



THE ULTIMATE GUIDE

Tax and Ownership for Foreign Owners of U.S. Real Estate

FIRPTA, estate tax, deductions, and the structures that change your outcome — for foreign nationals and U.S. expats



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About the Author

[Robert Chadwick](#) is the CEO of America Mortgages and founder of Global Mortgage Group (GMG), a cross-border mortgage and private credit platform operating across more than 23 jurisdictions. His work focuses specifically on the financing gap facing foreign nationals, U.S. expats, and international investors seeking to buy, refinance, or build a portfolio of U.S. real estate.

“The rental income tax bill is rarely the real risk. The estate tax exposure most foreign owners have never heard of is the one that can actually devastate a family.”

— Robert Chadwick



Who This Guide Is For

This is a guide to foreigners, expats from the U.S, and nonresident foreign property owners of properties in the U.S. This guide will discuss the application of [U.S. taxation laws](#) on such people. Tax rates and other issues including tax elections, methods of ownership and planning opportunities will be discussed. The effect of such matters can significantly affect the tax result. Estate tax liability becomes even worse when a family member dies.

This guide is educational, not tax or legal advice.

Tax law is fact-specific, treaty-dependent, and changes over time. Every strategy discussed here needs to be reviewed with a qualified cross-border tax attorney or CPA before you rely on it — the cost of that advice is almost always trivial compared to the cost of getting an estate or FIRPTA position wrong. Figures reflect general U.S. federal tax rules current as of publication and do not account for your specific country's treaty position or your individual circumstances.

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1. How the U.S. Taxes Foreign Owners of Rental Income

There is an important tax election available to a nonresident receiving rental income from U.S. real estate. This is the option of using the default method of taxation or electing to receive a lower tax burden.

The default: 30% withholding on gross rental income

If there is no election, U.S. rental income paid to a foreign individual is considered FDAP income. The tax rate on such income is 30%, and it is applied to gross rent. There are no deductions for interest on mortgages, real estate taxes, management fees, depreciation, and repairs. If the rental income is \$3,000 per month, \$900 can be withheld each month.

The election that changes everything: IRC §871(d)

Most foreign owners never make this election, and it can be the single most valuable tax decision in this entire guide.

Under IRC §871(d), a nonresident alien can elect to treat rental income as “effectively connected” with a U.S. trade or business. That election allows the owner to be taxed on net income — after mortgage interest, property tax, insurance, depreciation, management fees, and repairs — at the same graduated rates a U.S. taxpayer would pay, rather than 30% of gross rent with no deductions. For a leveraged, well-managed rental property, this frequently results in little or no U.S. tax owed at all in the early years, once depreciation and interest are factored in.

This comes with the cost that this election usually necessitates filling out form 1040-NR annually. Tax planning is also necessary. A cross-border CPA can weigh up both elections with respect to your property. They can also look at your financing structure and tax consequences.



2. FIRPTA: Withholding on the Sale of U.S. Property

FIRPTA makes it mandatory for a buyer to withhold tax when he purchases a property in the U.S. from a non-U.S. citizen. The amount to be withheld is dependent upon the purchase price. The buyer remits this amount to the IRS. FIRPTA withholding serves as the means of collection of taxes; it is not the tax itself. The seller is required to file the U.S. tax return. He calculates the amount of tax due on the gain.

Sale Price and Use	Withholding Rate
\$300,000 or less, buyer intends personal residence use	0% — no withholding required
\$300,001–\$1,000,000, buyer intends personal residence use	10% of gross sale price
Over \$1,000,000, or property not intended as buyer's residence	15% of gross sale price

The FIRPTA withholding tax is calculated on the gross selling price and not on the realized gain. It can even be more than the actual liability of the seller. When a seller anticipates making no gain or even having losses, he or she can file for reduced withholding tax. The form used in such applications is 8288-B. The application is supposed to be made before the closing date. The IRS can then approve a reduced amount or even a waiver.

