

# Tax Policy

## THE ROUNDTABLE'S LEADING ROLE IN SHAPING SUCCESSFUL TAX REFORM

In recent years, The Real Estate Roundtable worked hard to lay the necessary foundation to ensure that policymakers would have the appropriate data, facts, and analysis to understand how potential tax reform could affect real estate investment and jobs, as well as the broader economy. The Roundtable commissioned objective and fact-based academic and economic studies to evaluate the role and importance of rational cost recovery rules, like-kind exchanges, the deductibility of business interest, and carried interest as an incentive for entrepreneurial risk taking. The Roundtable worked with a former chief tax economist of the Treasury Department to model the impact of various tax reform options. And throughout the past year in particular, The Roundtable and its industry partners shared findings directly with policymakers,

raising their awareness and understanding of the relationship between and among tax policy, real estate, and economic growth.

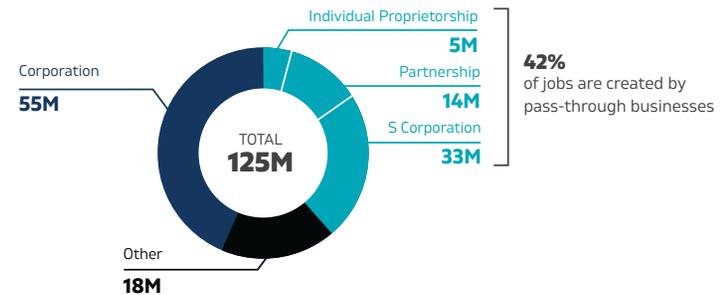
*"The right tax policy can, for the benefit of all Americans, help commercial real estate: create and maintain good jobs, lift retirement savings, reduce energy consumption, and improve the quality of life in local communities."*

— Jeff DeBoer, Senate Finance Committee Hearing on Business Tax Reform, September 19, 2017

Roundtable President and CEO Jeffrey D. DeBoer testifies before the Senate Finance Committee in 2017, supported by Roundtable Senior Vice President & Counsel Ryan McCormick.



## PASS-THROUGH BUSINESSES REPRESENT A LARGE AND GROWING SHARE OF JOBS IN THE USA



Number of employees in the United States, 2015

As the tax reform debate intensified, Roundtable President and CEO Jeffrey D. DeBoer was invited to testify before the Senate Finance Committee at its only hearing on business tax reform in 2017. He urged lawmakers to reform the taxation of real estate in ways that would promote economic growth and investment, and he cautioned policymakers to avoid legislative action that could cause severe market dislocation. The Roundtable's Tax Policy Advisory Committee (TPAC) worked closely with the congressional tax-writing committees on the design of key reforms to the business interest deduction and the taxation of pass-through businesses. TPAC produced an influential white paper on how to structure a reduced tax rate applicable to pass-through business income.

In December 2017, Congress finally enacted comprehensive tax reform legislation.

*The tax-writing committees debated and addressed all of the real estate industry's major tax reform issues as it considered the Tax Cuts and Jobs Act.*

On every issue, the end result was a deliberate decision by policymakers to retain or enhance key elements of the tax code related to real estate. The revised tax code will continue to: (1) encourage capital formation and entrepreneurship; (2) reflect the underlying economics of transactions and treat real estate consistently with other types of businesses; and (3) avoid excessive incentives or disincentives while recognizing that certain provisions are necessary to address market failures or social needs, such as affordable housing.

## TAX REFORM AND REAL ESTATE: A BOOST TO ECONOMIC GROWTH AND JOBS

### Business Interest Deductibility Preserved

Tax reform proposals submitted early in the debate last year advocated limiting or repealing the deductibility of net interest expense for business-related debt. That would have seriously jeopardized the health of U.S. real estate by deterring business formation and expansion. It would have risked fewer loans being refinanced, fewer new projects being developed, and fewer jobs being created.

Due in part to The Roundtable's advocacy, the final version of the *Tax Cuts and Jobs Act* preserved the deductibility of business interest. Real estate businesses can elect out of the new interest limitation regime. Lawmakers appropriately recognized that continued full deductibility of interest on the

approximate \$4.05 trillion of outstanding commercial real estate debt is fundamental to the stability and growth of the economy.

### Real Estate Like-Kind Exchanges Retained

The Real Estate Roundtable has long held that like-kind exchanges promote savings and investment, allow capital to flow freely and efficiently, encourage commerce, and stimulate U.S. economic growth and job creation. During debate, some policymakers proposed eliminating the ability to defer capital gain through a like-kind exchange. The result would have been an increase in taxes for many commercial property owners, a drop in property values, an increase in rents, and a decline in real estate sales activity.

While the *Tax Cuts and Jobs Act* generally repeals like-kind exchanges, The Roundtable helped ensure that the new law retained like-kind exchanges for real estate.

### Reform Keeps Rational Cost Recovery Rules for Real Estate

Early versions of reform legislation would have had businesses expense the full cost of real estate immediately, rather than over the life of the asset. Expensing real estate immediately would have constituted a dramatic shift from existing law with risky and unknown consequences. The Roundtable successfully advocated that, because real estate is subject to much longer recovery periods and slower recovery methods than other capital assets, it warrants different treatment.

As a result, the final version of the law appropriately maintained depreciation and cost recovery rules that allow an owner to recover the cost of a real estate investment over the life of the asset.

