CLIFFORD

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Client briefing

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Re: The Protecting Americans From Tax Hikes Act of 2015

On December 18, 2015, after over a year of negotiations, Congress passed, and the President signed into law, The Protecting Americans From Tax Hikes Act of 2015 (the "Act"). The Act extends tax provisions that expired in 2014 and makes other expiring provisions permanent. In addition, the Act makes significant changes to the rules relating to real estate investment trusts ("REITs") and the rules enacted by the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA") that will be relevant to both public and private REITs as well as real estate funds that are utilizing private REITs in their investment structure.

Potentially the most significant change contained in the Act is the exemption from FIRPTA for certain qualifying non-US pension funds, which promises to substantially increase the attractiveness of US real property investments for those funds, and should substantially simplify the structures used by those funds for their US real property investments. The Act also amends the FIRPTA provisions to:

- Eliminate the US corporate income tax and branch profits tax (or personal income tax, where relevant) imposed on capital gains dividends paid by REITs to certain qualifying non-US publicly traded investment vehicles, and instead subjects those dividends to the 30% US withholding tax applicable to ordinary REIT dividends, which may be reduced to 15%, or in certain circumstances 0%, under an applicable tax treaty. We expect there will be considerable interest in establishing qualifying non-US vehicles that can benefit from this largely favorable treatment.

- Increase the maximum percentage of shares of a publicly traded REIT a non-US person may own without being subject to taxation under the FIRPTA rules. This increase in the ownership limitation should encourage non-US investment in publicly offered REITs.
- Revise the test applicable for determining if a REIT or regulated investment company (a "RIC") qualifies as *domestically controlled.* Under the revised test:
  - A REIT or RIC is permitted to presume that holders of less than 5% of any regularly traded class of its stock are US persons unless the REIT or RIC has actual knowledge to the contrary;
  - If an upper tier REIT or RIC is publicly traded or, in the case of a RIC, issues redeemable securities, and such upper-tier REIT or RIC owns stock in a lower-tier REIT or RIC, the upper-tier REIT or RIC will be treated as a US person for purposes of determining if the lower-tier REIT or RIC is domestically controlled if, and only if, such upper-tier REIT or RIC is itself domestically controlled; and
  - Any other upper-tier REIT or RIC (e.g. a private REIT) that holds stock in a lower-tier REIT or RIC will be treated as a US person only to the extent that the stock of the upper-tier REIT or RIC is held by US persons.

  This revised test may be more or less favorable depending on a REIT or RIC's specific circumstances.
- Eliminate the use of the "Cleansing Rule" by REITs and RICs, as well as any C corporation that qualified as a REIT or RIC during the five preceding years. Such entities will no longer be able to avoid FIRPTA taxation through the sale of their US real property interests ("USRPIs").
- Increase the rate of FIRPTA withholding tax from 10% to 15%.

The Act also includes a number of provisions that impact the taxation of REITs. Most notably the REIT provisions of the Act:

- Restrict tax-free spin-offs involving REITs. This largely prevents non-REIT corporations from engaging in tax-free spin-offs of subsidiaries that would subsequently elect to be taxed as a REIT.
- Reduce the amount of REIT assets which may be held in a taxable REIT subsidiary ("TRS") from 25% to 20%, effective for taxable years beginning after December 31, 2017.

- Expand the REIT prohibited transaction safe harbor by (i) creating an alternative 3 year averaging test for purposes of the safe harbor and (ii) extending the safe harbor to property developed and marketed by a TRS. These expansions allow REITs more flexibility in selling property.
- Repeal the preferential dividends rules for publicly-offered REITs, conforming the preferential dividend rules to the rules applicable to RICs, and provide the secretary with the authority to provide an appropriate remedy for preferential dividends paid by non-publicly offered REITs in lieu of such REIT not being entitled to a dividends paid deduction.
- Expand the definition of real property for purposes of the 75% asset test to include personal property leased in connection with real property that satisfies the 15% rule of Section 856(d)(1)(C) of the Internal Revenue Code of 1986, as amended ("Code").
- Treat an obligation secured by a mortgage on real and personal property as a qualifying real estate asset to the extent the personal property does not exceed 15% of the total fair market value of all such property.
- Extend the treatment of REIT hedges to include income from hedges of previously acquired hedges that a REIT entered into to manage risks associated with liabilities or property that have been extinguished or disposed of.
- Expand the definition of real estate assets to include debt from publicly offered REITs. REITs may make unsecured investments in other publicly offered REITs without potentially having a 75% or 5% asset test issue with respect to such investment, but while carefully monitoring its 75% qualifying income.
- Permanently reduce the recognition period of built-in gains for S corporations, REITs and RICs from 10 years to 5 years for purposes of the built-in gains tax. The shorter recognition period encourages C corporations with appreciated assets to convert to S corporations, RICs or REITs.

