

LB&I Concept Unit Knowledge Base – International

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Chapter	15.2	Nonresident Alien FIRPTA Issues
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Unit Name	U.S. Real Property Holding Corporations - USRPHC Status	
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General Overview

U.S. Real Property Holding Corporations - USRPHC Status

History of the FIRPTA Law

A United States real property interest (USRPI) represents a direct interest in real property in the United States or in the stock of a domestic corporation whose assets consist principally of USRPIs. Prior to 1980, foreign persons could dispose of USRPIs without paying U.S. federal income taxes on the gain unless the gain was related to assets that generated effectively connected income with a U.S. trade or business.

In 1980, Congress enacted the *Foreign Investment in U.S. Real Property Tax Act of 1980* (FIRPTA) which added IRC 897 and treated gain or loss on the disposition of USRPI by a foreign corporation or a nonresident alien (NRA) as effectively connected with a U.S. trade or business. In 1984, the FIRPTA withholding tax regime under IRC 1445 was enacted under the *Deficit Reduction Act of 1984* (Pub. L. 98-369). IRC 1445 generally requires the buyer/transferee to withhold 15 percent (10 percent for dispositions before February 17, 2016) of the amount realized from the disposition of a USRPI by a foreign person or 35 percent of the gain on certain dispositions of USRPIs.

General Overview (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status

Under the *Foreign Investment in U.S. Real Property Tax Act of 1980* (FIRPTA) the United States can tax gain on the sale of a U.S. real property interest (USRPI). The stock of a corporation holding significant amounts of USRPI, a U.S. real property holding corporation (USRPHC), is also treated as a USRPI.

A foreign or domestic corporation is a U.S. real property holding corporation (USRPHC) if the fair market value (FMV) of its U.S. real property interest (USRPI) is at least 50 percent of the sum of the FMV of (1) its total USRPIs, (2) its total interest in real property located outside the United States (FRPI) and (3) any other assets used in a trade or business (Treas. Reg. 1.897-2(b)). The general formula used to make this determination is:

$$\frac{\text{FMV of all USRPIs}}{\text{FMV of USRPIs} + \text{FMV of all FRPIs} + \text{FMV of trade or business assets}} > 50\%$$

Although a foreign or domestic corporation can be a USRPHC, the implications are generally different. If a domestic corporation is a USRPHC or was one within the 5 years preceding the disposition and the cleansing rule does not apply, its stock is a USRPI (IRC 897(c) (1)(A)(ii)). Stock in a foreign corporation cannot be a USRPI. However, determining whether a foreign corporation is a USRPHC is relevant as to whether its corporate shareholder in turn qualifies as a USRPHC. See IRC 897(c)(5).

The stock of a foreign corporation making an IRC 897(i) election can be a USRPI for all FIRPTA purposes.

General Overview (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status

If a domestic corporation has been determined to be a USRPHC, its stock will be generally considered a USRPI in the hands of a foreign shareholder and any gain or loss on the disposition of the stock generally should be treated by the foreign shareholder as effectively connected to a U.S. trade or business under IRC 897(a).

Stock in a domestic corporation held by a foreign person that is determined to be a USRPHC at any point in time, is considered to be a USRPI for five years thereafter unless the cleansing rule applies.

FIRPTA will apply to the disposition of any interest in the corporation, other than an interest solely as a creditor. See IRC 897(c)(1)(A)(ii).

Relevant Key Factors

U.S. Real Property Holding Corporations - USRPHC Status

Key Factors

This Practice Unit demonstrates how to determine when a corporation is a USRPHC and the significance of making this determination. It addresses how interests in other businesses entities come into play, when determination dates are applicable, and define what is meant by the cleansing rule.

This Unit includes an explanation of the treatment of interest in controlled and non-controlled corporations, as well as interest in partnerships, trusts and estates.

This Unit references many of the examples contained in Treas. Reg. 1.897-2 to further illustrate points discussed.

