May/June 2012

AFIRE News

The Official Voice of the Foreign Real Estate Industry

INSIDE

Along the Road to Recovery

2012 AFIRE Annual Membership Meeting in Washington, DC

Focusing on the prospects of an improving economy in the US and the far-reaching economic implications of the 2012 elections, the Annual Membership Meeting will be held Wednesday, September 5, through Friday, September 7, at the Mandarin Oriental, Washington, DC.

The conference will start off with a reception Wednesday evening at the Potomac View Terrace, a plein air setting, overlooking the Potomac River and the western end of the National Mall, including the Lincoln and Jefferson Memorials. Thursday morning we will hear from Ron Insana, named one of the "Top 100 Business News Journalists of the 20th Century," and a contributor to CNBC and MSNBC, where he will speak on "Politics, Policy and the Economy."

Robert M. Gates, Secretary of Defense (2006–2011)

Ron Insana

At lunch on Thursday, Robert M. Gates, Secretary of Defense (2006–2011), will address the AFIRE luncheon. Mr. Gates is the only Secretary of Defense in US history to be asked to remain in that office by a newly-elected President. President Barack Obama is the eighth president Mr. Gates has served, and on his last day in office, President

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AFIRE 2012 Annual Membership Meeting
September 5–7, 2012
Mandarin Oriental • Washington, DC

See page 24 for registration form.

Volume 26 Number 3

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Purpose
AFIRE News provides its membership with information and news on legislation, issues and events impacting institutional real estate investment.

AFIRE News is published six times a year by the Association of Foreign Investors in Real Estate. The newsletter is mailed to AFIRE members at no additional cost.

Editor
Lexie Miller

Editorial Submissions
Articles and materials for inclusion in *AFIRE News* may be submitted to the AFIRE office via e-mail.

New Member Incentive Program

Associate and Supporting Members of AFIRE are asked to consider helping the Association continue to grow by **inviting non-US institutional investors**, qualified for membership, to join AFIRE.

In appreciation for each prospect who becomes an AFIRE Member, the inviting company may:

- **raise by one the number of attendees sent to the three conferences** held by AFIRE in the following year (Winter Conference, European Conference and Annual Meeting);

OR

- **bring one additional delegate complimentary to the three conferences** held by AFIRE in the following year (Winter Conference, European Conference and Annual Meeting).

Members must **contact the AFIRE office with the non-US investor contacts** they would like to invite to join AFIRE. The Managing Director will make sure they **meet the basic membership qualifications** and then provide the Member with a package of information to share with the prospect, including an application for membership. Once the AFIRE office receives their application, the prospect will have to be **approved by the Executive Committee**.

*AFIRE would like to give special thanks to **Wayne Fraser,** Hudson Realty Advisors Limited; **Steve Kohn,** Cushman & Wakefield Sonnenblick Goldman; and **Brad Olson,** Atlantic Partners, Ltd., for their role in engaging new members for AFIRE.*

A Three-Part Primer on Using Private REITs for Institutional Co-Investment with Sovereign Wealth Funds in US Real Estate

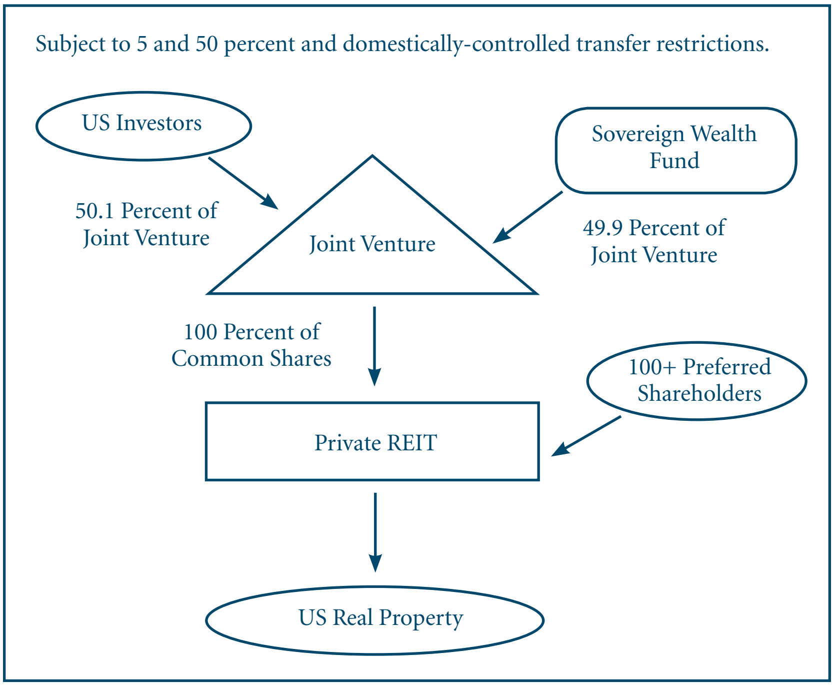
Part II — Dealing with Costs Imposed on US Investors

By John Grumbacher, Robert Towsner and Steven Schneider[1], Goulston & Storrs, P.C.

This is the second in a series of articles addressing investments by Sovereign Wealth Funds ("SWFs") in US real estate through a domestically controlled private REIT (a "Private DC REIT"). The first article in this series focused primarily on the advantages to an SWF of investing through a Private DC REIT. This article will assume familiarity with the concepts described in the first article and will address how the structure of the Private DC REIT affects the US co-investors and what they typically do to minimize any adverse impact of the structure.

To reset the stage, a SWF will typically invest in a REIT only if it is domestically controlled. This is accomplished by having all of the REIT's common shares held by a joint venture in which SWF holds less than 50 percent, by value, of the REIT's shares and the remainder of the joint venture is held by US investors. The REIT will avoid corporate level taxation by distributing all of its operating income to its shareholders annually. The SWF will insist that the REIT be prohibited from selling its real estate while the SWF is an investor and will require that the SWF be permitted to sell its REIT shares whenever there is an opportunity for a liquidity event. This restriction is necessary to avoid having the SWF be subject to US tax on gain arising from the liquidity event.[2]

Typically, this structure is as follows (at right):



Effects on US Co-Investors

US investors considering joint investments in US real estate with a SWF will need to work within the limitations imposed by this structure and will face issues not present in direct or flow-through investments in US real estate, principally (but not exclusively) related to the SWF's ultimate exit from its investment.

Transferring Appreciated Property to the REIT

If the real property that will be held by the REIT is already held by the US investor and has appreciated in value in that investor's hands, it is critical that the US investor first sell a 49.9 percent interest in the real estate to the SWF and that the SWF and US investor then contribute their respective shares of the real estate to the Private DC REIT.[3]

The failure to use this form will either deprive the REIT of any step up in basis for the appreciation in the property or will require the US investors to recognize 100 percent of the appreciation in the real estate as taxable gain.[4] Where 49.9 percent of the property is first sold to the Private DC REIT, the REIT obtains a step up in basis on this 49.9 percent interest and the remaining 50.1 percent of the real estate is transferred to the REIT in a tax-free transaction.

Effect of Step Up in Basis on Sale Economics

As noted above, the SWF will insist that the Private REIT be domestically controlled so that the SWF can sell its REIT shares and avoid taxation of its gain under FIRPTA.[5] The buyer of the REIT shares will simply step into the SWF's shoes as the owner of corporate shares. The REIT's tax basis in its real estate will not be affected by the sale, so that the amount of tax depreciation available to the buyer will not change to take into account the appreciation in the REIT's assets while the SWF held its shares. If the REIT sold its real estate directly to the buyer, the buyer would obtain a new tax basis in the real estate equal to the amount it pays to the REIT (including assumed/subject to debt), commonly called a "step up in basis." Effectively, when the real estate (rather than the REIT's shares) is sold, the appreciation while the seller held the property is converted into future tax deferral for the buyer.

