INVESTING IN U.S. REAL ESTATE ON A (POSSIBLY) TAX-FREE BASIS

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F.I.R.P.T.A.
Qualified Foreign Pension Fund
Qualified Shareholder
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Tax Reform
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A Real Estate Investment Trust ("R.E.I.T.") is an entity that generally owns and typically operates a pool of income-producing real estate properties, including mortgages. R.E.I.T.'s are generally a popular type of investment vehicle. Their investors look to a return on investment in two forms: (i) distributions from the R.E.I.T. and (ii) dispositions of the R.E.I.T. stock.

Essentially, R.E.I.T.'s do not pay corporate-level tax because they are required to distribute 90% of their income to shareholders. However, in order to enjoy this and other tax benefits under the Code, these entities must meet extremely stringent conditions to qualify as a R.E.I.T.

Many R.E.I.T.'s have their stock registered and traded on a stock exchange. These are referred to as publicly traded R.E.I.T.'s, which are granted tax incentives for foreign investors. Other types of R.E.I.T.'s and certain types of investors are also eligible for other favorable tax rules.

These beneficial rules were enhanced by the Protecting Americans from Tax Hikes Act ("P.A.T.H. Act") that was signed into law by President Obama in December 2015 and were left untouched by the Tax Cuts and Jobs Act ("T.C.J.A.") signed by President Trump in December 2017. As a result, under certain facts, some foreign investors can invest in a R.E.I.T. on a completely tax-free basis, both with respect to distributions received from the R.E.I.T. and with respect to the disposition of the R.E.I.T. stock.

TAXATION OF FOREIGN INVESTORS IN A U.S. R.E.I.T.

Taxation of R.E.I.T. Distributions

Distributions from a R.E.I.T. are generally designated as either "ordinary dividends" or "capital gain dividends." Certain distributions, or a portion thereof, may be treated as return of capital.

Typically, this treatment is a result of R.E.I.T. deductions, specifically (i) depreciation deductions, which generally were expanded and extended under the T.C.J.A., and (ii) interest expense deductions, which were limited under the T.C.J.A. (albeit R.E.I.T.'s, like other real estate businesses, are allowed to elect out of this limitation at the cost of losing some accelerated depreciation).

Ordinary Dividends

Ordinary dividends are attributable to earnings that are derived from ordinary income of the R.E.I.T., such as rents and mortgage interest. For foreign investors, ordinary dividends are treated as a Fixed or Determinable, Annual or Periodic ("F.D.A.P.") payment and are generally subject to 30% U.S. Federal withholding tax.

The withholding tax rate may be reduced or eliminated under an applicable income tax treaty. Typically, treaties restrict the benefit available to ordinary dividend income when the dividend is paid by a R.E.I.T.

The table below highlights some of the treaties under which a reduced rate is available, the type of treaty country resident that may be eligible for the reduced rate, and other general requirements that must be met (in addition to any limitation on benefits provision requirements):

Country	Eligible Resident	Rate / Ownership Requirements*	
China	Individuals Pension Funds Other Residents	10% 10% 10%	None None None
Denmark	Individuals Pension Funds Other Residents	15% 0% 15%	If ownership is no more than 10% If ownership is no more than 10% If R.E.I.T. is publicly traded and ownership is no more than 5%, or if R.E.I.T. is diversified[1] and ownership is no more than 10%
France	Individuals Pension Funds Other Residents	15% 15% 15%	If ownership is no more than 10% If ownership is no more than 10% If R.E.I.T. is publicly traded and ownership is no more than 5%, or if R.E.I.T. is diversified[1] and ownership is no more than 10%
Germany	Individuals Pension Funds Other Residents	15% 0% 15%	If ownership is no more than 10% If ownership is no more than 10% If R.E.I.T. is publicly traded and ownership is no more than 5%, or if R.E.I.T. is diversified[1] and ownership is no more than 10%
Japan	Individuals Pension Funds Other Residents	10% 10% 10%	If ownership is no more than 10% If ownership is no more than 10% If R.E.I.T. is publicly traded and ownership is no more than 5%, or if R.E.I.T. is diversified[1] and ownership is no more than 10%
Luxembourg	Only Individuals	15%	If ownership is less than 10%
Thailand	Individuals Pension Funds Other Residents	15% 30% 30%	If ownership is less than 25% None None
United Kingdom	Individuals Pension Funds Other Residents	15% 0% 15%	If ownership is no more than 10% If ownership is no more than 10% If R.E.I.T. is publicly traded and ownership is no more than 5%, or if R.E.I.T. is diversified[1] and ownership is no more than 10%

* Other requirements may apply.

