

H.R. 4539, The Real Estate Revitalization Act of 2010

The credit crisis in U.S. commercial real estate has illustrated the critical need for additional sources of equity capital. One way to address this need is to remove unnecessary barriers to non-U.S. investment in domestic real estate.

The Real Estate Revitalization Act of 2010 ("RERA 2010") would aid the recovery of the U.S. real estate industry by amending the Foreign Investments in Real Property Tax Act (FIRPTA) to provide the same tax treatment for non-U.S. investment in commercial real estate companies that exists for non-U.S. investment in U.S. corporations. By providing simple, certain and fair tax treatment for these investments, Congress can help address the credit crisis while facilitating property rehabilitation, community revitalization and job creation.

RERA 2010 would make the following changes:

I. Eliminate "U.S. Real Property Holding Corporation" Provisions of FIRPTA

Under FIRPTA, non-U.S. investors in U.S. real estate are subject to a U.S. tax regime not imposed on non-U.S. investment in any other class of U.S. corporations. In general, non-U.S. investors in U.S. corporations are not subject to capital gains tax upon the disposition of stock except where that company holds the requisite percentage of U.S. real property. By taxing gain realized on interests in U.S. corporations holding U.S. real property, FIRPTA creates a false dichotomy between investments in U.S. corporations holding U.S. real property and corporations engaged in any other type of activity.

By eliminating the FIRPTA tax for U.S. Real Property Holding Corporations, RERA 2010 would ensure that non-U.S. investors are subject to uniform tax treatment upon the sale of stock in a U.S. corporation – regardless of the assets held by the corporation. RERA 2010 would continue to require that non-U.S. investors that directly own U.S. real property to pay U.S. tax on any gain realized from the sale of the property.

II. Treat Certain REIT Capital Gain Distributions and Liquidating Distributions to Foreign Investors as Ordinary Income.

A. Characterize capital gain distributions to foreign shareholders that are attributable to the sale of U.S. real property as ordinary dividends subject to U.S. withholding. This provision would extend to all REIT shareholders the current U.S. tax treatment of foreign shareholders owning five percent or less of a publicly traded REIT, providing a unified U.S. tax regime with respect to REIT capital gain distributions to foreign shareholders and subjecting all dividend income to ordinary dividend withholding treatment. The proposal would not change the capital gains treatment of U.S. investors.

B. Treat REIT liquidating distributions to foreign investors as ordinary dividends subject to U.S. withholding to the extent a distribution exceeds the foreign investor's basis in its REIT stock. This will resolve the uncertainties generated by IRS Notice 2007-55 by clarifying the U.S. tax treatment of REIT liquidating distributions. By applying a unified U.S. tax regime subjecting all liquidating distributions to ordinary dividend withholding treatment, the provision will encourage investment in REITs by foreign investors.