The FIRPTA investment guide
For foreign investments in certain US oil and gas assets
This investment guide has been structured to help non-US investors broadly evaluate certain investments in US oil and gas assets. Within this guide we have summarized the Foreign Investment in Real Property Tax Act (FIRPTA) and its application to certain US oil and gas investments. This investment guide provides a backdrop to certain investments that are commonly employed in today’s market.

Included in this investment guide is an overview of the following US oil and gas subsectors (as well as a description of certain interests therein):

- **Upstream** – exploration and production by integrated oil companies, independent producers and small producers
- **Midstream** – gathering, field processing, transportation and storage
- **Downstream** – refining, marketing and retail
- **Oilfield services** – including certain service companies and the supply chain

This investment guide can support a variety of investment considerations designed to help non-US investors:

- Identify certain types of oil and gas investments
- Identify the impact of FIRPTA’s impact to such investments
- Support strategic investment planning with a broad-based understanding of certain investments

Sometimes the difference between a tax-efficient investment and a tax-inefficient investment is the right information at the right time.
Foreign Investment in Real Property Tax Act – general overview

Prior to June 19, 1980, gains realized from the disposition of certain US property (including US oil and gas interests) by a non-US investor were not generally subject to US taxation, unless such gains were “effectively connected” with the non-US investor’s US trade or business. Thus, it was possible for a non-US investor to structure its investments and subsequent dispositions in US property (including US oil and gas interests) in a manner that would escape otherwise taxable gain recognition in the United States.

In 1980, concerned with increasing non-US ownership of US real property, Congress enacted FIRPTA so that non-US investors would generally be subject to US taxation on income from the (actual or deemed) disposition of US real property interests (USRPIs), which generally include certain US oil and gas investments. FIRPTA is generally enforced through a withholding regime that requires certain amounts to be withheld in connection with the disposition of certain USRPIs.

In general, FIRPTA treats the gain from the sale of a USRPI as if the taxpayer is engaged in a trade or business in the United States, and as if the gain is income effectively connected with such US trade or business. Certain exceptions (as described herein) exist for publicly traded interests, interests solely as a creditor and certain other interests.

Since the application of FIRPTA can have a substantial economic impact on an inbound investment in US oil and gas assets (including a material impact on the internal rate of return of a project), it is important to recognize FIRPTA’s effect on the desired investment and, if applicable, to consider possible planning opportunities to minimize or otherwise mitigate FIRPTA’s impact when comparing competing investment alternatives across jurisdictions.

This investment guide discusses various types of investments in US oil and gas assets and the application of FIRPTA to each such investment.
Description of certain types of investments in US oil and gas assets

The oil and gas industry is generally divided into four main subsectors: upstream, midstream, downstream and oilfield services.

**Upstream**

The upstream or exploration and production (E&P) segment of the US oil and gas industry generally encompasses oil and gas companies engaged in exploration and production activities – searching for potential oil and gas reservoirs, drilling test wells and, upon success, operating the wells to recover and bring the crude oil or raw natural gas to the surface for separation.

**Working or operating interest**

A working (or operating) interest is granted by the owner of a mineral interest, entitling the holder to a share of production from the property. A significant feature of the working interest is that the owner of such interest bears all costs of developing and operating the property. Although a working interest is not perpetual in duration, it would generally continue through production (or sometimes for a specified term). A working interest is an economic interest and is therefore subject to depletion deductions. Additionally, only the working interest owner may generally take deductions with respect to intangible drilling and development costs.

**Participating interest**

Participating interests are generally carved out of the working interest. While the owner of a participating interest would generally pay a portion of the operating expenses of a mineral interest, such owner would not generally be responsible for costs relating to exploration, development or completion. A key differentiation between a participating interest and a net profits interest is that a net profits interest owner will not be liable for (or be required to fund out-of-pocket) the costs of developing and operating the mineral interest in excess of the interest owner's share of production income. On the contrary, and as stated above, a participating interest holder would generally be held responsible for its portion of operating expenses, regardless of whether they exceed its proportionate share of income. Additionally, the amount of operating expenses to which a participating interest is generally subject does not always equal such interest's proportionate share of expenses and instead may be set at a fixed amount, as stated in the terms of the participating interest certificate.