ILLUSTRATIVE EXAMPLE

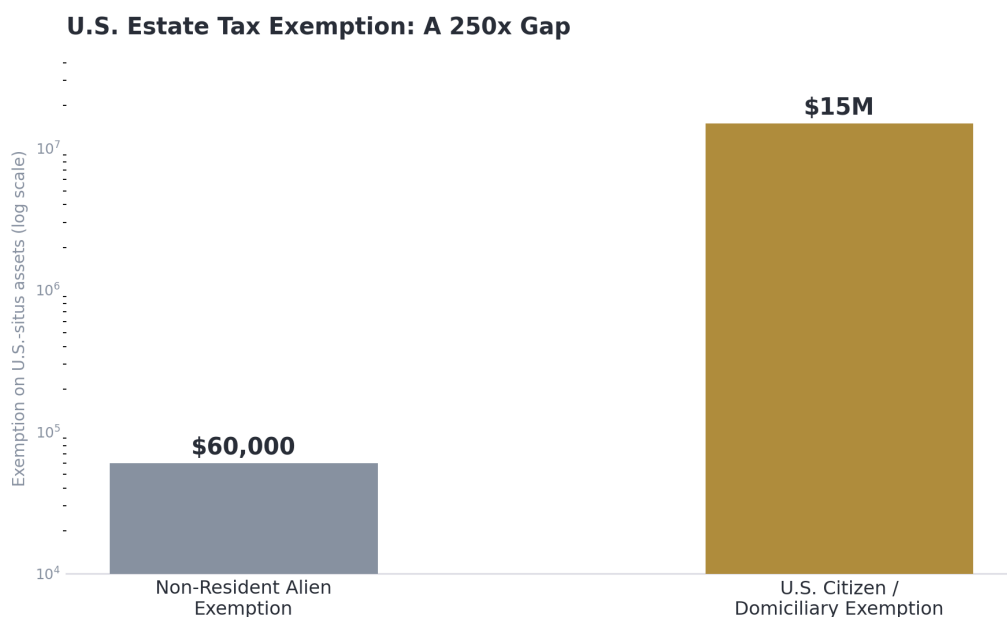
Priyanka Deshmukh — Mumbai, India

Priyanka sold a Chicago condo for \$520,000 with a relatively small gain after years of depreciation and selling costs. Default FIRPTA withholding at 15% would have tied up \$78,000 with the IRS for months.

Her CPA filed Form 8288-B before closing, and the IRS approved a reduced withholding amount closer to her actual estimated tax liability — freeing up the bulk of her sale proceeds at closing rather than months later via refund.

3. The U.S. Estate Tax Trap Most Foreign Owners Don't Know About

This is one of the most significant concerns within this guide. It is also one of the most disregarded issues. It is unrelated to rental income tax.



U.S. estate tax exemption on U.S.-situated assets, non-resident alien vs. U.S. citizen/domiciliary, 2026.

The U.S. is able to levy estate tax on assets of non-residents that have a U.S. situs at the time of death. U.S. real property constitutes U.S.-situated property. It is irrespective of where the individual resides or banks, as well as irrespective of citizenship status. The regular exemption for non-resident aliens amounts to \$60,000. This figure has stayed the same since 1988 and is not indexed for inflation. For U.S. citizens and domiciliaries, the exemption amount per person is \$15 million as of 2026.

A concrete example of how this plays out:

A foreign national who owns a \$2 million U.S. property outright, with no other U.S. assets, and passes away without planning around this issue, faces U.S. federal estate tax on roughly \$1.94 million of value (the property's value above the \$60,000 exemption), at graduated rates up to 40%. That can mean several hundred thousand dollars owed to the IRS, due within nine months of death, before the estate can even be settled — and before a U.S. bank or transfer agent will typically release the asset, pending an IRS transfer certificate.

This may be done in respect to a \$2 million vacation property. It could also be done with respect to a rental property. This may be the case with regard to a home bought for a child studying at a US university. The point to note is the possession of US-situs real estate.

