

Checklist: How to avoid FIRPTA withholding in a 1031 exchange

Use this checklist as a handy reference to FIRPTA filing and compliance regulations. For further explanation of FIRPTA, please read this article: <http://www.expert1031.com/pdfs/firpta.english.pdf>.

1. Determine if FIRPTA applies to you and your transaction.
 - Are you a **“Foreign Person”** selling a **“U.S. Property Interest”**?
 - Do any exceptions to FIRPTA withholding apply?
 - See **IRS Publication 515** [link: <http://www.irs.gov/pub/irs-pdf/p515.pdf>] or the **instructions to IRS form 8288** [link: <http://www.irs.gov/pub/irs-pdf/f8288.pdf>] for further explanation and definitions of these terms and exceptions.
2. If you are a Foreign Person, you must obtain a U.S. Taxpayer Identification Number (TIN) or from the IRS.
 - Individuals: file **IRS Form W-7** [link: <http://www.irs.gov/pub/irs-pdf/fw7.pdf>] to request a TIN.
 - Businesses: file **IRS Form SS-4** [link: <http://www.irs.gov/pub/irs-pdf/fss4.pdf>] to request an Employer I.D. Number (EIN).
3. Apply for a Withholding Certificate.
 - File **IRS Form 8288-B** [link: <http://www.irs.gov/pub/irs-pdf/f8288b.pdf>]
 - It may be possible to attach Form 8288-B to Form W-7 when applying for both a TIN and a Withholding Certificate. See instructions to Form 8288.
4. Notify the transferee (buyer) of your property that you have applied for a Withholding Certificate.
5. Prior to the closing of your property sale, enter into a 1031 exchange agreement with a Qualified Intermediary (such as The 1031 Exchange Experts) with the professional expertise to facilitate this kind of complex exchange. The Q.I. should take responsibility for proper compliance with FIRPTA withholding and filing requirements as a withholding agent or transferee.
6. Complete your exchange by buying new property though your Q.I.
 - Make sure the value of your replacement property (or properties) is equal or greater in value than the property you sold.
 - Make sure all net proceeds of your sale are applied to the purchase of replacement property in your exchange.
7. Report your sale and exchange to the IRS in a U.S. tax return for the tax year of your sale.

Note: This information is provided as a service to our clients, and should not be used in place of independent professional advice. Always consult with your legal, tax, or financial advisor if you believe FIRPTA regulations may apply to your transaction.