The Real Estate Roundtable

September 15, 2026

The Honorable Scott Bessent
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Re: Notice 2007-55 Relating to Current and Liquidating REIT Distributions

Dear Secretary Bessent:

On behalf of the membership of The Real Estate Roundtable,[1] I write to respectfully request that the Treasury Department ("Treasury") and the Internal Revenue Service (the "IRS") revoke Notice 2007-55[2] (the "Notice").

On June 13, 2007, Treasury and the IRS issued the Notice, announcing that regulations would be issued to clarify how Section 897(h)(1) and Section 1445(e) of the Internal Revenue Code of 1986, as amended (the "Code"),[3] apply to "distributions" made by a real estate investment trust (a "REIT").[4] Nearly 20 years

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[1] The Roundtable brings together leaders of the nation's top publicly held and privately owned real estate ownership, development, lending, and management firms with the leaders of major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy. The $26.2 trillion[1] of commercial real estate in the United States contributes $2.5 trillion annually to the nation's GDP[1] and supports 14.1 million jobs and careers. Property taxes generate over 70 percent of local tax revenue. This tax revenue supports schools, first responders, and other critical public services in communities across the country. Clarion Partners, The U.S. Commercial Real Estate Investable Universe (Jan. 12, 2026); Commercial Real Estate Development Association, *Economic Impacts of Commercial Real Estate, 2025* (Jan. 2025).

[2] 2007-27 I.R.B. 13.

[3] All references to "Sections" herein are references to sections of the Code, unless otherwise expressly indicated herein, and references to regulations are to the Treasury Regulations issued under the Code.

[4] The Notice applies to distributions made by a "qualified investment entity," which includes any REIT and any regulated investment company which is a United States real property holding corporation (a "USRPHC") or which would be a USRPHC under certain circumstances. A corporation is generally a USRPHC if the fair market value of its United States real property interests ("USRPIs") equals or exceeds 50% of the total fair market value of such corporation's USRPIs, its interests in non-U.S. real property interests and any other assets which are used or held for use in a trade or business. Section 897(c)(2). This letter focuses on the application of the Notice to distributions made by REITs and therefore references REITs where the Notice may be referring to qualified investment entities.

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have passed since issuance of the Notice and its unfulfilled promise of implementing regulations. Since that time, several subsequent developments point in favor of a careful reconsideration of the Notice's holdings. These developments include: meaningful and relevant changes in the *Foreign Investment in Real Property Tax Act* (*FIRPTA*) statute, significant growth in the importance of foreign capital to U.S. real estate jobs and investment, and the mounting corrosive effect of allowing aging and controversial sub-regulatory guidance to govern the tax treatment of major transactions and economic activity. The age of the Notice is particularly problematic because the guidance offers limited analysis, has been strongly questioned by commentators (including prior Roundtable submissions), and has not been subject to the rigor and scrutiny of the rulemaking process.

In short, sound legal reasoning, good governance, and favorable economic policy strongly support an administrative action to revoke Notice 2007-55, and we encourage you to do so as soon as possible. Repeal of the Notice would align squarely with the Administration's stated priority of "unleashing prosperity through deregulation."[5] The remainder of the letter builds on the significant foundation of argument and analysis laid by prior commentators, offers additional legal considerations based on the collective experience of Roundtable members and their tax advisors, and highlights the more recent developments that support revocation of the Notice.

I. Background

Section 897(h)(1). Section 897 generally treats gain or loss derived by a foreign person from the disposition of a USRPI as if such person were engaged in a trade or business within the United States and as if such gain or loss were effectively connected with such trade or business.[6] A USRPI includes an interest in real property located in the United States and stock in a USRPHC,[7] except that stock of a "domestically controlled" REIT (a "DREIT") is not a USRPI.[8] Section 897, together with the accompanying withholding tax rules in Section 1445, is commonly referred to as "FIRPTA." Under Section 897(h)(1), distributions by a REIT to a foreign shareholder are, to the extent attributable to gain from sales or exchanges by the REIT of USRPIs, treated as gain recognized by such foreign shareholder from the sale or exchange of a USRPI (such distribution, a "FIRPTA Distribution").