20% of income for pass-through businesses. Given the importance of pass-through entities to real estate owners, this ensures fair and equitable treatment of the industry.

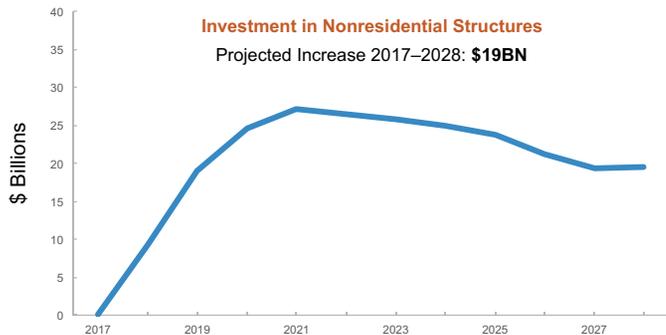
### Roundtable Accomplishments Since Tax Reform

The Roundtable's advocacy on behalf of the real estate industry continues in the wake of tax reform. TPAC working groups on affordable housing, FIRPTA, and pass-through issues have all driven positive policy outcomes on issues critical to real estate.

*RER commands the most respect from senior federal policymakers of any association representing the real estate industry.*

*National Journal's Ballast Research surveys more than 2000 senior policymakers every year to identify the most effective associations in Washington.*

### CONGRESSIONAL BUDGET OFFICE PROJECTS LARGE INCREASE IN COMMERCIAL REAL ESTATE INVESTMENT UNDER TAX CUTS AND JOBS ACT



*CBO projects the reduction in the user cost of capital and other changes in the tax bill will boost investment in nonresidential structures by \$19 billion. Separately, CBO estimates an additional lift in real estate investment will come from an acceleration of economic activity.*

Source: Congressional Budget Office.

### Tax Relief for Entrepreneurial, Pass-Through Businesses, Including Real Estate Partnerships

During debate, The Roundtable challenged policymakers who sought to impose an entity-level tax on all U.S. businesses and consistently argued that a reduction in the corporate tax rate should be accompanied by parallel relief for the four million partnerships and other businesses that operate in pass-through form. The Roundtable worked with the tax-writing committees to develop a pass-through tax proposal that would promote capital formation and business activity, and ultimately spur job creation and economic growth. The new law creates a tax deduction of up to

**Appropriate Corrections to FIRPTA.** The Roundtable helped develop clarifying legislation enacted in March 2018 that amended the Foreign Investment in Real Estate Property Tax Act (FIRPTA). The bill broadened the scope of foreign pension funds permitted to invest in U.S. real estate without triggering FIRPTA tax liability.

**Successful Partnership Audit Reform.** The Roundtable worked successfully to preserve the pass-through treatment of partnerships in the new partnership audit regime. In September of 2017, TPAC member Don Susswein testified on behalf of The Roundtable on partnership audit reform at an IRS hearing. A few months later, the Treasury Department issued favorable proposed regulations that allow tax adjustments to be "pushed out" through tiered





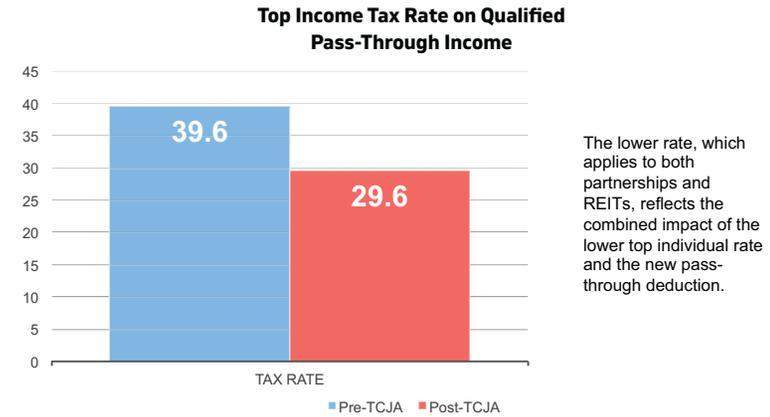
In September of 2017, TPAC member Don Susswein (RSM US LLP) testified on behalf of The Roundtable on partnership audit reform at an IRS hearing.

partnerships. And in March of this year, technical corrections to partnership audit rules passed by Congress made those regulations a matter of settled law. Tiered partnerships can “push out” tax adjustments to appropriate partners, rather than shifting the entire amount of unpaid taxes to the entity as a whole.

**Advancing Sales Tax Fairness for Brick-and-Mortar Retailers.** The Roundtable is heavily involved in the effort to overturn the physical presence standard that prevents states from imposing sales tax collection requirements on online retailers. The Roundtable and other real estate organizations filed an *amicus* brief urging the Supreme Court to consider a case that addresses the constitutionality of states’ authority to collect sales and use taxes on Internet consumer purchases. When the Supreme Court accepted the case, The Roundtable and its partners submitted

another *amicus* brief on the merits. The decision finally could level the playing field for all retailers that have in-state sales above a certain threshold and provide an economic boost to local communities.

## TAXATION OF REAL ESTATE INVESTMENT UNDER THE TAX CUTS AND JOBS ACT



## LOST U.S. REMOTE SALES TAX REVENUE WITHOUT E-FAIRNESS