For more detailed guidance regarding all provisions of the Act and their implications, please see the Appendix, attached.

Authors

Richard Catalano
Partner
T: +1 212 878 8421
E: richard.catalano@cliffordchance.com

David Moldenhauer
Partner
T: +1 212 878 8384
E: david.moldenhauer@cliffordchance.com

Michael Seaton
Partner
T: +1 212 878 3455
E: michael.seaton@cliffordchance.com

Caroline Phillips
Associate
T: +1 212 878 8121
E: caroline.phillips@cliffordchance.com

Clifford Chance, 31 West 52nd Street, New York, NY 10019-6131, USA

APPENDIX

The Protecting Americans From Tax Hikes Act of 2015

1. Exemption From FIRPTA For Certain Qualifying Non-US Pension Funds

Under the Act, FIRPTA does not apply to any USRPI that is held (directly or through one or more partnerships) by a *qualified foreign pension fund* or any entity all of the interests of which are held by a qualified foreign pension fund. Such persons likewise are not subject to FIRPTA in respect of distributions received from a REIT. The Act defines a *qualified foreign pension fund* as a trust, corporation, or other organization or arrangement that satisfies the following requirements:

- It is created or organized under the law of a country other than the US;
- It is 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;
- It does not have a single participant or beneficiary with a right to more than 5% of its assets or income;
- It is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which it is established or operates; and
- It is subject to a preferential tax regime under the laws of the country in which it is established or operates.[1]

There are a number of open questions as to how the foregoing requirements will apply to different non-US pension schemes and arrangements.

<u>Effective Date</u>: This provision is effective on the date of enactment.

<u>Impact</u>: As noted above, this provision promises to substantially increase the attractiveness of US real property investments for qualified foreign pension funds, and should substantially simplify the structures used by those funds for their US real property investments.

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[1] The preferential tax regime may take one of two forms. Either (i) contributions to such trust, corporation, organization, or arrangement that otherwise would be subject to tax under the laws of the country in which it is established or operates are deductible or excluded from the gross income of such entity, or are taxed at a reduced rate, or (ii) taxation of any investment income of such trust, corporation, organization or arrangement is deferred, or such income is taxed at a reduced rate.

2. Exception From FIRPTA For Certain Stock Of REITs And Other REIT-Related FIRPTA Provisions

(a) Elimination Of FIRPTA Taxation In Respect Of REIT Shares Held By Certain Qualifying Non-US Publicly Traded Investment Vehicles

The Act eliminates FIRPTA taxation in respect of REIT shares that are held by a non-US person that is a *qualified shareholder*, except to the extent that an investor in the qualified shareholder (that is not itself a qualified shareholder) holds more than 10% of the stock of the REIT (directly or indirectly). Specifically, REIT shares held by a qualified shareholder are not treated as USRPIs, and capital gains dividends received by a qualified shareholder are taxed in the same manner as ordinary REIT dividends (subject to 30% US withholding tax, which potentially may be reduced to 15%, or in certain circumstances 0%, under an applicable tax treaty).

The Act contains a complex definition of a *qualified shareholder*, under which the non-US person must meet both a set of threshold requirements, and must be a *qualified collective investment vehicle*. Under the basic requirements, the non-US person must meet one of two public trading tests, and also must maintain records regarding the identity of shareholders holding 5% or greater interests in a class of publicly traded shares. The two alternative public trading tests are as follows:

- The non-US person is eligible for benefits of a comprehensive income tax treaty with the US which includes an exchange of information program, and the principal class of interests of the non-US person is listed and regularly traded on one or more recognized stock exchanges (as defined in such comprehensive income tax treaty).
- The non-US person is created or organized under foreign law as a limited partnership in a jurisdiction that has an agreement for the exchange of information with respect to taxes with the US, and has a class of limited partnership units that is regularly traded on the New York Stock Exchange or Nasdaq Stock Market and the value of such class of limited partnership units is greater than 50% of the value of all the partnership units of such non-US person.