[1] A R.E.I.T. is treated as diversified if no one underlying property is worth more than 10% of its total holdings.

Capital Gain Dividends

A capital gain dividend is any dividend that is designated by the R.E.I.T as such in a written notice to its shareholders. Limitations apply as to the amount a R.E.I.T. may designate as capital gain dividends.

A capital gain dividend is treated as a gain from the sale or exchange of a long-term capital asset. This means that the receipt of a capital gain dividend is treated as a sale or exchange of a capital asset and thus would be taxed as long-term capital gain in the hands of the investor. However, this capital gain is not subject to U.S. tax in the hands of a non-U.S. investor to the extent that it is not attributable to gain from the disposition of a U.S. real property interest. This tax-free treatment is provided for in the Code under the general provisions applicable to the taxation of non-U.S. persons.

The disposition of a U.S. real property interest ("U.S.R.P.I.") by a foreign person is subject to U.S. tax under the Foreign Investment in Real Property Tax Act ("F.I.R.P.T.A."). Under F.I.R.P.T.A., the above-mentioned general rule for the treatment of capital gain dividends is modified. Under a "look-thru" rule, capital gain dividends attributable to a disposition of a U.S.R.P.I. will be treated as gain from the disposition of a U.S.R.P.I. Thus, such distributions ("F.I.R.P.T.A. Distributions") are generally treated as income effectively connected to a U.S. trade or business and subject to F.I.R.P.T.A. withholding. F.I.R.P.T.A. withholding applies at the maximum corporate rate applicable, currently 21% (reduced by the T.C.J.A. from 35%).

Taxation of the Disposition of R.E.I.T. Shares

As mentioned above, non-U.S. persons are subject to U.S. tax on the disposition of a U.S.R.P.I. The tax is collected by imposing a withholding obligation on the purchaser under F.I.RP.T.A.

The stock of a R.E.I.T. generally constitutes U.S.R.P.I. if the fair market value of its U.S.R.P.I. exceeds 50% of the fair market value of its world-wide real property and other business assets. However, under a special F.I.R.P.T.A. exception, the stock of a publicly traded R.E.I.T. does not constitute a U.S.R.P.I. in the hands of a non-U.S. person who owns 10% or less of the entity's stock. Additionally, the stock of a R.E.I.T. that is "domestically controlled" does not constitute a U.S.R.P.I.

As a result, the general rule is that a non-U.S. person will be subject to U.S. tax on the disposition of R.EI.T. stock. The gain on the disposition is treated as effectively connected income, and tax is collected through withholding. Over-withholding can be refunded by filing a U.S. tax return and calculating the actual tax liability or by submitting an advance determination application to the I.R.S. However, in certain instances, an exception applies, as will be discussed below.

BENEFICIAL R.E.I.T. STRUCTURES FOR FOREIGN INVESTORS

If structured properly, foreign investors in a U.S. R.E.I.T. may reduce and, in some instances, fully eliminate U.S. taxation. The following discusses possible R.E.I.T. structures that take advantage of beneficial statutory provisions.

