); 48 Fed. Reg. 19,163 (1984) (amending and postponing indefinitely the deadlines for FIRPTA information reporting).

⁹ SENATE COMM., *supra* note 7.

¹⁰ *Id.*

¹¹ Pub. L. No. 98-369, § 129, 98 Stat. 494, 655-60 (1984) (enacting new I.R.C. § 1445, and amending I.R.C. § 6039C) [hereinafter cited as Pub. L. No. 98-369]; I.R.S. Reg. §§ 1.1445-1T through 1.1445-6T (temporary) (implementing I.R.C. § 1445), 49 Fed. Reg. 50,667-89 (1984).

¹² Pub. L. No. 98-369 (amending I.R.C. § 6039C (West Supp. 1984)).

¹³ H.R. REP. NO. 861, 98th Cong., 2d Sess. 947 (1984) [hereinafter cited as H.R. REP. NO. 861].

¹⁴ 49 Fed. Reg. 50,671 (1984). The I.R.S. may implement reporting requirements in the

Beginning January 1, 1985, the purchaser of any United States real estate interest or nonpublicly traded stock is required to deduct and withhold as a tax 10% of the purchase price, whether or not the seller is in fact a foreign person.¹⁵ Nevertheless, most purchasers will be entitled to a withholding exemption if they receive either a written certificate from the seller stating that he is not a foreign person¹⁶ or, in the case of a stock purchase, a written certificate from the corporation stating that it is not and has not been a USRPHC.¹⁷ If the purchaser has actual knowledge or notice that the certificate is false, however, he must withhold the tax.¹⁸ Two types of real estate interests are also exempt from the withholding requirement, although not necessarily from tax liability: residences purchased for \$300,000 or less,¹⁹ and stock of a publicly traded United States corporation.²⁰ By regulation, an interest in a publicly traded partnership or trust is treated as corporate stock and is exempt from withholding.²¹

In addition to the withholding obligation of purchasers, certain entities which dispose of USRPIs or distribute them to foreign persons are subject to the withholding requirements.²² For example, foreign-owned partnerships, trusts, and estates disposing of USRPIs must withhold.²³ Likewise, a USRPHC must withhold

future if compliance with the withholding requirements is inadequate. Such requirements, however, would only be imposed prospectively. *Id.*

¹⁵ I.R.C. § 1445(a) (West 1985). To the extent required in regulations to be issued by the I.R.S., purchasers of partnerships or beneficial interests in trusts whose assets may include USRPIs must have deducted and withheld 10% of the purchase price. I.R.C. § 1445(e)(5) (West 1985); I.R.S. Reg. § 1.1445-5T(g) [Reserved] (temporary), 49 Fed. Reg. 50,669, 50,687 (1984).

¹⁶ I.R.C. § 1445(b)(2) (West 1985); I.R.S. Reg. § 1.1445-2T(b)(2) (temporary).

¹⁷ I.R.C. § 1445(b)(3) (West 1985); I.R.S. Reg. §§ 1.897-2(h), 1.1445-2T(c)(3) (temporary).

¹⁸ I.R.C. § 1445(b)(7)(A) (West 1985); I.R.S. Reg. §§ 1.1445-2T(b)(4)(iii), -2T(c)(3)(ii) (temporary).

¹⁹ I.R.C. § 1445(b)(5) (West 1985); I.R.S. Reg. § 1.1445-2T(d) (temporary).

²⁰ I.R.C. § 1445(b)(6) (West 1985); I.R.S. Reg. § 1.1445-2T(c)(2) (temporary).

²¹ I.R.S. Reg. §§ 1.897-1(c)(2)(iv), 1.1445-2T(c)(2) (temporary).

²² If tax is required to be withheld by the transferring entity, no additional tax must be withheld by the transferee-purchaser. I.R.S. Reg. § 1.1445-5T(b)(1) (temporary).