To be treated as a *qualified collective investment vehicle*, the non-US person must meet one of three alternative tests:

- Under the comprehensive income tax treaty referred to in the first public trading test, the non-US person is eligible for a reduced rate of withholding with respect to ordinary dividends paid by a real estate investment trust even if such person holds more than 10% of the stock of such real estate investment trust.[2]

- The non-US person (i) is a publicly traded partnership that is not taxable as a corporation, (ii) is a "withholding foreign partnership", and (iii) if such foreign partnership were a US corporation, it would be a US real property holding corporation ("USRPHC") at any time during a 5 year testing period.
- The non-US person is designated as a qualified collective investment vehicle by the US Treasury Department and is either (i) "fiscally transparent" for purposes of applying an applicable tax treaty, or (ii) is required to include dividends in its gross income, but is entitled to a deduction for distributions to persons holding interests (other than interests solely as a creditor) in such non-US person.

Effective Date: This provision is effective on the date of enactment.

Impact: This provision will encourage the formation of qualifying non-US publicly traded investment vehicles that can benefit from capital gains dividends being taxed in the same manner as ordinary REIT dividends (subject to 30% US withholding tax, which potentially may be reduced to 15%, or in certain circumstances 0%, under an applicable tax treaty), rather than being subject to US corporate income tax and branch profits tax (or personal income tax, where relevant). We are considering a number of possible structures that could be treated as qualified shareholders and thus benefit from this exclusion from FIRPTA taxation.

(b) Increase In Maximum Shareholding Of Publicly Traded REIT Stock From 5% To 10%

The Act increases the maximum stock ownership of a non-US shareholder of a publicly traded class of stock of a REIT from 5% to 10% both for purposes of determining whether the stock is a USRPI, and for purposes of the "flow-through FIRPTA distribution" rule, under which distributions by a REIT that are attributable to gain from the sale of a USRPI are generally treated as gain from the sale of a USRPI to a non-US shareholder. Under the Act, shares of a publicly traded class of stock of a REIT are not treated as USRPIs to a non-US shareholder who holds (directly, indirectly, or constructively) 10% or less of such stock. In addition, under the Act, the flow-through FIRPTA distribution rules do not apply to a non-US holder of 10% or less of a publicly traded class of REIT shares; rather, dividends received by such a holder are instead

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2 This would apply, for example to certain listed Australian property trusts described in Article 10.4(d) of the US/Australia tax treaty, and certain Dutch entities that qualify as "beleggingsinstelling" described in Article 10.4(c)(iv) of the US/Netherlands tax treaty.

subject to tax as ordinary REIT dividends (subject to 30% US withholding tax, which potentially may be reduced to 15%, or in certain circumstances 0%, under an applicable tax treaty).

Effective Date: This provision is effective on the date of enactment.

Impact: This provision will encourage investments by non-US shareholders seeking positions between 5% and 10% in the stock of a publicly traded REIT, by eliminating the US corporate income tax and branch profits tax (or personal income tax, where relevant) on capital gains from the sale of REIT shares, and by subjecting capital gains dividends to the 30% US withholding tax that generally applies to ordinary REIT dividends, which may be reduced to 15%, or in certain circumstances 0%, under an applicable tax treaty.

(c) Modification Of The Rules For Determining When A Qualified Investment Entity Is Domestically Controlled

The Act modifies the rules for determining when a REIT or RIC (a *qualified investment entity*) is *domestically controlled* for purposes of the FIRPTA rules. First, a qualified investment entity is permitted to presume that holders of less than 5% of a class of stock that is regularly traded on an established US securities market are US persons, except if the qualified investment entity has *actual knowledge* that such persons are not US persons. Stock in a qualified investment entity that is held by an upper-tier qualified investment entity that either is publicly traded or is a RIC with redeemable securities will be treated as held by a non-US person unless the upper-tier qualified investment entity itself is domestically controlled, in which case the stock in the lower-tier qualified investment entity will be treated as held by a US person. In any other case, stock in a qualified investment entity that is held by an upper-tier qualified investment entity (e.g. a private REIT) will be treated as held by a US person only to the extent that the stock of the upper-tier qualified investment entity is held by a US person.

Effective Date: This provision is effective on the date of enactment.

Impact: This provision clarifies the rules for determining whether a qualified investment entity is domestically controlled. Depending on the circumstances, this provision may have a favorable or an adverse effect. In particular, adverse consequences may arise where stock in a qualified investment entity is held by an upper-tier qualified investment entity that is publicly traded and is not itself domestically controlled.

