



Foreign Investment in Real Property Tax Act (FIRPTA)

The Foreign Investment in Real Property Tax Act (FIRPTA) was enacted by Congress in 1980 as a means to tax the gains on non-U.S. residents' income from the sale of U.S. real property. FIRPTA acts as a significant impediment to foreign investment in U.S. infrastructure and real estate at a time when the country's infrastructure needs are greater than ever.

FIRPTA limits the amount that foreign investors are willing and able to invest in both U.S. Real Estate Investment Trusts (REIT). As enacted in 1980, shareholders of a listed real estate company were not subject to FIRPTA if they owned less than 5 percent of the company during the five years before they sell their stock, but above that threshold, foreign investors faced an unnecessary tax liability. FIRPTA also does not apply when a foreign investor sells domestically controlled REIT shares, so long as the majority of the shares are owned by U.S. taxpayers.

After years of reform, efforts championed by Ways & Means Chairman Kevin Brady (R-TX) and Committee member Joe Crowley (D-NY) and Senators Mike Enzi (R-WY) and Robert Menendez (D-NJ), on Dec. 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) that accomplished these significant FIRPTA reforms:

1. Increases (from 5 percent to 10 percent) the ownership stake that a foreign investor can take in a U.S. publicly-traded REIT without triggering FIRPTA liability.
2. Extends the relief to interests in REITs held by foreign collective investment vehicles that meet certain requirements.
3. Allows foreign pension funds and retirement funds to invest in U.S. REITs and real estate without incurring tax liability under FIRPTA.
4. Modify the rules for determining whether an entity is domestically controlled for FIRPTA purposes.

ARDA Position

ARDA strongly supports eliminating or breaking down outdated tax barriers to inbound investment. FIRPTA Reform will help mobilize private capital for real estate and infrastructure projects, such as roads and bridges, while driving growth in construction and related jobs.