A participating interest is an economic interest, thus the net receipts received pursuant to the participating interest would generally constitute ordinary income and would generally be subject to depletion.
Net profits interest
Similar to a participating interest, a net profits interest owner receives a share of the gross production from a mineral property minus the costs of operating (and sometimes developing) the property. However, unlike a participating interest, a net profits interest owner is not liable for the direct payment of its portion of operating costs. In this regard, the net profits interest is structurally similar to a royalty interest. Net profits interests may be perpetual or limited, depending on the terms of the instrument. For instance, if a net profits interest is retained upon the transfer of an operating interest, it would generally be limited to the duration of the operating interest. Thus, the length of the interest from which a net profits interest is derived could be a factor in determining the length of the net profits interest. A net profits interest is carved out of the interest from which it is derived.

A net profits interest generally constitutes an economic interest, thus the share of the net profits received would generally constitute ordinary income subject to depletion deductions.

Fee simple
The undivided ownership of the land and the minerals in place below the land is referred to as owning the property in “fee simple.” All land generally starts off as being owned in fee simple; however, as is common in the US oil and gas industry, subsequent divisions and carve-outs generally result in the surface land owner and mineral interest holders each holding certain different rights to the property.

Royalty
A royalty interest may be retained by the owner of a mineral or fee interest when leasing the operating rights of a property to another party. Such interest gives the owner the perpetual right to receive a specified share of gross income or production from the mineral interest. The specified share of gross income or production is generally represented as a set amount per unit, or as a fraction or percentage of production. Although a royalty interest is a non-operating interest (i.e., the royalty owner does not have to pay the costs of developing and operating a lease), the royalty interest owner’s specified share of gross income or production received is generally net of production or severance taxes. Since production and severance taxes are generally paid on the royalty owner’s behalf by the working interest owner, the payment of such taxes will constitute additional income to the royalty owner.

A royalty interest is considered an economic interest in a mineral property; thus, royalties received would generally constitute ordinary income. Accordingly, the owner of a royalty interest would generally have the right to depletion deductions with respect to his or her interest in the property (typically the greater of cost or percentage depletion with certain limitations).

Overriding royalty
An overriding royalty interest often results when the original lessee of a mineral property retains a type of royalty interest upon assignment of all or part of his or her operating interest to a third party. A key difference between a royalty and an overriding royalty is that an overriding royalty does not last in perpetuity. Since the overriding royalty is carved out of the operating interest, the overriding royalty interest would expire upon cessation of the operating interest.

Similar to a royalty interest, an overriding royalty interest is the right to a specified share of gross income or production from the mineral interest. The specified share of gross income or production is generally represented as a set amount per unit, or as a fraction or percentage of production. While an overriding royalty interest is a non-operating interest (i.e., the overriding royalty owner does not have to pay the costs of developing and operating a lease), the overriding royalty interest owner’s specified share of gross income or production received is generally net of production or severance taxes. Since production and severance taxes are generally paid on the overriding royalty owner’s behalf by the working interest owner, the payment of such taxes will constitute additional income to the overriding royalty owner. For US federal income tax purposes, overriding royalties are considered economic interests and, similar to royalties, the receipt of an overriding royalty would generally constitute ordinary income and would generally be subject to depletion.
Joint venture arrangement – carried interest

Joint venture arrangements, pursuant to which two parties agree to develop certain properties, are common in the upstream oil and gas segment. Joint venture arrangements may be effected through a written joint venture agreement and do not require the establishment of a legal entity with respect to the arrangement. For US federal income tax purposes, it would generally be desired that such an arrangement would be treated as a tax partnership for US federal income tax purposes so that special allocations of income and deductions may be made in accordance with the economics of the agreement.

The oil and gas sector has done exceptionally well over the past decade, due in large part to escalating prices. Increased pricing and profitability spawned a corresponding increase in mergers, acquisitions and financing transactions within the oil and gas industry. At the core of many of these transactions is the traditional “carried interest” arrangement whereby the owner of an oil and gas working interest (commonly referred to as the “carried party”) finances through another party (commonly referred to as the “carrying party”) all or a portion of drilling, development and operating costs associated with the working interest. Accordingly, the carrying party will earn its interest through the agreed drilling operations.