(d) Exclusion Of Current And Former RICs And REITs From The FIRPTA "Cleansing Rule"

The Act codifies the position previously stated by the Internal Revenue Service ("IRS") that a RIC or a REIT will not cease to be a USRPHC by reason of a taxable sale of all its USRPIs, and extends that position to any corporation whose predecessor was a REIT or RIC at any time during the testing period for determining whether the corporation's stock is a USRPI, (i.e. the shorter of (i) the period where the taxpayer held such stock; or (ii) the 5 year period ending on the date of disposition of such stock).

Effective Date: This provision applies to dispositions made on or after the date of enactment.

Impact: This provision will prevent the use of certain strategies to avoid FIRPTA taxation on capital gains dividends by converting a REIT to a regular C corporation.

3. Increase In FIRPTA Withholding Tax To 15%

The FIRPTA withholding rate imposed on the disposition of USRPIs (other than on the sale of residences with an amount realized of $1 million or less) and on certain distributions is increased from 10% to 15%.

Effective Date: This provision applies to dispositions after the date which is 60 days after the date of enactment.

Impact: This provision will increase the financial cost of FIRPTA withholding imposed on dispositions of USRPIs and on certain distributions.

4. Restriction On Tax-Free Spin-offs Involving REITs

Generally, in a Section 355, tax-free spin-off transaction, a parent corporation ("Distributing") distributes to its shareholders stock of a subsidiary corporation ("Controlled"). The Act makes a REIT ineligible to participate in a tax-free spin-off as either a Distributing or Controlled corporation under Section 355 of the Code. There are two exceptions:

- First, the general rule does not apply if, immediately after the distribution, both Distributing and Controlled are REITs.
- Second, a REIT may also spin-off a Controlled corporation that has been a TRS of the REIT if: (1) Distributing has been a REIT at all times during the 3 year period ending on the date of distribution; (2) Controlled has been a TRS for the same 3 year period; and (3) the REIT has had control (as defined under Section 368(c) of the Code) of the TRS at all times during the same 3 year period, taking into account stock owned directly or indirectly including through one or more corporations or partnerships at all times during the period.

Additionally, if a non-REIT entity was a Distributing or Controlled corporation with respect to any distribution to which Section 355 of the Code applied, such corporation (and any successor corporation) may not make a REIT election for any taxable year beginning before 10 years after the date of the distribution.

Effective Date: This provision of the Act applies to all distributions on or after December 7, 2015. It grandfathers all distributions made pursuant to a ruling request initially submitted to the IRS before December 7, 2015 that has not been withdrawn and with respect to which a ruling has not been issued or denied entirely.

Impact: This provision will most likely deter future REIT conversions where a C Corporation with a real estate focus spins off its real estate assets on a tax deferred basis and such spun-off Controlled corporation subsequently elects REIT status. In addition, the provision will prevent a C corporation from spinning off its real estate portfolio through a Controlled corporation with such Controlled corporation thereafter merging into an existing REIT. It should not, however, deter conversions of a C corporation to a REIT that do not involve spin-offs.

5. Reduction In Percentage Of REIT Assets Which May Be Held In A TRS

The Act reduces to 20% (from the current 25% limitation) the total amount of REIT assets permitted to be represented by securities of one or more TRSs.

Effective Date: This provision is effective for taxable years beginning after December 31, 2017.

Impact: This provision of the Act may deter conversions of a C corporation to a REIT in a situation where a particular corporation has a significant amount of assets or nonqualified REIT businesses that would need to be held through a TRS. The provision does, however, allow 2 years for existing REITs with significant TRS assets to comply with the new 20% limitation.

6. Expanded Prohibited Transaction Safe Harbor And Expansion Of Services Provided By A TRS

The Act creates an alternative 3 year averaging for determining the percentage of assets that a REIT may sell on an annual basis and still be within the prohibited transaction safe harbor. Under prior law, in order to be eligible for the prohibited transaction safe harbor with respect to any sale of property in a particular taxable year, a REIT was required to have made no more than 7 sales of property or sell less than 10% of its assets by reference to the adjusted basis or fair market value of its assets as of the beginning of the taxable year (other than sales of foreclosure property or sales to which Section 1033 of the Code applied). As amended by the

Act, a REIT generally may qualify for the prohibited transaction safe harbor with respect to a sale in a particular taxable year if (A) the REIT meets the prior 10% requirement or (B)(1) the REIT has not sold greater than 20% of its assets by adjusted basis or fair market value in such taxable year and (2) the REIT has sold less than 10% of its assets by adjusted basis on average or by fair market value on average over the 3 taxable year period ending with such taxable year.

