



Professional Corporation



FIRPTA for Canadians:

The 2025 Guide to Selling U.S.
Property Without Losing More
Than You Should

*The Ultimate Guide to Selling U.S.
Property as a Canadian Non-Resident*



Table of contents

Introduction: Selling U.S. Property as a Canadian? Here's Why FIRPTA Matters

Chapter 1: Understanding FIRPTA – The Basics Every Canadian Seller Must Know

Chapter 2: Who Is Subject to FIRPTA? Determining Your Non-Resident Status

Chapter 3: FIRPTA Withholding Rates and Exceptions

Chapter 4: Filing for a FIRPTA Withholding Certificate

Chapter 5: Forms You'll Encounter (and What Each One Does)

Chapter 6: FIRPTA Deadlines & Timelines

Chapter 7: Common FIRPTA Pitfalls for Canadians

Chapter 8: Getting a FIRPTA Refund: What to File and When

Chapter 9: Sell Confidently with a Clear Plan

Introduction

Selling U.S. Property as a Canadian?

Here's Why FIRPTA Matters

Selling real estate in the United States (U.S.) as a Canadian, who is a non-resident of the U.S. is not as simple as signing the deed and collecting your cheque.

Instead, the U.S. tax system has a special rule you need to navigate — the Foreign Investment in Real Property Tax Act (FIRPTA).

FIRPTA generally requires the buyer (or sometimes the closing agent) to withhold 15% of the gross sale price when a foreign person sells U.S. real property.

This withholding is not the final tax — it's a security deposit for the IRS, ensuring they receive any U.S. tax owed.

While the intention of FIRPTA is to prevent tax evasion, in practice it often results in Canadians overpaying upfront and waiting months for a refund.

For example:

Imagine you sell your Florida condo for USD \$500,000. Under FIRPTA, the default withholding is \$75,000 — even if your actual U.S. tax liability is only \$12,000. Without proactive steps, you could be left waiting several months for the IRS to return the difference.

This guide was created to help you understand FIRPTA, plan ahead, and keep more of your sale proceeds in your pocket.

You'll learn:

- Who is affected by FIRPTA
- How to calculate withholding and apply for a reduction;
- How to avoid common mistakes that delay or cost you money; and
- Key treaty benefits for Canadians under the Canada–U.S. Tax Treaty.





Whether you're a snowbird selling a vacation home, a real estate investor cashing out, or a Canadian inheriting U.S. property, these details **will help you navigate FIRPTA confidently and legally.**

 **Key Insight:**

FIRPTA is not an extra tax — it's a prepayment of potential U.S. tax due. The actual tax liability is calculated when you file your U.S. nonresident tax return.



CHAPTER 1

Understanding FIRPTA in 2025

If you're a Canadian selling U.S. real estate in 2025, there's a good chance you've already heard about the Foreign Investment in Real Property Tax Act—better known as FIRPTA—but maybe not in the most pleasant way.

Often, Canadians learn about FIRPTA at the worst possible time: right at closing, when they realize up to 15% of their sale price will be withheld by the buyer and sent to the IRS before they ever see a dollar of their proceeds.

FIRPTA isn't a penalty—it's a withholding tax, much like when an employer withholds income tax from a paycheck. The difference? FIRPTA applies to the sale of U.S. real property by a U.S. non-resident alien (which, in IRS terms, includes Canadians who are not U.S. persons). This withholding is a prepayment toward your actual U.S. tax bill, which is determined later when you file a U.S. nonresident income tax return.

What is FIRPTA and Why Does It Matter to Canadians?

Why FIRPTA Exists?

FIRPTA was introduced in 1980 after the U.S. government noticed a recurring problem: Foreign investors—many of them Canadians—were buying U.S. properties, selling for a profit, and then leaving the country without paying U.S. capital gains taxes. Since the IRS had no practical way to chase non-resident sellers after the sale, millions in tax revenue went uncollected.

To fix this, FIRPTA shifted the responsibility from the seller to the buyer. The buyer now acts as the “withholding agent” and is legally obligated to hold back a portion of the purchase price and send it directly to the IRS.

In 2025, FIRPTA continues to be a non-negotiable part of selling U.S. property for many Canadians. The general rule is:

- Standard rate: 15% of the gross sale price (not just the gain)
- Possible reduced rate: 10% or even 0%, but only if very specific conditions are met (which we'll cover in Chapter 3)
- Applies to: Residential property, commercial property, land, and even certain shares in U.S. real property holding companies

This means that if you sell your Florida vacation condo for USD \$500,000, the buyer will typically withhold \$75,000 and send it to the IRS within 20 days of closing. Only after filing your U.S. tax return will you know if you're due a refund.

Who is Considered a “Foreign Person” Under FIRPTA?

Under FIRPTA, a “foreign person” is defined as a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, or a foreign estate. Essentially, this includes any individual or entity that is not classified as a U.S. person for tax purposes. U.S. citizens, resident aliens, and domestic entities such as corporations, partnerships, and trusts are not considered foreign persons under FIRPTA.

Key Changes and Considerations for 2025

While the fundamental structure of FIRPTA hasn’t changed since 2016 (when the withholding rate increased from 10% to 15%), there are ongoing updates to:

- IRS processing times for withholding certificates and refunds;
- Documentation requirements for ITIN applications; and
- Enforcement focus on buyers who fail to remit withheld funds.

In 2025, processing delays at the IRS remain a significant challenge. Refunds can often take 6–12 months to arrive after filing, and ITIN applications often take 8–12 weeks—even longer during peak tax season.