Production payment

A production payment is generally defined as the right to receive a specified share of the gross production from a mineral property (generally in cash or in kind). A production payment may be of the “carved out” variety (typically derived from various types of interests, including working interests) or retained upon sale or lease of a mineral interest. A key feature of a production payment is that it lasts for a shorter time period than the interest from which it was derived. Similar to royalty and overriding royalty interests, a production payment is not generally burdened by the development or operating costs of the property. In contrast to royalty interests, however, production payments are generally limited in quantum, generally by way of a specified dollar amount, quantity of mineral or period of time.

As a general rule, a production payment is treated as a loan for US federal income tax purposes, with the proceeds from such loan divided into payments of principal and interest. Certain types of production payments (such as production payments that are carved out and pledged to the development of the property or production payments that are retained on a leasing transaction), however, constitute economic interests (and, as a consequence, would be subject to depletion) while others would not (e.g., production payments that are carved out and not pledged to the development of the property or production payments that are retained on a sale of the underlying property). Thus, as stated above, although production payments do not generally constitute economic interests that are subject to depletion, certain varieties have been found to satisfy such requirements; whether depletion may be taken with respect to a production payment would generally be contingent on the characteristics of the production payment and whether it is determined to constitute an economic interest.

Two common types of production payments are volumetric production payments and dollar-denominated production payments. Volumetric production payments generally give the holder of such interest the right to receive a specific volume of output generated from the property. After the specified volume has been fulfilled, the volumetric production payment would generally expire. In contrast, dollar-denominated production payments give the holder of such interest the right to receive a fixed dollar amount (generally with a stated rate of interest) generated from the property. Similar to volumetric production payments, the interest would expire once the agreed-upon dollar amount has been received by the holder.

Certain tangible assets

A number of assets are involved in the exploration and production of oil and natural gas, including those used onshore (e.g., derricks and onshore rigs) or offshore (e.g., offshore rigs and platforms). Tangible assets are generally subject to recovery through depreciation (instead of depletion) deductions.

Other investment vehicles

The upstream oil and gas interests described above could be acquired through a number of investment vehicle alternatives, including, in part, ownership of master limited partnership units or royalty trust units or stock ownership in either public or private companies.
Midstream

The midstream segment of the US oil and gas industry generally includes the activities of transportation and the initial processing and storage of oil and natural gas. After the oil or gas has been brought to the surface and separated, it is transported from the well to the crude oil refineries or gas processing plants. Crude oil can be moved by pipeline, truck, barge or tanker to the refinery, while natural gas is generally moved by pipeline to the gas processing plants. Sometimes natural gas may be processed in this segment through gas processing or natural gas treating facilities for producing pipeline-quality gas for direct sale to a natural gas pipeline.

Although certain integrated companies have built out their own midstream infrastructure, many companies engage in midstream segment activities and services. For example, a number of publicly traded partnerships focus primarily on the transportation or storage of oil or natural gas.

Pipelines

Pipelines are used for the transportation of oil and natural gas. Pipelines can be located above or below ground. As with gathering systems/assets, midstream companies often charge fees for the transportation (under a variety of volume- or time-based fee structures) of oil and natural gas.

Gathering systems and storage assets

Gathering systems transport and control the flow of oil or natural gas from the well to a main “on-site” storage facility, processing plant or shipping point. A gathering system generally includes pumps, headers, separators, emulsion treaters, tanks, regulators, compressors, dehydrators, valves and associated equipment. Two types of gathering systems generally exist – radial (which brings all of the flow lines to a central header) and trunk line (which uses several remote headers to collect fluid). Certain midstream companies that own gathering systems/storage assets often charge fees for the compression, storage or transportation (under a variety of volume- or time-based fee structures) of oil and natural gas.

LNG

Liquefied natural gas (LNG) is natural gas that has been converted to liquid form (for the purpose of transport or storage). The liquefaction process generally involves the removal of certain components from the natural gas. Immediately thereafter, the natural gas is condensed into a liquid; the reduction in volume results in more cost-efficient storage or transportation operations over long distances. The LNG can then be regasified and distributed. In addition to pipelines, buildings (or structures) or storage tanks, LNG facilities typically involve machinery and equipment that support the liquefaction process.