Section 892. Section 892(a)(1) exempts from U.S. federal income tax certain categories of income earned by foreign governments, including dividends from and capital gains with respect to investments in the United States in stocks, bonds or other domestic securities (the "Section 892 Exemption"). Accordingly, provided that the requirements of Section 892 are met, a foreign sovereign and its controlled entities are generally exempt from FIRPTA taxation on gain from the sale of stock of

[5] Executive Order 14192 (Jan. 31, 2025) ("The ever-expanding morass of complicated Federal regulation imposes massive costs on the lives of millions of Americans, creates a substantial restraint on our economic growth and ability to build and innovate, and hampers our global competitiveness."); see also Memorandum from the Office of Management and Budget OIRA Acting Administrator to Regulatory Policy Officers at Departments and Agencies Regarding Streamlining the Review of Deregulatory Actions (Oct. 21, 2025) ("This Administration is committed to deregulating at an unprecedented scale. . . .").

[6] Section 897(a)(1).

[7] Section 897(c)(1).

[8] Section 897(h)(4).

a REIT or other corporation whose shares constitute USRPIs (whether or not the corporation is domestically controlled).[9]

The Notice. The Notice addresses two types of transactions that Treasury and the IRS believed were based on incorrect interpretation of Section 897(h)(1) and Section 892 and announces the intent to challenge such interpretation and issue regulations clarifying the application of such provisions. It has been 19 years since the issuance of the Notice, and no regulations have been issued to date.

Section 1 of the Notice (entitled "Distributions During the Life of the REIT") takes the position that Section 892 does not exempt FIRPTA Distributions from taxation under FIRPTA. Specifically, the Notice states Treasury and the IRS would issue regulations clarifying that FIRPTA Distributions would be subject to U.S. income taxation under Section 882(a)(1) as effectively connected income pursuant to Section 897(a)(1) and subject to withholding under Section 1445(e), and where applicable, would be taxed as gain attributable to the alienation of a USRPI under the capital gains articles of U.S. income tax treaties.

Section 2 of the Notice (entitled "Liquidating Distributions") takes the position that the term "distribution," as used in Section 897(h)(1) and Section 1445(e)(6), includes any distributions described in Sections 301, 302, 331 and 332 where the distribution is attributable, in whole or in part, to gain from the sale or exchange of a USRPI by a REIT (regardless of whether the REIT is a DREIT). The Notice states that the IRS would challenge an assertion by any foreign taxpayer that Section 897(h)(1) does not apply to liquidating distributions and regulations would clarify that the application of Section 897(h)(1) and withholding under Section 1445(e) are not limited to REIT distributions that are subject to Section 316 (*i.e.*, treated as dividends under the Code).

II. Discussion

The Notice fundamentally altered the interpretation of Section 892 and Section 897(h) on which foreign shareholders relied prior to its issuance and did so with limited analysis and little detail regarding how the substantive rules would or could be implemented. For the reasons discussed below, we believe that the positions taken in the Notice are not supported by the statute, legislative history or policy rationales of such provisions.

While this Part II mainly focuses on the substantive analysis of the Notice's interpretation of such provisions, we want to note at the outset that the Notice's brevity belies the considerable adverse impact it has had on foreign investment in U.S. real estate. Part II.D describes how the Notice has served in practice as a significant deterrent for U.S. real estate sponsors in maximizing growth and returns.

[9] Treas. Reg. Section 1.892-3T(a)(1). The exemption does not apply to income derived from the conduct of any commercial activity, income received by or from a "controlled commercial entity," or income derived from the disposition of any interest in a "controlled commercial entity."

