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Minimizing Foreign Investors' Capital Gain Tax Consequences in U.S. Real Property Using Contingent Interest Debt

Pete Oppenheimer, Ph.D.
Associate Professor
Mike Cottrell School of Business
North Georgia College and State University
Dahlonega, Georgia 30597

Abstract

The disposition of a U.S. real property interest by a non-resident alien results in taxable gain under the 1980 Foreign Investment in Real Property Tax Act (FIRPTA). But, because foreign tax treaties often exempt interest paid on debt from U.S. taxation, the use of debt that pays interest contingent on the appreciation of real property may reduce taxable capital gains for a foreign investor. This paper discusses the use of contingent debt to finance real property investment and the applicable U.S. tax laws for foreign investors.