



## The U.S. Treasury Releases New FIRPTA Regulations

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On February 17, 2016, the U.S. Treasury released [new regulations](#) (the New FIRPTA Regulations) that reflect changes that the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act) made to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), which was the subject of a prior [QuickStudy](#). Four provisions of PATH and the New FIRPTA Regulations are particularly noteworthy.

### Increased FIRPTA Withholding Rate.

Generally, FIRPTA requires foreign taxpayers to file and pay income tax on the gain resulting from the disposition of a United States real property interest (USRPI). To promote tax compliance, sellers of USRPIs have historically been required to withhold ten percent (10%) on gross proceeds. The PATH Act increased the FIRPTA withholding tax rate to fifteen percent (15%) of gross sales proceeds and the New FIRPTA Regulations now reflect this change in law.

### Foreign Pension Fund Exemption.

The PATH Act completely exempted qualified foreign pension funds investing in United States commercial real estate from FIRPTA taxation. The New FIRPTA Regulations address this change in law by providing that FIRPTA and the associated FIRPTA withholding tax does not apply to USRPIs held directly (or indirectly through one or more partnerships) by a qualified foreign pension fund provided that it presents a certificate of non-foreign status prior to a transfer of a USRPI. The New FIRPTA Regulations now clarify that a qualified foreign pension fund is not a foreign person for the purposes of FIRPTA.

### Restricted Cleansing Exception for REITs and RICs.

Previously, a domestic corporation could “cleansing” itself of a FIRPTA taint by disposing of all of the USRPIs that it held during the applicable testing period (generally, the prior five years) in taxable transactions. The PATH Act imposed a limitation on this so-called cleansing exception by providing that it does not apply to a corporation if it (or a predecessor) was a real estate investment trust or a regulated investment company during the applicable testing period (generally, the prior five years). This limitation is effective for dispositions that occur on or after December 18, 2015. The New FIRPTA Regulations reflect this change in law.

### FIRPTA Certificate Filing Location.

For several years it has been unclear whether the various FIRPTA certificates, statements, and elections that must be filed with the Internal Revenue Service (IRS) should be sent to the IRS service center in Philadelphia, PA or to the IRS service center in Ogden, UT. The New FIRPTA Regulations resolve this ambiguity by providing that all FIRPTA related filings should be sent to the Ogden, UT service center. The mailing address for this service center is “Ogden Service Center, P.O. Box 409101, Ogden UT 84409.”

For more information on the matters discussed in this Locke Lord QuickStudy, please contact the authors.

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