Discuss FIRPTA at the Start

Florida has the highest percentage of foreign investments in real estate within the U.S. Thus, it is critical that buyers of a U.S. real property interest owned by a foreign person understand and address FIRPTA requirements at the start of the transaction **to prevent issues or delays at closing.**

What is FIRPTA?

When a foreign person sells a U.S. real property interest, the Foreign Investment in Real Property Tax Act (FIRPTA) requires that the buyer withhold and remit a tax equal to 10 or 15 percent of the "amount realized" from the sale to the Internal Revenue Service (IRS) unless one or more exemptions apply to the seller or the transaction.

What is the withholding rate?

- When the property will be used by the buyers as a residence, the withholding rate of 10 percent applies provided the "amount realized" from the sale exceeds $300,000 but does not exceed $1,000,000.
- If the "amount realized" exceeds $1,000,000, the withholding rate is 15 percent.
- When the property will be used by the buyer as a residence, no withholding is required if the "amount realized" from the sale is $300,000 or less.
- When the property is not acquired to be the buyer's residence, the withholding rate is 15 percent of the "amount realized" from the sale.

What is the buyer's responsibility?

- In most cases, the buyer is the "withholding agent."
- The buyer must withhold and remit to the IRS any tax withheld within 20 days of closing.
- A person that is required to deduct and withhold the tax but fails to do so may be held liable for the payment of the tax and any applicable penalties and interest.

What is the seller's responsibility?

- Seek the advice of a licensed and qualified tax professional.
- Be proactive. Determine if there is an exception from withholding. Consider obtaining a withholding certificate from the IRS to determine what the seller actually owes. This could greatly reduce the amount withheld at closing. This process can take up to 90 days or more so start the process early in the transaction.

This content is provided solely for informational and educational purposes and does not purport to offer tax advice or legal advice of any kind. A complete understanding of FIRPTA is critical to determining the buyer's tax withholding and reporting obligations. Questions concerning the applicability of the provisions of any state or federal tax legislation should be directed to a licensed and qualified tax professional.

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Discuss FIRPTA at the Start

Foreign Owners?

Florida has the highest percentage of foreign investments in real estate within the U.S.* Thus, it is critical for the real estate professional to advise a foreign person selling a U.S. real property interest to address FIRPTA requirements with their tax professional at the start of the selling process **to prevent issues or delays at closing.**

The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA)

When a foreign-owned U.S. real property interest is sold, the Foreign Investment in Real Property Tax Act (FIRPTA) requires that a tax equal to 10 or 15 percent of the "amount realized" by the foreign person upon disposition be remitted to the Internal Revenue Service (IRS), unless one or more exemptions apply to the seller on the transaction from the sale.

How can a seller facilitate the process?

- Seek the advice of a licensed and qualified tax professional.
- Be proactive. Determine if there is an exception from withholding. Consider obtaining a withholding certificate from the IRS to determine what the seller actually owes. This could greatly reduce the amount withheld at closing. This process can take up to 90 days or more. Advise the seller to start this process early.

How can the real estate professional prevent closing delays?

- Advise foreign persons selling a U.S. real property interest to seek advise from a licensed and qualified tax professional.

What is the withholding rate?

- When the property will be used by the buyers as a residence, the withholding rate of 10 percent applies provided the "amount realized" from the sale exceeds $300,000 but does not exceed $1,000,000.
- If the "amount realized" exceeds $1,000,000, the withholding rate is 15 percent.
- When the property will be used by the buyer as a residence, no withholding is required if the "amount realized" from the sale is $300,000 or less.
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