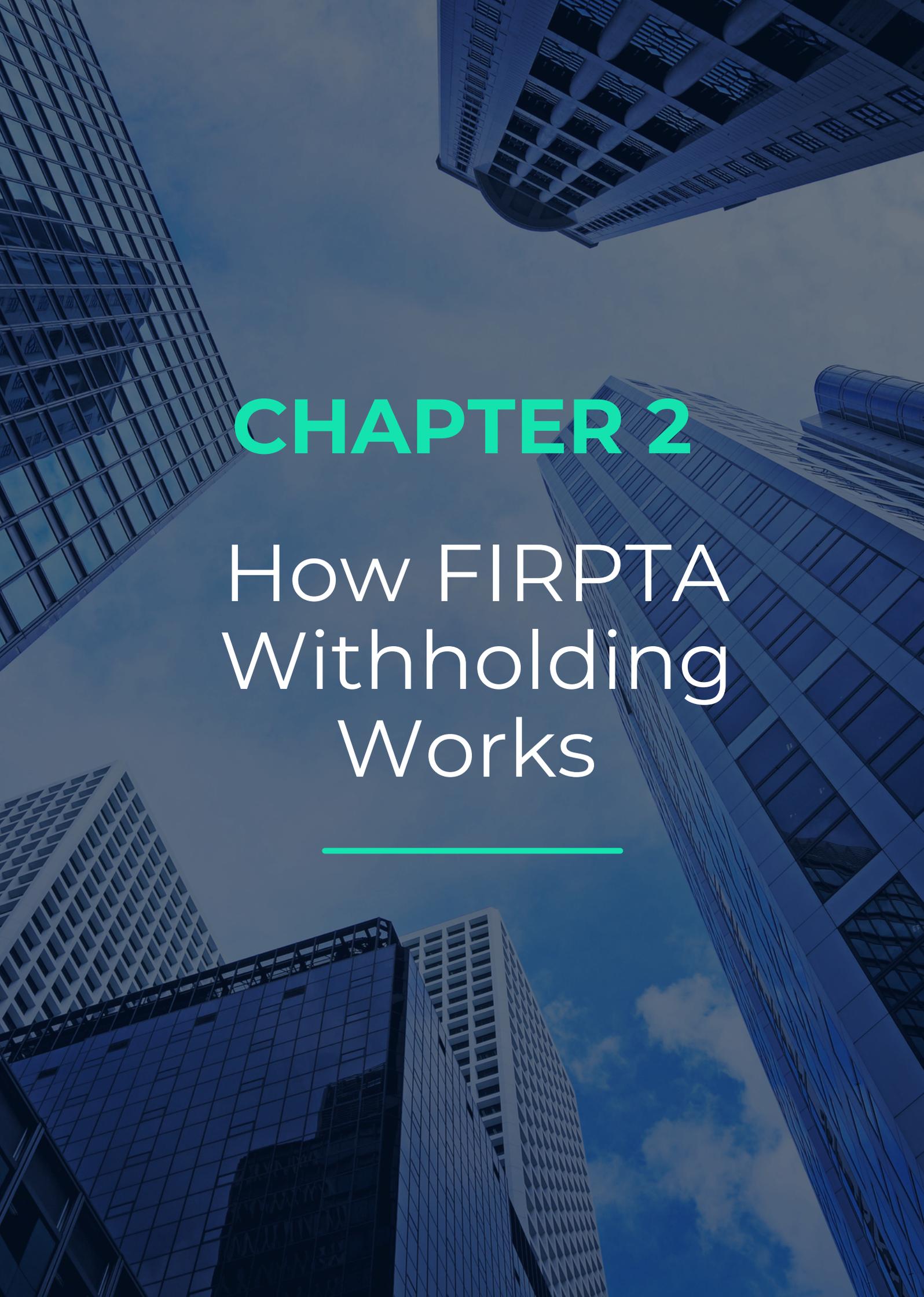
Why You Need to Understand FIRPTA Before Selling

Failing to plan for FIRPTA can:

- Delay your closing
- Tie up a large chunk of your equity with the IRS for months;
- Lead to lost refunds if forms are incomplete or deadlines are missed; and
- Cause headaches on your Canadian tax return if records aren’t properly kept

By learning how FIRPTA works, the rates, the exceptions, and the forms you’ll need, you can minimize the disruption to your sale proceeds and keep more of your money working for you.

FIRPTA is not something you can “opt out of” as a Canadian selling U.S. property—it’s a mandatory withholding system. However, with the right preparation and strategy, you can reduce withholding, speed up refunds, and avoid costly mistakes.



CHAPTER 2

How FIRPTA Withholding Works



The Big Picture

When a Canadian sells U.S. property, FIRPTA requires the buyer to withhold a set percentage of the gross sale price — not the profit — and send that money to the IRS.

Think of it as a security deposit for taxes: the IRS holds it until your actual U.S. tax liability is calculated after the sale.

STEP-BY-STEP: FROM CONTRACT TO IRS PAYMENT

✔ Step 1 – Sales Agreement Signed

- You accept an offer on your U.S. property.
- FIRPTA automatically applies if you are a non-U.S. resident for tax purposes.
- Your real estate agent or escrow officer will flag the need for FIRPTA withholding.

✔ Step 2 – Determine the Withholding Rate

- Standard rate = 15% of gross sale price
- Possible reduced rate = 10% or 0% (if buyer intends to use the property as a primary residence and the price falls within certain limits — see Chapter 3).
- This determination is made early so all parties know how much will be withheld at closing.

✔ Step 3 – Identify the Withholding Agent

- The buyer is legally the withholding agent, but they usually delegate the work to the escrow company or closing attorney.
- The withholding agent is responsible for calculating, collecting, and sending the funds to the IRS.

✔ Step 4 – Closing Day

- The withholding amount is taken out of your proceeds before you receive the balance.
- Example:
 - Sale price: \$600,000
 - FIRPTA rate: 15%
 - Amount withheld: \$90,000
 - Net proceeds to you (before other closing costs): \$510,000

✔ Step 5 – Submission to the IRS

- The withholding agent must file Form 8288 (U.S. Withholding Tax Return for Dispositions by Foreign Persons) along with the payment to the IRS within 20 days of closing.
- Form 8288-A (Statement of Withholding) is also sent; the IRS will stamp it and return a copy to you as proof of payment.

| Action | Who Does It? | Deadline |
|--|----------------|--|
| Close the sale | Buyer & Seller | Day 0 |
| File Form 8288 + send payment to IRS | Buyer / Escrow | Within 20 days of closing |
| IRS stamps and returns Form 8288-A | IRS | Often 3–6 months later |
| File U.S. Tax Return (Form 1040NR) to claim refund | Seller | By April 15 of the year after the sale |

Why Gross Sale Price Matters

One of the most frustrating parts of FIRPTA for Canadians is that the withholding is based on gross sale price not the actual gain or profit.

