

FREQUENTLY
ASKED QUESTIONS

*Foreigner's Tax Guide to
Selling U.S. Real Estate*



KAUFMAN | ROSSIN

Structuring and Tax Considerations for Foreign Investors Selling U.S. Real Estate

1. I am a foreign person selling U.S. real estate, do I need a taxpayer identification number?

There is no requirement for an individual taxpayer identification number (ITIN) in order to sell or transfer U.S. real estate. However, under the Foreign Investment in Real Property Tax Act (FIRPTA) rules, a seller will be, in most cases, subject to withholding upon the sale of U.S. real estate and therefore must submit certain information to the Internal Revenue Service (IRS).

The IRS requires all buyers and foreign sellers to provide their taxpayer identification number, names and addresses on withholding tax returns, applications for withholding certificates, notices of non-recognition and related documents. It will be to the seller's advantage to obtain an ITIN, as this number will ease the process of obtaining a tax refund in the circumstance where the withholding is actually higher than the actual income tax owed on the gain related to the sale/disposal. Kaufman Rossin is approved by the IRS as Certified Acceptance Agent and can assist foreigners with obtaining an ITIN. See our ITIN FAQ for more information.

2. What is FIRPTA and how does it affect a foreigner selling U.S. real estate?

The sale of U.S. real estate by a foreign individual or entity is subject to the Foreign Investment in Real Property Tax Act of (FIRPTA) income tax withholding. FIRPTA imposes a tax on foreign persons disposing of U.S. real property interests. Foreign persons (as defined by the IRS) selling U.S. real estate will face a withholding requirement of 15% of the sales price of U.S. property sold on or after February 17, 2016.

3. I am selling a U.S. property and am being told that I will be subject to a 15% tax withholding on the actual sales price. Is there an alternative?

Yes, the amount of tax that must be withheld from the transaction can be adjusted by requesting a withholding certificate from the Internal Revenue Service (IRS). Sellers can file an application requesting such certificate if they can prove that the actual maximum tax liability related to the gain on the disposition of the U.S. real property interest is lower than 15% of the sales price. If the IRS approves the application, the withholding may be reduced or eliminated. The IRS will generally act on these requests within 90 days from the date the application is received.

4. I own property through a U.S. business entity. Will the tax withholding under FIRPTA still apply during a sale?

Single-member limited liability companies (LLCs) and other forms of disregarded entities owned by foreign persons are subject to FIRPTA and thus subject to withholding upon the sale of U.S. real estate. U.S. corporations, multi-member LLCs, and U.S. partnerships selling U.S. real estate generally will not be subject to FIRPTA withholdings. However, please note that in some cases, these entities will have a withholding requirement. For example, U.S. partnerships are subject to withholding requirements under Section 1446 of the Internal Revenue Code for income allocated to foreign partners.

5. Who is responsible for the withholding?

When seller is a foreign individual, the buyer is the responsible party for withholding on such sale. When the seller is a U.S. business entity, such as a corporation or partnership, the business entity itself is the withholding agent. In these cases, withholding will not occur during the real estate closing but rather later, and it will occur at the entity level.

6. I am transferring property from my personal name to a newly formed U.S. business entity. Is the transfer subject to tax withholding?

Some transfers by foreign persons qualify for reorganization exemptions. However, the foreign person must comply with certain filing requirements required by Internal Revenue Code. (See Treasury Regulation 1.897-6T for examples and more guidance on this matter.) Sellers are responsible for determining if they qualify for an exemption to withholding for transfers of property from a foreign person to any type of entity. A certified public accountant with expertise in international tax can assist in complying with the filing requirements and complex non-recognition rules.

7. I am selling U.S. property owned by a foreign corporation. Is this transaction subject to FIRPTA?

Yes, the IRS considers a foreign corporation to be a foreign person and thus subject to FIRPTA rules. A 15% withholding tax will apply on the amount of the sale. However, it's important to note that applications for reduced withholding are also available to foreign corporations. A withholding certificate is a great way to reduce the burden of the withholding in the cases where the gain realized on the sale is lower than the 15% of the sales price that would normally need to be withheld.

A different scenario arises when a foreign corporation distributes U.S. real property interest to its shareholders. In that case, the foreign corporation must withhold at a rate of 35% on the gain it recognizes on the distribution.

Contact us to learn more



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