This step up in basis cannot be obtained where the SWF sells its shares unless the US owners sell their shares to the buyer as well. In that case, the buyer will typically liquidate the REIT and take advantage of the REIT's ability to deduct distributions paid to its shareholders so that no tax is imposed at the REIT level. The buyer will have gain on the liquidation to the extent that the value of the distributed real estate and other assets (net of liabilities) exceeds what the buyer just paid for the REIT's shares.

This places a premium on liquidating soon after the buyer acquires the shares and avoiding creating any evidence that the IRS could use to show that the net value of the real estate exceeds what the buyer paid for the REIT shares. However, the buyer cannot be under any obligation to liquidate the REIT. It must be the buyer's choice and many advisors counsel against liquidating within the same taxable year that the REIT shares were acquired by the buyer.

For example, if the REIT shares are sold through an auction, it will be better for the winning bidder if separate bids are not obtained for the underlying real estate. Any bid for a direct purchase of the real estate will likely be higher than the price for the REIT shares, for the reasons just stated. But this could mean that when the buyer liquidates the REIT the net value of the real estate it receives in liquidation will exceed what the buyer just paid for the REIT stock, which would result in taxable gain to the buyer.

It is important to note that — for various technical reasons — this method of achieving a step up in basis by having the Private DC REIT liquidated after its shares have been acquired by the buyer is not available if the buyer is, itself, a REIT. This fact reduces the population of buyers when the investors decide to exit their investment.[6]

US investors in Private DC REITs should expect incremental legal and accounting costs on exit of around \$50,000, while a buyer's incremental legal and accounting costs are likely to run between \$50,000 and \$150,000.[7]

Of course, US investors may have their own time horizon for their US real estate investments and may be unwilling to give the SWF drag-along rights on their Private REIT common shares. In that case, the buyer may be expected to insist on a lower purchase price for the SWF's shares, since the buyer will be deprived of the additional tax deferral common in virtually all US real estate transactions. The SWF can be expected to resist attempts to impose on it the adverse effects of the REIT structure, because this indirectly imposes on the SWF the effects of US taxation.

Impact of REIT Restrictions on Economic Return

The tax rules restrict REITs to primarily passive real estate investments, which creates compliance costs and prevents the REIT from earning certain types of income. For example a REIT is subject to 100 percent income tax on so-called "dealer income" and to avoid this draconian tax a REIT will not engage in certain business activities, such as developing condominiums, and will generally hold properties for a minimum of two years. Although a REIT is allowed to indirectly earn some dealer income through a Taxable REIT Subsidiary (TRS), this comes at the price of corporate tax at the TRS level. REITs are also generally prohibited from engaging in certain "non-customary" services and are typically not allowed to provide subsidized cafeterias, shuttle services, fitness rooms, concierge services, and valet parking. Another restriction is that the rental income cannot be based on the net income of the tenant. Because percentage rent in retail leases is customarily based on a tenant's gross income, the income limitation is typically not a material limitation.

Collateral Effects on the Sale Transaction

From the buyer's perspective, purchasing REIT shares is different than purchasing a direct interest in the REIT's real estate. When it acquires REIT shares, the buyer is acquiring an interest in an entity with a history and thus potential disclosed and undisclosed liabilities. As a result, the documentation for a sale of REIT shares will differ materially from the documentation for the sale of real estate.

In our experience, when compared to the acquisition of real estate directly, the purchaser of REIT shares can be expected to:

1. Require that representations and warranties related to the historic activities of the REIT extend for three years or more and that tax related representations and warranties extend until the expiration of the statute of limitations for assessment of tax against the REIT.[8] In the case of a purchase and sale of direct interests in real estate it is more typical for real estate related representations and warranties to expire between 6 and 18 months after closing.
2. Require a credit-worthy seller or affiliate to stand behind any representations and warranties, particularly with respect to liabilities arising out of the REIT's status as a separate entity with special tax status.
3. In addition, unless the US investor is willing to give the SWF a drag-along right, the buyer on exit will not qualify for a step up in basis. This will make an investment in this real estate less attractive to future buyers unless the US investors sell at the same time. If they are unwilling to do this, the buyer most likely will decrease the price it is willing to offer.
4. The negotiation and drafting of buy-sell arrangements are significantly complicated by the need to take into account whether or not the buyer will obtain additional tax deferral from increased tax depreciation on the property and how any diminution in the value of that interest arising from the absence of a step up in basis should be shared among the parties.

Conclusion

SWFs are major players in US real estate markets, making them attractive co-investors with US operators and other institutional investors. They can bring a great deal of capital to the table, but it comes with some baggage. The most significant issue that should be considered at the outset is whether the SWF will be granted the right to drag along the co-investor when the SWF wishes to exit, and, if not, to negotiate how the SWF and US investors will share the adverse effect on purchase price arising because a future buyer will not obtain a step up in basis.

Coming Attractions

The final article will discuss how to structure and negotiate the Joint Venture agreement for the entity that will own the REIT. What restrictions will the Joint Venture need to assure domestic control and general REIT compliance for the underlying REIT? What unique considerations exist with a non-US member of the Joint Venture? Also, how should the Joint Venture address cost sharing among the owners as it relates to unique costs incurred by the structure? ★

Pursuant to IRS Circular 230, please be advised that, to the extent this communication contains any federal tax advice, it is not intended to be, was not written to be and cannot be used by any taxpayer for the purpose of (i) avoiding penalties under US federal tax law or (ii) promoting, marketing or recommending to another taxpayer any transaction or matter addressed herein.

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1 Each of the authors is a director of Goulston & Storrs, P.C. with extensive experience in the structuring of complex real estate transactions, including extensive combined experience in-house and with Big-Four accounting firms.

2 The REIT will be taxable on gain on sale, unless that gain is distributed to shareholders, but such a distribution is taxable to a SWF.

3 Where the property has not appreciated before the SWF investment, typically the SWF and US investor will contribute the real estate to the REIT and the REIT shares to the JV, although this order is sometimes reversed.

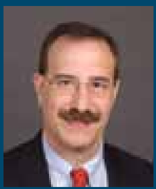
4 This occurs because the REIT is treated as an investment company for Code Section 351 purposes so that gain must be recognized on the contribution.

5 FIRPTA refers to the Foreign Investment in Real Property Tax Act.

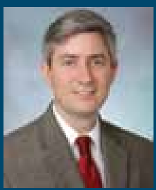
6 This effective disqualification of REITs as buyers of Private DC REIT shares is not present where the REIT is an UPREIT.

7 These amounts are in addition to the upfront and annual costs described in Part I of this series.

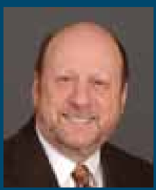
8 The statute of limitations for assessment of taxes is generally three years from the date of filing of the relevant tax return, although this may be extended to six years in certain instances. This continuing liability also raises the question of how the long-term contingent liability for a breach of the representations and warranties is recorded for financial accounting purposes.



John Grumbacher, a director in the tax group at Goulston & Storrs, focuses his practice on the taxation of institutional real estate investments, private equity and M&A transactions, as well as general tax law. He has extensive experience in the taxation of flow-through entities and in the structuring of complex transactions. Mr. Grumbacher received his B.A., cum laude, from Clark University and his J.D., cum laude, from Boston University School of Law. Prior to joining Goulston & Storrs, he was the New England Director of Merger & Acquisition Tax Services at Ernst & Young LLP. He can be reached at jgrumbacher@goulstonstorrs.com.



Steven Schneider, a director in the tax group at Goulston & Storrs, has significant experience in a wide variety of domestic and international transactions with particular experience in the taxation of pass-through entities such as partnerships, S corporations and REITs. Mr. Schneider received his B.S., summa cum laude, from the University of Missouri-Columbia, his J.D., Order of the Coif, from Washington University School of Law and his LL.M., with Distinction, in taxation, from Georgetown University Law Center. He can be reached at sschneider@goulstonstorrs.com.



