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April 15, 2013 www.groom.com

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# US Administration Proposes to Exempt Non-US Pension Funds from Income Tax on US Real Property Investments

The President of the United States, Barack Obama, has proposed exempting foreign pension funds from the application of the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA") as part of his just-issued 2014 budget . This change is designed to encourage foreign pension funds to invest in US infrastructure.

Non-US persons are generally exempt from US income tax on capital gains. However, FIRPTA modified that rule beginning in 1980 so that non-US persons, including non-US pension plans, are taxed on the disposition of their holdings of US real property interests (i.e., land, buildings and improvements). FIRPTA overrides treaty exemptions. The tax is imposed on the amount of gain recognized upon the sale of real property by a foreign entity, including both directly held real property and stock in corporations that predominately hold real property, and buyers of real property are generally required to withhold the tax at a 10% rate. While FIRPTA was primarily designed to put foreign investors on similar footing with US investors, it put non-US pension funds in a worse position than US pension funds, because US pension funds are generally exempt from US income tax.

The proposal would exempt gains from the disposition of US real property interests by foreign (non-US) pension funds from the application of FIRPTA beginning with dispositions after 2013. Generally, for this purpose, a foreign pension fund would include a trust, corporation or other organization or arrangement (1) created or organized outside the US, (2) generally exempt from income tax in the jurisdiction in which it is created or organized, and (3) substantially all of the activity of which is to administer and provide pension and retirement benefits (which does not appear to include life, health or other benefits). The US Treasury would have the authority to issue regulations for determining what entities or arrangements are foreign pension funds eligible for the exemption.

At the moment, there are few details about the proposed tax exemption, which is estimated to cost the US government 2.1 billion USD in tax revenue over 2014-2023. It is also part of a budget package which will certainly not survive in its proposed form. But tax proposals of this sort often reappear in subsequent tax legislation, so non-US pension plans with US real property or immoveable investments should continue to monitor US tax legislation for this exemption.