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New world for leveraged U.S. real estate partnerships

APRIL 6, 2017 2 MIN READ

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For Canadian entities seeking to access the booming U.S. real estate market or to diversify their global real estate holdings, strategically navigating the complex U.S. partnership tax regulations that exist is challenging. Canadian businesses must also understand how new limits on partnership guarantees and disguised sales will impact how they structure their cross-border real estate investments in order to realize the most significant tax benefits.

Increasingly, Canadian multinationals have elected to structure their U.S. real estate investments through limited liability entities classified as partnerships for U.S. tax purposes. Understanding how to leverage these partnerships for the benefit of U.S. tax deferrals is key for Canadian businesses.

This publication, which originally appeared in *Tax Notes*, focuses on the impact of new U.S. partnership tax regulations on cross-border real estate transactions from Canada into the U.S., and describes common investment structures used by Canadian enterprises. Also outlined in this publication are the following tax matters:

- UPREIT and DownREIT for domestically controlled REITs
- domestically controlled REITs
- UPREITs and DownREITs
- “bottom-dollar” guarantees and indemnities
- scope of 752 Regulations
- safe harbor for 90% obligors
- transition relief
- filing obligations
- recourse debt treated as nonrecourse under the disguised sale rules
- old rules on leveraged distributions and contributions of encumbered property
- determining the partner’s share of liabilities under the new disguised sale rules
- contributions of encumbered property and subsequent transfers
- leveraged distributions
- what a Trump presidency might mean for Obama’s disguised sale rules
- deficit restoration obligations (DROs) under the bottom-dollar payment rules
- technical correction to disguised sale rules

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