Robert Towsner, a director in the tax group at Goulston & Storrs, brings to his practice over 30 years of experience, focusing on corporate, real estate and tax matters including tax transactional and tax planning, REIT and UBTI tax planning and transactional structuring, entity restructurings, tax and non-tax aspects of partnerships and limited liability companies, and structuring and documentation of complex tax-sensitive transactions. Mr. Towsner received his B.S.E.E. from the University of Rochester and his J.D. from Georgetown University Law Center. He can be reached at rtowsner@goulstonstorrs.com.

AFIRE Calendar of Events

2012

EUROPEAN CONFERENCE
Westin Vendome
Paris, France
June 13–14, 2012

ANNUAL MEMBERSHIP MEETING
Mandarin Oriental Hotel
Washington, DC
September 5–7, 2012

AFIRE BOOTH AT EXPO REAL
Munich, Germany
October 8–10, 2012

AFIRE BRUNCH AT EXPO REAL
Restaurant Seeblick
Munich, Germany
October 9, 2012

2013

WINTER CONFERENCE
Mandarin Oriental Hotel
New York, NY
February 13–14, 2013

AFIRE BOOTH AT MIPIM
Cannes, France
March 12–15, 2013

AFIRE BRUNCH AT MIPIM
Hotel Majestic
Cannes, France
March 14, 2013

EUROPEAN CONFERENCE
Maritim Hotel Cologne
Cologne, Germany
June 19–20, 2013

ANNUAL MEMBERSHIP MEETING
The Ritz-Carlton
San Francisco, CA
September 9–11, 2013

AFIRE BOOTH AT EXPO REAL
Munich, Germany
October 7–9, 2013

AFIRE BRUNCH AT EXPO REAL
Restaurant Seeblick
Munich, Germany
October 8, 2013

Along the Road to Recovery

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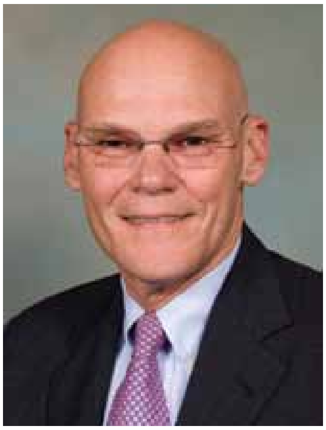
Tucker Carlson

Obama awarded him the Presidential Medal of Freedom, America's highest civilian honor. Before becoming Secretary of Defense in 2006, Mr. Gates was the president of Texas A&M University, the nation's seventh largest university. Mr. Gates joined the Central Intelligence Agency in 1966 and spent nearly 27 years as an intelligence professional. During that period, he spent nearly nine years at the National Security Council, The White House, serving four presidents of both political parties. Mr. Gates served as Director of Central Intelligence from 1991 until 1993. He is the only career officer in CIA's history to rise from entry-level employee to director.

The meeting will close on Friday after lunch with the lively repartee of Tucker Carlson and James Carville. Mr. Carlson is a veteran journalist and political commentator, currently working for the Fox News Channel. He is also the editor-in-chief of TheDailyCaller.com, a news and opinion site. Mr. Carlson joined Fox from MSNBC, where he hosted several nightly programs. Previously, he was the co-host of *Crossfire* on CNN, where he was the youngest anchor in the history of that network. During the same period, Mr. Carlson also hosted a weekly public affairs program on PBS.



James Carville

James "The Ragin' Cajun" Carville is America's best-known political consultant. His long list of electoral successes evidences a knack for steering overlooked campaigns to unexpected landslide victories and for re-making political underdogs into upset winners. His most prominent victory was in 1992 when he helped William Jefferson Clinton win the Presidency. In recent years, Mr. Carville has not been a paid political consultant for any domestic politicians or candidates for office, instead focusing on campaigns in more than 20 countries around the globe. Along with pollster Stanley Greenberg, Mr. Carville founded Democracy Corps, an independent, non-profit polling organization dedicated to making government more responsive to the American people.

We look forward to seeing you in Washington! ★

IRS Issues Proposed FATCA Regulations

By Willys H. Schneider, Partner, Kaye Scholer LLP, and David A. Sausen, Associate, Tax Department, Kaye Scholer LLP

BACKGROUND

The Foreign Account Tax Compliance Act (**"FATCA"**), enacted as part of the Hiring Incentives to Restore Employment ("HIRE") Act in March 2010, is designed to police offshore investments, accounts and trust interests held by certain US persons. The advent of FATCA will have a significant impact on non-US banks and other non-US financial institutions, non-US investment funds and certain other non-US entities, in each case if the entity has US source investments.

Under FATCA, certain foreign financial institutions (**"FFIs"**) are required to enter into an agreement (an **"FFI Agreement"**) with the US Treasury to (a) identify, through established due diligence procedures, any financial account held by specified US taxpayers or US-owned foreign entities (so-called **"US accounts"**), (b) report information about each US account, and (c) withhold taxes on certain payments made to (i) financial account owners that fail to submit information to the FFI and (ii) FFIs that do not enter into an agreement with the US Treasury (so-called **"nonparticipating FFIs"**).

FFIs that fail to enter into an FFI agreement may be subject to a 30 percent US withholding tax on certain US-source payments (so-called "withholdable payments"), including US-source interest, dividends, rents, salaries, wages and similar (fixed and determinable annual or periodical) payments, as well as on gross proceeds from the sale or other disposition of property that can produce US-source interest or dividends.

Other non-financial, foreign entities (so-called "non-financial foreign entities" or **"NFFEs"**) are subject to the same withholding tax on certain US-source payments if they do not report information on US owners, unless they can certify that they have no "substantial" (generally over 10 percent) US owner. Certain foreign entities, however, are exempt from this withholding tax (so-called **"excepted NFFEs"**). Under FATCA, excepted NFFEs include (i) publicly traded corporations, (ii) any corporation that is a member of the same "expanded affiliated group" as a publicly traded corporation, (iii) entities organized under the laws of a US territory and wholly owned by residents thereof, (iv) foreign governments or agencies or instrumentalities thereof and (v) foreign central banks. In general, an **"expanded affiliated group"** means a chain or group of corporations under 50 percent common ownership by vote and value. A partnership or other non-corporate entity is treated as a member of an expanded affiliated group if such entity is more than 50 percent owned (by value) by members of such group.

PROPOSED REGULATIONS

Since the enactment of FATCA, the IRS has issued preliminary guidance thereon in the form of three IRS Notices. Last month, the IRS issued a series of proposed regulations (the **"Proposed Regulations"**) designed more fully to implement the FATCA reporting and withholding regime. The Proposed Regulations incorporate, refine and expand upon all the prior guidance described in the Notices. The following provides a summary of the Proposed Regulations, an overview of the obligations of FFIs, and a timeline showing the phased implementation of FATCA, as currently proposed.

Foreign Financial Institutions

An FFI is defined as any "financial institution" that is a non-US entity. The term "financial institution" generally includes any entity that: (a) accepts deposits in the ordinary course of a banking or similar business; (b) as a substantial portion of its business, holds financial assets for the account of others; (c) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, notional principal contracts, insurance or annuity contracts or any interest in such securities, partnership interests, commodities, notional principal contracts or insurance or annuity contracts or (d) is an insurance company making payments with respect to financial accounts. An entity is treated as engaged primarily in the business of investing, reinvesting, or trading if the entity's gross income from those activities is at least 50 percent of the entity's total gross income over the current and prior two years. This category of FFIs will generally cover non-US investment funds.

