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U.S. Foreign Investment in Real Property Tax Act (FIRPTA) Introduction

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorized the United States to tax foreign persons on dispositions of U.S. real property interests.

A disposition means “disposition” for any purpose of the Internal Revenue Code. This includes but is not limited to a sale or exchange, liquidation, redemption, gift, transfers, etc. Persons purchasing U.S. real property interests (transferees) from foreign persons, certain purchasers' agents, and settlement officers are required to withhold 15% (10% for dispositions before February 17, 2016) of the amount realized on the disposition (special rules for foreign corporations).

In most cases, the transferee/buyer is the withholding agent. If you are the transferee/buyer, you must find out if the transferor is a foreign person. If the transferor is a foreign person and you fail to withhold, you may be held liable for the tax. For cases in which a U.S. business entity such as a corporation or partnership disposes of a U.S. real property interest, the business entity itself is the withholding agent.

The transferee must deduct and withhold a tax on the total amount realized by the foreign person on the disposition. The rate of withholding generally is 15% (10% for dispositions before February 17, 2016).

The amount realized is the sum of:

1. The cash paid, or to be paid (principal only);
2. The fair market value of other property transferred, or to be transferred; and
3. The amount of any liability assumed by the transferee or to which the property is subject immediately before and after the transfer.

If the property transferred was owned jointly by U.S. and foreign persons, the amount realized is allocated between the transferors based on the capital contribution of each transferor.

[Reference]:

<https://www.irs.gov/individuals/international-taxpayers/firpta-withholding>



If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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