Publicly Traded R.E.I.T.'s

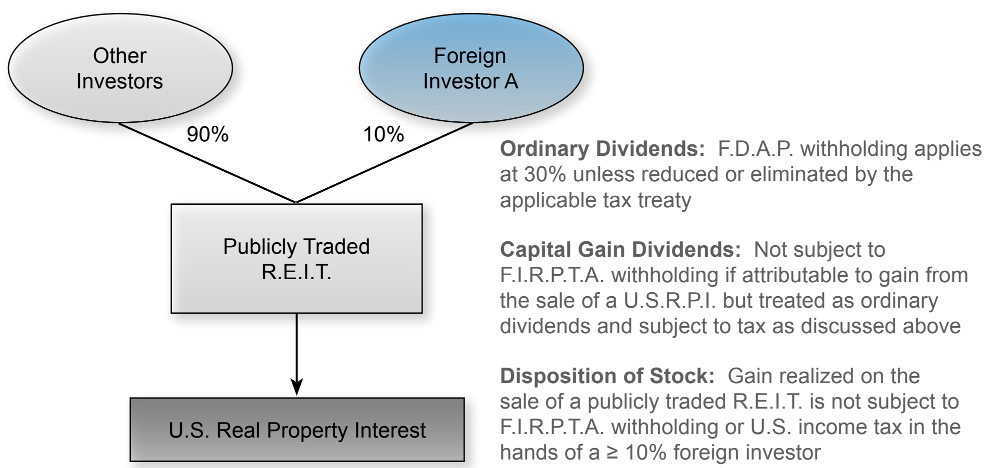
As previously mentioned, stock of a R.E.I.T. that is regularly traded on an established securities market is not treated as a U.S.R.P.I. in the hands of a non-U.S. person who owns (directly or indirectly, and by applying the constructive ownership rules) 10% or less of the R.E.I.T. stock at all times during the holding period or during the last five years, if shorter.

Additionally, the look-thru rule, mentioned above, does not apply to distributions received with respect to publicly traded stock, provided that the receiving non-U.S. person did not own more than 10% of the R.EI.T. stock at any time during the one-year period ending on the date of the distribution. However, these distributions are subject to tax under the Code as ordinary dividend distributions.

As a result, when a R.E.I.T. is publicly traded, the general taxation rules apply with the following modifications applicable only to non-U.S. investors with shareholdings of 10% or less:

- F.I.R.P.T.A. Distributions are treated as ordinary dividend distributions.
- Dispositions of R.E.I.T. stock are not subject to U.S. taxation.

Investing 10% or Less in a Publicly Traded R.E.I.T.



Domestically Controlled R.E.I.T.'s

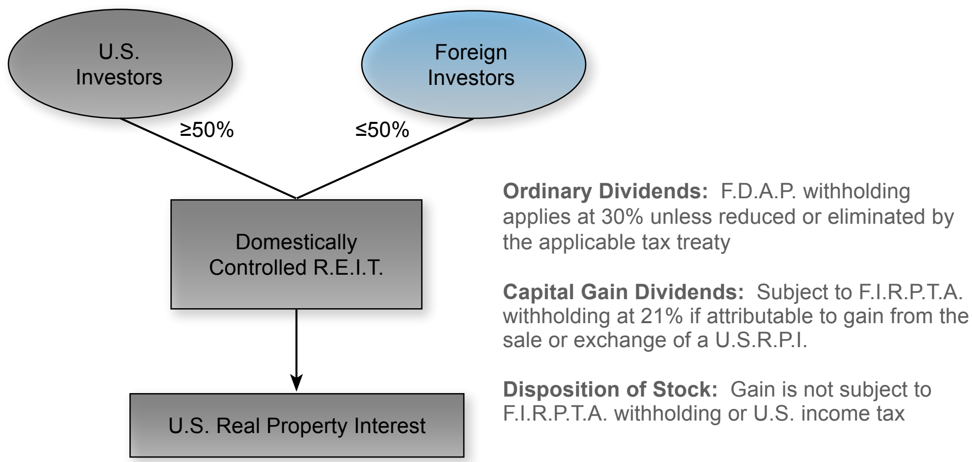
Stock in a domestically controlled R.E.I.T. is not treated as a U.S.R.P.I. A R.E.I.T. is domestically controlled when 50% or more of the value of the stock is held by U.S. persons for the five-year period ending on the determination date or the period of the R.E.I.T.'s existence, if shorter.

When a R.E.I.T. is domestically controlled, the general taxation rules apply with the following modifications:

- Dispositions of domestically controlled R.E.I.T. stock are not subject to U.S. taxation.

