Tax Policy

The Roundtable played a central role in the passage of key elements of the Tax Cuts and Jobs Act of 2017 (TCJA) that promote real estate investment and job growth. By preserving a sound, structural foundation of tax rules for real estate, TCJA helped ensure that real estate entered the COVID-19-induced economic downturn in a strong and healthy position.

Since then, the Roundtable has worked with policymakers to ensure the 2017 reforms are implemented as Congress intended. The Roundtable is also building the necessary foundation to ensure that policymakers have the right data and analysis to understand how potential future reforms are likely to affect real estate investment and jobs, as well as the broader economy, especially during the period of pandemic and economic recovery. The Roundtable continues to produce objective, fact- and economic-based research on 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. In 2020, our focus remains on promoting tax policies that support sustainable economic growth, job creation, and healthy, livable communities.

House Ways and Means Committee Chairman Richard Neal (D-MA) discusses the prospects for additional tax changes and legislation, and the importance of commercial real estate to the economy.

Deductibility of Business Interest

The health and stability of real estate markets rely on the ability to borrow without a tax penalty. The focused advocacy of The Roundtable during the Tax Cuts and Jobs Act debate helped preserve the deductibility of business interest for real estate businesses despite the enactment of an otherwise broad-based limitation on the business interest deduction. The final law, however, delegated significant rulemaking authority to the Treasury Secretary. The Roundtable has actively engaged the Treasury Department regarding the new limitation on business interest deductibility. For example, The Roundtable successfully advocated for regulations that allow partners to deduct interest payments on loans if the loan proceeds are subsequently invested in a partnership engaged in a real property trade or business. The Treasury Department is currently finalizing the proposed regulations for the business interest limitation. The Roundtable is working to ensure that those regulations retain the deductibility of business interest in all types of real estate ownership arrangements.

Foreign Investment in U.S. Real Estate

The Foreign Investment in Real Property Tax Act (FIRPTA) imposes capital gains tax on the sale of U.S. real estate owned by a foreign investor. Originally, FIRPTA was meant to deter foreign purchases of U.S. agricultural and ranch land. It has since become a major impediment to the flow of foreign equity investment to U.S. real estate and infrastructure, generally. FIRPTA places a discriminatory tax on real estate investment. In recent years, Roundtable advocacy has helped mitigate the harm of FIRPTA through legislation and rule-making, and we continue to push for additional reforms and repeal.

FIRPTA Foreign Pension Fund Exemption

Congress passed meaningful reforms to FIRPTA in 2015, exempting foreign pension funds from the tax and doubling the amount a foreign interest may invest in a U.S. publicly traded REIT. Those changes are still being implemented today. Pension systems vary widely across the globe. After advocating for enactment of the foreign pension fund exemption, The Roundtable has worked to ensure that the exemption covers the broad range of retirement arrangements in other countries, including Social Security-type funds. This effort culminated in the enactment of technical corrections to the foreign pension exemption in 2018 and the issuance of favorable proposed regulations for the exemption by the Treasury Department in 2019.

The recent regulations further clarify the scope of the pension fund exemption and resolve most of foreign investors' remaining concerns. Among other improvements, the regulations adopt a broad view on what constitutes a "qualified foreign pension fund" and confirm that entities wholly owned by multiple foreign pension funds can qualify for the exemption.

IRS Notice 2007-55

Poorly drafted sub-regulatory tax guidance issued in 2007 (IRS Notice 2007-55) creates unwarranted FIRPTA liability for certain inbound investments in U.S. real estate and infrastructure structured through domestically controlled REITs. The Notice subjects the liquidating distribution of a domestically controlled REIT as a sale of the REIT's underlying assets, rather than a sale of its stock—the customary treatment. For several years, The Roundtable has encouraged policymakers to help spur greater foreign investment and job creation by revisiting its misguided Notice. Last year, a bipartisan group of Senators from the Finance Committee wrote to the U.S. Treasury Department urging the withdrawal of IRS Notice 2007-55. In February 2020, a group of House members submitted a similar letter.

Repealing IRS Notice 2007-55 would restore the intent of Congress, provide parity to investors, and increase direct foreign investment in U.S. commercial real estate and infrastructure. The Roundtable will continue raising awareness of the harm caused by the Notice and ensure that it is revisited by tax authorities.