Diagram of Concept

U.S. Real Property Holding Corporations - USRPHC Status

Diagram of Concept

Example 1

If the domestic corporation is a USRPHC, its stock is considered a USRPI in the hands of the foreign shareholder. Distributions made in excess of earnings and profits (E&P) and basis (IRC 301(c)(3)) by a domestic corporation that is a USRPHC are treated as gain and are subject to FIRPTA. Liquidating distributions and redemption proceeds for stock of such corporation are also subject to FIRPTA.

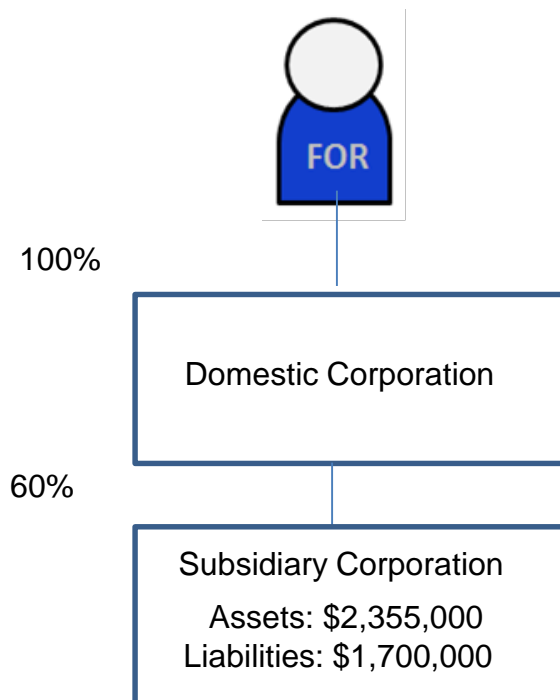


Diagram of Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status

Diagram of Concept

Example 1 (cont'd)

DOMESTIC CORPORATION
 USRPHC DETERMINATION FRACTION
 ASSETS AND LIABILITIES AT FMV
 (Valued at December 31, 2013)

Assets

Working cash	\$30,000
Land, improvements, and associated property	\$1,520,000
Machinery	\$500,000
Trade receivables	\$150,000
60% of stock of sub corp. also a U.S. corporation	\$468,000

Total assets \$2,668,000

Liabilities

Purchase mortgage secured by land and building	\$1,000,000
Debt secured by machinery	\$200,000

Total liabilities \$1,200,000

Diagram of Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status

Diagram of Concept

Example 1 (cont'd)

Subsidiary corporation owns property with the following FMV and liabilities:

SUBSIDIARY CORPORATION
 USRPHC DETERMINATION FRACTION WORKSHEET
 SCHEDULE OF ASSETS AND LIABILITIES AT FMV
 (Valued at December 31, 2013)

Assets

Working cash	\$230,000
Land and building	\$2,000,000
Trade receivables	\$100,000
Inventory	\$25,000

Total assets \$2,355,000

Liabilities

Purchase debt secured by land and building	\$1,700,000
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Total liabilities \$1,700,000

Diagram of Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status

Diagram of Concept

Example 1 (cont'd)

DOMESTIC CORPORATION
USRPHC DETERMINATION FRACTION
(Determination Date: December 31, 2013)

Numerator: FMV of USRPIs held by domestic corporation

Domestic corp's land and building (net of mortgage)	\$520,000
60% subsidiary corp's land and building (net of mortgage)	\$180,000

Total USRPIs held by domestic corp: \$700,000

Denominator: FMV of total relevant assets held by domestic corporation

USRPIs (from calculations in Part I)	\$700,000
Domestic corp's machinery (net of mortgage)	\$300,000
Domestic corp's working cash	\$30,000
Domestic corp's trade receivables	\$150,000
60% of sub corp's trade receivables	\$60,000
60% of sub corp's working cash	\$138,000
60% of sub inventory	\$15,000

Total USRPIs and business assets held by domestic corp: \$1,393,000

Domestic corp's USRPHC determination fraction as of December 31, 2013

$$\frac{\$700,000}{\$1,393,000} = 50.25\%$$

Domestic corp is a USRPHC as of December 31, 2013.

