The Real Estate Roundtable

Preserving Business Property Tax Deductions

Tax Policy

Summary

As part of the budget reconciliation process and in order to finance a growing list of tax priorities, members of Congress have considered limitations on the federal tax deduction for state and local taxes paid by businesses ("Business SALT") as a source of new revenue. These restrictions could take several forms. A cap on the deductibility of business-related property taxes would have devastating consequences for commercial real estate values, rents, and the entire economy and financial system. The tax legislation passed by the House Ways and Means Committee in May does not limit the deductibility of state and local business-related property taxes.

RER has strongly urged Congress to preserve the deductibility of state and local business property taxes to avoid the detrimental impacts that would result from changing this policy.

Key Takeaways

- State and local property taxes represent, on average, **40 percent** of the operating costs of U.S. commercial real estate, a greater expense than utilities, maintenance, and insurance costs combined.
- Business-related property taxes are different from state and local income taxes. Property taxes are an **unavoidable expense**, an inescapable cost of operating any business. They are a cash outlay that is owed **regardless** of whether the business has any income at all.
- Analysis by the Tax Foundation indicates that disallowing corporate SALT deductions for corporate income and property taxes would reduce GDP and American incomes by 0.6 percent and reduce hours worked by 147,000 full-time equivalent jobs.

Background

2017 Tax Cuts and Jobs Act (TCJA)

- The TCJA imposed a $10,000 cap on the deductibility of state and local income and property taxes paid by individuals.
- The bill retained the deductibility of state and local business taxes, including property taxes on business property (property used in a trade or business, or property held for investment), state corporate income taxes, and state income taxes paid at the entity-level (state pass-through "work around" regimes).
- Business SALT restrictions are considered a potential offset for individual SALT relief, an extension of already-expired business provisions (e.g., bonus depreciation), or a further reduction of the corporate rate.
- Advocates of limiting the deductibility of Business SALT offer two policy arguments.
    - Some suggest, as a matter of tax parity, that businesses should be treated the same as individuals.
    - Others argue that restricting the Business SALT deduction would put pressure on states to further lower their tax burden on job creators.

Recommendations

Preserve the Deductibility of Business SALT: Repealing the deductibility of state and local business property taxes would cause unimaginable damage to U.S. commercial real estate, local communities, and the broader economy and must be avoided.

- Eliminating or capping the Business SALT deduction could **raise effective tax rates to 1970s-era levels near 50 percent**, discouraging investment in housing, infrastructure, and economic development projects nationwide.
- This would **reverse** the benefits of the TCJA and Section 199A, in effect **raising business owners' property tax bills by roughly 40 percent** and causing employers to owe federal tax on money that they do

not have.

- Real estate values would fall as investors rush to exit the market, and banks and other lending institutions would face increased negative pressure.
- Foreclosures, insolvencies, and massive layoffs would result, and new investment would dry up.
- Changing deductibility of Business SALT would **hit lower-rent housing the hardest**, drive up operating costs, and deter construction at a time when housing affordability is already at a crisis point.
  - The cost will be passed through to tenants as landlords are forced to raise rents. Lower-income renters will be hit the hardest because property taxes are a larger percentage of the total cost for these properties.
  - In addition to stalling housing development and eroding property values, repealing Business SALT deductions would undercut local tax bases that fund schools, fire departments, and more. These public services and others would suffer as local tax revenue declines.

The Real Estate Roundtable
Pass-Through Business Income
Tax Policy

Summary

Real estate generally is owned and operated through "pass-through" entities that allow income to pass through to individual owners rather than taxing the income at the entity level. Pass-through entities such as partnerships, limited liability companies (LLCs), S corporations, and REITs are ideal for real estate because they give investors flexibility in how they structure the risks and rewards of these capital-intensive and relatively illiquid businesses.

The 20 percent deduction for pass-through business income enacted in 2017, Section 199A of the tax code, **expires at the end of 2025**. At that time, the effective marginal rate on pass-through business income would rise by over one-third. Tax legislation passed by the House Ways and Means Committee in May would permanently extend Section 199A and increase the deduction to 23 percent, lowering the top effective tax rate on qualifying income to 28.49 percent.

Key Takeaways

- Our pass-through regime is a competitive strength of the U.S. tax system. Most countries rely on inflexible corporate regimes that provide little ability for an entrepreneur to tailor the capital and ownership structure to meet the needs of the business and its investors.
- Half of the 4 million partnerships in the U.S. are real estate partnerships, and real estate activity constitutes a large share of pass-through business activity.
- Listed REITs allow small investors to invest in diversified, commercial real estate using the same single tax system available to partners and partnerships.
- Small and closely-held businesses drive job growth and entrepreneurial activity in the United States. Entity choice is a differentiator that contributes to our entrepreneurial culture.

