

F.I.R.P.T.A. - Top 8 Questions

What is F.I.R.P.T.A.?

F.I.R.P.T.A. is an acronym for Foreign Investment Real Property Tax Act. It was established in 1980 for the purpose of withholding the estimated amount of taxes which may be due on the gain of the disposition of a U.S. Real Property Interest from foreign persons. A U.S. real property interest includes sales of interests in parcels of real property as well as sales of shares in certain U.S. corporations which are considered U.S. real property holding corporations. Persons purchasing U.S. real property interests (transferee) from foreign persons are required to withhold 10 percent of the amount realized.



What is the purpose of withholding 10%?

Real estate withholding is a prepayment of anticipated tax due on the gain of the sale of a U.S. real property interest. It is not an additional tax. Any difference between the amount paid and the amount owed is refunded to the seller when a tax return is filed.

Who is responsible for finding out if the transferor is a foreign person?

It is the transferee's/buyer's responsibility to determine if the transferor/seller is a foreign person and subject to withholding.

Are there exceptions from FIRPTA withholding?

Yes. Exceptions are explained on the IRS.GOV website here.

Who is responsible for withholding 10% of the amount realized?

Withholding is the responsibility of the transferee/buyer.

How and where is the F.I.R.P.T.A. withholding paid?

The buyer must complete IRS Form 8288 and Form 8288-A and remit them, along with the payment to the IRS at the address shown on Form 8288.

What is the settlement agent's role with regards to F.I.R.P.T.A.?

The IRS Rule requires the transferee/buyer to determine if withholding applies and, if so to remit the withholding to the

IRS. If the buyer has determined F.I.R.P.T.A. withholding applies, the buyer and seller may mutually instruct the settlement agent to deduct the 10%, gather the applicable forms and remit them to the IRS on their behalf.

Will a Limited Practice Officer (LPO) give legal advice with regards to F.I.R.P.T.A.?

A LPO or settlement agent is not qualified to provide legal or tax advice relating to F.I.R.P.T.A. If you are involved in a real estate transaction with a foreign person or entity and require legal advice, you will need to seek council from a professional other than the settlement agent.

More information on F.I.R.P.T.A. can be found here:
Click the links below to learn more.

- IRS – [FIRPTA Withholding](#)
- IRS – [Exceptions from FIRPTA withholding](#)
- IRS – [Reporting and Paying Tax on U.S. Real Property Interests](#)
- IRS – [Withholding Certificates \(reductions in 10% withholding\)](#)
- IRS – [Definitions of terms and procedures unique to FIRPTA](#)
- IRS – [Foreign Persons Involved in U.S. Real Estate Transactions](#)

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