Facts of Concept

U.S. Real Property Holding Corporations - USRPHC Status

Facts of Concept

Example 1 on the previous four pages illustrates a test to determine if a domestic corporation is a USRPHC by analyzing the value of the properties and certain liabilities of the domestic corporation and its lower tier 60 percent owned subsidiary corporation.

For purposes of determining USRPHC status, if a domestic corporation owns 50 percent or more of the FMV of all classes of stock of a lower tier corporation, the parent is treated as owning a proportionate share of that lower tier corporation's assets. This 50 percent ownership determination takes into account the attribution rules under IRC 318(a) with certain modifications. To summarize, this rule "looks through" the parent's ownership of the stock and includes a ratable portion of the controlled subsidiary's assets as its own, ignoring its ownership of the stock itself. The subsidiary may be foreign or domestic and the rule is applied successively through a chain of ownership. See Treas. Reg. 1.897-2(e)(3), example 2 for an additional illustration.

In the example, the domestic corporation is a USRPHC; 60 percent of the FMV of certain assets of the subsidiary corporation are included in the calculation. The domestic corporation is a USRPHC because the FMV of its USRPI is greater than 50 percent of the value of its USRPI plus FRPI plus business assets. There will be explanations of fair market value and business assets later in the Unit.

Examples for situations where the domestic corporation owns less than 50 percent of the FMV of all classes of stock of the lower tier corporation appear later in this Practice Unit.

Detailed Explanation of the Concept

U.S. Real Property Holding Corporations - USRPHC Status

As USRPHC status is a complex subject, there are several concepts to consider.

Analysis	Resources
<p><u>Fair Market Value</u></p> <p>The Fair Market Value (FMV) of property is its gross value reduced by the outstanding balance of any debts secured by the property. Gross value is the price that exists between a willing buyer and willing seller, when neither is under any compulsion to buy or sell and both have reasonable knowledge of all the relevant facts. For trade or business assets, going concern value generally should be used but another valuation method may be used if it is used consistently and provides more accurate results.</p> <p>Note: the above definition of Fair Market Value according to the Treas. Reg. 1.897-1 is only for IRC 897, IRC 1445 and IRC 6039C.</p>	<ul style="list-style-type: none">▪ Treas. Reg. 1.897-1(o)(2)(i)▪ Treas. Reg. 1.897-1(o)(2)(ii)▪ IRC 897▪ IRC 1445▪ IRC 6039C

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p><u>Trade or Business Assets</u></p> <p>For purposes of the statutory test, "trade or business assets" are defined as assets other than USRPIs that are used for or are held for use in a business.</p> <p>Trade or business assets may include the following:</p> <ol style="list-style-type: none">1. Inventory2. Depreciable property3. Livestock4. Goodwill5. Intellectual property used in the trade or business6. Cash7. Stock and other securities8. Receivables9. Certain options and contracts	<ul style="list-style-type: none">▪ Treas. Reg. 1.897-1(f)

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p><u>Trade or Business Assets (cont'd)</u></p> <p>A trade or business asset must either be held for the principal purpose of promoting the present conduct of a trade or business or be acquired and held in the ordinary course of business or otherwise held in a direct relationship to the trade or business. An asset cannot be included if it is held only for anticipated future needs.</p> <p>For example, assets held for future diversification, expansion, plant replacement or future business contingencies are not trade or business assets. Generally, an asset should be held to meet current operating expenses or other current operations. However, an asset that is held to meet capitalization or reserve requirements imposed by law will be presumed held in direct relationship to the trade or business.</p>	<ul style="list-style-type: none">▪ Treas. Reg. 1.897-1(f)(2)(i)-(iii)