That means:

- Selling at a loss? Still withheld.
- Breaking even? Still withheld.
- The IRS prefers to collect first and refund later, rather than risk nonpayment.

Example: Selling at a Loss

Let's say you bought a U.S. rental property for \$650,000 in 2018 and sell it in 2025 for \$600,000.

- Sale price: \$600,000
- FIRPTA withholding (15%): \$90,000
- Actual gain/loss: You lost \$50,000, so your U.S. tax liability is \$0.

In this case, the only way to get that \$90,000 back is by filing a U.S. tax return with proof of your loss.

You can also apply before closing for a withholding certificate (Form 8288-B) to reduce or eliminate the amount withheld, see Chapter 8.

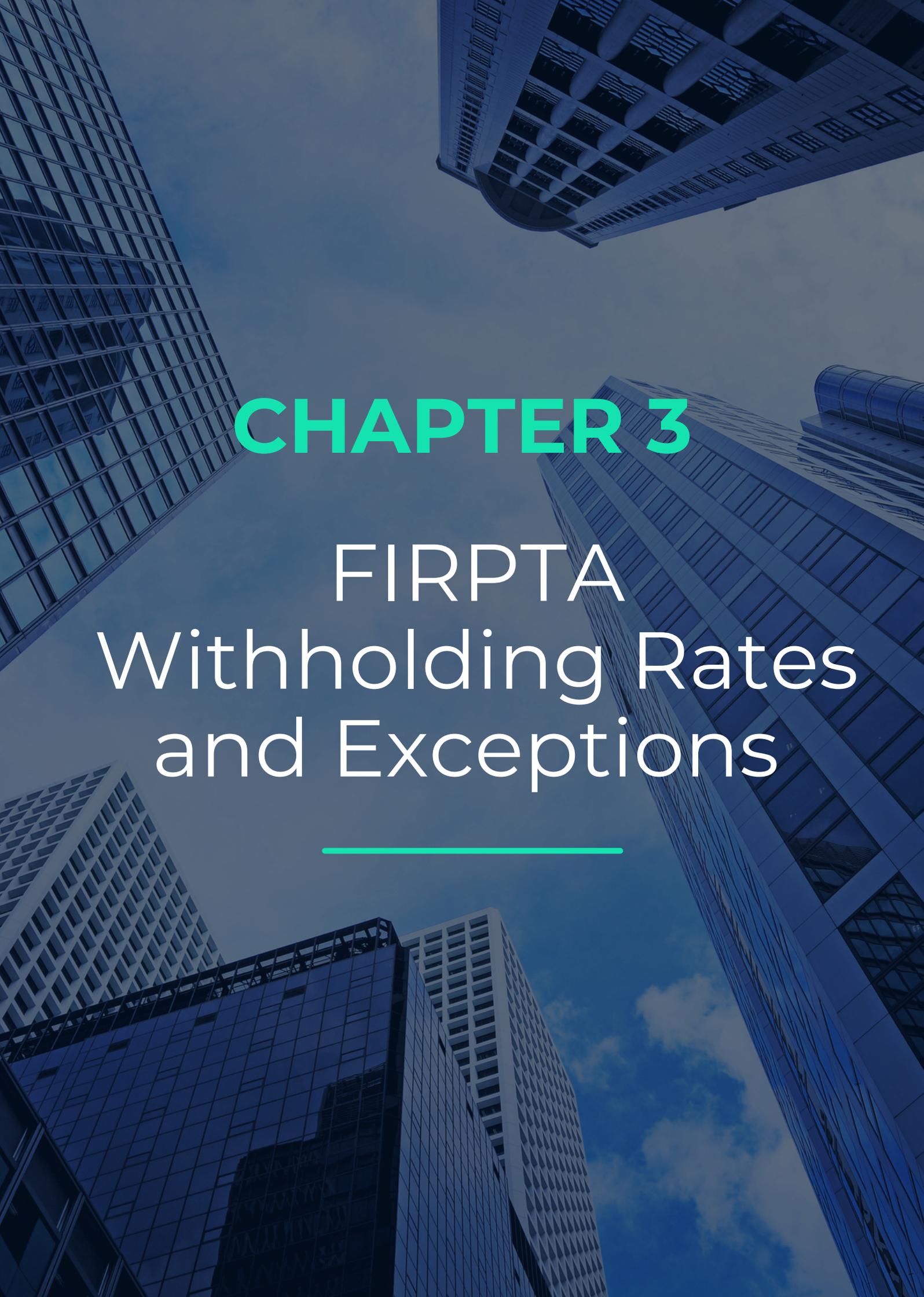
What Happens if the Buyer Doesn't Withhold?

If the buyer fails to withhold when required:

- The buyer — not you — becomes liable for the tax, interest, and penalties.
- This is why most buyers insist that FIRPTA is adequately handled — it protects them from IRS trouble.
- As the seller, you could still face delays in proving your withholding was done correctly when filing for a refund.

Key Challenges in 2025

- IRS Delays: Refunds can take up to 12 months if documentation is incomplete.
- ITIN Processing: Without an Individual Taxpayer Identification Number, the IRS will not process your return or issue a refund.
- Incorrect Forms: Small mistakes on Forms 8288 or 8288-A can cause months of extra waiting.



CHAPTER 3

FIRPTA Withholding Rates and Exceptions

When you sell U.S. real property as a Canadian non-resident, FIRPTA requires the buyer to withhold a percentage of the sales price and remit it to the IRS. The default rate is 15% of the gross sale price—not the profit.