A. Section 1 of the Notice

Section 892 explicitly states that certain types of income "shall not be included in gross income and shall be *exempt from taxation under this subtitle*."[10] As mentioned above, such exempt income includes "the income of foreign governments received from investments in the United States in stocks, bonds or other domestic securities owned by such foreign governments."[11] The only statutory exclusion from the Section 892 Exemption is for income derived from the conduct of any commercial activity or income received by, from, or with respect to the disposition of an interest in, a "controlled commercial entity."[12] Sections 892 and 897 both appear in subtitle A of the Code, "Income Taxes." Thus, the plain language of Section 892 dictates that the Section 892 Exemption apply to all income received by a foreign government with respect to a non-controlling stock interest in a REIT, including income that would otherwise be subject to tax under Section 897 in the hands of foreign investors that do not qualify for Section 892.[13] Indeed, the regulations under Section 892, and the Notice itself, expressly recognize this fact as it relates to gain on the sale of the stock of a USRPHC.[14]

There is no indication that Section 897(h)(1) overrides the Section 892 Exemption. In fact, there is nothing in the legislative history of Section 897(h) or Section 892 or any other section of the Code that suggests a minority ownership interest in a REIT should be treated for purposes of Section 892 any differently than such an interest in any other domestic corporation, nor that a FIRPTA Distribution on REIT shares should be treated any differently than an ordinary dividend on, or gain from the disposition of, those same REIT shares.[15] To the contrary, Section 897(h) begins with a limiting clause: "For purposes of this [S]ection"—*i.e.*, for purposes of Section 897. By its terms, therefore, Section 897(h)(1) does only one thing: it deems certain REIT distributions to be gain from the sale or exchange of a USRPI *for purposes of FIRPTA*. It does nothing, however, to transform such distributions from income on an investment in securities (eligible for the Section 892 Exemption) to some other type of income that is not so eligible. Yet the Notice effects exactly such a transformation, as it concludes that the Section 897(h)(1) characterization of a REIT distribution causes the Section 892 Exemption not to apply to such a distribution.

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[10] Section 892(a)(1) (flush language) (emphasis added).

[11] Section 892(a)(1).

[12] A "controlled commercial entity" generally means any entity engaged in commercial activities (whether within or outside the United States) if the government (i) holds (directly or indirectly) any interest in such entity which (by value or voting interest) is 50 percent or more of the total of such interests in such entity, or (ii) holds (directly or indirectly) any other interest in such entity which provides the foreign government with effective control of such entity. Section 892(a)(2)(B).

[13] One circumstance in which the Section 892 Exemption would not apply is if the shareholder of the REIT is a controlled commercial entity. For purposes of this letter, it is assumed that the controlled entity that is a REIT shareholder is not engaged in commercial activity.

[14] *See* Treas. Reg. Section 1.892-3T(b), Ex. 1 (providing that X, a controlled entity of a foreign sovereign that is not engaged in commercial activity anywhere in the world, is exempt from U.S. tax under Section 892 on gains from the disposition of a minority equity interest in a USRPHC).

[15]

The legislative history of Section 897(h) undermines the Notice's interpretation. The Committee Reports for Section 897(h) do not mention Section 892, much less suggest that Congress intended Section 897(h) to override it.[16] During the enactment of Section 897(h), there was no discussion of Section 892 and no indication that Congress intended to narrow its exemption. That silence is significant. If Congress had intended to make a substantial change to the scope of Section 892, one would expect some acknowledgment of that result in the legislative history. The absence of any such discussion reinforces what the statutory text already makes clear: Section 897(h)(1) applies only "for purposes of" FIRPTA, not for purposes of Section 892. Nor is there any policy reason why a foreign government should receive diametrically opposed consequences when receiving a FIRPTA Distribution attributable to a sale of real property as opposed to selling the same real property through a sale of REIT shares;[17] in both cases, the foreign government is receiving income from a minority investment in securities, exactly what Section 892 was intended to exempt.

In the absence of clear congressional intent for Section 897(h) to contradict the plain meaning of its introductory phrase "[f]or purposes of this section" and thereby override Section 892, the Notice was incorrect in concluding that FIRPTA Distributions cannot qualify for the Section 892 Exemption.