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p>The Treasury Regulations provide for testing of USRPHC status to be done on specific determination dates.</p> <p><u>Determination Dates</u></p> <p>The applicable dates for determining whether a corporation is a USRPHC are as follows:</p> <ol style="list-style-type: none"> A. The last day of the corporation's taxable year. B. The date on which the corporation acquires any USRPIs. C. The date on which a corporation disposes of an interest in real property located outside the U.S. or other assets used or held for use in a trade or business during the calendar year. D. In the case of a corporation treated as owning part of the asset held by an entity in which the corporation directly or indirectly holds an interest, the date on which that entity either: <ol style="list-style-type: none"> 1. Acquires a USRPI, 2. Disposes of an interest in real property located outside of the U.S. or 3. Disposes of other assets used or held for use in a trade or business during the calendar year. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.897-2(c)(1)(i)-(iv)

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p><u>Determination Dates (cont'd)</u></p> <p>The dates on the previous page or events will trigger a determination date for the corporation. However, the first determination of a corporation's status is not required until 120 days after the later of the date of incorporation or the date on which the corporation first has a shareholder. No determination is required during the 12-month period beginning on the date on which a corporation adopts a plan of complete liquidation as long as all corporate assets are distributed during that period.</p> <p>There are several transactions that can take place in a corporation without triggering a determination date, including:</p> <ol style="list-style-type: none"> A. Disposition of inventory or livestock. B. Satisfaction of accounts receivable arising from the disposition of inventory or livestock or from the performance of services. C. Disbursement of cash to meet the regular needs of a business (such as, pay wages and salaries or acquire inventories). D. Disposition of a small amount of assets (other than inventory or livestock) used or held for use in a trade or business. E. Acquisition of a small amount of USRPIs. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.897-2(c)(1)(iv) ▪ Treas. Reg. 1.897-2(c)(2)(i)(A)-(E)

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status

Analysis

Resources

The acquisition of a small amount of USRPIs mentioned on the previous page excuses a corporation from making determinations if it acquires USRPIs or disposes of trade or business assets, amounting to less than certain percentages of its total relevant assets. This exception allows for routine business transactions and for acquisitions and dispositions that do not effect major shifts in corporate assets. These percentages can be summed up as follows:

Percentages of total assets that are USRPIs by FMV	Percentage of USRPIs acquired or disposition of trade or business assets by FMV
Less than 25%	10%
25% to less than 35%	5%
35% at least	2%

In other words, if USRPIs held by the corporation are less than the stated percentage of the total assets on the last determination date, then a portion of all trade or business assets, on a cumulative basis, may be disposed of without triggering a new determination date.

If the USRPI is 25 percent to less than 35 percent, the trigger level is 5 percent. If the USRPI is 35 percent or more, the trigger level is 2 percent. Also, if the corporation is not a USRPHC under the alternative book value test (discussed below), the applicable limitation is 10 percent of the book value of all trade or business assets or all USRPIs as applicable.

- Treas. Reg. 1.897-2(c)(2)(iii)(A)-(D)
- Treas. Reg. 1.897-2(c)(2)(iii)(D)
- Examples 1 - 2 at this cite illustrate when a determination date is triggered

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p><u>Alternate Monthly Determination</u></p> <p>A corporation may choose to determine its USRPHC status on an alternative monthly determination date. Under this method, a determination is required to be made only at the end of each calendar month and for certain transactional dates. The corporation must determine its status if acquisitions of USRPIs or dispositions of foreign real property or business assets exceed 5 percent of the sum of the fair market value of USRPIs, real property interests outside the U.S. and assets used or held for use in a trade or business held by the corporation.</p> <p><u>Alternate Book Value Formula</u></p> <p>A corporation may use a "book value" to establish that it is not a USRPHC. The book value test replaces the FMV value with the values at which the assets are carried on the corporation's financial accounting records, provided the property values are kept in accordance with <i>U.S. Generally Accepted Accounting Principles (GAAP)</i>.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.897-2(c)(3)(iii) ▪ Treas. Reg. 1.897-2(c)(5) ▪ Examples 1 - 2 at this cite illustrate alternate valuation dates <ul style="list-style-type: none"> ▪ GAAP ▪ Treas. Reg. 1.897-2(b)(2)(ii)

