

FIRPTA UPDATE

FIRPTA WITHHOLDING INCREASED TO 15%

EFFECTIVE FOR CLOSINGS¹ ON OR AFTER FEBRUARY 17, 2016²

On December 18, 2015, President Obama signed into law the "Protecting Americans from Tax Hikes Act of 2015" (the "**Act**"), which makes significant changes to the Foreign Investment in Real Property Tax Act of 1980 ("**FIRPTA**").³ The Act increases the FIRPTA withholding rate from 10% to **15%** under certain circumstances.

General highlights of changes to the FIRPTA law relating to transfer of real property by a foreign seller⁴:

Sales Price over \$1,000,000:

- ▶ If the sales price is over \$1,000,000, then **15%** FIRPTA Withholding applies.

Sales Price over \$300,000 up to \$1,000,000:

- ▶ If the sales price is over \$300,000 and does not exceed \$1,000,000⁵, and the buyer will be using the property as his or her residence, then 10% FIRPTA Withholding applies.
- ▶ If the sales price is over \$300,000 and does not exceed \$1,000,000, and the buyer will **NOT** be using the property as his or her residence, then **15%** FIRPTA Withholding applies.

Sales Price \$300,000 or less:

- ▶ If the sales price is \$300,000 or less, and the buyer will be using the property as his or her residence, then FIRPTA Withholding does **NOT** apply (0% Withholding).⁶
- ▶ If the sales price is \$300,000 or less, and the buyer will **NOT** be using the property as his or her residence, then **15%** FIRPTA Withholding applies.

¹ Closing in Hawaii is generally the date of recordation and disbursement of funds.

² Effective date of this FIRPTA provision of the Act "shall apply to dispositions after the date which is 60 days after the date of the enactment of the Act." The date of enactment of the Act is December 18, 2015.

³ The Act includes other significant changes to FIRPTA and other tax laws which are not addressed in this material.

⁴ Subject to any FIRPTA exemptions or exclusions under the Internal Revenue Code. "Foreign seller" is a general reference to nonresident alien individual or foreign corporation and is not a defined term under the Internal Revenue Code.

⁵ Sales price can be exactly \$1,000,000.00 but may not exceed this amount.

⁶ This rule pertaining to \$300,000 or less sales price is an existing provision under the Internal Revenue Code 26 USC 1445(b)(5). Under this specific provision (26 USC 1445(b)(5)), a property is "acquired for use as a residence if you or a member of your family has definite plans to reside in 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" and the buyer must be an individual.

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