²³ United States partnerships, trusts, and estates disposing of USRPIs are required to withhold 10% of any amount realized that is includible in the distributive share of a foreign partner or beneficiary. I.R.C. § 1445(e)(1) (West 1985); I.R.S. Reg. § 1.1445-5T(c)(1) (temporary). A partnership or trust that has more than 100 partners or beneficiaries may elect, pursuant to I.R.S. regulations, to withhold 20% of the amount realized and distributed (or 28% in the case of foreign corporate distributees) at the time of the actual distribution, rather than 10% of the amount realized at the time of each disposition of USRPIs by the partnership or trust. I.R.S. Reg. § 1.1445-5T(c)(3)(iii) (temporary). To the extent required in regulations to be issued by the I.R.S., foreign partnerships, trusts, and estates, as well as

10% of the amount realized by its foreign shareholders in connection with any USRPI distribution in exchange for their stock, including distribution from a corporate liquidation.²⁴ Foreign corporations which distribute USRPIs are required to withhold 28% of the gain recognized by the corporation if the USRPI is distributed as a dividend, or in exchange for stock or for other property not subject to FIRPTA.²⁵

In certain circumstances, an agent or representative of the seller or purchaser must withhold as if he were the purchaser, up to the amount of his compensation in connection with the transaction.²⁶ An agent will be liable for withholding if (1) the purchaser receives a false certificate from the seller or from the corporation whose stock is being purchased, (2) the agent has actual knowledge that the certificate is false, and (3) the agent fails to notify the purchaser.²⁷ In the case of an agent of a foreign corporation selling United States real estate, however, the agent is deemed to have knowledge of a false certificate and is automatically liable for the amount not withheld.²⁸

The new withholding requirements pose several problems. The withholding requirements apply literally to every purchase of non-publicly traded stock of United States corporations, unless the corporation furnishes a certificate denying that it is or has been a USRPHC.²⁹ The withholding requirements may be a particular ob-

United States entities, will also have to withhold in the case of any distribution of USRPIs to foreign persons. I.R.C. § 1445(e)(4) (West 1985); I.R.S. Reg. § 1.1445-5T(f) [Reserved] (temporary), 49 Fed. Reg. 50,669, 50,687 (1984). See I.R.C. § 897(g) (West 1982).

²⁴ I.R.C. § 1445(e)(3) (West 1985). The temporary withholding regulations provide for withholding based on the "fair market value of the property distributed." I.R.S. Reg. § 1.1445-5T(e)(1) (temporary).

²⁵ I.R.C. § 1445(e)(2) (West 1985); I.R.S. Reg. § 1.1445-5T(d)(1) (temporary).

²⁶ I.R.C. § 1445(d) (West 1985); I.R.S. Reg. § 1.1445-4T(a), -4T(e) (temporary). An agent is any person who represents a party in negotiating the transaction or who settles the transaction, but does not include a settlement escrow agent. I.R.C. § 1445(d)(3), (4), and (5) (West 1985); I.R.S. Reg. § 1.1445-4T(f) (temporary). The definition of agent includes any person who represents a party through a subagency relationship, as well as the person who procured the services of the subagent. SENATE COMM., *supra* note 7, at 407.

²⁷ I.R.C. § 1445(d)(2)(A) (West 1985); I.R.S. Reg. § 1.445-4T(a), -4T(e) (temporary).

²⁸ I.R.C. § 1445(d)(1)(B) (West 1985); H.R. REP. No. 861, *supra* note 13, at 941-42; I.R.S. Reg. § 1.1445-4T(a)(2), -4T(e) (temporary).

²⁹ I.R.S. Reg. § 1.1445-4T(c) (temporary). The final regulations put an affirmative duty on each United States corporation which has foreign shareholders to determine whether it is or is not a USRPHC. I.R.S. Reg. § 1.897-2(h)(1)(i). If it is not a USRPHC, the corporation must furnish a denial notice to the I.R.S. as part of its annual tax return and must furnish a non-USRPHC certificate to each foreign shareholder who requests it. I.R.S. Reg. §§ 1.897-2(h)(1)(ii), -2(h)(1)(iv). These regulations directly conflict with the legislative history of

stacle for some highly-leveraged acquisitions where the initial cash consideration is less than 10% of the purchase price and the purchaser has insufficient funds to withhold.³⁰ In addition, there is a substantial risk of excess withholding beyond the tax liability imposed by FIRPTA.

