Northern New Jersey

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Foreign Capital and U.S. Real Estate

There have been continued international capital inflows into U.S. real estate assets, especially in New Jersey. Industry experts expect the trend to grow. Political uncertainty and global economic factors continue to drive foreign money into the United States, which has long been considered a safe haven.

The U.S. property market is the most stable and transparent in the world, making it an easy investment choice. According to research firm Real Capital Analytics, foreign purchases of U.S. real estate assets rose to $62 billion over the 12-month period ending October 2015.

It should be expected that these foreign investors will eventually reposition their assets and liquidate certain holdings based upon expected returns and market changes.

Buyers of real estate from foreign sellers, escrow agents, and closing agents who close on such transactions need to be aware of the federal withholding requirements set forth in the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA).

Under FIRPTA, the buyer of U.S. real estate from a foreign entity or person must withhold tax equal to 15 percent of the "amount realized" from the sale. The amount realized includes the total amount received for the property including cash, the existing balance of mortgages encumbering the property, and any non-cash personal property.

Withholding is required when the seller is a foreign entity or person; including non-resident alien individuals, partnerships, trusts and estates, and certain corporations domiciled outside of the United States. At or before the closing, if the seller signs a certification of non-foreign status, which states under penalty of perjury that he is not a foreign person, the buyer can rely on this certification unless he has actual knowledge that certification is not accurate. If the seller is able to sign the certification, a withholding is not required. However, the buyer must retain the certification for five years after the transfer.

If the seller is a foreign entity or person, the buyer must withhold the 15 percent and remit the tax to the IRS within 20 days of the date of closing. If the buyer fails to do so, the buyer is liable to pay the IRS for the tax that should have been withheld, plus penalties and interest.

If the ultimate tax liability is expected to be zero or less than the required 15 percent withholding amount, the foreign seller can apply for a withholding certificate to request a reduction in this amount. This is done by filing IRS Form 8288-B. There are exceptions to the withholding requirements, including property used as a home and 1031 exchanges, but both are not without specific qualifications.

When purchasing real estate from a foreign seller, it is important for buyers to consult with their advisors to ensure compliance under FIRPTA.

KRS CPAs, Paramus, NJ, provides financial accounting, bookkeeping, tax planning & compliance, business valuation & litigation support, outsourced controllership. ■