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p><u>Alternate Book Value Formula (cont'd)</u></p> <p>If the “book value” USRPHC fraction is 25 percent or less, the corporation may presume itself not to be a USRPHC. However, if the Service questions this presumption made by the corporation, and determines that the FMV of the corporation's assets does not accurately reflect the USRPHC status by the use of the alternative book value test, the Service will notify the corporation in writing that it cannot rely on the alternative book value test. By day 90 following the date on which the corporation receives the notification, the corporation must determine, using FMVs, whether on its most recent determination date, it was a USRPHC pursuant to the general 50 percent test and notify the Service of its determination.</p> <p>If the corporation determines that it was not a USRPHC under the 50 percent test, it may continue to rely on the alternative book value test unless the Service, after a review of additional information submitted, again requests that the taxpayer make the determination pursuant to the general rule. If the corporation determines that it was a USRPHC on its most recent determination date, it must notify each of its shareholders (and any other holder of non-creditor interest) by day 180 following receipt of the Service's notification, that it was a USRPHC.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.897-2(b)(2)(iii) ▪ Treas. Reg. 1.897-2(b)(2)(iii)

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p><u>Interest in Non-Controlled Corporations</u></p> <p>If a domestic corporation owns less than 50 percent of the stock of another corporation and the latter is a USRPHC, the domestic corporation's shares in the USRPHC are treated as USRPIs in determining whether the domestic corporation is a USRPHC. If the latter corporation has lower tier subsidiaries, the same procedure must first be done to determine the latter corporation's USRPHC status.</p> <p>Generally, stock of a corporation can only be a USRPI if the corporation is domestic. However, stock that a domestic corporation holds in a foreign corporation can qualify as a USRPI for purposes of determining the domestic corporation's USRPHC status. Also, a foreign or domestic corporation can qualify as a USRPHC and if a foreign corporation makes an IRC 897(i) election, it will be treated as a domestic corporation for all FIRPTA purposes. An IRC 897(i) election can be made only if the foreign corporation will qualify as a USRPHC.</p>	<ul style="list-style-type: none">▪ Treas. Reg. 1.897-2(e)(1)▪ See examples 1 - 2 at this cite regarding tiered ownership for determining USRPHC status ▪ Treas. Reg. 1.897-8(T)(b)▪ IRC 897(i)

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p><u>Interest in Partnerships, Estates and Trusts</u></p> <p>For purposes of determining USRPHC status, the look-through rule applies to partnerships, estates and trusts (“pass-through entities”). Instead of an interest in the entity itself, the corporation is deemed to own a pro rata share of the assets of the pass-through entity.</p> <p>The pass-through entity is deemed to own its proportionate interests of the assets of any pass-through entity in which it owns an interest.</p> <p>As with corporations this rule applies successively through the chain of ownership. Again, the look-through rule applies regardless of whether the pass-through entity is foreign or domestic.</p> <p>There is an exception for entities with substantial investments in cash, stock and securities.</p>	<ul style="list-style-type: none">▪ Treas. Reg. 1.897-2(e)(2)▪ See examples 1 - 2 at this cite regarding USRPHC status taking into account lower tier partnerships and trusts ▪ Treas. Reg. 1.897-1(f)(3)(ii)▪ Treas. Reg. 1.897-1(f)(4)▪ See examples 1 - 3 at this cite for assets considered to be held in the conduct of a trade or business