B. Section 2 of the Notice

A significant driver behind the issuance of the Notice seems to have been a need to address perceived abusive planning involving the "cleansing rule" provided in Section 897(c)(1)(B). The cleansing rule provides that the stock of a USRPHC ceases to be a USRPI once the corporation has disposed of all of its USRPIs in transactions in which the full amount of the gain (if any) was recognized. In the case of a USRPHC that is not a REIT, the cleansing rule makes sense: because the USRPHC would be subject to corporate-level tax on the disposition of its USRPIs, there would be no need to impose a second layer of shareholder-level tax when the net amount of sale proceeds are distributed to its shareholders in complete liquidation. Legitimate concerns were raised, however, that prior to the Notice, the cleansing rule could have been read to exempt foreign shareholders of a REIT from FIRPTA, even where they would have been subject to FIRPTA if they had sold the REIT stock and even though the REIT would not pay any corporate-level tax as a substitute for the shareholder-level tax. Such interpretation of the cleansing rule did not present a similar concern in the case of a foreign shareholder of a DREIT or foreign government shareholder eligible for the Section 892 Exemption because such shareholder would not have been subject to FIRPTA on the disposition of the REIT stock in the first instance.

However, rather than being limited to preventing the specific planning concern, the Notice goes well beyond what was necessary to address the perceived abuse associated with the cleansing rule. By providing that any distribution described in Sections 301, 302, 331 and 332, regardless of whether such distribution is a dividend distribution under Section 316, is subject to FIRPTA to the extent the

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16 *See* H. Rep. No. 96-1479, 96th Cong., 2d Sess. at 188 (1980).

17 We note that the primary practical impact of Section 1 of the Notice is to force foreign sovereign investors to require, as a condition to investing in U.S. real property, that sales of such property occur through a sale of REIT shares, which results in several significant market inefficiencies, such as those discussed in Part II.D of this letter.

distribution is attributable to gain from the sale of a USRPI by a REIT, the Notice effectively extends FIRPTA to a broader set of circumstances not compelled by the statutory framework or any legitimate policy concern. Moreover, even if Section 2 of the Notice served a narrow purpose at the time it was issued, the subsequent enactment of the Protecting Americans from Tax Hikes Act of 2015, which expressly clarified that the cleansing rule does not apply to REITs, directly foreclosed the concern that had been cited as a principal justification for the Notice.

As noted above, the Notice adopts an overbroad reading of what constitutes a distribution for purposes of Section 897(h)(1) that is not supported by the statute or legislative history. While the statute refers to "any distribution," the natural read of the term "distribution" in the context of the Internal Revenue Code is that it is referring to "distributions" for tax purposes. That is, "any distribution" includes transactions that are distributions under the Code and, conversely, transactions that are distributions as a legal matter but are treated as "sales or exchanges" rather than distributions for tax purposes, are not covered. In that regard, there is no indication that Congress intended Section 897(h)(1) to encompass liquidating distributions,[18] which are treated as sale proceeds rather than distributions for tax purposes. Section 331(a) is clear that a shareholder receiving a liquidating distribution from a corporation is treated as if the shareholder disposed of its interest in the corporation. Further, Section 331(b) explicitly provides that Section 301 does not apply to any distribution of property in complete liquidation of a corporation. The only statutorily permitted exception from this rule is a distribution out of a personal holding company covered by Section 316(b)(2)(B),[19] making it clear that Congress specifically chose to alter the general rule of Section 331(b) only in that particular instance.

The House Conference Report states that under Section 897(h)(1), distributions by a REIT to foreign shareholders would be treated as "gain on the sale of U.S. real property to the extent of the shareholder's pro rata share of the *net capital gain* of the REIT."[20] As one of the comment letters on the Notice observes,[21] the use of the term "net capital gain" indicates that Congress thought to apply the capital gain dividend mechanics of Section 857(b)(3)—which permits a REIT to designate its regular dividends as capital gain dividends up to the amount of its "net capital gain" for the taxable year[22]—to Section 897(h)(1). Under the REIT rules, no portion of a liquidating distribution can be designated as a capital gain dividend because such a distribution is not a dividend.[23]

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[18] For the sake of simplicity, the rest of this section refers to "liquidating distributions," but such references should be read to include redemptive distributions to which Section 302(a) applies.

[19] Section 331(b).

