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Tax Evasion

Foreign Real Estate Buyers Must Report Tax Data to IRS

U.S. limited liability companies with a single foreign owner, a common structure used in investment property deals, will have to report tax information to the IRS starting next year as the government continues to push toward tax transparency, according to final rules.

The owners will have to report to the Internal Revenue Service in the same way already required for 25 percent foreign-owned corporations. The rules (T.D. 9796, RIN:1545-BM94), released Dec. 12, treat the single-owner LLCs as domestic corporations separate from their owners.

In addition to getting employer identification numbers from the agency, these foreign owners will have to file an information return aimed at disclosing all transactions with foreign related parties.

The rules, part of the Treasury Department's push to increase tax transparency, will largely affect foreigners investing in U.S. real estate who frequently use single-member LLCs treated as a disregarded entity for tax purposes. The structure is common among overseas cash buyers who purchase condos in major U.S. cities, such as New York or Miami, as investment properties rather than residences.

Tax Specialist Necessary. This change will require tax advisers to be involved in these deals going forward, John C. Dworkin, of John C. Dworkin P.C., told Bloomberg BNA Dec. 12. Non-tax lawyers had been comfortable advising on these transactions previously because there hadn't been any tax reporting requirements, he said.

The rules under tax code Section 6038A are largely the same as the regulations proposed in May in an effort to increase tax reporting transparency. However, the effective date was changed so that the rules are applicable to taxable years starting on or after Jan. 1, 2017. As proposed, the rules would have applied to taxable years ending on or after the date 12 months after the final rules' publication.

The rules likely won't deter foreign investors from buying real estate in large U.S. cities, Dworkin said. However, many will likely elect to be a corporation so they can deduct and capitalize expenses. The entities have to report information to the IRS as a corporation whether or not they elect to be one.

The Treasury Department has been seeking to increase tax compliance through more comprehensive reporting regimes in recent months. These rules follow the debt-equity rules under tax code Section 385, made final in October, which require multinationals to document intercompany loans in a bid to stop companies from shifting income overseas.

''This is similar to the debt-equity rules in the sense that there is an additional level of compliance and reporting to the IRS required,'' Dworkin said. ''This puts these transactions squarely within what tax experts need to advise on.''

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