This means that if you sell for USD \$500,000, the withholding would be USD \$75,000, even if your profit was far less.

Standard FIRPTA Withholding Rate

- 15% of the total sales price
- Applies to most transactions involving a non-U.S. seller
- Calculated on gross proceeds, not the net gain

Example:

- Sale Price: USD \$450,000
- Buyer intends to use as a personal residence
- FIRPTA withholding rate: 10%
→ USD \$45,000 withheld (instead of \$67,500)

Exceptions and Reduced Rates

A. Personal Residence Exception (Up to USD \$300,000)

- If the buyer intends to use the property as a personal residence and the purchase price is USD \$300,000 or less, FIRPTA withholding can be completely waived.
- Criteria:
- Buyer must sign an affidavit confirming intent to use the property as a primary residence for at least 50% of the time in the first two years
- Applies only if the price is \leq USD \$300,000

B. Reduced Rate for Personal Residence Over USD \$300,000 but \leq USD \$1,000,000

- If the purchase price is above \$300,000 but not more than \$1,000,000, and the buyer intends to use it as a personal residence, the withholding rate is reduced from 15% to 10%.

C. Withholding Certificate Reduction

- If your actual tax liability will be significantly lower than 15% of the sale price, you can apply for an IRS Withholding Certificate (covered in Chapter 4). This allows the buyer to withhold less than the standard rate.





CHAPTER 4

Filing for a FIRPTA Withholding Certificate

What Is a FIRPTA Withholding Certificate?

A FIRPTA Withholding Certificate is an official IRS approval that allows the withholding to be reduced or eliminated before funds are sent to the IRS.

WHY APPLY FOR ONE?

- Keep more cash at closing
- Avoid waiting months for a refund
- Match withholding to your actual tax owed

ELIGIBILITY

You can apply if:

- Your actual tax liability is less than the standard withholding amount
- The sale qualifies for an exception under U.S. tax law
- You are selling at a loss

STEP-BY-STEP APPLICATION PROCESS

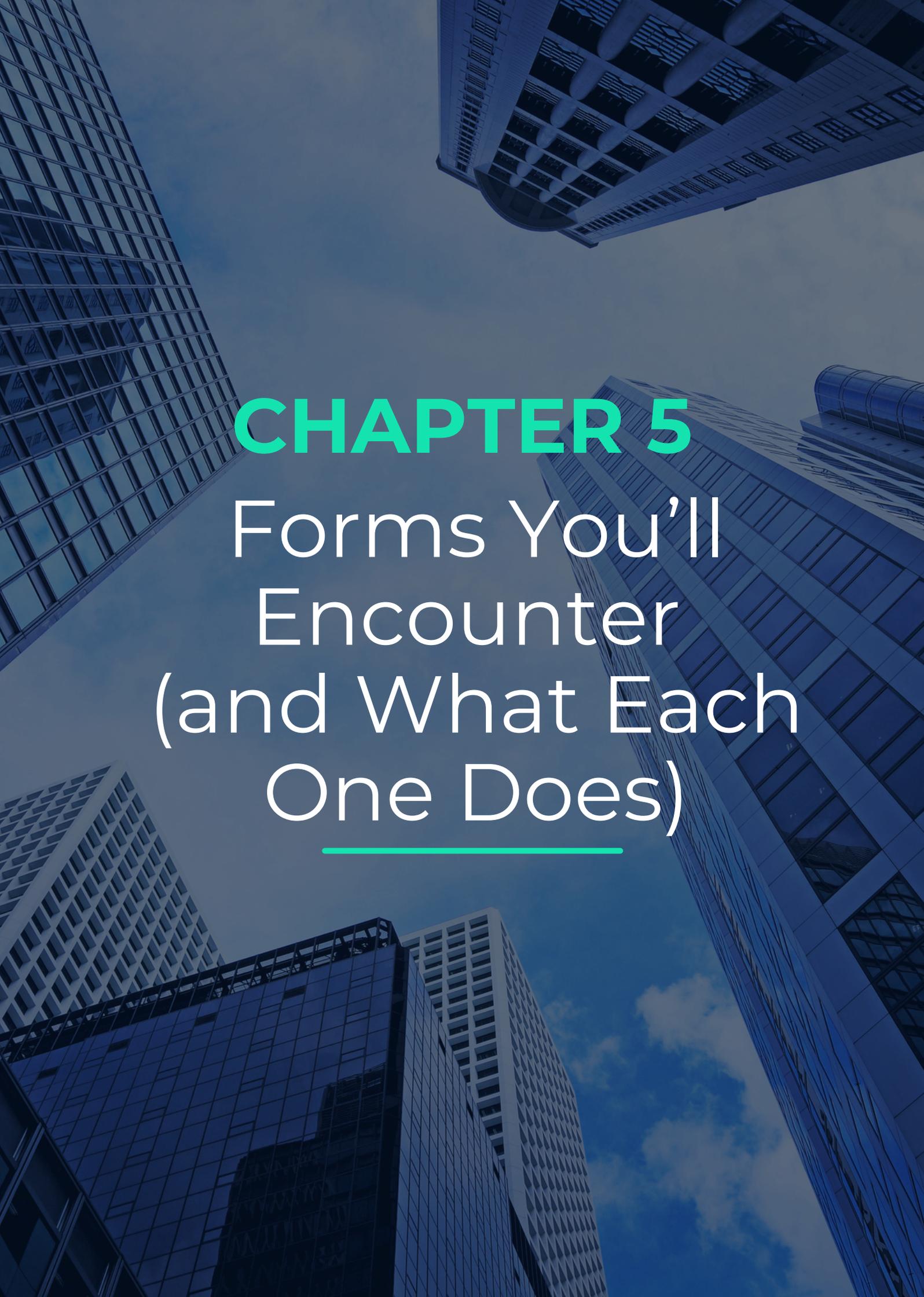
Step 1: Complete IRS Form 8288-B (Application for Withholding Certificate)

Step 2: Attach supporting documents:

- Copy of sales contract
- Proof of your cost basis (purchase documents, improvements)
- Identification (passport, ITIN or SSN)
- Step 3: Apply application to the IRS before closing
- Step 4: Provide a copy to the buyer/closing agent

Pro Tip:

Applying early is critical—processing can take 90+ days. If the certificate isn't received before the closing deadline, the default 15% withholding applies.