FATCA Implementation Timeline Summary

DEADLINE	REPORTING/WITHHOLDING REQUIREMENT
January 1, 2013	Certain obligations outstanding on this date generally will not be subject to the FATCA withholding regime.
June 30, 2013	FFIs that enter into an agreement with the US Treasury by June 30, 2013, are guaranteed that they will not be subject to withholding on payments made to them when FATCA withholding goes into effect on January 1, 2014.
January 1, 2014	Withholding begins on (a) US-source, fixed and determinable annual or periodical payments (such as interest and dividends) made to nonparticipating FFIs and (b) passthru payments that are withholdable payments made to nonparticipating FFIs and to recalcitrant account holders.
March 31, 2014	Limited FATCA reporting begins (with respect to the 2013 calendar year), limited to the name, address, taxpayer identifying number (TIN), account number and account balance of each US account.
January 1, 2015	Withholding beings on all other types of withholdable payments made to nonparticipating FFIs (such as gross proceeds from the sale of property that can produce US-source interest or dividends).
March 31, 2016	Additional FATCA reporting on income earned on accounts (other than gross proceeds from the sale of property) begins (with respect to the 2015 calendar year.
January 1, 2017	Withholding on passthru payments that are not withholdable payments (i.e., a payment that is attributable to, but is not itself, one of the types of enumerated US-source payments) made to nonparticipating FFIs and to recalcitrant account holders.
March 31, 2017	Additional FATCA reporting on gross proceeds earned on accounts from the sale of property begins (with respect to the 2015 calendar year).

US Accounts

FATCA defines the term "US account" (subject to FATCA reporting) as any "financial account" held by one or more "specified US persons" or "US-owned foreign entities," with certain exceptions. A "financial account" generally is defined by FATCA to mean any depository account, custodial account, or equity or debt interest in an FFI, other than interests that are regularly traded on an established securities market. The Proposed Regulations also provide that a financial account does not include any account held solely by one or more "exempt beneficial owners" (discussed below under "FATCA Withholding on Withholdable Payments") or by nonparticipating FFIs holding the account as intermediaries solely on behalf of one or more such owners.

The Proposed Regulations refine the statutory definition of financial account to focus on traditional bank, brokerage, money market accounts, and interests in investment vehicles, and to exclude most debt and equity securities issued by banks and brokerage firms, subject to an anti-abuse rule. In particular, the Proposed Regulations provides that debt or equity that is "regularly traded" on an established securities market will not be treated as a financial account. For this purpose, debt or equity interests are considered "regularly traded" if (a) trades in such interests are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the prior year and (b) the aggregate number of such interests that are traded on such market or markets during the prior year is at least 10 percent of the average number of such interests outstanding during the prior year. The Proposed Regulations do not address how this exception applies in respect of newly issued interests.

The Proposed Regulations provide that the term "specified US person" generally means any US person, *excluding*, however, (a) a corporation the stock of which is regularly traded on one or more established securities markets, and any corporation that is a member of the same expanded affiliated group as such a corporation; (b) a real estate investment trust; (c) the United States or any wholly owned agency or instrumentality thereof; and (d) a US tax-exempt organization (including charities and certain pension funds). A "US-owned foreign entity" is defined as any foreign entity that has one or more substantial (generally more 10 percent, directly or indirectly) US owners.

FATCA Withholding on Withholdable Payments

FATCA requires withholding of 30 percent from any withholdable payment to an FFI or NFFE that does not meet certain requirements.

To meet such requirements, an FFI generally must enter into an FFI Agreement with the IRS, pursuant to which the FFI must agree to undertake certain due diligence, reporting and withholding responsibilities (so-called **"participating FFIs"**). If an FFI is itself the beneficial owner of a payment with respect to which FATCA withholding has been imposed, and the FFI is entitled to a reduced rate of tax on the payment under a tax treaty, the FFI can claim a credit or refund of over-withheld tax (without interest).

An NFFE, on the other hand, generally must certify to the payor that it does not have any "substantial" US owners, or provide the payor with the name, address, and tax ID number of each substantial US owner. As noted above, certain foreign entities are exempt from the FATCA withholding tax as so-called "excepted NFFEs" and, as such, do not have to certify as to any US owners. The Proposed Regulations expand the list of excepted NFFEs to include "active NFFEs." An active NFFE is any NFFE if less than 50 percent of its gross income for the calendar year is passive income and less than 50 percent of its assets are assets that produce or are held for the production of dividends, interest, rents and royalties (other than those derived in the active conduct of a trade or business), annuities, or other passive income. Accordingly, foreign entities involved in active operating businesses should not be viewed as "NFFE's. Real estate entities, however, may or may

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MIPIM 2012

Donald M. Wise, Metzler North America; **Susheela Rivers,** DLA Piper; and **Choy-Soon Chua,** SEB Investment GmbH

Hans-Christian Ritter, Landesbank Hessen Thüringen (Helaba), and **Eberhard Maier,** Bayerische Landesbank

Christoph A. Kahl, JAMESTOWN US–Immobilien GmbH; **Sabine Kraut,** Wafra Investment Advisors; and **Francis P. Lively,** Wafra Investment Advisory Group, Inc.

David Paine, Standard Life Investments, and **Klaus Mennickheim,** SEB Investment GmbH

Jane Gavan, Dundee Real Estate Asset Management; and **Bruce Traversy,** Dundee Real Estate Asset Management

Stephen Tross, Bouwinvest, and **Martina Malone,** Prologis Private Capital

Hideto Yamada, Mitsui Fudosan (UK) Ltd.; **Barbara A. Knoflach,** SEB Asset Management AG; and **James Fetgatter,** AFIRE

Salon Dinard at The Majestic

IRS Issues Proposed FATCA Regulations

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not be so treated, depending upon whether they are deemed to derive rents from the conduct of an active trade or business.

FATCA exempts from withholding payments beneficially owned by certain persons (so-called, **"exempt beneficial owners"**). Under FATCA, exempt beneficial owners include (a) any foreign government or agencies or instrumentalities thereof, (b) international organizations and (c) foreign central banks. The Proposed Regulations expand the definition of "exempt beneficial owners" to include (x) governments of US territories, (y) foreign retirement plans that fit within specific criteria set forth in the Proposed Regulations and (z) an FFI described in the third category of "financial institutions" (*i.e.*, engaged, or holding itself out as being engaged, primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, etc.) if it is wholly owned by one or more other exempt beneficial owners.

FATCA withholding was originally to go into effect on January 1, 2013, subject to the grandfathering rule described below. The IRS has extended this deadline in prior guidance as follows:

- Withholding on US-source, fixed and determinable annual or periodical payments (such as interest and dividends) made to nonparticipating FFIs will go into effect on January 1, 2014.
- Withholding on all other types of withholdable payments made to nonparticipating FFIs (such as gross proceeds from the sale of property that can produce US-source interest or dividends) will go into effect on January 1, 2015.

Also under prior guidance, the IRS has provided that FFIs that enter into an agreement with the US Treasury by June 30, 2013, are guaranteed that they will not be subject to withholding on payments made to them when FATCA withholding goes into effect on January 1, 2014. FFIs that enter into an agreement with the US Treasury after that date (and before December 31, 2013), although technically compliant with FATCA, may nevertheless be subject to withholding during 2014 in certain situations due to the lack of sufficient notice to US withholding agents regarding their compliance status. As such, all FFIs are well-advised to enter into an agreement with the US Treasury no later than June 30, 2013.

Grandfathered Obligations

Under FATCA, "obligations" outstanding on March 18, 2012 (*i.e.*, two years after enactment), generally are not subject to the FATCA withholding regime. The Proposed Regulations expand this rule to obligations outstanding on January 1, 2013, and any gross proceeds from the disposition of such obligations. The Proposed Regulations provide that, for this purpose, the term "obligations" generally does not, however, include stock or other equity interests or agreements that lack a definitive expiration or term (the latter including deposit accounts or brokerage agreements). Moreover, any material modification of an obligation may result in the obligation being treated as newly issued for purposes of FATCA, thus potentially taking it out of the "grandfathering" protection.

