Tax Policy

Throughout the debate leading to the passage of the *Tax Cuts and Jobs Act of 2017*, the Real Estate Roundtable played a leading role in encouraging policymakers to retain or enhance key elements of the tax code that promote productive real estate investment and job growth. The Roundtable worked hard to ensure that policymakers had the appropriate data, facts, and analysis to understand how potential tax reform could affect real estate values and local communities, along with the broader economy.

The positive effects of the tax changes are evident in today's economy. However, the final regulatory rules for new provisions, such as the limitation on the deductibility of business interest, will be critically important to the long-term success of the tax law. Smart and well-designed Treasury regulations and guidance will help real estate continue to drive economic activity and create jobs.

To that end, The Roundtable remains committed to working with policymakers to ensure that tax reform and future tax changes are implemented smoothly and efficiently, in a way that encourages capital formation and entrepreneurship and reflects the underlying economics of transactions. The tax system should treat real estate consistently with other types of assets and avoid excessive incentives or disincentives that distort markets. At the same time, certain provisions are necessary to address market failures and serve critical social needs, such as access to affordable housing.

Securing Relief for 30 Million Businesses Through the Pass-Through Business Income Deduction

In January, the Treasury Department issued final regulations and new guidance on the 20% deduction for qualified pass-through business income under IRS code section 199A. The deduction is one of the most important and complex elements of the 2017 tax overhaul law. It was designed to provide relief to the 30 million businesses in the United States that are not C corporations and so do not benefit from the corporate tax cut.

The original proposal was a key topic of Roundtable President and CEO Jeffrey D. DeBoer's testimony before the Senate Finance Committee before lawmakers

Opportunity Zones: Promoting Economic Development Through Productive Real Estate Investment

8,762 Number of designated and certified opportunity zones	**35 Million** People in the U.S., including Puerto Rico, live in opportunity zones	**50** Median age in years of housing stock in the average opportunity zone, more than 10 years older than the U.S. median	**20%** Increase in opportunity zone property values according to *Zillow*, since zone designations were made in early 2018

Sources: Treasury Department; Economic Innovation Group; White House Council of Economic Advisors

released the first version of their tax overhaul in the fall of 2017, and The Roundtable was closely involved in the legislative development of the provision, as well as the rulemaking process. The final rules preserve real estate investors' eligibility for the deduction and include important clarifications that will remove lingering taxpayer uncertainty.

Preserving the Deductibility of Debt Incurred in a Real Estate Business

The ability to borrow without a tax penalty is critical to the health and stability of real estate markets. The Roundtable's advocacy helped put the potential harm of changes to the deductibility of business interest front-and-center for lawmakers during the consideration of the tax overhaul. The law allows real estate businesses to elect out of the new limit on business interest deductibility. Congress delegated certain aspects of the real estate exemption to Treasury to clarify, such as how it applies to tiered partnerships. The Roundtable is working closely with Treasury to ensure the final rules reflect the congressional intent and retain the deductibility of business interest in all types of real estate ownership arrangements.

Spurring Economic Development and Job Creation in Opportunity Zones

Newly designated opportunity zones offer tremendous potential to jumpstart productive real estate investment in struggling low-income communities. Qualifying long-term investments in opportunity zones are eligible for tax incentives, including the exclusion of capital gain for businesses and property located in opportunity zone census tracts. Some capital remained on the sidelines as taxpayers waited for additional guidance on how the program would work for investors and funds alike.

House Ways and Means Committee Chairman Richard Neal (D-MA) discusses prospects for tax policy legislation in the 116th Congress.

The Roundtable is actively working with Congress and the Treasury to answer critical questions, address concerns, and expedite the rulemaking process.

Opportunity zones also promote the pooling of capital through opportunity funds. This pooling could be transformative in mobilizing capital from disparate sources to support jobs and growth. Moreover, the fund structure that underlies the program may result in a business model where local entrepreneurs with knowledge and expertise partner with outside investors, creating a new cadre of business leaders and lasting benefits for the community.

Real estate investment is an economic multiplier and a catalyst for permanent, lasting job creation. The ability of opportunity zones to unlock private capital for real estate investment will be a principal determinant of the program's effectiveness. Final opportunity zone implementing guidance should seek to maximize the flow of real estate investment, capital, and jobs into the designated communities by providing greater clarity and comfort to potential investors regarding the types of activities and investments that qualify.