The Act also clarifies that the prohibited transaction safe harbor is applied independently of whether the real estate asset sold is held as inventory.

In addition, under the Act, a TRS is permitted to provide certain services to a REIT that were previously required to be provided by third parties. The Act changes the requirement that substantially all of the marketing and development expenses with respect to a property sold by a REIT be made through an independent contractor in order to be eligible for the prohibited transaction safe harbor and instead allows a TRS to market and develop the property. In addition, a TRS may operate foreclosure property without causing the property to lose its status as foreclosure property.

Finally, redetermined TRS service income is now included in the items subject to the 100% excise tax on certain non-arm's length transactions between a TRS and a REIT.

Effective Date: The 3 year averaging safe harbor is effective for taxable years beginning after the date of enactment, and therefore is generally effective for taxable years beginning January 1, 2016, while the dealer property clarification is generally effective as if included in the Housing Assistance Tax Act of 2008. The provisions relating to services provided by a TRS are effective for taxable years beginning after December 31, 2015.

Impact: The change to the prohibited transaction safe harbor should give REITs more flexibility in satisfying the safe harbor, since sales in a particular year can now exceed 10% of the REIT's assets so long as such REIT has not sold greater than 20% of its assets in a particular taxable year and can meet the 3 year 10% average.

7. Repeal Of Preferential Dividend Rules For Publicly Offered REITs

The Act repeals the preferential dividend rules for publicly offered REITs required to file annual and periodic reports with the Securities and Exchange Commission ("SEC").

Effective Date: The repeal of the preferential dividend rules for publicly offered REITs applies to taxable years beginning after December 31, 2014.

Impact: The Act generally conforms the preferential dividend rules applicable to publicly offered REITs to the rules applicable to RICs (i.e. mutual funds).

8. Alternative Remedies For Preferential Dividends Paid By Non-Publicly Offered REITs

The Act provides the Secretary with authority to provide an appropriate remedy to cure the failure of a REIT to comply with the preferential dividend requirements in lieu of the REIT not being entitled to a dividends paid deduction with respect to such distribution. Such Secretarial authority will apply if the preferential dividend is inadvertent or is due to reasonable cause and not due to willful neglect.

Effective Date: The provision applies to taxable years beginning after December 31, 2015.

Impact: The impact of the preferential dividend rules on investment fund structures has become a hot topic since a recently issued adverse REIT private letter ruling. While still subject to Secretarial discretion, this provision could potentially provide some relief for a REIT that has acted on tax advice with respect to its structure, but nonetheless is found to pay preferential dividends, at least with respect to taxable years beginning after December 31, 2015.

9. Clarification Regarding Ancillary Personal Property

The Act expands the definition of real property for purposes of the 75% REIT asset test to include personal property leased in connection with a lease of real property to the extent that rents attributable to such personal property are treated as rents from real property under Section 856(d)(1)(C) of the Code (which treats rents from personal property as rents from real property to the extent the total rent attributable to the personal property for such taxable year does not exceed 15% of the total rent attributable to personal property and real property under such lease).

The Act also treats obligations secured by a mortgage on real property and personal property as a qualifying real estate asset to the extent the personal property does not exceed 15% of the total fair market value of all of such property. The fair market value of all property is determined at the same time and in the same manner as the fair market value of real property is determined for purposes of apportioning interest income between real property and personal property under the rules for determining whether interest income is from a mortgage secured by real property.

Effective Date: This provision is effective for taxable years beginning after December 31, 2015.

Impact: This provision should increase a REIT's ability to make loans secured by real and personal property where the face amount of the loan exceeds the value of the real property but does not exceed the combined value of the real property and personal property, provided that the personal property is less than 15% of the total value of the real property and personal property.

10. Hedging Provisions

The Act extends the treatment of REIT hedges to include income from hedges of previously acquired hedges that a REIT entered into to manage risks associated with liabilities or property that have been extinguished or disposed, thereby leaving the hedge naked.

<u>Effective Date</u>: This provision is effective for taxable years beginning after December 31, 2015.

<u>Impact</u>: This provision codifies several REIT private letter rulings that have been recently issued to REITs that had engaged in these types of hedging activities.