Reporting under an FFI Agreement

FATCA requires a participating FFI to report certain information on an annual basis to the IRS with respect to each US account and to comply with requests for additional information by the IRS with respect to any US account. The information that must be reported with respect to each US account generally includes: (i) the name, address, and taxpayer identifying number (TIN) of each account holder who is a specified US person (or, in the case of an account holder that is a US owned foreign entity, the name, address, and TIN of each specified US person that is a substantial US owner of such entity); (ii) the account number; (iii) the account balance or value; and (iv) the gross receipts and gross withdrawals or payments from the account. If foreign law would prevent the FFI from reporting the required information absent a waiver from the account holder, and the account holder fails to provide a waiver within a reasonable period of time, the FFI is required to close the account.

The Proposed Regulations provide that FATCA reporting will be phased in beginning in 2014 (with respect to the 2013 calendar year), with participating FFIs required to report only the name, address, taxpayer identifying number (TIN), account number and account balance with respect to US accounts. Reporting on income earned on accounts (other than gross proceeds from the sale of property) will be required beginning in 2016 (with respect to the 2015 calendar year), and reporting on gross proceeds earned on accounts from the sale of property will be required beginning in 2017 (with respect to the 2016 calendar year). The Proposed Regulations provide that FFIs may elect to report information either in the currency in which the account is maintained or in US dollars.

Withholding under an FFI Agreement

FATCA requires a participating FFI to withhold 30 percent of any "passthru payment" to a "recalcitrant account holder" or to another FFI that is a nonparticipating FFI. A "passthru payment" generally is defined as any (a) withholdable payment or (b) other payment made by a participating FFI to the extent attributable to a withholdable payment received by the FFI. The Proposed Regulations provided that the IRS is still considering rules for when a payment will be treated as attributable to a withholdable payment. A "recalcitrant account holder" is any account holder that fails to provide the information required to determine whether the account is a US account, or the information required to be reported by the FFI, or that fails to provide a waiver of a foreign law that would prevent reporting. A participating FFI may in certain cases elect not to withhold on passthru payments, and instead be subject itself to FATCA withholding on payments it receives, to the extent those payments are allocable to recalcitrant account holders or nonparticipating FFIs.

Participating FFIs generally are required under FATCA to withhold on passthru payments that are withholdable payments made to nonparticipating FFIs and to recalcitrant account holders, beginning on January 1, 2014. Prior IRS guidance provided that participating FFIs are not obligated to withhold on passthru payments that are not withholdable payments (i.e., a payment that is attributable to, but is not itself, one of the types of enumerated US-source payments) made to nonparticipating FFIs and recalcitrant account holders before January 1, 2015. The Proposed Regulations have extended this deadline and now provide that withholding will not be required with respect to such passthru payments before January 1, 2017. Until January 1, 2017, however, in an effort to reduce tax evasion, participating FFIs are required to report annually to the IRS the aggregate amount of certain payments made to each nonparticipating FFI.

Affiliated FFIs

The requirements of an FFI agreement apply to the US accounts of the participating FFI and to the US accounts of each other FFI that is a member of the same expanded affiliated group as such FFI. Furthermore, FATCA generally requires that each FFI that is a member of an expanded affiliated group must be a participating FFI or a "deemed-compliant FFI" in order for any FFI in the expanded affiliated group to become a participating FFI. In prior guidance, the IRS has indicated that intends to implemented a centralized compliance approach that will require (or, in certain cases, permit) an affiliated group of FFIs to designate a lead FFI to handle communications with the IRS and assume an oversight role with respect to compliance by the affiliate group with the FATCA regime. If this approach ultimately is adopted, it should alleviate some of the compliance burden on affiliated groups of FFIs. The Proposed Regulations, however, do not address this issue.

Recognizing that some jurisdictions have in place laws that prohibit an FFI's compliance with certain aspects of FATCA, the Proposed Regulations provide a two-year transition, until January 1, 2016, for the full implementation of this requirement. During this transitional period, an FFI affiliate in a jurisdiction that prohibits the reporting or withholding required by FATCA will not prevent the other FFIs within the same expanded affiliated group from entering into an FFI agreement, provided that the FFI in the restrictive jurisdiction agrees to perform certain due diligence to identify its US accounts, maintain certain records, and meet certain other requirements. Similar rules apply to branches of FFIs that are subject to comparable legal prohibitions on compliance.

Modification of Due Diligence Procedures for the Identification of Accounts

As noted above, FATCA requires participating FFIs to identify their US accounts. Prior IRS guidance has addressed the due diligence procedures that participating FFIs will be required to undertake to identify their US accounts. The Proposed Regulations modify this earlier guidance, and thereby reduce the administrative burden on FFIs, by permitting FFIs to rely primarily on electronic reviews of preexisting accounts to determine if such accounts are US accounts.

For preexisting individual accounts maintained offshore, manual review of paper records generally is limited to accounts with a balance or value that exceeds $1,000,000 (unless the electronic searches meet certain requirements, in which case manual review is not required). In addition, the Proposed Regulations provide detailed guidance on the precise scope of paper records required to be searched. Additionally, with respect to preexisting accounts, individual accounts with a balance or value of $50,000 or less, and certain cash value insurance contracts with a value of $250,000 or less, are excluded from the due diligence procedure.

For preexisting entity accounts, the Proposed Regulations provide for simplified procedures for identifying US accounts, including exclusions of accounts with balances of $250,000 or less and also for extended reliance on information gathered in the context of the due diligence required to comply with anti-money laundering/"know your customer" (AML/KYC) rules.

With respect to new accounts, the Proposed Regulations permit an FFI to rely extensively on its existing customer intake procedures. Accordingly, the Proposed Regulations generally do not require an FFI to make significant modifications to the information collected on customer intake, other than with respect to account holders identified as FFIs, as passive investment entities, or as having certain US indicia.

Procedures Required to Verify Compliance

FATCA generally requires a participating FFI to comply with certain verification procedures with respect to the identification of US accounts. The Proposed Regulations provide that a responsible officer of each FFI is required to certify that the FFI has complied with the terms of its FFI agreement. Verification of such compliance through third-party audits is not required. The Proposed Regulations also provide that if an FFI substantially complies with its obligations in the FFI agreement, the FFI will not be held strictly liable for failure to identify a US account.

Deemed-Compliant FFIs

FATCA provides that certain categories of FFIs that will be treated as "deemed compliant" and, as a result, will not be required to enter into an FFI

Agreement with the IRS in order to avoid the 30 percent withholding tax. The Proposed Regulations expand upon prior guidance and provide additional categories of deemed-complaint FFI.

The Proposed Regulations provide for two general types of deemed-compliant FFIs: registered deemed-compliant FFIs and certified deemed-compliant FFIs. A registered deemed-compliant FFI generally is required to register with the IRS every three years in order to declare its status as deemed-compliant and to attest to the IRS that it satisfies certain procedural requirements. A certified deemed-compliant FFI generally is not required to register with the IRS, but will be required certify to any withholding agent on an IRS Form W-8 that it meets the requirements of its certified deemed-compliant category.

- **Registered Deemed-Compliant FFIs**
  Registered deemed-compliant FFIs include local FFIs, nonreporting members of participating FFI groups, qualified investment vehicles and restricted funds, as well as FFIs that comply with the requirements of FATCA under an agreement between the United States and a foreign government. Although no such agreements are currently in place, the IRS recently announced that it had entered into an agreement with France, Germany, Italy, Spain and the United Kingdom to pursue a framework for implementing FATCA.