Invest in America Act

In April 2019, Representatives John Larson (D-CT) and Kenny Marchant (R-TX) introduced the bipartisan Invest in America Act to fully repeal FIRPTA. The legislation seeks to build on the 2015 FIRPTA reforms included in the Protecting Americans from Tax Hikes (PATH) Act. The PATH Act resulted in a 33% increase in global investment in U.S. real estate. However, even in its revised form, FIRPTA continues to hinder job growth and infrastructure improvements.
It also serves as an anti-competitive tax barrier that deflects global capital to other countries. The passage of the Invest in America Act would help put Americans back to work by spurring construction and development of productive U.S. real estate and infrastructure. Its enactment is a key tax policy priority for The Roundtable and a broad coalition of business and labor organizations.

Opportunity Zones

Opportunity Zones, created in the Tax Cuts and Jobs Act (TCJA) of 2017, use capital gains tax incentives to promote long-term investment in economically struggling, low-income communities. After passage of TCJA, The Roundtable created a working group to develop recommendations aimed at maximizing the positive economic impact of the program. Many of The Roundtable's

(R-L) Governor Gina Raimondo of Rhode Island and Rep. Stephanie Murphy (D-FL), a member of the House Ways and Means Committee, outlined efforts to work across the aisle building a solutions-oriented approach to tax policy.

recommendations were included in the proposed regulations, such as a working capital safe harbor for real estate and other projects that take considerable time to complete. Treasury issued final regulations in December 2019 that included a number of additional improvements advocated by The Roundtable. Among the changes, the final rules clarify the types of gain that investors may roll over into opportunity funds, allow multi-asset opportunity funds to sell individual assets after 10 years without losing tax benefits, and liberalize the rules that relate to the improvement of existing, vacant properties located in Opportunity Zones.

Taxpayers have invested an estimated $20-30 billion in opportunity funds through April 2020. In May, The Roundtable and ten other national real estate organizations wrote to Members of Congress and urged them to consider Opportunity Zone rule changes that could spur investment, promote capital formation and bolster job growth in economically disadvantaged communities impacted by the COVID-19 pandemic.
The changes would:

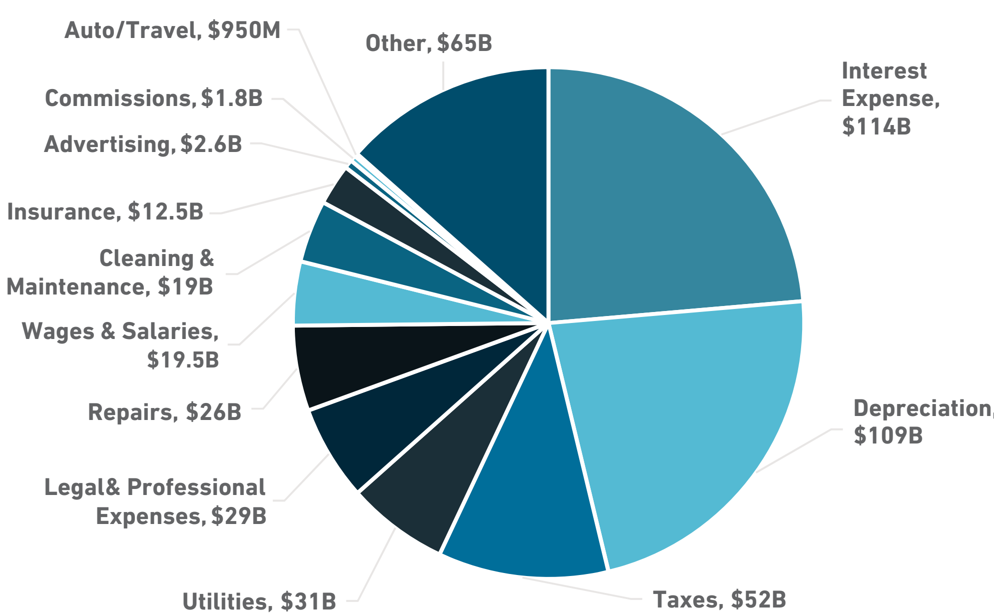
- Allow opportunity funds to raise capital from all sources, not just gain rolled over from a recently disposed investment.
- Spur productive real estate investment in low-income communities by providing that a 50% increase in the basis of a building constitutes a substantial improvement.
- Strengthen the economic incentives by codifying the tax rate on—and extending the recognition date for—deferred gain, and consequently, the deadlines that must be met in order to qualify for the increase in basis for gain rolled into an opportunity fund.

