



Overview of FIRPTA Tax Obligations

This article provides an overview of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) from the seller's perspective when there is the sale of U.S. real estate.

This withholding is commonly referred to as "FIRPTA", "FIRPTA withholding tax" or "FIRPTA withholding".

When foreign nationals sell real estate in the United States, they must comply with FIRPTA withholding requirements. This federal law requires withholding a portion of the sale proceeds to ensure proper tax collection on real estate transactions involving non-U.S. residents.

Before FIRPTA, foreign investors could often sell U.S. real property and move the proceeds back to their home country without paying U.S. capital gains tax. This effectively avoided IRS collection efforts. FIRPTA was enacted to treat foreign and domestic investment in U.S. real property more comparably and create equity in treatment between U.S. tax residents and non U.S. tax residents.

Starting in 1984 default withholding of 10% was enacted. The Protecting Americans from Tax Hikes of 2015 (PATH Act) changed the percentage to 15% effective February 17, 2016. Sellers were always required to report a sale and pay tax due, if any, but FIRPTA withholding helps ensure the required reporting takes place as FIRPTA is often in excess of the tax due.

The buyer is the responsible party to collect and remit the withholding, along with the required forms, to the government. A clause in a standard real estate sales contract covers FIRPTA and, generally, will say that the seller is responsible to pay the costs associated with FIRPTA.

It is the seller's responsibility to disclose that they are a non-U.S. tax resident subject to FIRPTA.

What is the FIRPTA Withholding Rate?

The current FIRPTA withholding rate is **15% of the gross sales price**.

This withholding must be remitted to the Internal Revenue Service (IRS) within 20 days after closing.

It's important to understand that the 15% FIRPTA withholding is not the actual tax owed—it functions as a deposit applied against your final tax liability. The actual tax owed is calculated when you file your U.S. income tax return reporting the sale.

If the withholding exceeds your actual tax liability, the IRS will refund the difference once a tax return is filed to report the sale of the property after the end of the calendar year of sale.

If your tax liability is higher than the FIRPTA withholding, you'll need to pay the additional amount. It is less common that this occurs.

Certain transactions allow foreign sellers to skip the withholding requirement entirely. These situations involve specific combinations of sale price, buyer intentions, and property usage.

FIRPTA Exceptions: When Reduced or No Withholding is an option

Exceptions to the general rule of 15% withholding exist to reduce or eliminate it.



No withholding is possible when **all** of the following conditions are met:

- Your property sells for three hundred thousand dollars or less
- An individual person (not a business entity) purchases the property
- This buyer commits to living in the property themselves
 - Their personal occupancy will represent at least half of all time the property has occupants over the following two years
 - The buyer must be willing and able to provide the closing agent a signed affidavit confirming their intent at the time of sale (closing) to meet this condition. This statement is signed by the buyer under penalties of perjury.

EXAMPLE: FIRPTA Exception

A foreign national sells a U.S. property for \$250,000. The buyer plans to:

- Rent the property for 3 months per year
- Use it personally for 4 months per year
- Leave it vacant for 5 months per year

The property is occupied 7 months annually. Since personal use (4 months) exceeds 50% of occupied time (7 months), the exemption applies. The seller avoids the 15% withholding, if the buyer provides a sworn statement to this intent to the closing agent, but must still file a U.S. tax return to report the sale.

Reduced FIRPTA Withholding Rate: 10% Option

Reduced withholding is possible when the sale price is between three hundred thousand and one million dollars may qualify for a reduced 10% withholding rate instead of the standard 15%. This reduction requires that buyers intend to occupy the property, following similar occupancy standards described above.

Requesting Lower Withholding Through IRS Certificates

When standard withholding would significantly exceed your true tax liability, you can petition tax authorities to reduce the amount held back. This process involves obtaining an official certificate that authorizes lower withholding.

This approach makes sense when:

- Your sale will generate a loss rather than a profit
- Your taxable gain represents only a small fraction of the sale price
- You expect minimal or zero tax liability

Timeline and Process Considerations:

Your certificate application must reach tax authorities by your closing date at the latest. Processing typically requires at least three months, but may be much longer, before the certificate gets issued.

The closing agent is authorized to withhold the standard percentage from your proceeds but doesn't immediately send it to the government is an application for reduced withholding is submitted. These funds sit in a protected escrow account awaiting your certificate. Once the certificate arrives, the agent forwards any required amount to the government and releases the remainder directly to you.



You're selling a property for \$500,000 that you purchased for \$600,000. You'll incur a \$100,000 loss, meaning no U.S. tax is owed. However, the standard FIRPTA withholding would be \$75,000 (15% of \$500,000).

By applying for a withholding certificate, you can demonstrate that the transaction results in a loss. The IRS will issue a certificate reducing the withholding to zero, allowing you to receive your full sale proceeds.

Timing Your Sale Strategically:

Sales Early in the Year

Completing your sale in the first months of the year creates a long wait for refunds. You can't file your tax return until the following calendar year. With IRS processing times, this could mean your refund is received potentially fourteen months or more after closing. In these situations, obtaining a certificate upfront often proves more beneficial.

Sales Late in the Year

Completing sales in the last few months of the year allows you to file your return in the first months of the next year, with refunds typically arriving within a few months. The certificate process may offer less advantage in these scenarios.

Additional Decision Factors

Also weigh these considerations:

- How much excess withholding you expect
- Your immediate cash requirements
- How long you're willing to wait for refunds
- The administrative effort involved in certificate applications



To ensure proper compliance with FIRPTA requirements:

1. Determine if your sale qualifies for an exemption
2. Calculate the expected withholding amount
3. Compare withholding to estimated actual tax liability
4. Decide whether to apply for a withholding certificate
5. Submit applications before closing if seeking reduced withholding
6. Ensure proper documentation and affidavits are signed
7. File U.S. income tax return to report the sale
8. Claim refund if withholding exceeds actual tax

Author's Notes:

There are other planning opportunities related to the sale of U.S. real estate. Each situation is unique.

This article is not intended to be tax advice.

Real estate transactions involving foreign sellers present unique complexities. Each situation involves different property values, ownership structures, gain calculations, and timing and fact pattern considerations that affect the strategy that is right for you.

Consulting with tax professionals who regularly handle international property transactions helps ensure you understand your specific obligations and exploring available options that can help you maximize your proceeds and minimize delays in receiving your funds.

I am happy to advise you on the options available to you in complying with this requirement on the sale of your property.

About the author:

David A Cumberland, CPA CGMA has presented at the local, state, and national level. David has authored articles intended for both the taxpayer and the tax professional. He is vice chair of the FICPA International tax committee and founder of Cumberland CPA & Co. which serves clients worldwide. He has published in the FICPA's Florida CPA Today magazine and produces client-based tax articles in English and Spanish to educate both current and prospective clients and advisors to those clients. He primarily practices in the area of inbound international tax work covering both individual and business tax preparation and consulting. Fluent in Spanish, his emphasis is working with international clients or clients with international considerations. David brings unique value and perspective to advising clients as a CPA as he has more than two decades of operational management experience in business in addition to a technical tax background. Having retired as lead shareholder of the International Tax Department of one of the largest independent certified public accounting firms in Southwest Florida his focus now is on continuing to serve clients he is passionate about in a boutique setting.

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