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October 3, 2016

The Honorable Mark Mazur
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The Honorable John Koskinen
Commissioner
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The Honorable William J. Wilkins
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Re: *Report No. 1354 on Changes to FIRPTA under the Protecting Americans from Tax Hikes Act of 2015*

Dear Messrs. Mazur, Koskinen, and Wilkins:

I am pleased to submit the attached report of the Tax Section commenting on certain provisions enacted in the Protecting Americans from Tax Hikes Act of 2015 (the "PATH Act"), enacted December 18, 2015. The PATH Act made a number of changes to the FIRPTA regime under Section 897 of the Internal Revenue Code, including extending exemptions for new classes of investors for certain gains otherwise subject to FIRPTA. Those new classes of investors are "qualified foreign pension funds" (or "QFPF") and "qualified shareholders" (or "QCIV").

In this Report we address the new requirements for investors to qualify as QFPFs or QCIVs. Many of our comments request guidance with respect to the interpretation of the new laws so that investors, as well as

their legal advisors, may accurately determine whether they qualify for a new exemption. Our principal recommendations are following:

1. Regulations should be issued to clarify each prong of the definition of QFPF, including clarification that non-pension, non-retirement plan benefits will not disqualify a foreign pension fund from qualifying as QFPF, and guidance as to what forms such foreign pension funds may take to qualify as part of an “arrangement.”

2. Regulations should be issued to provide guidance on indirect ownership by QFPFs of real property through partnerships or corporate subsidiaries, including guidance defining “wholly-owned” subsidiary and entities owned by multiple plans.

3. Regulations under Section 897(k) should appropriately extend this new exemption to other entities that meet the same characteristics as LAPTs and *beleggingsinstellingen* to which the PATH Act currently applies (possibly including an angels list of qualifying entities).

4. Regulations under Section 897(k) should clarify whether a publicly traded partnership would need to qualify as a USRPHC if treated as a domestic corporation, rather than just a real estate holding corporation.

In this report we also ask for guidance both under existing law and provisions of the PATH Act with respect to the “publicly traded” and “domestically controlled” FIRPTA exceptions. Our principal requests include:

1. Guidance should be issued as to whether a “person” for purposes of the publicly traded exception and domestically controlled test should be determined at the partner or partnership level.
2. Clarification should be provided as to whether the new 10-percent threshold for the publicly traded exception applies for periods before the effective date of the PATH ACT, in cases where the relevant disposition or distribution occurs after that date.
3. Guidance should be issued clarifying that ownership of REITs should be determined on a look-through basis for partnerships holding REIT shares, but not corporations holding REIT shares, in determining whether the REITs qualify as domestically controlled REITs.

The Honorable Mark Mazur
The Honorable John Koskinen
The Honorable William J. Wilkins

October 3, 2016

We appreciate your consideration of our recommendations. If you have any questions or comments on this report, please feel free to contact us and we would be happy to assist in any way.

Respectfully Submitted,



Stephen B. Land
Chair

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