Background

2017 Tax Cuts and Jobs Act (TCJA)

- In 2017, Congress reduced the corporate tax rate by **40 percent** and created a new **20 percent** deduction (Section 199A) for pass-through business income to avoid putting partnerships, S corporations, and REITs at a competitive disadvantage relative to large C corporations.
- Section 199A expires at the end of 2025. At that time, the effective marginal rate on pass-through business income is projected to increase significantly, from **29.6 percent to 39.6 percent**.
- Tax legislation considered in 2021 would have raised the top marginal income tax rate on many small and pass-through business owners from 29.6 percent to 46.4 percent.
- The Trump administration supports extending all of the expiring 2017 tax cuts, including Section 199A.

Recommendations

Extend Section 199A: Congress should continue to support **closely-held, entrepreneurial businesses** that create jobs and spur growth, and reject tax changes that discriminate against pass-through entities.

- Any new tax legislation should avoid the unintended consequences and potential harm caused by the stacking of tax increases on pass-through entities.
- Section 199A is appropriately targeted at businesses that hire workers and invest in capital equipment and property.
- Section 199A also helps preserve tax fairness vis-à-vis large corporations, promoting competition and entity choice.

The Real Estate Roundtable
Carried Interest
Tax Policy

Summary

A "carried" interest is the interest in partnership profits that a general partner receives from the investing partners for managing the investment and taking on the entrepreneurial risks of the venture, such as funding pre-development costs, guaranteeing construction budgets, and potential litigation. Carried interest is also granted for the value the general partner adds beyond routine services, such as business acumen, experience, and relationships. Carried interest may be taxed as ordinary income or capital gain depending on the character of the income generated by the partnership.

This year, both Republican and Democratic leaders have proposed making policy changes that would increase the tax burden on carried interest. President Trump has urged Republican lawmakers to include a tax increase on carried interest as part of budget reconciliation legislation.

Since carried interest and its tax treatment first emerged as a controversial political issue in 2007, **RER has consistently opposed legislative proposals to tax all carried interest at ordinary income rates.**

Key Takeaways

- **Carried interest is essential to real estate investment**, supporting housing development, economic growth, and the modernization of U.S. infrastructure.
- Carried interest is **not compensation for services**. General partners receive fees for routine services (leasing, property management). Those fees are taxed at ordinary tax rates.
- Proposals to tax all carried interest as ordinary income would result in an enormous tax hike on the **2.2 million** real estate partnerships and **9.7 million** real estate partners across the country who develop, own, and operate income-producing real estate.
- Unfair retroactive application of carried interest legislation to existing partnerships would distort the economics of private-sector agreements with unknown and potentially damaging consequences for real estate markets and the overall economy.

Background

Proposed Changes to Carried Interest

- Lawmakers have introduced various proposals to increase the tax burden on carried interest since 2007.
- **In 2017**, Congress created a **three-year** holding period requirement for the reduced long-term capital gains rate.
- During his first term in office, President Trump reportedly pushed Republican lawmakers to include much stricter restrictions on carried interest than the three-year holding period that was included in the final 2017 tax bill.
- In 2021, House Ways and Means Democrats passed legislation to extend the carried interest holding period from three to five years, and other changes, while adding a new exception for a real property trade or business (e.g., real estate). The proposals were not enacted.
- In February 2025, President Trump informed Republican congressional leaders that one of his main tax priorities this year is "closing the carried interest tax deduction loophole." Shortly thereafter, a group of 13 Senate Democrats reintroduced the *Carried Interest Fairness Act* (S. 445).
- The bill would convert virtually all real estate-related carried interest income to ordinary income subject to the top tax rates and self-employment taxes.

- Former Senate Finance Chairman Ron Wyden (D-OR) has proposed treating carried interest as an interest-free loan from the limited partners to the general partner that is taxable upon grant, regardless of whether the partnership ever generates any profits.

Recommendations

Preserve Current Law on Carried Interest: Carried interest changes would harm small businesses, stifle entrepreneurs and sweat equity, and threaten future improvements and infrastructure in neglected areas.

