THE UNBEARABLE ABSURDITY OF THE US TAX RULES FOR WITHHOLDING ON DISPOSITIONS OF PARTNERSHIP INTERESTS

Michael J. Miller**

Section 1446(f) of the Internal Revenue Code requires the transferee of a partnership interest to withhold 10 percent of the amount realized by the transferor if, among other requirements, the transferor is a non-US person, a gain is recognized on the sale, and such gain is “effectively connected” with a US trade or business conducted by the partnership. The author of this article has examined the proposed regulations and other guidance implementing this provision and found them deficient in several respects. He points out that, unfortunately, they disregard the statutory requirements and generally require withholding by all transferees of partnership interests, anywhere in the world, even if the partnership has never conducted any activities within the United States. The proposed regulations and other guidance provide for limited exceptions, but as the author explains, the exceptions are unrealistic and wholly inadequate.

KEYWORDS: PARTNERSHIPS ■ WITHHOLDING ■ DISPOSITIONS ■ US ■ REGULATIONS

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* Of Davies Ward Phillips & Vineberg LLP, New York (e-mail: pglicklich@dwpv.com).
** Of Roberts & Holland LLP, New York and Washington, DC (e-mail: mmiller@rhtax.com).