Implemented wisely, Opportunity Zones should be a powerful catalyst for transformative real estate investment in parts of the country that are struggling economically.

LIBOR

In the last year, The Roundtable successfully advocated for Treasury regulations that remove potential tax liability associated with the phasing out of LIBOR (the London Inter-bank Rate) by the end of 2021. In June 2019, The Roundtable asked the Treasury Department and the IRS for guidance on the tax treatment of the LIBOR transition. Guidance is needed in order to reduce the risk of

An IRS study found that 1.48 million real estate partnerships collected $524 billion in gross rent and incurred $483 billion in expenses:



Source: Internal Revenue Service

Progress on Real Estate Tax Priorities in FY 2020

1. Proposed business interest regulations allow partners to deduct interest on loans used to finance real estate partnerships
2. Proposed tax regulations allow real estate borrowers and lenders to replace LIBOR in financial contracts without a deemed modification of the loan that triggers tax liability
3. Final Opportunity Zones regulations include key provisions encouraging real estate rehab. and new construction in distressed communities
4. Proposed FIRPTA regulations clarify and expand pension fund exemption
5. CARES act retroactively clarifies nonresidential real estate improvements qualify for 15-year depreciation; allows real estate businesses to carry back 2018-2020 losses for 5 years; claim refunds for prior years
6. CARES Act temporarily increases limit on business interest deductibility; allows real estate businesses to revoke prior elections
7. Treasury guidance grants real estate partnerships temporary authority to file amended tax returns to benefit from tax relief in CARES Act
8. Treasury guidance allows REITs to temporarily reduce cash distributions in light of pandemic
9. Treasury guidance extends deadlines for 1031 transactions, Opportunity Zone investments due to pandemic
10. 15 national real estate organizations commission updated academic study on economic benefits of real estate like-kind exchanges

market disruption and to clarify how the IRS will treat financial contracts when they replace the expiring LIBOR with a substitute reference rate.

LIBOR is used in about $200 trillion of financial contracts, including $1.3 trillion of commercial real estate loans. The replacement of LIBOR in existing agreements presents significant tax risks. Tax authorities could view the replacement of LIBOR as a debt modification that triggers taxable gain or loss for a lender, as well as debt discharge income for a borrower. The Roundtable recommended that the Treasury give borrowers and lenders flexibility to replace LIBOR with an index that reflects objective changes in the cost of borrowing money, such as a broad index of Treasury or corporate borrowing rates, in addition to a list of rates suggested by various regulators.

In October 2019, Treasury issued proposed regulations that largely align with The Roundtable's recommendations. The proposed rules include a reasonable safeguard to prevent potential abuse–they require that the fair market value of the modified financial instrument be "substantially equivalent" to its value before modification.

Like-kind Exchanges

The landmark Tax Cuts and Jobs Act preserved like-kind exchanges for real estate while repealing exchanges (section 1031) for all other types of assets. The Roundtable worked closely with industry partners to demonstrate the economic benefits of section 1031. The industry sponsored an unprecedented academic study that examined and analyzed 1.6 million commercial real estate transactions over a 14-year period to assess the impact of section 1031 on investment, liquidity, holding periods, capex, tax revenue, and jobs. The study by Professors David Ling (Univ. Fla.) and Milena Petrova (Syracuse U.) provided clear, empirical evidence of the importance of real estate exchanges to the U.S. economy.

Today, however, like-kind exchanges remain a target among certain policymakers. The Roundtable and 14 other organizations have commissioned Professors Ling and Petrova to update their highly-regarded research on real estate like-kind exchanges. The study will provide an even more comprehensive dataset to assess the role and importance of like-kind exchanges in supporting real estate jobs and investment.