- Such changes would increase the cost of building or strengthening infrastructure, workforce housing and assisted living, and deter risky projects, such as sites with potential environmental contamination.
- The tax code should reward risk-taking**; the capital gains rate should apply to more than just invested cash**.
- The tax code has never, and should never, limit the reward for risk-taking to taxpayers who have cash to invest. An entrepreneur who forgoes the security of a salary to invest time and effort into starting a business should qualify for capital gains treatment in the same way that a passive investor qualifies when they put their cash into a public stock or private venture.
- Carried interest proposals apply retroactively to prior transactions and partnership agreements executed years earlier. The agreements were based on tax law **as it existed at the time**.
- Changing the results years later would undermine the predictability of the tax system and discourage long-term, patient investment.

The Real Estate Roundtable
Opportunity Zones
Tax Policy

Summary

Created in 2017, Opportunity Zones (OZs) are designated, low-income census tracts where qualifying investments are eligible for reduced capital gains taxes. By channeling investment where it is needed, OZs help stimulate jobs, generate economic opportunity, and improve the built environment in low-income communities. The decentralized design of OZs allows more investors and stakeholders to participate in the market and invest in these projects.

This year, the renewal and reform of the OZ tax incentives is expected to be a **major topic of discussion** as Congress considers the **extension** of the Tax Cuts and Jobs Act of 2017. RER has advocated for a long-term extension of the OZ incentives, as well as additional reforms to scale their impact and improve their effectiveness.

Tax legislation passed by the House Ways and Means Committee in May would extend OZ incentives through 2033, create new benefits for rural OZs, call for a new round of OZ census tract designations, and make other reforms to the provisions.

Key Takeaways

- In their short tenure, OZs have created jobs and spurred billions of dollars of new investment in economically struggling communities across the country.
- Opportunity Funds finance affordable, workforce, and senior housing; grocery-anchored retail centers; and commercial buildings that create spaces for new businesses and jobs.
- In 2020, the White House Council of Economic Advisers estimated that the Opportunity Funds had raised **$75 billion** in private capital in the first two years following the incentives' enactment, including **$52 billion** that otherwise would not have been raised. The council projected this capital could lift one million people out of poverty in OZs by 11 percent.
- Despite major hurdles such as COVID-19 and high interest rates, more recent estimates suggest OZs have attracted over **$120 billion** in capital.
- Today, **72 percent** of U.S. counties contain at least one OZ, and **32 million** people live in the 8,764 OZ-designated census tracts.

Background

Tax Cuts and Jobs Act of 2017 (TCJA)

- First introduced by Senator Tim Scott (R-SC) and supported on a bipartisan basis, OZs were created under section **1400Z of the Internal Revenue Code** as part of TCJA. The three main OZ tax benefits were a **deferral of prior capital gain** rolled into an OZ fund, an increase (partial "step-up") in the basis of the prior investment after a five or seven-year holding period, and the **exclusion of gain** on the OZ investment after 10 years.
- The final OZ regulations were issued four months before the COVID-19 lockdown. The tax benefits are **gradually phasing down**, with the deferral of prior gain ending in **2026**. The partial basis step-up has expired for new OZ fund contributions.
- In the last Congress, bipartisan House legislation (Reps. Mike Kelly, R-PA and Dan Kildee, D-MI; H.R. 5761) would extend OZ deadlines for two years, allow helpful "fund of funds" OZ tax structures, sunset certain high-income OZ census tracts, and create new OZ information reporting and transparency rules.

Recommendations

Provide a Long-Term Extension of OZ Deadlines: Congress should ensure that OZs continue to act as a catalyst for economic development in struggling communities by passing legislation that extends OZ deadlines.

- In the case of new investments, two of the three OZ tax incentives have either expired altogether or phased down. The third and **most important benefit**, the exclusion of gain on OZ investments held at least 10 years, expires for new investments made after December 31, 2026.
- A long-term extension will avoid disruption to the growing ecosystem of opportunity funds and the network of OZ investors that are mobilizing private capital for low-income communities and creating new jobs, housing, and economic opportunities for their residents.

Supplement the Extension of OZs with Well-Designed Reforms: Congress should also continue working on improvements to the OZ tax incentives to boost their scale and impact. RER encourages Congress to enact the following reforms:

- Remove limitations on the type of capital eligible for investment in Opportunity Funds.
- Add a new OZ tax benefit for the conversion of older, obsolete commercial buildings to housing.
- Establish a rolling deferral period and reinstate a basis step-up for new OZ investments.
- Codify, lengthen, and improve the OZ working capital safe harbor.
- Increase flexibility of Opportunity Fund ownership, investment, restructuring, and leasing arrangements.
- Modify the substantial improvement threshold to cover a broad range of real estate rehabilitation and development projects.
- Promote greater foreign investment.
- Establish information reporting and transparency requirements.

