
CORPORATE TAX PLANNING

Co-Editors: Andrew W. Dunn,* Derek G. Alty,* Brian R. Carr,**
and Christopher J. Steeves**

RECENT US TAX REGULATIONS AFFECTING CANADIAN TAXPAYERS: FIRPTA, INVERSIONS, AND PORTFOLIO INTEREST WITHHOLDING

*Michael Shumate and Todd Jenkins**

In recent months, the US Internal Revenue Service has issued or announced new regulations that address several issues of importance to Canadian-based taxpayers—specifically, concerns about reorganizations involving foreign interests in US real estate (FIRPTA), inversions, and the portfolio interest exemption. This article describes the changes to the law contained in these regulations and the rationale behind the changes.

The regulations under section 897 of the Internal Revenue Code (IRC) will be expanded to take into account the new rules permitting foreign mergers to qualify for non-recognition treatment, among other changes. The temporary regulations relating to the inversion rules refine the parameters of the scope of IRC section 7874 to better define when a domestic corporation will be affected by this provision and to prevent the use of certain foreign partnerships to avoid it. Lastly, the proposed regulations relating to the portfolio interest exemption address the application of the 10 percent shareholder test when a non-resident alien or a foreign corporation is a partner in a partnership that receives interest income.

KEYWORDS: FIRPTA ■ EXCHANGES ■ INVERSIONS ■ WITHHOLDING TAXES ■ EXEMPTIONS

* Of Deloitte & Touche LLP, Toronto.

** Of Fraser Milner Casgrain LLP, Toronto.