CHAPTER 5

Forms You'll Encounter (and What Each One Does)

Form W-7 (ITIN)

Purpose: Obtain your ITIN, the number you need to interact with the IRS if you're not eligible for a Social Security Number.

Why it matters:

- Required to file 1040NR and claim a refund
- Required for 8288-B applications in most cases
- Avoids long delays and mail-back cycles

How to apply:

- Complete Form W-7, selecting the appropriate reason (e.g., “Nonresident alien required to obtain ITIN to claim tax treaty benefit or file a U.S. tax return”)
- Provide identity/foreign status documents:
 - Preferred: Original passport, or
 - Certified copy of passport from the issuing agency, or
 - Two-document combo meeting IRS criteria (e.g., driver's license + birth certificate), properly certified
- Submission methods:
 - Mail to IRS ITIN Operations (Austin, TX)
 - Use a Certified Acceptance Agent (CAA) to avoid mailing your passport
 - Apply in person at a U.S. IRS Taxpayer Assistance Center (by appointment)

Timing:

- Typical processing is 7–11 weeks
- Apply early

Tips:

- Don't send ordinary photocopies
- If you had an ITIN but didn't use it for three consecutive years, it may have expired—renew it
- Keep your ITIN notice; you'll reference it in future filings

Forms 8288 and 8288-A (Buyer Filing)

Purpose: Report the sale and remit the withholding to the IRS.

What's included:

- Seller and buyer identification (ITINs/EINs where applicable)
- Property description and closing date
- Amount withheld
- Whether a withholding certificate impacts the amount

Process:

- The withholding agent files 8288 and 8288-A within 20 days of closing and sends payment
- The IRS processes the filing and returns a stamped copy of 8288-A to the seller

Why you care:

- Form 8288-A is your proof of withholding; you need it to claim a credit and get a refund on your 1040NR
- If the buyer fails to file these forms correctly, your refund can be delayed

Form 8288-B (Withholding Certificate)

Purpose: Ask the IRS to reduce or eliminate the withholding before funds are remitted.

Who should consider it:

- Sellers with low or no taxable gain (after basis and selling costs)
- Sellers with losses
- Sellers where the standard 10–15% withholding far exceeds expected tax

What you submit:

- Completed Form 8288-B
- Copy of the executed sale contract
- Estimated tax computation (showing expected gain or loss)
- Valid ITIN (or concurrent W-7 application, though having an ITIN first speeds things up)
- Statement detailing why reduced withholding is warranted

Timing:

- File before or at closing
- If filed before remittance, the buyer can hold the funds in escrow pending IRS decision

Processing time:

- Commonly 90+ days; can be longer
- Start early and coordinate with all parties

Outcome:

- If approved, the IRS issues a certificate authorizing reduced withholding
- The buyer remits only the approved amount; balance is released to you



Form 1040NR (Your U.S. Tax Return)

Purpose: Report the sale, compute actual U.S. tax, and claim a refund of excess withholding.

What you report:

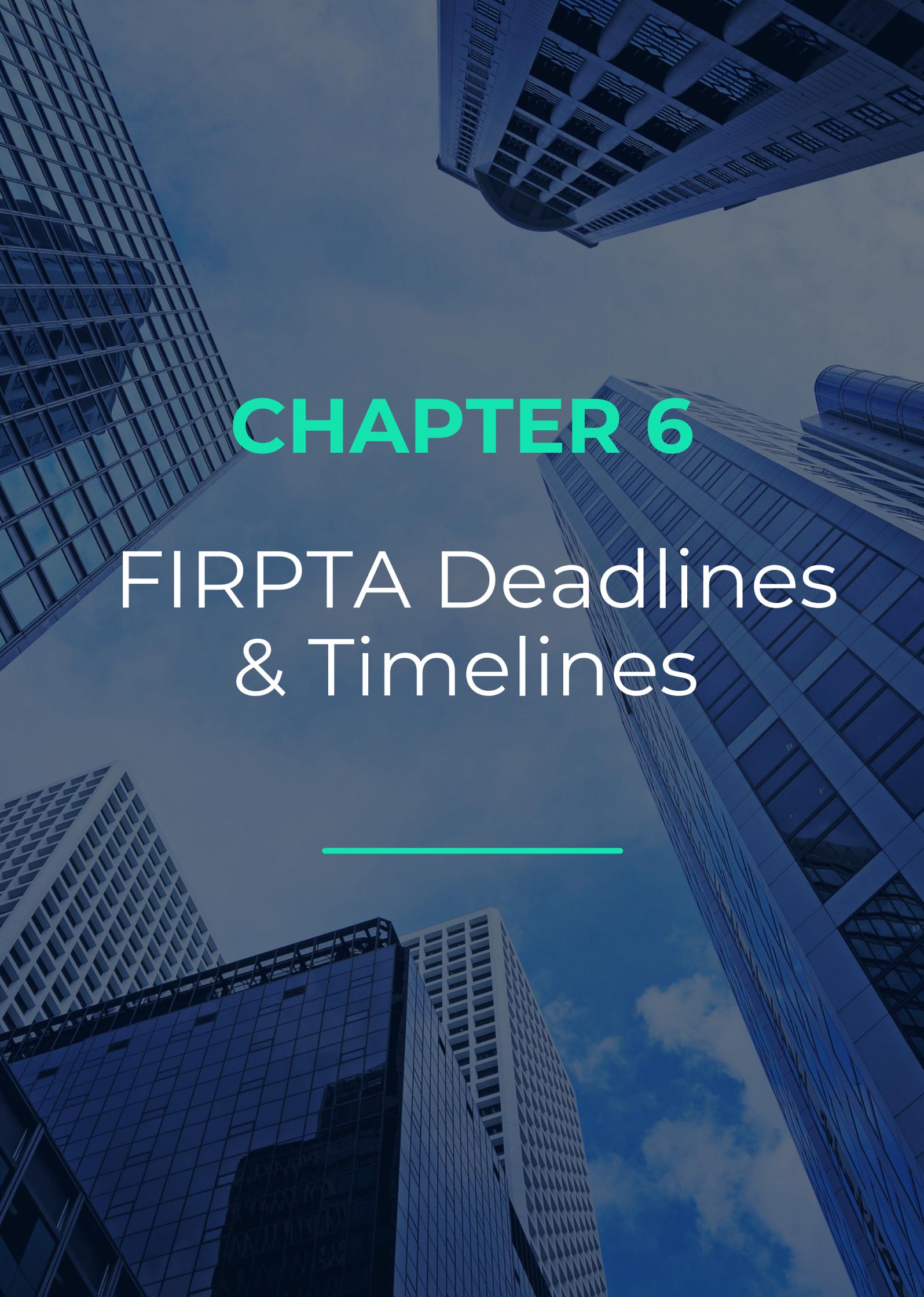
- Gross sale price
- Adjusted basis: purchase price + capital improvements + certain closing costs
- Selling costs: commissions, legal, transfer taxes (where applicable)
- Capital gain or loss
- Credits for FIRPTA withholding (from stamped 8288-A)
- Other U.S.-source income (if any)