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p><u>Determining Proportionate Share of Assets Held by Corporations and Partnerships</u></p> <p>To determine a corporation's pro rata share of assets in a corporation or a partnership, the taxpayer must multiply the corporation's percentage ownership interest in the entity by the FMV of the entity's assets (or book value if used). The percentage ownership interest is the ratio of the sum of all liquidation values of all of the corporate partner's interests in the entity to the sum of the liquidation values of all of the outstanding interests in the entity.</p> <p>The liquidation value is the amount of cash and the FMV of any property that would be distributed with respect to such interest upon the liquidation of the entity after satisfaction of liabilities to persons having interests in the entity solely as creditors. Any presently exercisable options to acquire a right to convert or otherwise acquire an interest in the partnership other than solely as a creditor will be considered as exercised for these purposes.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.897-1(e)(2)(i) ▪ Treas. Reg. 1.897-1(e)(2)(ii) ▪ Treas. Reg. 1.897-1(e)(2)(iii) ▪ See examples 1 – 2 at this cite on the determination of a person's ownership interest in a corporation and a partnership

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p><u>Estates and Trusts</u></p> <p>To determine the percentage ownership in estates and non-grantor trusts for USRPHC status, a corporation's pro rata share of assets is determined by multiplying its percentage ownership interest in the trust or estate by the FMV (or book value) of the estate or trust's assets. In this case, the percentage ownership interest is the ratio of the sum of the actuarial values of the corporation's interests in the cash and other assets of the entity to the entire amount of the entity's cash and other assets, after satisfaction of liabilities to those holding interests solely as creditors.</p> <p>Interests entitling any person to a distribution of a USRPI on liquidation disproportionate to his or her interest in the total assets are disregarded to the extent of the disproportionality. With grantor trusts, the grantor or other person will be deemed to own a percentage ownership interest equal to the portion that he or she is treated as owning under the grantor trust provisions under IRCs 671-679.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.897-1(e)(3)(i) ▪ Treas. Reg. 1.897-1(e)(3)(ii) ▪ Treas. Reg. 1.897-1(e)(3)(ii)(B) ▪ See example at this cite on the determination of a foreign person's ownership interest in a trust ▪ IRCs 671-679

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p><u>Notice Requirements</u></p> <p>A foreign person can obtain a statement from a domestic corporation as to whether its interest in the domestic corporation is a USRPI. The domestic corporation must provide this information within a reasonable period.</p> <p>The domestic corporation only needs to inform the interest holder of its determination and no particular form is required. However, the statement must be dated and signed by a responsible corporate officer under penalties of perjury.</p> <p>If a foreign person requests a statement from a domestic corporation as to whether his or her stock is a USRPI, the domestic corporation must also provide a notice to the Service. No particular form is required but the notice must include the following:</p> <ol style="list-style-type: none">1. A statement that the notice is provided pursuant to the requirements of Treas. Reg. 1.897-2(h)(2).2. The name, address and identifying number of the corporation providing the notice.	<ul style="list-style-type: none">▪ Treas. Reg. 1.897-2(g)(1)(ii)▪ Treas. Reg. 1.897-2(h)

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p><u>Notice Requirements (cont'd)</u></p> <p>3. The name, address and identifying number of the foreign interest holder that requested the statement (this may be omitted if shown in the statement to the interest holder attached to the IRS's notice).</p> <p>4. Whether the interest in question is a USRPI.</p> <p>5. A statement dated and signed by a responsible corporate officer verifying under penalties of perjury that the notice and attachments are correct to his or her knowledge and belief.</p> <p>These notice requirements do not apply to any class of a corporation's stock that is regularly traded on an established securities market at any time during the calendar year, or to a domestically controlled real estate investment trust (REIT) as defined in IRC 897(h)(4)(B).</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.897-2(h)(1) and (2) ▪ IRC 897(h)(4)(B) ▪ Treas. Reg. 1.897-2(h)(3)

Detailed Explanation of the Concept (cont'd)

