The Foreign Investment in Real Property Tax Act (FIRPTA) of 1980 authorizes the United States to tax foreign persons who are non-resident aliens selling U.S. real property interests. A U.S. real property interest includes sales of interests in parcels of real property.

Persons purchasing U.S. real property interests (transferee) from non-resident aliens (transferor), certain purchasers’ agents, and settlement officers are required to withhold 10% of the amount realized (the purchase/sales price of the real estate going to transferor) and remit that amount to the Internal Revenue Service within 20 days of the transaction.

Withholding is intended to ensure U.S. taxation of gains realized on disposition of real property interests. The transferee/buyer is the withholding agent. If you are the transferee/buyer, you must find out if the transferor/seller is a foreign person/non-resident alien. If the transferor is a foreign person/non-resident alien and you fail to withhold, you may be held liable for the tax.

**COVERAGE OF FIRPTA - DEFINITION OF “NON-RESIDENT ALIEN” (FOREIGN PERSON)**

A non-resident alien is defined for federal income tax purposes as an individual who is neither a U.S. citizen nor a resident of the U.S. within the meaning of the Internal Revenue Code. An alien individual is a resident of the U.S. for federal income taxes if he or she:

1. Has been issued a green card (been admitted as a Lawful Permanent Resident in the U.S.) at any time during or prior to the calendar year; or
2. Has maintained a “substantial presence” in the U.S., which means the alien (a) is physically present in the U.S. for 183 days or more during the calendar year or (b) if the alien is physically present in the U.S. for at least 31 days during the current year, the alien may be treated as a resident in the current year by the following calculation:

   a) Each day of presence in the current year is counted as a full day;
   b) Each day of presence in the 1st preceding year is counted as 1/3 of a day;
   c) Each day of presence in the 2nd preceding year is counted as 1/6 of a day.

If the total of (a) + (b) + (c) is 183 days or more, the alien may be a U.S. tax resident unless the alien files certain required information with the IRS to claim the benefit of any relevant exception. If the foreign person is neither a U.S. citizen nor falls within description (1) or (2), he or she is a non-resident alien and is subject to FIRPTA withholding unless an exception applies.

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EXCEPTIONS

- **Home Use/$300K Exception** - One of the most common exceptions to FIRPTA withholding is that the transferee is not required to withhold tax in a situation in which the transferee purchases real estate for use as his/her home and the purchase price is not more than $300,000. In this case, the transferee or a member of his family must have definite plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer.

- **Withholding Certificate** - Another exception from FIRPTA withholding occurs when the IRS issues a withholding certificate. The transferee, the transferee’s agent, or the transferor may request a withholding certificate and the IRS will generally act on these requests within 90 days after receipt of a complete application (Form 8288-B), including the Taxpayer Identification Numbers (TINs) of all parties to the transaction. Form 8288-B requires a description of the real property interest being sold, the sales price, a calculation of the maximum tax owed, and evidence that the seller has no unsatisfied FIRPTA withholding obligations with respect to the purchase of the real property interest.

A transferor that applies for a withholding certificate must notify the transferee in writing that the certificate has been applied for on the day of or the day prior to the transfer. If the withholding certificate is obtained, the non-resident alien must file a U.S. tax return for the year of sale and pay the appropriate amount of tax due at that time. Please note that if the principal purpose of a transferee’s applying for a withholding certificate is to delay remitting the withheld tax to the IRS, the transferee will be subject to interest and penalties.

Additional exceptions from FIRPTA withholding exist but most involve transactions related to U.S. real property holding companies or the government acquisition of property. For additional information about those transactions, applicable forms, the withholding certificate application process, the effects of U.S. income tax treaties with other countries on withholding, and more, please visit www.irs.gov.