



CLIENT BRIEFING

FIRPTA Withholding on U.S. Real Estate Sales

What foreign sellers, buyers, and their advisors need to know before closing

FIRPTA turns a U.S. real estate closing into a tax collection event. When a foreign person sells U.S. real property, the law does not wait for that seller to file a return and pay what is owed. It requires the buyer to withhold a share of the proceeds at closing and send it to the IRS, before the seller ever sees the money.

That single design choice shapes everything that follows: who is liable if withholding is missed, how much gets held back, and what can be done ahead of time to avoid holding back more than necessary. This briefing is organized into two parts.

PART ONE The Withholding Rules

What counts as U.S. real property, who has to withhold, how much, and how that amount is calculated.

PART TWO Managing the Withholding

The exceptions that reduce or eliminate withholding, the certificate process for aligning it with actual tax owed, and how it gets reported and paid.



PART ONE

Part One — The Withholding Rules

PART ONE · 01

What Counts as a U.S. Real Property Interest

It reaches further than land and buildings.

A U.S. real property interest is not limited to the physical parcel. It also includes mines, wells, and other natural deposits on the property, and personal property associated with it, such as farming machinery. It can even reach a domestic corporation, if that corporation is (or recently was) a “U.S. real property holding corporation.” Selling stock in a domestic company can trigger FIRPTA withholding for that reason alone, so it is worth confirming before a stock sale closes.

INCLUDES

- Direct interests in real property located in the United States or the U.S. Virgin Islands (a mortgage or other creditor interest is excluded)
- Mines, wells, and other natural deposits situated on the property
- Associated personal property, such as farming machinery or equipment
- Interests in a domestic corporation, unless it can show it never held U.S. real property interests above the statutory threshold during the relevant testing period

PART ONE · 02

Who Withholds, and How Much

The buyer collects the tax. The seller never touches it.

The transferee, meaning the buyer, is the withholding agent, and liability for getting it right runs to the buyer, not the seller. A buyer who closes without withholding when FIRPTA applies can be held personally liable for the tax that should have been collected, plus interest and penalties. Settlement officers and certain agents of the purchaser can carry that same responsibility.

WITHHOLDING RATES

- Dispositions before February 17, 2016: 10% of the amount realized
- Dispositions on or after February 17, 2016: 15% of the amount realized (the current standard rate)
- A foreign corporation distributing U.S. real property: 21% of the gain it recognizes on the distribution



Calculating the Amount Realized

The withholding base is usually larger than the check the seller expects.

“Amount realized” is the number withholding is measured against, and it is broader than the net cash the seller walks away with. It includes cash paid, the fair market value of any other property transferred, and any liability the property is subject to or that the buyer assumes, such as an existing mortgage. Where the property is jointly owned, the amount is allocated among the owners based on their capital contributions.



PART TWO

Part Two — Managing the Withholding

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Reduced or No Withholding on a Residence

Not every sale by a foreign person owes the full 15%.

The most commonly used exception is built around the buyer's intended use of the property as a personal residence.

APPLIES WHEN

- **Sale price of \$300,000 or less:** no withholding is required if the buyer acquires the property as a residence and intends to live there at least 50% of the days the property is used during each of the first two 12-month periods after the transfer.
- **Sale price between \$300,000 and \$1,000,000:** withholding can be reduced from the standard rate when the buyer is acquiring the property as a residence, even though the full exception does not apply.

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Form 8288-B Withholding Certificates

The tool for aligning withholding with the tax actually owed.

When 15% of the amount realized is clearly more than the seller's real tax liability, for example because basis is high relative to the sale price, the seller can apply on Form 8288-B for a certificate authorizing reduced or eliminated withholding. The IRS generally acts on a complete application within 90 days; where an ITIN is requested alongside it, that piece is typically processed within 10 days. An application does not excuse the buyer from withholding at closing. Absent specific IRS relief, the tax still has to be collected, or placed in escrow, until the IRS rules on the application.

BEST FILED WHEN

- As early as possible, ideally as soon as the contract is signed
- The seller's actual gain is well below 15% of the amount realized
- An ITIN is also needed and can be requested in the same application



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Reporting and Paying the Withholding

The clock starts at closing, not at approval.

Once withholding is collected, the buyer has 20 days after the transfer to report and remit it to the IRS on Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons. A related Form 8288-A is stamped by the IRS and returned to the foreign seller as proof of the amount withheld, which the seller then uses to claim credit on their own U.S. tax return. Reporting is tied to the year the transaction actually closed, regardless of when a related withholding certificate application is approved. Payments are mailed to the IRS at P.O. Box 409101, Ogden, UT 84409, unless the withholding agent is using an approved electronic payment method.

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A Worked Example

A \$500,000 condo sale, followed through both parts.

A nonresident individual sells a Florida condominium for \$500,000 to a buyer who plans to use it as an investment property, so the residence exception does not apply. Absent a withholding certificate, the buyer must withhold 15% of the amount realized, \$75,000, and remit it on Form 8288 within 20 days of closing, along with Form 8288-A reporting the withholding to the seller.

If the seller's actual gain is small, for example because the condo was recently inherited and received a stepped-up basis close to the sale price, applying for a Form 8288-B certificate before closing can bring the amount withheld much closer to the real tax due, rather than waiting to recover the difference on a return filed the following year.



NEXT STEP

Questions Before You Close?

Every FIRPTA question is really a timing question. Whether it is confirming that a sale is covered, sizing the withholding correctly, or filing a withholding certificate before a closing date is locked in, the earlier we are involved, the more options are still open. Crossbridge Global Tax works with foreign sellers, U.S. buyers, and the settlement agents and attorneys between them to get this right before the closing table, not after.

This briefing summarizes IRC §1445 and current IRS guidance in Publication 515 and Publication 523. It is general information, not advice on a specific transaction, reflects federal tax law in effect for 2026, and may not apply to every situation. Please contact your Crossbridge advisor, together with your legal and settlement team, before a closing date is set.