The Real Estate Roundtable
Preferential Rate and Realization Requirement
Tax Policy

Summary

It has become standard practice in the United States to tax long-term capital gain at a lower rate than ordinary income. The previous Biden administration proposed raising the capital gains rate to be on-par with the top rate on ordinary income. Former President Biden also proposed increasing the tax rate on net investment income and applying it to active business owners, including real estate professionals.

RER encourages Congress to continue to support investment and job creation with a meaningful capital gains incentive.

Key Takeaways

- Unlike other tax policies, such as immediate expensing, the capital gains preference only **rewards smart, productive investments** that generate profits.
- The reduced capital gains rate partially offsets the higher risk that comes with illiquid, capital-intensive real estate projects, as well as **the economic effects of inflation**.
- **High taxes on capital income make it harder** to attract the investment needed to rebuild our urban centers. Opportunity Zone capital gains incentives facilitated **$75 billion** in new investment in low-income communities in the first two years after enactment.
- A tax on unrealized gains would require the IRS to **police households** as they identify, tabulate, and value all their worldly possessions. The tax would thrust the IRS into a new and unwelcome role. The agency would become a permanent, live-in accountant and watchdog over every aspect of household finances, consumer activity and economic life.

Background

Proposed Changes to Capital Gains

- Traditionally, the United States has taxed long-term capital gain at a lower rate than ordinary income. The only exception was a brief three-year period after the Tax Reform Act of 1986 when Congress lowered the top ordinary tax rate from 50 percent to 28 percent and created temporary tax parity between ordinary and capital income.
- Long-term capital gain is currently taxed at a top rate of 20 percent.
- However, the rate increases to 23.8 percent if the income is subject to the 3.8 percent tax on net investment income. The net investment income tax applies to real estate gains earned by passive investors and not income earned from the active conduct of professionals in real estate.
- The prior Biden administration proposed raising the capital gains rate to 39.6 percent, which would bring it to parity with its proposed top rate on ordinary income.
- In addition, former President Biden had proposed to increase the 3.8 percent tax on net investment income to 5 percent and extend it to the income of active business owners, including real estate professionals; the net investment income tax applies to both capital gains and rental income.
- Former President Biden and several key Democratic lawmakers also proposed a mark-to-market regime in which built-in, unrealized gain would be taxed on an annual basis, regardless of whether the asset is sold.

Recommendations

Maintain a Reduced Tax Rate on Capital Gains: The current structure **decreases the cost of capital**, drives long-term investment, encourages productive entrepreneurial activity, draws investment from around the world, and increases U.S. workforce **productivity and competitiveness.**

- The differential tax treatment of liquid and illiquid investments would distort markets and give rise to wasteful new tax shelters and taxpayer games.

Reward Risk-Taking: Current law on capital gains encourages taxpayers to **put capital to work** on projects that won't pay off for many years. By taxing business assets and investments annually, a tax on unrealized gains would remove one of the major incentives for **patient, productive capital investment**.

- Risk capital differs from wage compensation. The entrepreneur who foregoes a traditional job in favor of starting a business forfeits many protections and benefits offered to employees, such as a pre-negotiated salary.
- The capital gains preference **compensates entrepreneurs** for this risk, including the potential complete loss of their time and capital.

Preserve the Integrity of Our Tax System: A proposed tax on unrealized gains is quite possibly **unconstitutiona**l. Supreme Court jurisprudence has applied a realization requirement to determine whether gains or profits constitute income taxable under the 16th Amendment.

- In addition, taxing unrealized gains would trigger **wasteful disputes and litigation,** detracting from productive economic activity. Annual valuation requirements will require **costly appraisals**. Valuation disagreements will be a constant source of audits and administrative appeals.

The Real Estate Roundtable

Real Estate Like-Kind Exchanges

Tax Policy

Summary

Currently, the tax code allows taxpayers to defer capital gain when exchanging real property used in a trade or business for a property of a like-kind. The prior Biden administration proposed restrictions on gains deferred through like-kind exchanges. **RER advocates for preserving the current tax treatment of like-kind exchanges.**

Key Takeaways

- **15-20 percent of commercial transactions** involve a like-kind exchange. Exchanges get languishing properties into the hands of new owners who improve them and put them to their best use.
- Academic and outside research has found that exchanges spur capital expenditures, increase investment, create jobs for skilled tradesmen and others, reduce unnecessary economic risk, lower rents, and support property values.
- Like-kind exchanges allow businesses to grow organically with less unsustainable debt, creating a ladder of economic opportunity for minority-, veteran- and women-owned businesses and cash-poor entrepreneurs that lack access to traditional financing.
- Land conservation organizations rely on exchanges to **preserve open spaces for public use** or environmental protection.