  <u>Local FFIs.</u> To qualify as a local FFI, the FFI (and, if the FFI is a member of an expanded affiliated group, each FFI in the group) must meet certain licensing and regulation requirements. It must have no fixed place of business outside its country of organization and must not solicit account holders outside its country of organization. In addition, 98 percent of the accounts maintained by the FFI must be held by residents of the FFI's country of organization, and the FFI must be subject to reporting or withholding requirements in its country of organization with respect to resident accounts. For this purpose, an FFI that is organized in a European Union Member State is permitted to treat account holders that are residents of other EU Member States as residents of the country in which the FFI is organized. A local FFI also must establish policies and procedures to ensure that it does not open or maintain accounts for specified US persons that are not residents in the country in which the FFI is organized, for nonparticipating FFIs, or for entities controlled or beneficially owned by specified US persons, and must perform due diligence with respect to its entity accounts and certain individual accounts.

  <u>Nonreporting Members of Participating FFI Groups.</u> An FFI that is a member of an expanded affiliated group that includes at least one participating FFI can become a registered deemed-compliant FFI as a "nonreporting member" of the group if it transfers certain preexisting accounts that have been identified as US accounts (or accounts held by nonparticipating FFIs) to an affiliate in the group that is a participating FFI or a US financial institution. The nonreporting member also is required to implement certain policies and procedures to ensure that any US accounts (or accounts held by nonparticipating FFIs) are promptly transferred to an affiliate that is a participating FFI or a US financial institution. This type of deemed-compliant FFI is not limited to those FFIs that operate within a single country and that solicit account holders in such country.

  <u>Qualified Investment Vehicles.</u> In general, an FFI that is described in the third category of "financial institutions" (*i.e.*, is engaged, or holding itself out as being engaged, primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, etc.) and that is regulated in its country of organization as an investment fund generally can become a registered deemed-compliant FFI, if all holders

of record of a direct interest in the FFI are participating FFIs, deemed-compliant FFIs, or exempt beneficial owners.

Restricted Funds. An FFI that is described in the third category of "financial institutions" (*i.e.*, is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, etc.) and that is regulated as an investment fund under the law of its country of organization also can become a registered deemed-compliant FFI if each "distributor" of the investment fund's interests is a participating FFI, a registered deemed-compliant FFI, a nonregistering local bank, or a restricted distributor. The term "distributor" generally includes underwriters, brokers and dealers. This rule also requires that each agreement that governs the distribution of the investment fund's debt or equity interests (other than interests which are both distributed by and held through a participating FFI) prohibit sales of debt or equity interests in the fund to US persons, nonparticipating FFIs, or passive NFFEs with one or more substantial US owners, and its prospectus must indicate that sales to US persons, passive NFFEs, and nonparticipating FFIs (other than interests which are both distributed by and held through a participating FFI) are prohibited. The FFI also must establish procedures to review preexisting direct accounts and ensure proper treatment of new direct accounts.

- **Certified Deemed-Compliant FFIs**
  Certified deemed-compliant FFIs include non-registering local banks, certain retirement plans, non-profit organizations, certain owner-documented FFIs, and FFIs with only low-value accounts.

Non-Registering Local Banks. To qualify as a nonregistering local bank, generally a bank must offer basic banking services, operate solely in its country of incorporation (or if it is a member of an expanded affiliated group, all members must operate in the same country), and have no more than $175 million in assets on their balance sheet (and the entire expanded affiliated group must have no more than $500 million on their combined balance sheets).

Retirement Plans. For a retirement plan to qualify for certified deemed-compliant status, generally, the FFI must be organized for the provision of retirement or pension benefits under the law of each country in which it is established or in which it operates. Contributions to the FFI must consist only of employer, government, or employee contributions and must be limited by reference to earned income. In addition, no single beneficiary may have a right to more than five percent of the FFI's assets. Finally, contributions to the FFI must be excluded from the income of the beneficiary and/or taxation of the income attributable to the beneficiary must be deferred under the laws of the country in which the FFI is organized or operates, or the FFI must receive 50 percent or more of its total contributions from the government or employers. Alternative criteria apply to retirement plans that have fewer than 20 participants and meet certain other requirements.

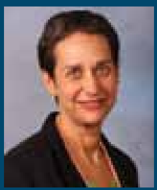
Non-Profit Organizations. A non-profit organization can qualify for certified deemed-compliant status if it (a) is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes; (b) is exempt from income tax in its country of residence; (c) has no shareholders or members that have a proprietary interest in its income or assets; and (d) is subject to restrictions preventing the private inurement of its income and assets.

Owner-Documented FFIs. An "owner-documented FFI" is an FFI that (a) is described only in the third category of "financial institutions" (*i.e.*, is engaged, or holding itself out as being engaged, primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, etc.) and is affiliated only with other similar FFIs, (b) maintains no financial accounts for nonparticipating FFIs, (c) does not issue debt that constitutes a financial account in excess of $50,000 to any person, (d) provides a withholding agent with all required documentation regarding its owners, and (e) the withholding agent agrees to report to the IRS the information required with respect to any of the owners of the owner-documented FFI that are specified US persons. Because an owner-documented FFI is required to provide each withholding agent with documentation and the withholding agent must agree to report on behalf of the owner-documented FFI, an owner-documented FFI may have certified deemed-compliant status only with respect to a specific withholding agent.

FFIs with Only Low-Value Accounts. An FFI is treated as having only low-value accounts if (a) the FFI is described only in the first or second category of "financial institutions" (*i.e.*, accepts deposits in the ordinary course of a banking or similar business; or as a substantial portion of its business, holds financial assets for the account of others); (b) no financial account maintained by the FFI (or, in the case of an FFI that is a member of an expanded affiliated group, by any member of the expanded affiliated group) has a balance or value in excess of $50,000; and (c) the FFI has no more than $50 million in assets on its balance sheet (and, in the case of an FFI that is a member of an expanded affiliated group, the entire expanded affiliated group has no more than $50 million in assets on its consolidated or combined balance sheet).

CONCLUSION

Although there is still more than one and a half years before the FATCA provisions become effective, once they come into play they will have a significant impact on foreign banks, funds and other foreign persons (as well as on US payors of US-source amounts to such foreign persons). Foreign entities subject to these new rules are well-advised to plan ahead by putting mechanisms into place that will enable them to comply with the various due diligence and reporting requirements so as to avoid an unnecessary US withholding tax burden. ★



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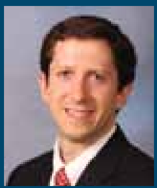
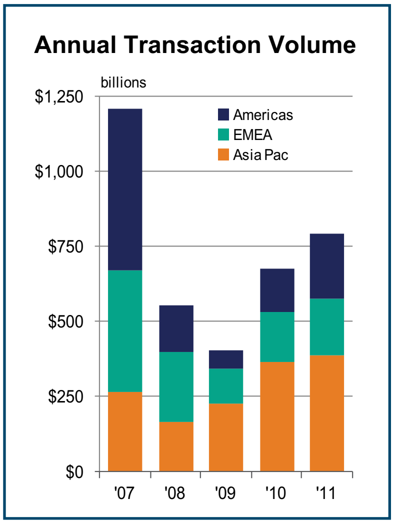


David A. Sausen is an associate in Kaye Scholer's Tax Department. His practice is broad-based, covering tax issues relating to mergers and acquisitions, partnerships and limited liability companies, investment funds, tax-exempt organizations, leveraged leasing transactions and cross-border transactions. He has substantial experience in working with clients on mergers and acquisitions, corporate and partnership restructurings, investment fund formations and restructurings, and IRS and New York tax controversy matters. In addition, Mr. Sausen has considerable experience in forming and advising tax-exempt organizations on various issues, including private inurement, self-dealing, unrelated business taxable income and excess benefit transactions.