4. Reducing Estate Tax Exposure: Structures and Trade-Offs

The exposure may prove to be of great significance. The foreign owner realizes it much later. It is important for them to know the major structuring alternatives before making the purchase. There are certain pros and cons associated with each alternative.

Owning directly, in your own name

Simplest to set up and finance, but leaves the full estate tax exposure described above fully intact.

A standard U.S. LLC (disregarded entity)

A typical LLC in the U.S. offers liability protection. At the same time, it is often used in property investments financing. However, a single-member LLC does not offer an estate tax shelter for U.S. real estate properties. An LLC will be disregarded for tax purposes in the U.S. The Internal Revenue Service will look beyond the LLC and see the actual real estate property. This continues to be one of the biggest misconceptions among foreigners.

A foreign or domestic corporate “blocker” structure

The ownership of U.S. real estate by means of a corporation will lead to estate tax structuring. It will mean the involvement of a foreign corporation; a U.S. holding company can also lie below it. The arrangement will turn the ownership of real estate into shares held in the corporation. Such shares will have a specific estate tax structuring that will help avoid or minimize some types of estate taxes. However, structuring in a corporation will cause additional expenses and complications. In particular, there will be an additional corporate taxation on rental income and gains on the sale. There will be individual benefits in terms of long-term capital gains after the sale.

A trust structure

Some types of trusts may also be compatible with a corporate blocker. They may offer additional advantages with regard to estate and succession planning. Such structures will also serve better for larger portfolios. They may help with multi-generation planning too. It is a highly specialized area. Consult an experienced cross-border estate planner.

There is no single right answer here.

The right structure depends on property value, your country of residence and its treaty position, whether the property is a personal residence or a pure investment, and your family's broader estate plan. A \$300,000 rental and a \$5 million vacation compound call for very different structuring

conversations — have that conversation with a cross-border estate planning attorney before you close, not after.

5. Tax Treaties and How They Can Help

The U.S. has estate and gift tax treaties with many other nations such as Canada, the U.K., Germany, and France. Such treaties make a substantial difference to the regular exemption amount of \$60,000. The Canada-U.S. tax treaty makes use of a prorated unified credit based on the comparison of U.S. situs property with worldwide property.

Not all countries have treaties on the estate tax with the U.S. There are differences from country to country in what is provided for by the treaties. The laws are country-specific. You must consult a cross-border tax adviser before relying on the \$60,000 exemption.

6. Depreciation and Legitimate Deductions

Depreciation can be beneficial for property owners who have opted for net income option. Typically, depreciation on residential rental property occurs over a period of 27.5 years. In this way, depreciation serves as a deduction from your taxable rental income every year.

- Taxable income from rentals can be reduced by standard depreciation.
- Cost segregation can help in faster depreciation for eligible parts of the property. It can help in higher deductions faster.
- Interest payments, property taxes, insurance, management costs, and repairs are deductible through the net income approach.

The benefit of depreciation deductions lowers your property's basis. The impact of that is on your gains from selling. There is also an impact on the FIRPTA tax withholding rate and the recapture of depreciation. Remember that depreciation is just a temporary tax advantage.

7. 1031 Exchanges for Foreign Investors

One of the misconceptions regarding 1031 exchange is that foreign individuals or companies will not be able to make use of 1031 exchange. This is not the case because section 1031 allows such transactions irrespective of citizenship or residence. Foreign parties are eligible for making use of 1031 exchanges for their qualifying investment properties.

The FIRPTA withholding can likewise be avoided or reduced by conducting an appropriately structured 1031 exchange. Such a transaction has the effect of deferring any taxable gain. The withholding can thus be reduced during the closing process. The exchange needs to be done in coordination with the intermediary.