In response to a request made prior to the close of a transaction,³¹ the I.R.S. may issue a "withholding certificate." The withholding certificate provides for reduced withholding, based on the taxpayer's maximum tax liability. In issuing a withholding certificate, the I.R.S. takes into account the seller's basis in the USRPIs to be transferred,³² any withholding exemption,³³ and the presence of other arrangements which have been made for payment of the tax due.³⁴ I.R.S. action is discretionary, however, and it will normally take ninety days to process a request.³⁵ If the transaction closes before the withholding certificate is issued, the seller may claim an early refund of excess withholding, based on the withholding certificate.³⁶ Interest will not accrue in connection with an early refund,³⁷ and any tax imposed under FIRPTA in excess of the amount withheld will remain a liability of the foreign seller.³⁸

FIRPTA, wherein the Conference Committee deleted a requirement that United States corporations establish in their returns whether or not they are USRPHCs. The Conference Report provided that corporations may establish that they are not USRPHCs on a voluntary basis. H.R. REP. No. 1479, 96th Cong., 2d Sess. 190 (1980); see I.R.S. Reg. §§ 1.897-2(h)(2), (3) (certain entities may voluntarily determine and report their non-USRPHC status).

³⁰ The withholding obligation of the purchaser is not affected by the amount of cash paid by the purchaser. I.R.S. Reg. § 1.1445-1T(b)(1) (temporary). In the case of an installment sale, the purchaser is required to satisfy his entire withholding obligation out of the initial installment payment. Compare I.R.S. Reg. § 1.1445-1T(d)(4) (temporary) with I.R.C. § 453 (West 1982); *Comm'r v. South Texas Lumber Co.*, 333 U.S. 496, 500 (1948) (gain not realized except to the extent installment payments are received); see *Warren Jones Co. v. Comm'r*, 524 F.2d 788, 792 (9th Cir. 1975) (the installment sale provisions are legislative relief from the rigor of the general income realization rule contained in I.R.C. § 1001(b)).

³¹ Such a request may be made by the transferee as well as the transferor. I.R.C. § 1445(c)(1) (West 1985); I.R.S. Reg. §§ 1.1445-3T(a), - 6T(a) (temporary).

³² I.R.C. § 1445(c)(1) (West 1985); I.R.S. Reg. §§ 1.1445-3T(c), - 6T(c) (temporary).

³³ I.R.S. Reg. §§ 1.1445-3T(d), - 6T(d) (temporary).

³⁴ I.R.C. § 1445(b)(4) (West 1985); I.R.S. Reg. §§ 1.1445-3T(e), - 6T(e) (temporary).

³⁵ I.R.C. § 1445(c)(3)(B) (West 1985); I.R.S. Reg. §§ 1.1445-3T(a), - 6T(a) (temporary). In some cases, ninety days will be insufficient for the I.R.S. to establish the amount of tax due, and the I.R.S. may notify the applicant in such case that additional processing time will be necessary. I.R.S. Reg. §§ 1.1445-3T(a), - 6T(a) (temporary).

³⁶ I.R.C. § 1445(c)(1)(C) (West 1985); I.R.S. Reg. §§ 1.1445-3T(f), -6T(f) (temporary).

³⁷ I.R.S. Reg. §§ 1.1445-3T(f), - 6T(f) (temporary).

³⁸ I.R.S. Reg. §§ 1.1445-1T(f), - 5T(b)(7) (temporary).

III. BASIC TAX PLANNING

Because of the broadly inclusive definition of USRPI contained in FIRPTA, a foreign individual or corporation is virtually certain to owe tax in connection with the sale of directly owned United States real estate.³⁹ Likewise, the new withholding obligation burdens any purchaser who buys United States real estate directly from a foreign individual or corporation.⁴⁰ The sale of stock of a USRPHC is treated as a disposition of USRPI, for both FIRPTA tax and withholding purposes.⁴¹

FIRPTA requires the I.R.S. to treat the sale of any interest in a foreign or United States partnership or trust as a transfer of the USRPIs owned by the partnership or trust.⁴² Similarly, the I.R.S. has authority to impose withholding requirements on any purchaser of a partnership or trust.⁴³ The usefulness of these entities as tax planning tools will depend on future regulations.⁴⁴

The pivotal point for tax planning purposes is that the *disposition of stock* of a foreign corporation is not taxed under FIRPTA, whereas the disposition of stock of a USRPHC is taxed.⁴⁵ FIRPTA taxes a foreign holding corporation on its *distribution of USRPIs* at a maximum rate of 28%, however, as compared to the 20% rate applicable to foreign individuals receiving USRPI distributions in the liquidation of a USRPHC.⁴⁶ The basic tax planning question then is whether to minimize the tax by means of a United States real estate holding company or to defer, and in some cases completely avoid, the tax through the use of a foreign holding company.