When to file:

- For sales in 2025, due April 15, 2026 (or June 15, 2026 if you qualify as living outside the U.S., though payment deadlines differ)
- Late filing can delay or jeopardize refunds

Submission:

- Most nonresidents still file by mail
- Include copies of 8288-A, settlement statements, and ITIN notice



CHAPTER 6

FIRPTA Deadlines & Timelines

Before Listing Your Property

- **90–120 Days Before Listing:**
 - Confirm your status as a foreign person for U.S. tax purposes.
 - Gather documents like purchase records, improvement receipts, and anticipated selling costs.
 - Estimate your gain or loss and potential U.S. tax liability.
 - Decide if you'll apply for a withholding certificate (Form 8288-B) to reduce withholding.

Before Closing

- **30–60 Days Before Closing:**
 - Coordinate with the buyer to determine their intended use of the property (primary residence or investment).
 - If applicable, prepare and submit Form 8288-B to request reduced withholding.

At Closing

- **Closing Day:**
 - The buyer (or their agent) withholds the required amount (0%, 10%, or 15%) based on the sale price and buyer's intent.
 - The buyer or escrow/title company prepares Forms 8288 and 8288-A to report the withholding.

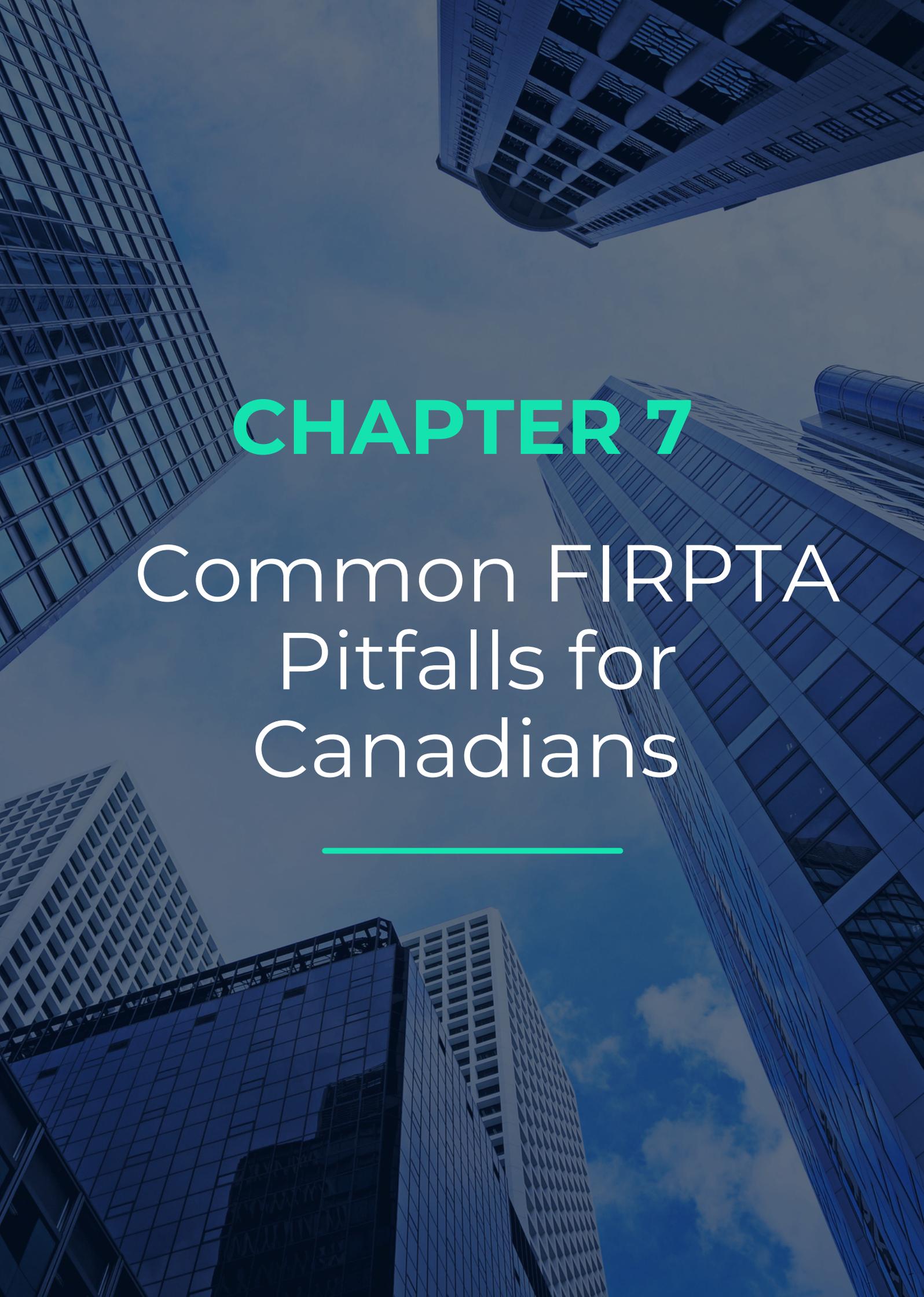
Post-Closing

- **Within 20 Days of Closing:**
 - The buyer (or their agent) must file Forms 8288 and 8288-A with the IRS and remit the withheld funds.

💡 Key Insight:

Start early! Confirm FIRPTA withholding rates with the buyer, and file all forms on time to avoid delays and penalties.



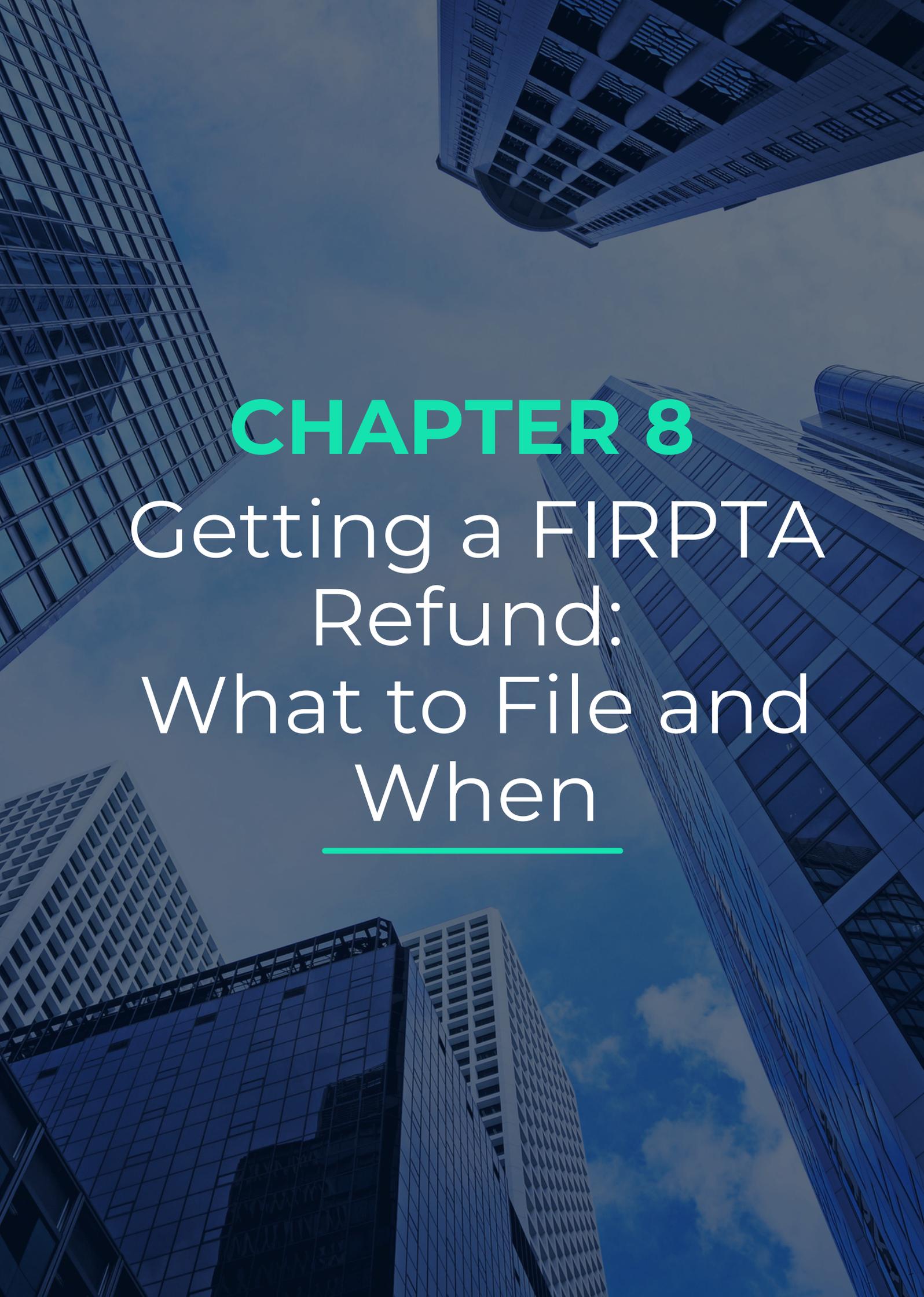


CHAPTER 7

Common FIRPTA Pitfalls for Canadians



- Not applying for an **8288-B** when eligible:
- If your tax is far below the default withholding, a **certificate** could keep cash in your hands at closing.
- **No ITIN** = no certificate (in most cases) and delayed refunds.
- Assuming the **buyer will “handle everything”**:
 - The buyer is responsible, but errors impact your refund. Confirm filings and timelines.
 - Using the wrong tax return:
 - File **1040NR**, not 1040. Using the wrong form stalls refunds.
 - Missing the **filing deadline**:
 - **Late** or **missing** returns mean the IRS keeps your withholding until you file correctly.
 - **Mismatched** amounts on forms:
 - Ensure withholding on **1040NR** matches stamped **8288-A**.
 - Believing a loss automatically removes withholding:
 - You still need an **8288-B** or a qualifying exemption.