In June and December 2018 The Roundtable provided formal comments regarding the opportunity zone tax incentives to the Treasury and the IRS, detailing ways in which the program could fulfill its objectives and urging the Treasury to clarify a number of tax issues that would remove uncertainty for potential investors and opportunity fund managers. The Roundtable also wrote to Senators Chris Coons (D-DE) and Michael Bennet (D-CO) to address their concerns regarding the potential for waste and abuse in the program.

Sen. Tim Scott (R-SC), who serves on the Senate Banking, Housing and Urban Affairs and Finance Committees, discusses the ongoing development of the opportunity zones program, which is designed to channel investment and spur economic development and affordable housing in distressed areas across the U.S.

The Roundtable comments are the product of an active task force that consists of more than 75 members, the Tax Policy Advisory Committee (TPAC) Opportunity Zone Working Group. Proposed rules released in April 2019 resolved most of the key issues. The TPAC Working Group will continue its dialogue with government officials to help ensure the program fulfills its ambitious objectives of stimulating economic development and job creation in low-income communities.

Removing Barriers to Foreign Investment in U.S. Real Estate and Infrastructure

The Roundtable strongly supports the *Invest in America Act*, introduced this April by Representatives Kenny Marchant (R-TX) and John Larson (D-CT). The Act would repeal the *Foreign Investment in Real Property Tax Act (FIRPTA)*, which imposes a discriminatory capital gains tax on foreign investors in U.S. real estate and infrastructure that does not apply to any other asset class. The legislation has the potential to create as many as 284,000 American jobs and attract as much as $125 billion in global investment in U.S. communities. It would serve as a market-driven catalyst to finance improvements in our nation's infrastructure.

Congress passed meaningful reforms to FIRPTA in 2015, exempting foreign pension funds and doubling the amount a foreign interest may invest in a U.S. publicly-traded REIT. These reforms increased global investment in U.S. cities of all sizes and locations by 33%, showing that a full repeal as envisioned in the *Invest in America Act* would bring significant benefits to many more state and local economies.

Building Consensus to Oppose Re-Characterizing Carried Interest

The Roundtable continues to raise awareness among lawmakers and the public of the significant harm to entrepreneurial risk-taking that would result from treating all carried interest as ordinary income subject to the top individual tax rates. Misguided bills introduced in the House (H.R. 1735) by Rep. Bill Pascrell (D-NJ) and in the Senate by Sen. Tammy Baldwin (D-WI) and Sen. Ron Wyden (D-OR) (S. 781 and S. 1639), would result in a huge tax increase on countless Americans who use partnerships in businesses of all types and sizes. They would discourage individuals from pursuing their business vision, encourage debt rather than equity financing, tax sweat equity invested in businesses and slow economic growth. These results would be particularly harmful to the nearly eight million partners in U.S. real estate partnerships.

The Roundtable has spearheaded a coalition of 14 national real estate organizations to urge members of the House of Representatives not to move forward with the *Carried Interest Fairness Act*. The bill would limit capital gain treatment only to taxpayers who have cash to invest, making it more expensive to build or improve real estate and infrastructure, including workforce housing, assisted living communities, and industrial properties, to name just a few.

Guiding Technical Corrections to the Tax Reform Law

The Roundtable is urging members of Congress to correct a mistake in the 2017 tax reform law that lengthened the cost recovery period for qualified improvement property (QIP). The unintended error has resulted in a 39 or 40-year cost recovery period for most improvements to the interior of nonresidential real estate. Congress's intent was to allow the immediate expensing of QIP, or provide a 20-year recovery period in the case of taxpayers electing out of new limitations on the deductibility of business interest. The error means that the after-tax costs of modernizing and altering buildings of all types and uses have increased.

In October 2018, The Roundtable, along with 239 businesses and trade groups, wrote to Secretary Mnuchin urging the Treasury Department to provide taxpayers with administrative relief from the drafting error.

On Capitol Hill, the bipartisan and bicameral *Restoring Investments in Improvements Act* (S. 803, H.R. 1869) is a simple and straightforward technical correction to the *Tax Cuts and Jobs Act*.

The Roundtable will continue to advocate for legislation addressing the QIP error and other technical corrections, which will lead to relief for businesses all over the country.

In 2019, The Roundtable was identified by senior federal policymakers as the industry's leader—the association that demonstrates the highest commitment to industry standards and sound practices in the real estate sector.

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