- The F.I.R.P.T.A. exception applicable to domestically controlled R.E.I.T. stock is not limited by ownership percentages (*i.e.*, if a R.E.I.T. is domestically controlled, a non-U.S. person may own more than 10% and the stock will not be treated as a U.S.R.P.I.).

Investment in a Domestically Controlled R.E.I.T.



BENEFITS FOR QUALIFIED SHAREHOLDERS AND QUALIFIED FOREIGN PENSION FUNDS

Qualified Shareholders

Special benefits are available to "Qualified Shareholders." These include the following:

- The stock of a R.E.I.T. held by a Qualified Shareholder is not treated as a U.S.R.P.I., and therefore, the disposition of R.E.I.T. shares by a Qualified Shareholder will not be subject to U.S. taxation.
- F.I.R.P.T.A. Distributions are treated as ordinary dividend distributions.

A Qualified Shareholder is generally a foreign person that meets the following three conditions:[2]

1. The foreign person is
   a. publicly traded and qualifies for certain U.S. tax treaty benefits or
   b. a foreign partnership that has at least half of its value represented in units that are traded on the N.Y. stock exchange or Nasdaq and was formed in a foreign country with a U.S. tax-information sharing agreement.
2. The foreign person is a "Qualified Collective Investment Vehicle" – that is, it meets any one of three conditions:

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[2] Code §897(k)(3)(A)-(B).

a. The foreign person is eligible (or would be under a U.S. tax treaty) for reduced withholding on ordinary dividends from the R.E.I.T. irrespective of the ownership percentage.

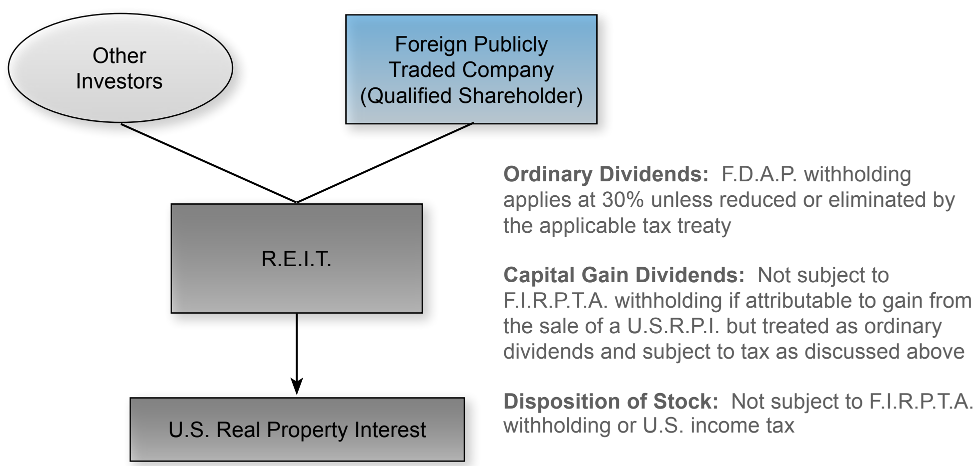
b. The foreign person is: (i) a publicly traded partnership that is a “withholding partnership”[3] and (ii) would be treated as a U.S. real property holding corporation if it were a domestic corporation.

c. The foreign person is a fiscally transparent entity (or effectively treated as such) and is designated as a Qualified Collective Investment Vehicle by the I.R.S.

3. If its shares are publicly traded, the foreign person maintains records of the identity of each person that holds directly 5% or more of its shares.

“The stock of a R.E.I.T. held by a Qualified Shareholder is not treated as a U.S.R.P.I.”

Investment by a Qualified Shareholder in a R.E.I.T.



Qualified Foreign Pension Funds

F.I.R.P.T.A. is not applicable to interests held directly (or indirectly through one or more partnerships or through a wholly owned entity) by a Qualified Foreign Pension Fund (“Q.F.P.F.”). As a result, capital gain dividends received by a Q.F.P.F. are not separated into F.I.R.P.T.A. Distributions and other capital gains. Rather, the general rule, according to which capital gain dividends are treated as gain from the sale or exchange of a long-term capital asset, applies. And as mentioned above, these dividends are not subject to tax in the hands of a non-U.S. person. Additionally, the disposition of R.E.I.T. shares is treated as a disposition of any U.S. asset that is not a U.S.R.P.I. and is thus not subject to U.S. tax.