CHAPTER 8

Getting a FIRPTA Refund: What to File and When



What Counts as Proof

To support your refund claim, compile:

- Stamped Form 8288-A (your proof of withholding)
- Closing/settlement statement (HUD-1 or equivalent)
- Purchase documents and records of capital improvements
- Receipts for selling costs (commissions, legal fees, transfer taxes if applicable)
- ITIN assignment letter
- Any 8288-B correspondence if a certificate was involved

Filing Form 1040NR for a Refund

Your 1040NR will:

- Report the sale and compute gain or loss
- Apply the withholding as a credit using the 8288-A
- Reflect any other U.S.-source income
- Show refund due if withholding exceeded your tax

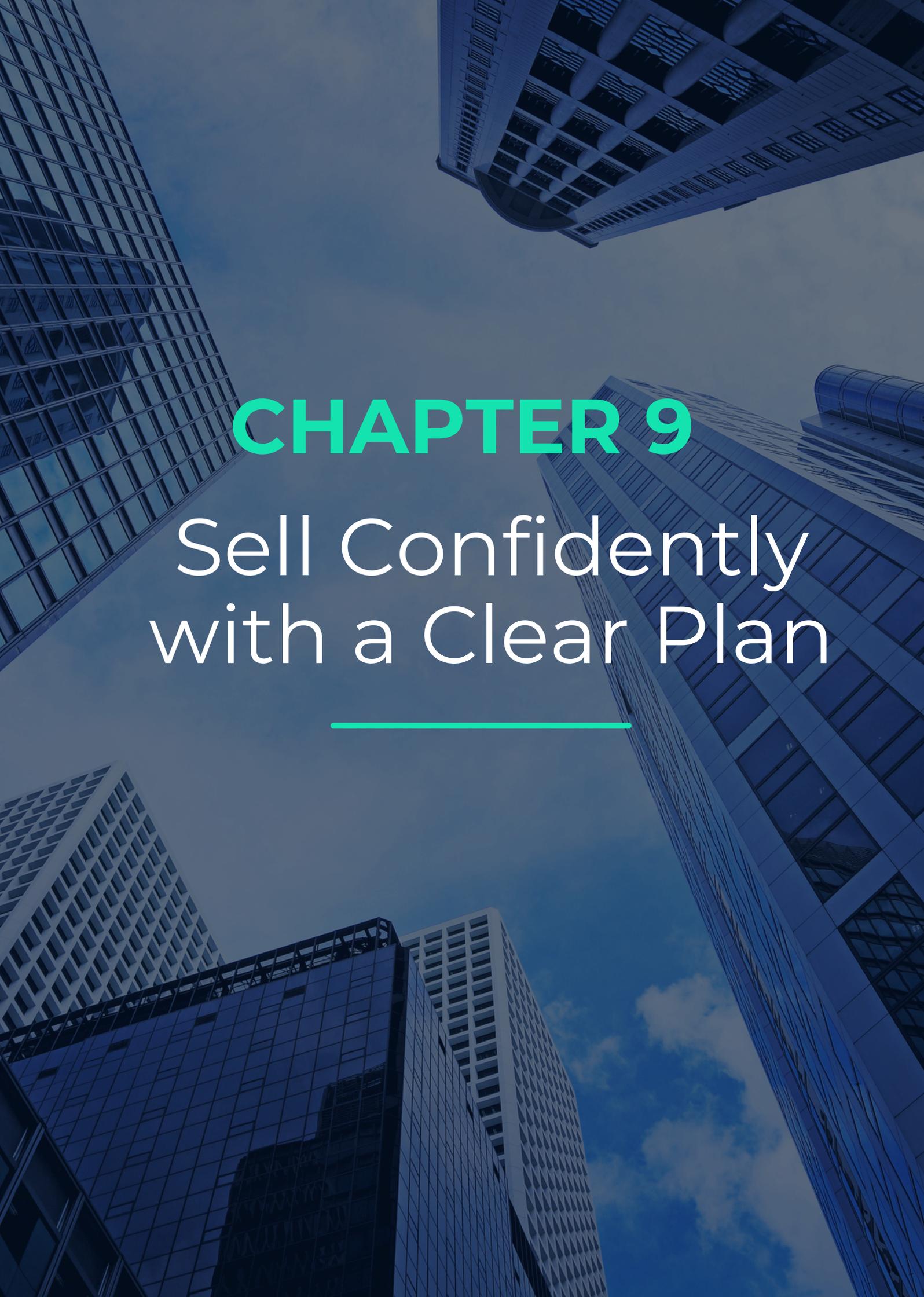
Mailing and processing:

- Most Canadians mail the return to the IRS
- Processing times vary; refunds commonly take 6-12 months
- Accuracy and complete documentation reduce delays

Timelines and How to Avoid Delays

- Get your ITIN before filing
- Ensure 8288 and 8288-A were filed correctly by the buyer
- Match amounts across forms (sale price, withholding)
- Keep copies of everything you submit
- Consider using a cross-border tax specialist to prepare and track your file





CHAPTER 9

Sell Confidently with a Clear Plan



FIRPTA can surprise Canadian sellers, but it doesn't need to derail your sale or tie up your proceeds for months. With a plan, you can:

- Identify the correct withholding rate based on buyer use
- Apply for a withholding certificate when it makes sense
- Get your ITIN in place early to avoid delays
- Keep clean records so your 1040NR refund goes through smoothly

Your sale is both a real estate event and a cross-border tax event. The right preparation turns a complex process into a predictable one—and helps you keep more of what you've earned.

Action steps:

- Map your timeline now (ITIN, buyer intent, 8288-B decision)
- Coordinate with your agent and escrow on FIRPTA tasks
- File an accurate 1040NR with complete documentation
- Consult a cross-border specialist to avoid missteps

Selling well is about more than price. It's about planning, precision, and compliance that protects your outcome.

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Disclaimer: The views expressed in this article are those of the author and should not be relied on to make decisions. Consider discussing your specific circumstances with an appropriate specialist.