NGL processing plant

Natural gas liquids (NGLs) are a by-product of gas production and are also referred to as the “wet” portion of the natural gas. NGLs are residual liquids that are recovered in a separation process, typically performed in an NGL gas processing plant. The remaining “dry” gas is generally sold separately and transported by pipeline. NGL facilities generally include pipelines, compressors and tank farms, as well as other machinery and equipment that support the process. Additionally, fractionation facilities may be maintained to further separate the NGLs into different, more valuable derivatives.

Other investment vehicles

The midstream oil and gas assets or interests described above could be acquired through a number of investment vehicle alternatives, including, in part, joint venture arrangements, ownership of master limited partnership units or trust units, or stock ownership in either public or private companies.
Downstream

Included in the downstream segment are refining and marketing activities, certain storage and transfer activities, and the selling and distribution of natural gas, natural gas liquids and products derived from crude oil (including gasoline and diesel fuel). As with the midstream segment, certain oil and gas companies will engage in downstream operations on behalf of third parties based on a variety of contractual arrangements.

Refining operations

Refining typically refers to any operation by which the physical or chemical characteristics of crude oil or crude oil products are changed, but it does not refer to operations such as passing crude oil through separators to remove gas, placing crude oil in settling tanks to recover basic sediment and water or dehydrating crude oil. The process of refining involves the processing and refining of crude oil into more useful petroleum products (e.g., gasoline and kerosene). Various assets are used in refining operations, including distillation units, cracker units, storage tanks, hydrotreater units and many others.

Retail and distribution facilities

With respect to oil and natural gas, retail and distribution facilities engage in the sale or distribution of oil or “dry” natural gas at a retail (i.e., consumer) level or to another commercial or industrial user. Retail operations include the actual facilities and operations involved in making the product available to the end user, as well as certain ancillary operations, assets and procedures.

Other investment vehicles

The downstream oil and gas assets or interests described above could be acquired through a number of investment vehicle alternatives, including, in part, joint venture arrangements or stock ownership in either public or private companies.

Oilfield services

Oilfield service companies provide services to the E&P companies but do not generally engage in E&P activities themselves. Commonly, such companies will provide services such as fracturing, drilling (including directional drilling), seismic testing, consulting, engineering and transportation to E&P companies.

Hydraulic fracturing

Hydraulic fracturing generally involves the stimulation of oil or gas production as a result of forcing highly pressurized fluid into a producing rock formation (generally shale rock). Forcing the fluid under extremely high pressure into the formation has the effect of breaking up the formation and creating new avenues for oil or natural gas to flow to the well.

Drilling (including directional drilling)

Drilling companies provide the crew and equipment (including drilling rigs) to drill vertical wells as well as horizontal and directional wells to tap tight sands and shale.

Seismic imaging

Through the use of technology, oil and gas companies are able to evaluate the geological structure and makeup of a particular formation or field. Seismic surveys can generally produce a multidimensional image of the subsurface and are an integral resource to E&P companies.

Oil and gas well equipment and services

Oil and gas well equipment and services could include, in part, the provision of offshore and onshore drilling equipment for conventional, unconventional and deepwater oil and gas exploration.

Other services

Companies in the oilfield services segment of the US oil and gas industry provide a wide array of services, including, in part, consulting, engineering and related services to E&P companies throughout the world.
Application of FIRPTA to certain types of investments in the US oil and gas industry

Capital gains are not generally taxable to non-US investors under current US federal income tax law, unless FIRPTA applies. Under FIRPTA, a non-US investor would generally be subject to US federal income taxation upon the disposition of USRPI. A USRPI generally includes an interest in real property (such as an interest in a mine, well or other natural resource deposit) located in the United States or the Virgin Islands, and any interest (other than an interest solely as a creditor) in any domestic corporation, unless it is established that such corporation was at no time a USRPHC during the five-year period ending on the date of the disposition of such interest.

