



# WHAT IS FIRPTA?

## WHAT IS THE FUNDAMENTAL ISSUE?

*The Foreign Investment in Real Property Tax Act (FIRPTA) was enacted in 1980, initially as a response by Congress to concerns about increasing foreign ownership of farmland in the United States.*

*The major purpose of FIRPTA was to establish equity of tax treatment in U.S. real property between foreign and domestic investors. Before the enactment of FIRPTA, foreign investors were often able to avoid paying U.S. capital gains tax on gains when they sold U.S. assets, such as real estate, stocks, bonds, and U.S. Treasury securities.*

*FIRPTA changed this for gains on real property held by foreign investors by requiring the buyer of such property to withhold a portion of the proceeds and remit it to the IRS as a proxy tax. If the foreign investor owed less than the amount withheld, he or she could file a tax return and claim a refund for the difference. FIRPTA thus helped to level the tax playing field between U.S. and foreign investors*

## What is FIRPTA withholding?

The acronym stands for the Foreign Investment in Real Property Tax Act and is used to describe withholding of tax on the sale of real estate by a foreign person.

## Who is a Foreign Person?

A foreign person is a nonresident alien who is neither a U.S. citizen nor a green-card holder and who does not meet the IRS prescribed substantial presence test. The term also refers to a foreign corporation (a corporation not incorporated in the U.S.), foreign partnership, foreign trust, or a foreign estate.

## Am I a withholding agent?

Every person who controls, holds custody of, receives, disposes of, or pays any item of income to a foreign person that is subject to foreign withholding is a withholding agent. Attorneys for both buyers and sellers can find themselves liable. FIRPTA defines agent as “any person who represents the transferor or transferee in any negotiation relating to the transaction or in settling the transaction.”

## Which payments are subject to withholding?

Sales proceeds realized upon the disposition of a U.S. real property by a foreign person are subject to FIRPTA withholding. NOTE: Other types of income payments to foreigners may be subject to withholding if income is from sources within the United States, and it is fixed or determinable, annual or periodical (FDAP) income. Examples of such payments are dividends, interest, real property income such as rents, and royalties.

## How much do I need to withhold and when?

Generally, you must withhold at the time you pay the income to the foreign person. Sales proceeds from real estate transfers are subject to 15% withholding.

## Can FIRPTA withholding be avoided?

FIRPTA is avoided in case of residential sales under \$300,000 if the buyer signs an affidavit stating that the property will be their personal residence and the buyer or buyer's family member will occupy the property at least 50% of the number of days the property is in use during each of the first two 12-month periods following the date of purchase.