Foreign investors can obtain the favorable 20% rate for the liq-

³⁹ For a detailed discussion of the FIRPTA tax provisions, see Maiers, *Foreign-owned United States Real Estate: Post-FIRPTA Tax Planning*, 37 TAX LAW 577 (1984); Larkins & Jones, *Tax Strategies for the Foreign Investor in U.S. Real Estate*, 37 TAX EXECUTIVE 81 (1984).

⁴⁰ I.R.C. §§ 1445(a) (West 1985) (withholding is applicable to any USRPI disposition by a "foreign person"), 1445(f)(3) (definition of "foreign person").

⁴¹ I.R.C. §§ 897(c)(1)(A)(ii), (c)(2) (West 1982), (defining USRPI to include USRPHC), 1445(a) (West 1985) (making withholding applicable to any USRPI disposition).

⁴² I.R.C. § 897(g) (West 1982).

⁴³ I.R.C. § 1445(e)(5) (West 1985).

⁴⁴ I.R.S. Reg. § 1.1445-5T(g) [Reserved] (temporary); see I.R.S. Reg. § 1.1445-5T(b)(8)(v) (temporary) (deferring the effective date of I.R.C. § 1445(e)(5) until the effective date of a future Treasury decision implementing I.R.C. § 897(g)).

⁴⁵ The definition of USRPI does not include the stock of a foreign corporation, even if it qualifies as a USRPHC. I.R.C. § 897(c)(1)(a)(ii) (West 1982); I.R.S. Reg. § 1.897-2(e)(1).

⁴⁶ See *supra* notes 4 and 5 and accompanying text.

uidation of certain foreign holding companies by electing to have the corporation treated as a United States corporation for FIRPTA tax purposes.⁴⁷ This option will be unavailable, however, to many investors because of its strict eligibility requirements.⁴⁸ In addition to this limitation, the election may not be effective for withholding purposes.⁴⁹ The sale or distribution of USRPIs by a foreign corporation is otherwise likely to result in withholding; this risk is heightened if the USRPI is sold since any representative or agent risks forfeiting his compensation to the I.R.S. if he fails to inform the purchaser that the seller is a foreign corporation.⁵⁰

Taxes generally can be minimized by using a United States holding corporation whose foreign shareholders are noncorporate taxpayers benefiting from the 20% rate on liquidating distributions. A United States corporation, as a resident taxpayer, can offset operating expenses and depreciation deductions against income during the USRPI holding period.⁵¹ The distribution of USRPIs by a United States corporation exposes foreign shareholders to less risk of international double taxation as opposed to USRPI distributions from a foreign corporation.⁵² If the foreign shareholder has

⁴⁷ I.R.C. § 897(i) (West 1982); I.R.S. Reg. § 1.897-3.

⁴⁸ See Maiers, *supra* note 39, at 597-98. For example, in order to exercise the Section 897(i) election, the foreign corporation must be entitled to nondiscriminatory treatment with respect to its U.S. real estate under a treaty to which the United States is a party. I.R.C. § 897(i)(1)(B) (West 1982); I.R.S. Reg. § 1.897-3(b)(2). To benefit from the nondiscrimination provision of most bilateral tax treaties, the foreign corporation must have a "permanent establishment." See, e.g. United States Treasury Dep't Model Income Tax Treaty, May 17, 1977, art. 24(c), CCH Tax Treaties ¶ 153, P-H Tax Treaties ¶ 1019. With respect to its real property income, however, if the foreign corporation is subject to FIRPTA (because such income is not otherwise effectively connected with a U.S. trade or business), the foreign corporation is deemed not to have a permanent establishment. I.R.C. § 894(b). Similarly, none of the bilateral Friendship, Commerce, and Navigation treaties contains a nondiscrimination provision which clearly protects the right of foreign nationals to acquire and deal with land in the United States. Brodkey, Hugh A., *The Effect of Bilateral Treaties on Foreign Investments in United States Real Estate*, 31 PRACTICAL LAWYER 91 (1985).