Local law definitions are not controlling for purposes of determining the meaning of the term “real property” for purposes of FIRPTA; instead, the applicable Treasury Regulations break down “real property” into the following three categories:

- **Land and unsevered natural products of the land:** This category generally includes land, growing crops and timber, mines, wells and other natural resource deposits.
- **Improvements:** An improvement within the meaning of the FIRPTA rules is a building, any other “inherently permanent structure” (i.e., any property that is affixed to real property that will ordinarily remain affixed for an indefinite period of time) or the structural components of either.
- **Personal property associated with the use of the real property:** Personal property would generally be considered associated with the use of the real property if it is predominantly used in the mining, farming or forestry of unsevered natural products in or upon the land; the improvement of real property; the operation of a lodging facility; or the rental of furnished office and other work space.

For purposes of FIRPTA, an interest in real property generally includes any interest other than an interest solely as a creditor, including a fee ownership, co-ownership, or leasehold interest in real property; a time sharing interest in real property; or a life estate, remainder or reversionary interest in such property. Similarly, any direct or indirect right to share in the appreciation in value or in the proceeds or profits generated by the real property is also generally considered real property for purposes of FIRPTA.

As discussed herein, FIRPTA applies to interests in real property; however, the following types of interests/assets are common carve-outs or exceptions to FIRPTA’s application (subject to certain limitations):

- **Oilfield services or contracts:** Since FIRPTA only applies to real property interests (i.e., land and unsevered natural products of the land, improvements and personal property associated with the use of real property), FIRPTA would not generally apply to certain oilfield services or certain contracts made with respect to oilfield services.
- **Investments in non-inherently permanent property:** Personal (or non-inherently permanent) property is only generally considered to be real property if it is associated with the use of real property. Personal property that is used to process or transport minerals, crops or timber after they are severed from the land, however, would not be treated as associated personal property; accordingly, such personal property would not generally constitute a USRPI.
- **Certain publicly traded interests:** An exception to FIRPTA exists for the ownership of 5% or less of a regularly traded class of interests in a publicly traded domestic corporation (i.e., such interest would not generally constitute a USRPI, even if such corporation were determined to constitute a USRPHC). Specific requirements must apply in order for this rule to be met. This exception would also generally apply for the ownership of 5% or less of certain classes of interests in publicly traded partnerships or trusts that are considered to be traded regularly on an established securities market.
- **Certain non-publicly traded interests:** Stock of a corporation that has previously sold all of its USRPIs in a taxable transaction (and as a result the corporation holds only cash and similar assets) would not generally be treated as a USRPI. Alternatively, if the non-US investor can establish that the non-publicly traded corporation was not a USRPHC (for a stated period of time), the interest in such corporation would not be treated as a real property interest.
Below is a listing of common interests and assets, as previously described, in the US oil and gas industry, along with a corresponding indication of whether such interest or asset would generally be considered US “real property” and thus potentially subject to FIRPTA.

The list of interests and assets below is not intended to be comprehensive, and before investing in any oil and gas asset, we would recommend further analysis to confirm the application (or lack thereof) of FIRPTA to the proposed investment.

### Upstream

<table>
<thead>
<tr>
<th>Interest/Asset</th>
<th>Green light</th>
<th>Yellow light</th>
<th>Red light</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fee simple</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Royalty</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Overriding royalty</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Participating interest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Volumetric production payment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dollar-denominated production payment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Working or operating interest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net profits interest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oil derrick</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Onshore rig</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offshore platform – floating</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offshore platform – affixed to ocean floor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land (related to upstream activities)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buildings (related to upstream activities)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Midstream

<table>
<thead>
<tr>
<th>Interest/Asset</th>
<th>Green light</th>
<th>Yellow light</th>
<th>Red light</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pipelines</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gathering systems/assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flowlines/pipelines</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compressors, valves, certain equipment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LNG processing plant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NGL processing plant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Storage/terminals</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Related machinery and equipment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land (related to midstream activities)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buildings (related to midstream activities)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

**Reading the signals: when to proceed with caution**

A green light indicates that an investment into such interest or asset would not generally be subject to FIRPTA.