8. ITIN: What It Is and Why You Need One

An ITIN (Individual Taxpayer Identification Number) is a tax-processing number that is provided by the IRS. It is for individuals who have U.S. tax returns and are unable to provide a Social Security number. For most

foreigners owning property, an ITIN is needed for some tax filing. An ITIN may be required when making a net income rental election. In addition, an ITIN is required for claiming a FIRPTA refund. Furthermore, an ITIN will help to reduce your withholding amount. The application form for an ITIN is W-7.

9. State-Level Taxes to Consider

Taxation laws of the federal government are just a small portion of the puzzle. Taxation laws of the state governments vary greatly in terms of rental income, capital gains, and property taxes. For example, the state of Florida and Texas do not have an income tax. This makes it easier to tax rental income than, say, California or New York that both have income taxes.

10. Common Mistakes and Misconceptions

- Considering 30% withholding of gross rental income is the only solution. Net income election will lead to lower tax liability.
- Discovering the existence of a \$60,000 U.S. estate tax exemption after the death of a family member. Anticipate this liability in advance.
- Considering a one-person LLC will safeguard U.S. property from estate tax. This may not be the case.
- Not investigating whether there is an estate tax treaty between the U.S. and one's home country.
- Considering foreign investors cannot benefit from the 1031 exchange. This is generally not the case.
- Waiting till the closing week to apply for ITIN/FIRPTA reduced withholding certificate.

11. Frequently Asked Questions

How is U.S. rental income taxed for a foreign owner?

The rental income earned by a non-U.S. person is subject to 30% withholding tax on gross rent. There are no deductions available. However, IRC §871(d) allows the foreign owner to opt for net income taxation. Deductions are permitted under this system and the income is taxable at graduated tax rates.

What is FIRPTA and how much is withheld when I sell?

According to FIRPTA, there will be withholding of a portion of the gross sales price of the property by the buyer from the seller. This is normally at the rate of 15 percent. Lower prices are usually applicable for some of the properties to pay at 10% and 0%. The reduced rates apply depending on the buyer's purpose.

Do foreign owners of U.S. real estate pay U.S. estate tax?

Yes, non-resident aliens usually have an exemption of \$60,000 on situs property that is located in the U.S., which includes U.S. real estate. The U.S. citizens and residents have an exemption of \$15 million from the year 2026.

Does an LLC protect foreign owners from U.S. estate tax?

No, not automatically. For U.S. tax purposes, an ordinary single-member LLC is generally disregarded. The IRS will pierce the LLC and look at the underlying real property. The property continues to be a situs asset of the U.S. and, therefore, is subject to estate tax. However, there are corporate blockers that can alter this classification.

Can foreign nationals use a 1031 exchange?

Yes, Section 1031 does not limit eligibility by citizenship or residency status. Foreign nationals may typically participate in 1031 exchange transactions. They have to adhere to the same requirements that apply to U.S. individuals.

What is an ITIN and do I need one?

ITIN refers to tax identification numbers of persons who file their tax returns in the U.S. The tax identification numbers are for persons who cannot obtain the social security number. Foreign property owners will require the ITIN for filing their tax returns in cases such as the net income rental election. The ITIN is also used for claiming a FIRPTA refund.

Are there countries with better U.S. estate tax treatment than the standard \$60,000 exemption?

Yes, for people who are residents of some treaty countries, there is a better rate of taxation of their estates. One of those countries is Canada. It uses a pro-rated unified credit, which may be better than the usual exemption amount of \$60,000.

12. About This Guide

This guide is an independent educational document regarding taxation of foreign owned property in the U.S. The manual has taken advantage of structuring knowledge from America Mortgages. [America Mortgages](#) is the American mortgage branch of [Global Mortgage Group](#).

This is not tax or legal advice.

Every figure and rule referenced reflects general U.S. federal tax law current as of publication and does not account for your specific treaty position, state of residence, or individual circumstances. Tax law changes, and the consequences of getting FIRPTA or estate tax planning wrong are significant. Engage a qualified cross-border CPA and estate planning attorney before making any decision described in this guide.