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USA: FIRPTA – Sale of U.S Real Property Interest by Foreign Individuals

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Strong economies of many foreign jurisdictions have contributed to the increase in the purchase of real property interest by many foreign investors in the United States. A measurable tax pain is experienced when this property is sold.

The sale of U.S. real property interest by a foreign person is subject to FIRPTA (Foreign Investment in Real Property Tax Act) regulations. Under FIRPTA, when a foreign person sells U.S. real property interest, the buyer is required to withhold 15% of the sale proceeds and remit it to the Internal Revenue Service (IRS) within 20 days of the sale. This 15% rate can be reduced to 10% if the property being purchased is for use by the transferee as a residence and the sale proceeds are between \$300,000 and \$1,000,000. A complex web of exceptions applies to avoid this 15% (or 10%) FIRPTA withholding, [explain the experts at Marcum LLP](#).

No withholding is required if the sale proceeds do not exceed \$300,000 and the purchaser certifies that the property will be used as a residence for the period required under FIRPTA regulations. The buyer need not withhold if the foreign transferor gives written notice to the buyer that no recognition of any gain or loss on the transfer is required because of a non-recognition provision in the Internal Revenue Code, or a provision in a U.S. tax treaty, files this notice with the IRS within 20 days of the date of transfer and meets certain other conditions.



Foreign individuals wishing to sell real estate in the USA, are confronted with numerous tax regulations. If they wish to exploit the exceptions available, it is important to comply strictly to the stringent documentation requirements.

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The most notable and most sought out of all exceptions is a withholding certificate from the IRS. As long as the application for a withholding certificate is filed in time, the buyer does not need to pay the withheld amount to the IRS but only hold it in an escrow account. Once the IRS approval of the no-withholding is received, the buyer can pay over the escrow amount to the foreign transferor.

A withholding certificate can be requested from the IRS under three circumstances:

- a claim solely on a calculation that shows that the transferor's maximum tax liability is less than the tax otherwise required to be withheld
- a claim that the transferor is entitled to deferral of gain, e. g. under like-kind exchange rules
- a claim that the transferor is entitled to non-recognition treatment or is exempt from tax, e. g. under principal residence rules.

In order to be successful in seeking this certification from the IRS, the application schedule and strict documentation requirements must be stringently adhered to.

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Marcum LLP is a national accounting and advisory firm with offices in major business markets throughout the U.S., as well as Grand Cayman, China, and Ireland.

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FIRPTA, foreign person withholding real estate, U.S. real estate, withholding tax on US real estate