11. Debt Instruments Of Publicly Offered REITs And Mortgages On Interests in Real Property Treated As Real Estate Assets

Under prior law, shares of other REITs were considered a qualifying real estate asset, but debt instruments issued by REITs were not. Under the Act, debt instruments issued by publicly offered REITS required to file annual and periodic reports with the SEC are treated as qualifying real estate assets. Such REIT debt instruments, therefore, are treated as qualified assets for the 75% asset test, subject to the following limitations:

- The income from the debt instruments issued by publicly offered REITs that would not have been treated as real assets, but for the new provision, is not qualified income for the 75% REIT income test; and
- These debt instruments cannot represent more than 25% of the REIT's total assets.

In addition, the Act clarifies that interests in mortgages on interests in real property will qualify as real estate assets.

<u>Effective Date</u>: This provision is effective after December 31, 2015.

<u>Impact</u>: This provision allows a REIT to make unsecured investments in other publicly offered REITs without potentially having a 75% or 5% asset test issue with respect to such investment, but while carefully monitoring its 75% qualifying income. The provision also clarifies that a REIT may treat as qualifying assets mortgages that are secured by assets that qualify as interests in real property but do not qualify as real property (for example, leasehold interests).

12. Extension Of Reduced Recognition Period For S Corporation Built-In Gains Tax

For the taxable years beginning in 2012, 2013, and 2014, Section 1374(d)(7)(C) of the Code imposed a 5 year period (instead of the otherwise applicable 10 year period) for imposing tax under Section 1374 of the Code on net recognized built-in gain of a C corporation that converts to an S corporation. Under Treasury Regulation 1.337(d)-7, Section 1374 also applies to a C corporation that converts to a RIC or a REIT, unless the RIC or REIT elects to be subject to tax on any built-in gain at the time of the conversion. The legislation makes the 5 year period permanent.

Effective Date: This provision is retroactive and effective after December 31, 2014.

Impact: This provision will facilitate conversions of C corporations holding appreciated assets to S corporations, RICs or REITs. Such a conversion can have a number of advantages, including avoiding corporate level taxation, and in certain circumstances reducing shareholder-level tax.

13. Limitations On The Designation Of Dividends By REITs

The Act limits the aggregate amount of dividends that could be designated by a REIT as qualified dividends or capital gain dividends with respect to a taxable year to the amount of dividends paid with respect to the taxable year. The Secretary may prescribe regulations or other guidance requiring the proportionality of the designation for particular types of dividends among shares or beneficial interests in a REIT.

Effective Date: This limitation applies to distributions in taxable years beginning after December 31, 2015.

Impact: The IRS had issued a revenue ruling holding that a RIC could designate the maximum amount of capital gain dividends and certain other categories of dividends applicable to RICs, even if the total amount of such designations exceeded the RIC's total dividend distributions for the taxable year. This provision clarifies that a REIT may not designate capital gain dividends and qualified dividends in excess of the amount of distributions paid by the REIT that are treated as dividends for the relevant period.

14. Modification Of The Calculation Of REIT Earnings And Profits To Avoid Duplicate Taxation

The Act modifies the calculation of earnings and profits ("E&P") for REITs to avoid duplicative taxation of REIT shareholders by providing that REIT E&P for any taxable year is not reduced by any amount not allowable in computing taxable income for the taxable year or any prior taxable year. A conforming change is made to a similar rule that increases E&P solely for purposes of the dividends paid deduction by the total amount of gain recognized on the sale of real property.

Effective Date: This provision is effective for taxable years beginning after December 31, 2015.

Impact: These changes are designed to prevent REIT shareholders from being subject to tax on multiple distributions that are attributable to the same item of income while ensuring that the REIT will have sufficient E&P to meet its distribution obligation. The provision applies, for example, if a REIT sells property under the installment method and recognizes gain from the sale over multiple years, or if a REIT is entitled to a deduction in a single year for an amount that reduces the REIT's earnings and profits over multiple years.

15. Dividends Received Deduction

Dividends from a RIC or a REIT that is 80% owned by a non-US corporation are not treated as dividends from an 80% owned domestic corporation for purposes of determining the portion of any dividend paid by the non-US corporation to a US corporation that can qualify under Section 245 of the Code for the dividends received deduction in the hands of the US corporation.

Effective Date: This provision applies to dividends received by a non-US corporation from RICs and REITs on or after the date of enactment. No inference is intended with respect to the proper treatment under Section 245 of dividends received from RICs or REITs before such date.

Impact: This provision codifies the position of the IRS and the Treasury Department that RIC and REIT dividends paid to a non-US corporation are not taken into account for purposes of determining the portion of dividends paid by the non-US corporation to a US corporation that can qualify for the dividends received deduction.