A yellow light indicates that the determination of whether FIRPTA applies to an investment into such interest or asset would generally require further analysis or be subject to certain specific limitations or restrictions (and that further planning would generally be required to minimize or otherwise mitigate the impact of FIRPTA’s application).

A red light indicates that such interest or asset would generally be considered real property for purposes of FIRPTA, and, as a result, further planning would be required to minimize or otherwise mitigate FIRPTA’s application.
## Downstream

<table>
<thead>
<tr>
<th>Refining operations/assets</th>
<th>Green light</th>
<th>Yellow light</th>
<th>Red light</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refinery related storage tanks</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Distillation, hydrotreater and cracker units</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retail/distribution assets</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gas stations and related tanks</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gasoline pumps, trucks and tankers</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land (related to downstream activities)</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buildings (related to downstream activities)</td>
<td>●</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## Oilfield services*

<table>
<thead>
<tr>
<th>Hydraulic fracturing</th>
<th>Green light</th>
<th>Yellow light</th>
<th>Red light</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drilling</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seismic</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oil and gas well services</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transportation services</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consulting services</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Engineering services</td>
<td>●</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* As illustrated above, oilfield services are generally at a lower risk of being subject to FIRPTA than are investments in the upstream subsector. However, even with respect to the different types of services offered, the determination of whether FIRPTA would apply to the exit of an investment in an entity engaged in such services would generally depend on the nature of the related assets. The assets supporting each activity may vary; thus it is necessary to analyze the potential USRPIs of each entity considered for investment in order to determine whether the investment is subject to FIRPTA (including certain US real property held by oilfield services companies).
**Investment vehicles***

<table>
<thead>
<tr>
<th>Investment vehicle</th>
<th>Green light</th>
<th>Yellow light</th>
<th>Red light</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest in a joint venture/partnership**</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Master limited partnership unit</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>US royalty trust (publicly traded)</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stock of a privately held corporation (USRPHC)</td>
<td>●</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stock of a publicly traded corporation (USRPHC)**</td>
<td>●</td>
<td>●</td>
<td></td>
</tr>
<tr>
<td>Stock of a corporation (not a USRPHC)</td>
<td>●</td>
<td>●</td>
<td></td>
</tr>
</tbody>
</table>

* The application of FIRPTA to the investment vehicles above (with the exception of stock of a corporation that is not a USRPHC) would generally depend on the nature of the underlying assets. For instance, whether stock of a publicly traded corporation that meets the definition of a USRPHC (within the meaning of the FIRPTA rules) constitutes a USRPI would generally depend on the investor’s percentage ownership of such stock. Conversely, the USRPIs of a partnership would generally be treated as held proportionally by its partners, regardless of such partner’s percentage ownership of such partnership.

** As is the case with the midstream, downstream and oilfield services subsectors, an investor in a joint venture that is classified as a partnership for US federal income tax purposes would generally be treated as holding a USRPI (and, accordingly, subject to FIRPTA) to the extent of such investor’s allocable share of the partnership’s interests in real property (e.g., the partnership’s USRPIs).

*** See page 9.

Accordingly, although investments in each of the four main subsectors could be subject to FIRPTA, an investment in an oilfield services company, if properly structured, would not generally be subject to FIRPTA (except to the extent of such company’s interest in US real property, depending on such company’s US federal income tax classification).
About Ernst & Young's Transaction Tax services

Every oil and gas transaction has tax implications, whether it's an acquisition, disposal, refinancing, restructuring or initial public offering. Understanding these implications can mitigate transaction risk, enhance opportunity and provide crucial negotiation insights. Our Transaction Tax services comprise a worldwide network of professional advisors who can help you navigate the tax implications of your oil and gas transaction. We mobilize wherever needed, assembling a personalized, integrated global team to work with you throughout the transaction life cycle, from initial due diligence through post-deal implementation. And we can suggest structuring alternatives to balance investor sensitivities, promote exit readiness and raise opportunities for improved returns. It's how Ernst & Young makes a difference.

Contacts

For more information, please contact:

Deborah Byers
deborah.byers@ey.com
+1 713 750 8138

Greg Matlock
greg.matlock@ey.com
+1 713 750 8133

Wes Poole
wes.poole@ey.com
+1 817 348 6141