U.S. Real Property Holding Corporations - USRPHC Status	
Analysis	Resources
<p><u>The Cleansing Rule</u></p> <p>Stock of a USRPHC would cease to be a USRPI if the USRPHC did not hold any USRPIs as of the date of a disposition of the USRPHC's stock, and all of the USRPIs previously held by such USRPHC at any time during the shorter of (i) the period of time that the selling shareholder held the USRPHC Stock or (ii) the five-year period ending on the date of the disposition, were disposed of in a transaction in which the full amount of gain (if any) was recognized (or such USRPIs ceased to be USRPIs under this rule).</p> <p>The <i>Protecting Americans from Tax Hikes Act of 2015</i> (PATH Act) adds a requirement that neither the USRPHC nor any predecessor of the USRPHC has been a regulated investment company (RIC) or a real estate investment trust (REIT) at any time during the applicable holding period. This additional requirement applies to dispositions made on or after the December 18, 2015 enactment date.</p> <p><u>Determination by Commissioner</u></p> <p>A foreign person that disposes of an interest in a domestic corporation may establish that the interest was not a USRPI as of the date of disposition by requesting and obtaining a determination from the SB/SE Commissioner. A taxpayer may be able to go through the pre-filing agreement program for a USRPHC determination.</p> <p>In this situation, examiners should contact the Withholding (Individual Inbound) Practice Network.</p>	<ul style="list-style-type: none"> ▪ IRC 897(c)(1)(B) ▪ PATH Act ▪ Treas. Reg. 1.897-2(g)(1)

Examples of the Concept

U.S. Real Property Holding Corporations - USRPHC Status

Examples

See Diagram of Concept for example 1.

Example 2

Interest in Partnership:

Mr. NRA owns all of the stock of DC, a domestic corporation. DC owns 50 percent in FP, a foreign partnership. DC also owns foreign real estate with a FMV of \$500,000 and business assets with a FMV of \$100,000.

FP owns foreign real estate with a FMV of \$300,000 and U.S. real estate with a FMV of \$2,000,000. The look-through rule treats DC as owning one half of the assets held by FP.

As a result, DC indirectly owns \$1,000,000 of U.S. real estate and \$150,000 of foreign real estate.

DC is a USRPHC because the FMV of DC's USRPI (\$1,000,000) exceeds 50 percent of the sum of the FMV of DC's USRPI (\$1,000,000), DC's FRPI (\$650,000), plus DC's other business assets (\$100,000).

Index of Referenced Resources

U.S. Real Property Holding Corporations - USRPHC Status
IRC 301(c)(3)
IRC 671-679
IRC 897
IRC 1445
IRC 6039
Treas. Reg. 1.897-1
Treas. Reg. 1.897-2
Treas. Reg. 1.897-8
<i>Deficit Reduction Act of 1984 (Pub. L. 98-369)</i>
<i>Foreign Investment in U.S. Real Property Tax Act of 1980 (FIRPTA)</i>
<i>Protecting Americans from Tax Hikes Act of 2015 (PATH Act)</i>
<i>U.S. Generally Accepted Accounting Principles (GAAP)</i>

Training and Additional Resources

U.S. Real Property Holding Corporations - USRPHC Status

Type of Resource	Description
Saba Meeting Sessions	▪ None at this time.

Glossary of Terms and Acronyms

Term/Acronym	Definition
E&P	Earnings and Profits
FIRPTA	Foreign Investment in Real Property Tax Act of 1980
FMV	Fair Market Value
FRPI	Foreign Real Property Interests Located Outside the United States
GAAP	Generally Accepted Accounting Principles
NRA	Nonresident Alien
Pass-Through Entities	Partnerships, Estates and Trusts
PATH Act	Protecting Americans from Tax Hikes Act of 2015
REIT	Real Estate Investment Trust
RIC	Regulated Investment Company
UIL	Uniform Issue List
USRPHC	U.S. Real Property Holding Corporation
USRPI	U.S. Real Property Interest

Index of Related Practice Units

Associated UIL	Related Practice Unit	DCN
	None at this time.	