The Real Estate Roundtable

# Protecting Access to Foreign Investment in U.S. Real Estate

## Tax Policy

## Summary

Foreign investment is a major source of capital for U.S. commercial real estate, but new federal regulations, a wave of state-level restrictions, and proposed legislation threaten to deter the deployment of global capital in U.S. assets.

First, in April 2024, the Treasury Department issued final regulations that greatly expanded the reach of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), creating a new and unprecedented "look-through" rule that in effect would raise the tax burden on inbound real estate capital. Tax regulations proposed by the Trump administration in October 2025 would repeal the 2024 look-through rule. Separately, in December 2025, Treasury issued final Section 892 regulations and proposed new regulations that could disrupt inbound real estate investment from foreign governmental entities.

Second, at the state level, 20 states have enacted restrictions on foreign investors in real estate and agricultural land, and eight states have considered similar measures.

Third, Congress recently considered a tax proposal—known as Section 899—that would impose higher U.S. tax rates on investors from foreign countries deemed as maintaining "unfair" tax regimes. Section 899 was ultimately dropped from the One Big Beautiful Bill Act (OB3 Act) after the US and OECD agreed to carve out U.S. companies from a global minimum tax agreement.

### Key Takeaways

- Foreign capital is a critical source of capital for U.S. real estate and infrastructure investment. Policies that discourage foreign investment weaken U.S. competitiveness, raise the cost of capital for U.S. developers, and undermine efforts to revitalize urban cores, modernize infrastructure, and expand the housing supply.
- Treasury's proposed repeal of the FIRPTA look-through rule is a positive development.
    - The rule exceeds Treasury's authority. Congress explicitly authorized "look-through" rules for REITs and RICs, but excluded domestic C corporations. Treasury's 2024 interpretation reads into the statute a rule Congress rejected.
    - The "look-through" rule reverses decades of well-settled law. Treasury's 2024 interpretation of the statute is contradicted by the structure and legislative history of Section 897, the only IRS ruling on the topic, and judicial opinions concerning the application of constructive ownership rules generally.
    - The "look-through" rule is retroactive and disruptive. It imposes the regulations on investment structures in place for years and creates significant uncertainty for foreign investors in REITs and infrastructure.
- States enacting or considering restrictions on foreign investment in real estate should proceed carefully to prevent unintended consequences that could hold back economic growth and capital formation.
- State-level restrictions have national implications and seem to fly in the face of the Commerce Clause of the Constitution in that they interfere with the free flow of interstate and foreign commerce.
- Congress should continue to oppose proposals such as Section 899 that could disrupt global capital flows and chill passive investment in U.S. real estate and infrastructure.
- If a "retaliatory tax" like Section 899 moves forward, lawmakers should modify the measure to exempt passive, non-controlling minority investment in U.S. real estate in order to protect an important source of financing and capital.