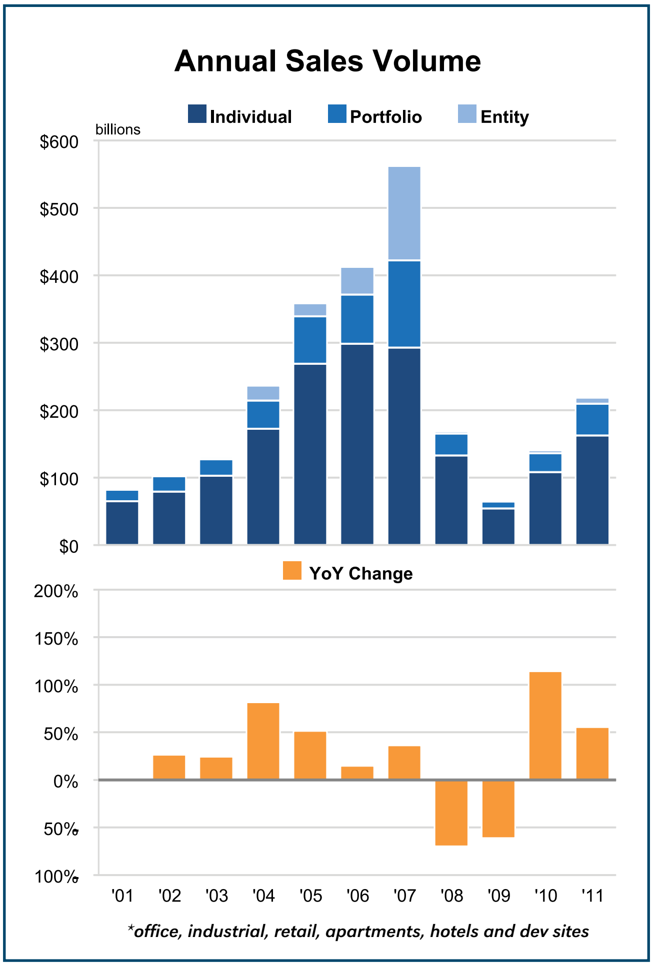
2011 Year in Review

—Real Capital Analytics' Global Capital Trends

Three major trends in the property investment markets were evident throughout the world in 2011. First, nearly every market had a much more robust marketplace in the first half of the year which slowed in the second half as economic uncertainty weighed heavier on investors. Second, throughout Asia, the US and Europe investors faced a dilemma between major markets where prices were already high and yields very low versus alternative markets where risks can be higher, liquidity is lower, but yields on property acquisitions are enticing. A third trend that held across the globe was a growing preference for retail properties evident in both volume and pricing gains.



- Sales of significant commercial properties totaled around $792 billion globally in 2011 representing a 17 percent increase over 2010. Transactions involved over 24,000 significant properties valued over $10 million, which also equates to a 17 percent increase over 2010.
- China accounted for $265 billion of the total, including $247 billion in sales of land rights to developers while the US represented $190 billion of total global volume in 2011.
- The US and Germany recorded the largest gains among the major economies in transaction activity in 2011, approximately 60 percent YOY. Poland and Central Europe were the standout markets last year and were among the few where volume did not falter in the second half of the year.



2011 Year in Review: Top Deals and Players Globally

—Real Capital Analytics' Global Capital Trends

Top 20 Buyers**

	Vol ($M)
Blackstone	$15,543
AMB Property Corp	$11,406
China Vanke	$6,208
CPP Investment Board	$6,036
CapitaLand Limited	$4,416
Poly RE Grp	$4,261
JP Morgan	$3,952
Invesco Real Estate	$3,541
Mapletree	$3,451
TIAA-CREF	$3,361
SL Green	$3,187
Patrizia Immobilien AG	$3,146
Greentown China Hldgs	$3,093
Cheung Kong Holdings	$3,084
Wheelock & Co	$2,887
DekaBank	$2,840
Dundee REIT	$2,790
Yunnan Zhonghao Prop	$2,714
Soho China	$2,662
Capital Shopping Ctrs	$2,626

Top 20 Sellers**

	Vol ($M)
ProLogis	$12,325
Centro Properties Group	$9,570
URA	$5,520
Goldman Sachs	$4,854
RREEF	$4,244
Housing & Development Board	$4,065
Lehman Brothers Holdings Inc	$3,903
Beacon Capital Partners	$3,119
Morgan Stanley	$2,922
Brookfield Asset Management	$2,888
GE Capital	$2,878
Lone Star	$2,862
Blackstone	$2,845
HSH Nordbank	$2,722
Prudential	$2,692
Caisse de Depot	$2,630
Tishman Speyer	$2,600
Aberdeen Property Investors	$2,500
Hines	$2,495
Swire Pacific Limited	$2,412

Top 30 Property Sales*

	Type	Transaction	Location	Price ($M)	SF(K)/ Units	PPSF/ PPU (K)	Buyer
1	RET	Festival Walk	Hong Kong, HKG	$2,412.5	1,209	$1,995	Mapletree
2	RET	The Trafford Centre	Manchester, GBR	$1,998.3	1,900	$1,315	Capital Shopping Ctrs
3	DEV	Lot No IL 8949	Hong Kong, HKG	$1,497.6	113	$13,266	Cheung Kong Holdings
4	DEV	Wave Mega City Centre	Noida, IND	$1,438.9	6,578	$219	Wave Inc
5	RET	Westfield Stratford City	London, GBR	$1,414.4†	1,900	$1,489	APG Group JV CPP Investment Board
6	OFF	Ocean Financial Centre	Singapore, SGP	$1,374.8†	885	$1,775	K-REIT Asia
7	OFF	280 Park Avenue	New York, NY	$1,098.9†	1,179	$941	SL Green JV Vornado Realty Trust
8	DEV	Chongqing 11143	Chongqing, CHN	$1,028.8	988	$1,041	CapitaLand Limited
9	DEV	Shenzhen 2011-K202-0014	Shenzhen, CHN	$990.9	7,509	$132	China Merchants Prop Dev
10	DEV	Shanghai 200910201 Plot 8-1	Shanghai, CHN	$979.1†	489	$3,077	Fosun Int'l Ltd JV Greentown China Hldgs
11	RET	Centr0	Oberhausen, DEU	$956.4†	2,174	$880	CPP Investment Board
12	APT	at Al Raha Beach	Abu Dhabi, ARE	$952.8	760	$1,254	Abu Dhabi Government
13	DEV	CITIC City B,C,D blocks (Prt II)	Beijing, CHN	$928.9	848	$1,095	Financial Street Holding Co
14	OFF	Starrett Lehigh Building	New York, NY	$920.0	2,310	$398	RXR Realty JV PSP Investments
15	APT	Olympic Village (free market units)	London, GBR	$916.2	1,439	$637	Delancey JV Qatar Invt Authority
16	OFF	Otemachi Pal Bldg	Tokyo, JPN	$876.6	301	$2,916	Mitsui Fudosan JV Mitsui & Co
17	OFF	Silver Tower	Shanghai, CHN	$874.6	667	$1,310	Mapletree
18	DEV	Changsha 2011-001	Changsha, CHN	$855.2	800	$1,068	Wheelock & Co
19	OFF	Deutsche Bank Twin Towers	Frankfurt, DEU	$853.6	807	$1,057	Deutsche Bank
20	DEV	Qingdao 2010-002	Qingdao, CHN	$849.9	9,205	$92	Qingdao Hisense Real Estate Co. Ltd.
21	DEV	Oil Street Dev Site	Hong Kong, HKG	$805.7	85	$9,491	Cheung Kong Holdings
22	DEV	Punggol Central & Punggol Walk	Singapore, SGP	$799.2	323	$2,475	Fraser & Neave JV Far East Org
23	OFF	1633 Broadway	New York, NY	$793.8†	2,359	$687	Paramount Group JV Beacon Cap Ptnrs
24	DEV	Jurong Gateway	Singapore, SGP	$791.4	194	$4,085	CapitaLand Ltd JV HSBC Holdings
25	OFF	Mitsubishi Heavy Industries HQ	Tokyo, JPN	$786.4	613	$1,282	Nippon Bldg Fund JV Japanese Domestic
26	DEV	Shanghai 200910201 Plot 8-1	Shanghai, CHN	$783.7†	489	$3,202	Soho China
27	OFF	Chiswick Park	London, GBR	$780.8	1,900	$411	Blackstone
28	OFF	Akasaka Park	Tokyo, JPN	$778.0	601	$1,295	Japan Real Estate Investment Corp
29	OFF	Helmsley Building	New York, NY	$731.3†	1,213	$635	Invesco RE JV Nat'l Pension Service
30	DEV	Jiudu Dev Site	Hong Kong, HKG	$705.5	248	$2,844	Kerry Properties JV Sino Land Co Ltd