Therefore, the only U.S. tax that may apply to an investment in a R.EI.T. (publicly traded or not, domestically controlled or not) made by a Q.F.P.F. is that which would apply to ordinary dividends. Ordinary dividend income may be subject to a reduced

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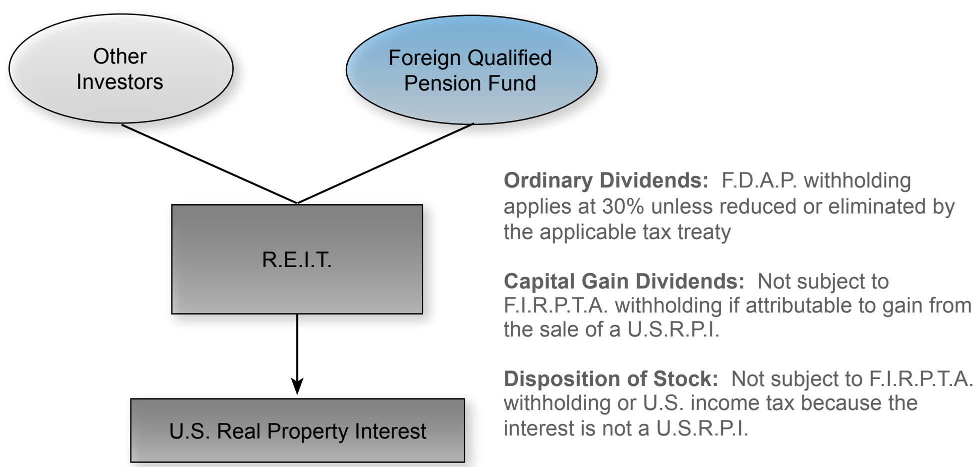
3 Meaning, a foreign partnership that entered into an agreement with the I.R.S. to assume the withholding and reporting obligations for certain payments of U.S. source income that are included in the distributive share of its foreign partners.

rate of taxation under certain treaties, and in certain instances, as demonstrated in the table above, the tax may be eliminated.

A Q.F.P.F. means any trust, corporation, or other organization or arrangement that meets all the following conditions:[4]

- The pension fund must be created or organized under the laws of a country other than the U.S.
- The pension fund must be established to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered.
- The pension fund must not have a single participant or beneficiary with a right to more than 5% of its assets or income.
- The pension fund must be subject to government regulation and provide annual information reporting about its beneficiaries to the relevant tax authorities in the country in which it is established or operates.
- Under the laws of the country in which the fund is established or operates,
    - contributions to the fund that would otherwise be subject to tax are deductible or excluded from the gross income of the entity or taxed at a reduced rate or
    - tax on any investment income is deferred or the income is taxed at a reduced rate.

Investment by a Qualified Foreign Pension Fund in a R.E.I.T.[5]



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[4] Code §897(l)(2).

[5] The F.I.R.P.T.A. exemption coupled with 0% withholding on ordinary dividends, if eligible, allows a foreign pension fund to invest in a U.S. R.E.I.T. on a tax-free basis.

SUMMARY

In general, R.E.I.T.'s offer a tax efficient investment vehicle by allowing the R.E.I.T. to deduct distributions it makes to its shareholders. But when it comes to foreign investors, R.E.I.T.'s offer additional benefits that make for interesting investment opportunities – especially through one's pension fund. In certain instances, these investments can be made on a completely tax-free basis.

In sum, a foreign investor's benefit in investing in U.S. real property through a R.EI.T. include

- avoiding state and local taxation on income earned from U.S. real property,
- converting income that would otherwise be treated as effectively connected income to F.D.A.P. income which may be subject to a reduced rate of taxation under a treaty, and
- in certain instances,
    - avoiding or reducing U.S. taxation on ordinary income from U.S. real property,
    - avoiding or reducing U.S. taxation on the disposition of underlying U.S. real property assets, and
    - avoiding U.S. taxation on the disposition of R.E.I.T. shares.