[20] H.R. Conf. Rep. No. 1479, 96th Cong. 2d Sess. 188 (1980) (emphasis added).

[21] Letter from Peter J. Genz, John C. Hart, John D. Rayis and James B. Sowell to The Honorable David Kautter Assistant Secretary of the Treasury (Tax Policy), at 6 (November 1, 2017).

[22] Section 857(b)(3)(B).

[23] *See* Section 857(b)(3)(B) (defining "capital gain dividend" as any "dividend" that meets the designation requirements). Under Treasury Regulations Section 1.856-1(e), other provisions of chapter 1 of the Code and the regulations thereunder generally will apply with respect to both the REIT and its shareholders in the same manner that they would apply to any other organization which would be taxable as a domestic corporation, including that

Under established principles of statutory construction, the provisions of a statute must be read in harmony and, where possible, in a manner that gives effect to each provision without creating internal inconsistency.[24] As another commentator has pointed out,[25] the Notice's treatment of a liquidating distribution from a REIT as a distribution subject to FIRPTA tax results in an internal inconsistency whereby a liquidating distribution from a DREIT is exempt by reason of Section 897(h)(2), which provides that any interest in a DREIT is not a USRPI, but such distribution is taxable under Section 897(h)(1). If Congress intended Section 897(h)(1) to apply to liquidating distributions, it would have clarified that sale or exchange treatment under Section 331(a) is not applicable for purposes of Section 897(h)(1). This inherently inconsistent application can be seen in existing regulations as well—for example, regulations under Section 897 provide that the term "disposition" for FIRPTA purposes means "any transfer that would constitute a disposition by the transferor for any purpose of the [Code] and regulations thereunder[26] and that the amount of gain or loss from the disposition of a USRPI is determined "as provided in [S]ection 1001(a) and (b)."[27] Therefore, a liquidating distribution under Section 331 would be subject both to Section 897(h)(1) and the regulations treating it as a Section 1001 exchange.

C. The Notice Should Be Revoked in Furtherance of Sound Tax Administration

The failure to timely promulgate regulations contemplated by published notices can create significant confusion and uncertainty for taxpayers attempting to apply those notices in real world contexts. During President Trump's first term, Treasury and the IRS expressly acknowledged this concern in their Policy Statement on the Tax Regulatory Process, released on March 5, 2019, which provides that future notices announcing an intent to issue proposed regulations will include a statement that, if no proposed regulations or other guidance is issued within 18 months of the notice, Treasury and the IRS will not assert a position adverse to taxpayers based on the notice.

The Notice stated that Treasury and the IRS would promulgate regulations that would be effective retroactively to the date of the Notice's publication on June 11, 2007. While the IRS's Priority Guidance Plan for 2025-2026 lists "Regulations under §897(h) regarding certain investment entities" (which is the first time such plan was included in the Priority Guidance Plan), to date, after *19 years*, no such regulations have been proposed. As mentioned above, the Notice was issued with a legal interpretation

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Sections 331 and 302 apply in determining whether REIT distributions are to be treated as in exchange for stock. Treas. Reg. Section 1.856-1(e)(3).

[24] *See e.g.*, *Watt v. Alaska*, 451 U.S. 259, 267 (1981) ("The intention of the legislature to repeal must be clear and manifest ... We must read the statutes to give effect to each if we can do so while preserving their sense and purpose") (citing *Morton v. Mancari*, 417 U.S. 535, 551 (1974); *Haggar Co. v. Helvering*, 308 U.S. 389, 394 (1940)).

[25] Kimberly S. Blanchard, *Notice 2007-55 Rules Liquidating Distributions from REITs Are Taxable Under § 897(h)(1)*, 36 Tax Mgmt. Int'l J. 2, 2 (Aug. 10, 2007).

[26] Treas. Reg. Section 1.897-1(g).

[27] Treas. Reg. Section 1.897-1(h). *See also* Treas. Reg. Section 1.897-5T(b)(2) (providing that the distributee shareholder of a domestic corporation is treated as having disposed of a USRPI and recognizes gain or loss on the stock of such corporation to the extent that the distribution is treated pursuant to Section 331(a) or Section 302(a) as made in full payment in exchange for stock).

that was inconsistent with the then-accepted understanding among practitioners, with limited analysis and no detail regarding how the substantive rules would or could be implemented.