Background

Like-Kind Exchanges

- Since 1921, the tax code has allowed taxpayers to defer capital gain when exchanging real property used in a trade or business for a property of a like-kind, which today is covered in Section 1031.
- In 2017, Congress narrowed Section 1031 by disallowing its use for personal property (art, collectibles, etc.).
- The previous Biden administration would have restricted gains deferred through like-kind exchanges to no more than $500K per year ($1M/couple). A similar proposal has appeared in the last six budgets submitted by Democratic administrations.

Recommendations

Preserve Current Policy on Like-Kind Exchanges: The existing tax treatment of like-kind exchanges under Section 1031 supports healthy real estate markets and property values.

- Like-kind exchanges helped **stabilize property markets** at the height of the COVID-19 lockdown. Exchanges are even more important during periods of market stress when external financing is harder to obtain.
- **Section 1031 is facilitating a smoother transition** as real estate assets are re-purposed in the post-COVID economy.
- Roughly **40 percent** of like-kind exchanges involve rental housing. Section 1031 helps fill gaps in the financing of affordable housing. Unlike the low-income housing tax credit, developers can use Section 1031 to **finance land acquisition costs for new affordable housing projects.**
- Exchanges help low-income, hard-hit and distressed communities where outside sources of capital are less available. Section 1031 also **supports public services** (police, education) by boosting transfer/recording/property taxes (nearly 3/4 of all local tax revenue).
- Section 1031 **is consistent with corporate and partnership tax rules** that defer gains when the proceeds are retained and reinvested in businesses (sections 721, 731, 351, and 368).

The Real Estate Roundtable
Business Interest Deductibility
Tax Policy

Summary

The 2017 tax bill included strict new limits on the deductibility of business interest, generally restricting this to 30 percent of the taxpayer's EBITDA (earnings before interest, tax, depreciation, and amortization). However, the bill also included a key provision that allows commercial real estate (a real property trade or business) to opt out of the interest limitation.

Since 2022, the general 30 percent business interest limitation has applied a less favorable rule that uses the taxpayer's EBIT (earnings before interest and tax) rather than EBITDA as the base for measuring the amount of deductible interest. In 2025, extension of EBITDA rule, which was in effect from 2018-2021, is under review as Congress considers extension of the 2017 tax bill.

Tax legislation passed by the House Ways and Means Committee in May would reinstate the EBITDA tax rule for business interest deductibility for five years: 2025-2029.

Key Takeaways

- Debt is a fundamental part of a real estate entity's capital structure and, in addition to property acquisition costs, is used to finance day-to-day operations like meeting payroll, buying raw materials, making capital expenditures and building new facilities.
- The ability to finance investment and entrepreneurial activity with borrowed capital has driven jobs and growth in the United States for generations. America's capital markets are the deepest in the world and provide our economy with a valuable competitive advantage.
- **Commercial banks are the dominant source of financing for commercial real estate investment**. Like other entrepreneurs, small and medium-sized real estate developers and investors lack access to equity markets and rely on traditional lending to grow and expand.

Background

EBITDA Rule

- The original 2017 House Republican tax plan—the House blueprint for tax reform—would have eliminated the deductibility of all business interest (including commercial real estate debt) while replacing depreciation rules with the immediate expensing of all future capital investment, including real property.
- The final legislation included a revised Section 163(j) in which the deductibility of business interest is generally limited to 30 percent of the taxpayer's EBITDA. It also included 100 percent expensing of equipment and machinery (not real estate) for five years, phasing down thereafter.
- The 30 percent interest limit does not apply to an electing real estate business. However, an electing real estate business is required to use the alternative depreciation system, which includes slightly longer cost recovery periods for real property and cannot immediately expense leasehold and other interior improvements.

Recommendations

Extend the EBITDA Rule: Congress should extend the EBITDA rule that was in effect from 2018-2021 and avoid passing new restrictions on business interest deductibility.

- Business interest expense is appropriately deducted under the basic principle that interest is an ordinary and necessary business expense. Interest income is taxable to the recipient.