Top 10 Portfolio Sales*

	Type	Transaction	Location	Price ($M)	SF(K)/ Units	PPSF/ PPU (K)	Buyer
1	IND	AMB/Prologis Merger	Worldwide	n/a	266,963	n/a	AMB Property Corp
2	RET	Centro United States Portfolio	Multiple, USA	$9,150.0	99,847	$92	Blackstone
3	MIX	LB Immo Acquisition	Worldwide	n/a	4,077	n/a	Patrizia Immobilien AG
4	MIX	Kuok Group/Allgreen Merger	Asia	$2,114.6	6,015	$369	Kuok Group
5	MIX	ING Industrial Fund	Worldwide	n/a	21,938	n/a	Goodman Group JV CPP Invt Board
6	MIX	Europolis MIX Eastern Euro Ptfl 11	Europe	$1,473†	11,396	$129	CA Immo
7	MIX	Pangbourne Props Mix Portfolio	South Africa	n/a†	19,321	n/a	Capital Property Fund
8	IND	Bracor Industrial Portfolio 11	Brazil	$1,325.2	10,301	$129	Prosperitas
9	RET	Metro Retail Portfolio 11	Germany	$1,173.5	9,688	$121	Cerberus Capital Management
10	HTL	NAMA's London Hotel Ptfl 2011	London, GBR	$1,138.6	463	$2,459	Barclay Bros

*When prices are not known, estimated prices are used in the ranking but are not shown. In the case of partial interest deals, the pro-rated share of the property was used for the transaction price and the PPU/PPSF was based on the full 100 percent price; ** Rankings are based on the pro-rated share of the total property or portfolio value. Transactions $10 million and greater. See notes page for full methodology; † Partial Interest

AFIRE 2012 European Conference | June 13–14, 2012
The Westin Paris–Vendôme | Paris, France

Global Real Estate with a French Twist

Schedule

Wednesday, June 13

3:00pm–5:00pm	**Walking Tour of Paris**
6:00pm	**Depart The Westin Paris–Vendôme for Dinner Cruise**
7:00pm–9:30pm	**Dinner Cruise on the Seine: *Excellence — Yacht de Paris***
9:30pm	**Young AFIRE Event (TBA)**

Thursday, June 14

8:00am–9:00am	**Registration and Breakfast**
9:00am–9:10am	**European Conference Begins** Welcome by **Barbara A. Knoflach**, Chief Executive Officer, SEB Asset Management AG, and AFIRE Chairman
9:10am–10:10am	**Political Implications of the G20 Elections** "Everyone knows what is happening but nobody knows what it means." Using the President's Daily Brief as its model, Oxford Analytica has used an extensive network of 1,400 scholar experts since 1975 to explain what it all means. **Presented by: Dr. David R. Young,** Founder and Chairman, Oxford Analytica

Thursday, June 14 (continued)

10:30am–11:30am **Global Real Estate with a French Twist**

European investors offer their opinions of the global real estate markets, all with a certain French Connection.

Moderated by: Amaury de Parcevaux, Senior Vice President and Chief Marketing Officer, Falcon Real Estate Investment Management, Ltd.

Panelists: Dennis Lopez, Global Chief Investment Officer, AXA Real Estate; **Olivier Piani**, Chief Executive Officer, Allianz Real Estate; **Peter Roesler**, Chairman of the Supervisory Board, BNP Paribas Real Estate Germany; **Giancarlo Scotti**, Chief Executive Officer, Generali Immobiliare

11:30am–12:30pm **Le Grand Paris**

A presentation of the new comprehensive development project for Greater Paris which may rival the Haussmann modernization program in the 1800s. Organized with the assistance of Erik Sonden, Chairman of ULI France.

Moderated by: Nicolas Buchoud, Founding Principal, Renaissance Urbaine

12:30pm–2:00pm **Lunch**

2:00pm–3:00pm **Economic Address**

A global economic view from a European perspective.

Presented by: Pierre-Olivier Beffy, Chief Economist, Exane BNPP

3:00pm–4:00pm **Thinking Deeply About the US Market**

How should an investor approach the US real estate markets in the face of low cap rates in prime markets and record low 10-year Treasury yields? What are the risks and opportunities in such a scenario? Is the US a safe haven or an illusion?

Presented by: Mark D. Gibson, Executive Managing Director, HFF

4:00pm–5:30pm **Reception**

Check the AFIRE Web site for speaker updates.

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Mandarin Oriental
Washington, DC

GENERAL CONFERENCE INFORMATION

Hotel Information:
Mandarin Oriental
1330 Maryland Ave., SW
Washington, DC 20024
Tel: 1.888.888.1778
202.787.6140

When making reservations, request the AFIRE group rate — $369 per night. Reservations are dependent on availability and must be made by **Wednesday, August 8, 2012.**

To Register:
Fax: 202.312.1401
E-mail: nknight@afire.org
Mail: AFIRE
1300 Pennsylvania Ave., NW
Washington, DC 20004

To be included on the participant list, your registration must be received by Friday, August 24, 2012.

Cancellation Policy:
Refunds will be given for cancellations received in writing on or before **Friday, August 24, 2012.** Substitutions may be made at any time. Please note, if you do not cancel and do not attend, you are still responsible for payment.

Up-to-Date Information:
For the latest information on the conference or AFIRE, please visit the AFIRE Web site at www.afire.org.

To register, please print clearly the information below and fax this form to AFIRE at 202.312.1401.

Mr./Ms./Mrs. Name: ______________________

Badge Name: ______________________

Title: ______________________

Company: ______________________

Mailing Address: ______________________

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City, State, ZIP, Country: ______________________

Phone: ______________ Fax: ______________

E-mail: ______________________

Special Meals or Needs: ______________________

REGISTRATION FEE & REGULATIONS

❑ First & Second Institutional Member Delegates ....Complimentary
❑ Third Institutional Member Delegate................................$1,500
❑ Associate & Supporting Member Delegates $1,500
❑ Institutional Young AFIRE Delegate.................................. $750
❑ Non-Member Registration $2,500

SPECIAL EVENTS (You must register to attend)

❑ Check here if you plan to attend the reception at the Potomac View Terrace on September 5, 2012.
REQUIRED INFORMATION FOR EACH ATTENDEE:
Birth Date, Passport # & Country OR Driver's License # & State of Issuance: ______________

❑ Spouse/Guest fee for reception $200

❑ Spouse/Guest Badge Name: ______________________
REQUIRED INFORMATION FOR EACH GUEST:
Birth Date, Passport # & Country OR Driver's License # & State of Issuance: ______________

Institutional Members may send two delegates on a complimentary basis. A third delegate may attend for the member meeting registration fee. Associate and Supporting Members may send up to two delegates who will each pay the member meeting registration fee. Academic Circle Members may send up to two attendees complimentary. Sponsors may send a maximum of four delegates, all of whom may attend complimentary. Speakers attend complimentary and are not counted in the maximum number of delegates allowed to attend from the company. Attendance at a meeting may not be split between delegates.

PAYMENT INFORMATION (All fees and payments are in US dollars.) Please print clearly.

❑ Check (payable to AFIRE) ❑ Visa ❑ MasterCard ❑ American Express

Name on Credit Card: ______________________

Account Number: ______________ Expiration Date: ______________

Credit Card Billing Address: ______________________

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Signature: ______________________