

Changes and Benefits

PATH Act

and FIRPTA

The Protecting Americans from Tax Hikes (PATH) Act created significant changes to the Foreign Investment in Real Property Tax Act (FIRPTA).

How did the PATH ACT change withholding requirements?

The PATH Act increased the FIRPTA base withholding rate from 10% to 15% of the amount realized on the sale of real property by a foreign person (the transferor). If the sales price does not exceed \$1,000,000, Real Property sold by a foreign person that is to be used as a residence by the buyer qualifies for a reduced rate of 10%. If the buyer is not using the property as a residence, the new 15% withholding rate is for all transactions. If the price is higher than \$1,000,000, the 15% withholding rate is applicable for all transactions.

What are the benefits?

The PATH Act benefits the real estate industry by doubling the maximum amount of stock ownership a foreign person may have in a real estate investment trust (REIT) from 5% to 10%. Another additional benefit is that the law permits certain foreign pension funds to invest in REITs without having FIRPTA withholding apply.

| Appropriate Withholding Tax Rate Under New Tax Law | YES | NO |
|--|-----|-----|
| Buyer Intends To Use Property as a Residence? | | |
| \$300,000 and Under | \$0 | 15% |
| \$300,001– \$1,000,000 | 10% | 15% |
| Over \$1,000,000 | 15% | 15% |



What are the guidelines buyers must follow when determining the withholding rate?

1. If the amount realized is \$300,000 (typically the sales price) or less, and the property will be used by the buyer as a residence (within current regulations), no amount is to be withheld or remitted to the IRS.
2. If the amount realized is greater than \$300,000 but does not exceed \$1,000,000 and the property will be used by the buyer as a residence, then the withholding rate is 10% of the entire amount realized.
3. If the amount realized exceeds \$1,000,000, then the withholding rate is 15% of the total consideration, regardless of how the property is used by the buyer.

NOTE: Other exceptions to withholding may apply.

Are there any obligations for FIRPTA withholding by the real estate agent or broker?

If you represent the buyer or seller of real property subject to FIRPTA withholding, you could be liable for the tax up to the amount of commission received in certain circumstances. We always recommend discussing your situation with a tax professional.

If you have additional questions about the PATH Act, please contact a tax professional or the IRS.

