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FIRPTA Reform Proposal Re-Introduced in the Senate

Yesterday, Senators Bob Menendez (D-NJ) and Mike Enzi (R-WY) introduced S. 1181, the "Real Estate Investment and Jobs Act of 2013," in the 113th Congress. The measure, backed by Senators on a bipartisan basis, is identical to legislation introduced in the 112th Congress that would make two significant changes to the Foreign Investment in Real Property Tax Act (FIRPTA). These two changes would be an important step in the enactment of necessary reforms to FIRPTA that The Invest in America Coalition and a number of other real estate organizations have been advocating for several years. As stated by Senator Menendez in his press release, "By increasing investment in commercial real estate, we can create American jobs and generate a need to build up surrounding infrastructure, including new sidewalks, roads and light rail projects. That's the kind of positive chain reaction our economy needs."

Similar to the earlier proposal, S. 1181 includes a proposal that would increase the current "portfolio investor" exception for sales of stock and capital gains dividends of listed REITs from 5 percent to 10 percent. This change would conform the definition of "portfolio investor" for FIRPTA purposes to that used in tax treaties and which is applicable to foreign investment in U.S. debt securities. REIT dividends paid to non-U.S. portfolio investors would remain subject to U.S. withholding (but not FIRPTA) tax.

Second, S. 1181 would reverse a 2007 IRS Notice with respect to the treatment of liquidating distributions of a domestically controlled qualified investment entity pursuant to which such distributions are currently taxed as a sale of real estate subject to FIRPTA, rather than being taxed as a sale of stock. Prior to 2007, most tax practitioners believed FIRPTA did not apply to these transactions.

The Invest in America Coalition expresses its appreciation to Senators Menendez and Enzi, both members on the Senate Finance Committee, for their continued efforts to achieve important modifications of FIRPTA at a time when the U.S. real estate sector could greatly benefit from additional foreign investment. In addition, The Invest in America Coalition thanks the 22 senators, including 13 who also serve on the Senate Finance Committee, who have added their names as original co-sponsors to S. 1181: Senators Barrasso (R-WY), Begich (D-AK), Bennet (D-CO), Boozman (R-AR), Boxer (D-CA), Cantwell (D-WA), Cardin (D-MD), Carper (D-DE), Coons (D-DE), Cornyn (R-TX), Crapo (R-ID), Gillibrand (D-NY), Hagan (D-NC), Isakson (R-GA), Nelson (D-FL), Roberts (R-KS), Schumer (D-NY), Shaheen (D-NH), Stabenow (D-MI), Tester (D-MT), Thune (R-SD), and Wyden (D-OR).

The Invest in America Coalition anticipates that similar legislation will be introduced in the House of Representatives later this year.

The introduction of the "Real Estate Investment and Jobs Act of 2013" in the Senate, together with the Obama Administration's legislative proposal to treat foreign pension plans the same as U.S. pension plans for purposes of FIRPTA, as contained in its Fiscal Year 2014 budget proposal, are positive steps that will hopefully result in the achievement of FIRPTA reform during the 113th Congress.