⁴⁹ The temporary withholding regulations provide that an electing foreign corporation will be treated as a domestic corporation for withholding purposes, based on "the conferees' intent of simplifying administration of Section 1445." 49 Fed. Reg. 50,671; see I.R.S. Reg. § 1.1445-7T(a) (temporary). The Conference Report clearly envisages, however, that the foreign corporation election will not be effective for withholding purposes. H.R. REP. NO. 98-861, *supra* note 13, at 946-47 (mandating a crediting procedure under which foreign shareholders can claim tax credits for the amount withheld by the electing foreign corporation). There is now pending in Congress a Treasury Department proposed technical amendment to make the Section 897(i) election applicable for withholding purposes. H.R. 1800, 99th Cong., 1st Sess. §§ 110(f)(1)(A), (B) (1985).

⁵⁰ I.R.C. § 1445(d)(1)(B) (West 1985), see *supra* note 28 and accompanying text.

⁵¹ I.R.C. §§ 161-196 (West 1982).

⁵² The FIRPTA tax treatment of foreign corporations is a departure from the general

high-basis stock in the holding company, the gain realized under FIRPTA on liquidating distributions of low-basis real estate will likely be lower if received from a United States holding corporation rather than from a foreign holding company.⁵³ In addition, the purchaser of a United States holding corporation can obtain a stepped-up basis in its depreciable USRPI assets without triggering FIRPTA gain recognition.⁵⁴

The sale of USRPIs by a United States holding corporation, including a liquidating sale of assets, escapes the withholding requirements of FIRPTA since the seller is not a foreign person.⁵⁵ Withholding applies, if at all, in connection with the gain realized by the foreign shareholders on any subsequent liquidating distributions by the USRPHC.⁵⁶

IV. CONCLUSION

The new FIRPTA withholding provisions repeal the intrusive and burdensome reporting requirements and assure continued foreign investor anonymity. The new withholding requirements, however, apply to foreign as well as domestic purchasers of United States real estate and nonpublicly traded stock. If the proper non-foreign or non-USRPHC certificate is not obtained, the purchaser may have a withholding liability.

The FIRPTA tax itself is a planning consideration for foreign investors only in the event of a contemplated future sale of United States real estate or of any interest therein other than the stock of a foreign corporation. Where the primary investment objectives are preservation of capital and maintenance of a long-term investment in the United States, FIRPTA is really irrelevant.

international practice of imposing tax on the shareholder rather than the distributing corporation. See I.R.C. § 897(d)(1) (West 1982). The FIRPTA rule, therefore, will probably result in some instances in a double taxation of gain without any likelihood of tax credit relief because the United States and the foreign taxing jurisdiction impose tax on different taxpayers.

⁵³ The FIRPTA tax on liquidation of a United States corporation is likely to be less than the FIRPTA tax on liquidation of a foreign corporation because the shareholder's basis in the stock of the United States corporation has not been reduced by depreciation deductions whereas the foreign corporation's basis in the distributed USRPI assets has been reduced by depreciation. See *supra* note 52.

⁵⁴ I.R.C. § 338 (West 1982) (election to have certain stock purchases treated as asset acquisitions to which I.R.C. § 337 applies). Cf. I.R.C. § 897(d)(2) (West 1982) (repealing I.R.C. § 337 with respect to the sale or exchange of USRPIs by foreign corporations).

⁵⁵ H.R. REP. No. 98-861, *supra* note 13, at 946.

⁵⁶ I.R.C. § 1445(e)(3) (West 1985). See *supra* note 24.

Tax planning is very important, however, in the situation where the foreign investor has to, or plans to, sell appreciated United States real estate. The tax in such cases can be substantial—20% of the gain for individual investors and up to 28% for foreign corporate investors. The risk of excess withholding, residual tax liability, and other transaction burdens created by the new FIRPTA withholding rules also complicate the sale of United States real estate assets. Foreign investors who wish to maintain their United States real estate portfolio but want to change the asset mix from time to time can benefit by establishing a United States holding company and using the simple planning concepts described above. By using more complex tax planning tools such as a foreign holding company, aggressive tax planners can take their sale proceeds outside the United States, defer or avoid both taxes and withholding, and then reinvest in the United States. Consequently, favorable tax treatment depends on a careful structuring of the sale transaction and on an avoidance of hidden tax problems before the sale.