- New restrictions on interest deductibility would cause enormous damage to U.S. commercial real estate by **dragging down property values and discouraging new investment**. Fewer loans could be refinanced, fewer projects could be developed, and fewer jobs would be created.

The Real Estate Roundtable

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

Tax Policy

Summary

Under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), foreign investors are generally subject to U.S. capital gains tax on sales of U.S. real estate and most REIT shares—unlike gains on other U.S. investments. However, an exemption exists for domestically controlled REITs, where less than 50 percent of the shares are held "directly or indirectly" by foreign persons.

In April 2024, the Treasury Department issued final regulations under FIRPTA that changed the previous interpretation of the phrase "directly or indirectly" and introduced a sweeping new "look-through" rule. Though these changes aim to safeguard national security, they risk discouraging essential foreign capital crucial for refinancing and sustaining U.S. commercial real estate markets, particularly given upcoming debt maturities.

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.

RER has advocated for the withdrawal of the "look-through" rule and the restoration of a stable, predictable framework for foreign investment in U.S. real estate.

Key Takeaways

- The FIRPTA look-through rule is legally unsound, economically harmful, and inconsistent with congressional intent.
- Foreign investment is a major source of capital for U.S. commercial real estate, leading to job creation and economic growth for communities throughout our nation.
- Many investment funds that are controlled or advised by regulated U.S. asset managers source investment capital in global capital markets.
- With approximately $1.5 trillion of U.S. commercial real estate debt coming due in the next three years, foreign equity investments in U.S. assets are often an important source of capital as commercial real estate owners seek to restructure, refinance, or sell their properties.
- Discouraging foreign investment weakens U.S. competitiveness, raises the cost of capital for U.S. developers and undermines efforts to revitalize urban cores, modernize infrastructure, and expand the housing supply.

Background

New "Look-Through" Rule

- In April 2024, the Treasury Department issued final regulations under FIRPTA that introduced a "look-through" rule to determine whether a real estate investment trust (REIT) or regulated investment company (RIC) qualifies as a "domestically controlled qualified investment entity" (DCQIE) under Section 897(h)(4)(B) of the Internal Revenue Code.
- For decades, Treasury regulations interpreted the phrase "directly or indirectly" to refer to actual ownership and not constructive ownership through unrelated entities. Domestic C corporations—including those with significant foreign ownership—were treated as U.S. persons for purposes of determining whether a REIT was domestically controlled.
- The 2024 final regulation reverses this position. It requires "look-through" treatment of any non-public domestic C corporation if 50 percent or more of its stock is held (directly or indirectly) by foreign persons.

- In such cases, the REIT shares held by the domestic C corporation are attributed up to its shareholders and counted as foreign-owned. The rule applies retroactively, including to long-established structures created under the prior legal regime.
- States that have enacted or considered restrictions on foreign investors in real estate and agricultural land include Florida, which enacted Senate Bill 264 in 2023. The law aims to limit and regulate the sale and purchase of certain Florida real property by “Foreign Principals” from “Foreign Countries of Concern.”

Recommendations

Reform FIRPTA and Withdraw the “Look-Through” Rule: The federal government should reform FIRPTA and work to remove tax barriers that deter capital formation and investment in U.S. real estate and infrastructure. Treasury should formally withdraw the “look-through” rule and issue sub-regulatory guidance allowing taxpayers to rely on the forthcoming withdrawal.

- **The rule exceeds Treasury’s authority.** Congress explicitly authorized “look-through” rules for REITs and RICs in Section 897(h)(4)(E) but deliberately excluded domestic C corporations. Treasury’s new interpretation reads into the statute a rule Congress rejected.
- **It reverses decades of well-settled law.** Treasury’s 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.
- **It impedes investment in the U.S. economy.** Foreign capital as a share of total U.S. CRE investment has already fallen from over 16 percent in 2018 to less than 6 percent in 2024. The rule risks further reducing capital formation for job-creating U.S. real estate and infrastructure projects.
- **The legal case against the look-through rule is even stronger today** in the wake of the Supreme Court’s *Loper Bright* decision, in which the Court significantly narrowed the deference to which regulatory agencies are entitled when rulemaking.
- While RER supports efforts to protect national security as well as the integrity of commercial real estate investments, we have concerns about rules that may hinder foreign investment in U.S. real estate by legitimate enterprises and capital formation by law-abiding entities.

Use Caution Around State-Level Rule Changes: 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.