D. The Notice Should Be Revoked for Adverse Impact on Foreign Investment in U.S. Real Estate

Over the last 10 years, the United States has attracted an average of more than $50 billion per-year in foreign capital for investment in U.S. commercial real estate, including multifamily and senior housing, retail, office, and other asset classes.[28] The ability of the U.S. commercial real estate industry to access foreign sources of capital and foreign-based real estate investors is overwhelming positive for the broader U.S. economy, for the creation of well-paying jobs in the United States, and for the health and well-being of our communities. Passive foreign capital is often a key component that allows ambitious and transformative projects to move forward. Previously, foreign investment occurred most frequently in large, gateway markets on the coasts. Today, foreign capital is more and more relevant in smaller, regional markets. Cities such as Charlotte, Tampa, Memphis, Austin, Orlando, Seattle, Phoenix, Philadelphia, Seattle, and a dozen others each attracted over $1 billion in foreign real estate investment in recent years.[29] When invested in U.S. real estate, foreign capital puts contractors, tradesmen, and others to work constructing, upgrading, and improving properties. Pooled with U.S. partners and their expertise, foreign investment helps create productive assets, such as shopping centers and apartment buildings, which revitalize communities and increase the supply of affordable housing. Foreign investment can be a critical source of financing for new multifamily housing that brings down costs for working families. Foreign institutional investors, in particular, are ideal partners for ambitious real estate and infrastructure projects because they have the capital for large-scale initiatives and the time horizon necessary for the long-term returns associated with the upfront investment.

Rather than contributing to sound tax administration or meaningful revenue collection, the Notice operates in practice as a deterrent to investment in U.S. real estate. The commercial reality is that foreign sovereign investors generally do not accept the FIRPTA exposure implicated by the Notice as acceptable in their base-case economics for investing in REITs. Instead, they generally expect the investment to be structured through a REIT that is prohibited from making FIRPTA Distributions, with an exit achieved through a sale of REIT stock.[30] The result is that the U.S. sponsors are often forced into inefficient structuring practices, including the use of single-asset REITs even where the business case may be stronger to group multiple assets together,[31] and required to pass on otherwise attractive acquisition, disposition, recapitalization and other market opportunities in order to preserve the desired tax outcome

[28] CBRE, *Foreign Investment Briefing* (Feb. 2025).

[29] *Id*.

[30] In situations where the foreign sovereign's co-investors are unwilling to commit to such an exit structure, the foreign sovereign will often forgo the investment entirely.

[31] For example, assume a real estate portfolio consists of 50 commercial properties. If the sponsor wants the flexibility to sell any of the properties in a one-off transaction rather than as part of a sale of the whole portfolio while achieving the desired (and often contractually mandated) tax result for its foreign investors, it may reasonably determine that it must hold each asset in a separate REIT. The resulting administrative costs—both to the taxpayer in maintaining 50 separate REITs and to the IRS in processing 50 separate REIT returns each year—are enormous, especially when multiplied across the entire industry.

for the foreign sovereign investors. Furthermore, the obligation to sell REIT stock reduces optionality and liquidity as the purchaser must be able to satisfy the REIT organizational requirements (which will eliminate certain purchasers from the buyer pool, including, for example, family offices because they will not be able to satisfy the "closely held" requirement) and introduces unnecessary transaction costs, such as representation-and-warranty insurance, diligence and other protections relating to REIT qualification or other historic REIT liabilities.

III. Conclusion

For the substantive reasons discussed above and the significant distortionary impact the Notice has had on foreign investment in U.S. real estate, we strongly urge the Treasury and the IRS for a comprehensive reassessment of the Notice's interpretation of Section 897(h). Thank you in advance for your consideration of the issues addressed above and our comments. Please do not hesitate to have your staff contact me with questions or requests for additional information.

Sincerely,

Jeffrey D. DeBoer
President and Chief Executive Officer