

PATH Act Changes to FIRPTA Withholding

The recently-enacted Protecting Americans from Tax Hikes (PATH) Act brought about significant changes to the Foreign Investment in Real Property Tax Act (FIRPTA).

Effective February 16, 2016, the withholding rate for the sale of real property by foreign persons increased from 10% to 15% under certain circumstances, which we have outlined below.

Under the provisions of the Foreign Investment in Real Property Tax Act (FIRPTA), the buyer of a United States real property interest from a foreign person is required to withhold a minimum of 15% of the sales price and forward the funds to the IRS with the required documentation on the seller's behalf. This is to insure that the foreign seller files the appropriate tax return documentation when receiving monetary benefit for disposing of real property in the United States. To be clear, the withheld amount is not an additional tax on the foreign seller, it is an estimated payment against the tax ultimately imposed on gain from the sale.

Changes will affect all real estate transactions governed by FIRPTA that close on or after February 16, 2016. The following withholding amounts will be adhered to:

Withholding rate is 0%... If the amount realized (typically, the purchase price) does not exceed \$300,000, and the buyer acquires the property to use as a primary residence.

Withholding rate is 10%.... If the amount realized is greater than \$300,000 and does not exceed \$1,000,000, and the buyer acquires the property to use as a primary residence.

Withholding rate is 15%.... If the amount realized exceeds \$1,000,000 regardless of the buyer's use of the property.

Withholding rate is 15%.... If the property will NOT be used as the buyer's primary residence.

If the buyer is purchasing a U.S. real estate interest from a foreign seller, this information MUST be relayed to them so that they can adequately withhold. If not, buyers could find themselves liable for extra withholdings.

There are many factors involved in this process that can have significant effects to both buyers and sellers. Contact your tax professional with any questions regarding the FIRPTA changes.



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