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), a law that imposes a discriminatory capital gains tax on foreign investment in U.S. real estate. The regulations created a new and unprecedented "look-through" rule that largely nullified the longstanding, statutory exemption from FIRPTA for domestically controlled REITs, thereby raising the tax burden on inbound real estate capital. Newly proposed tax regulations issued by the Trump administration would repeal the 2024 look-through rule.

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 income, dividends, and capital gains earned by investors from foreign countries deemed as maintaining "unfair" tax regimes. Although Section 899 was ultimately dropped from the One Big Beautiful Bill Act (OB3 Act) passed this year, key lawmakers have indicated that they will revive the proposal if Europe does not exempt U.S. companies from the global minimum tax.

Key Takeaways

- 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.
- The FIRPTA look-through rule is legally unsound, economically harmful, and inconsistent with congressional intent. Treasury should act quickly to finalize proposed regulations repealing the look-through rule.
- The enactment of Section 899 as proposed would create uncertainty that in turn would substantially deter foreign investment, increase borrowing costs, and dampen property values.

Background

FIRPTA "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.
- The rule applies retroactively, including to long-established structures created under the prior legal regime.

State-level Restrictions on Foreign Real Estate Investment

- 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."

Proposed "Section 899" Tax

- Section 899, as proposed in initial versions of the 2025 budget reconciliation bill, would have operated through the tax code's foreign residency rules, and in many cases made the Treasury Department responsible for determining whether a foreign country imposes unfair taxes and could therefore face escalating penalities. This would have resulted in uncertainties for foreign investors, where individual tax rates could change from year to year or between administrations.
- The provision would have extended to a wide range of passive investors—including sovereign wealth funds, pension funds, high-net-worth individuals, and insurance companies—with the economic burden often falling on U.S. borrowers under typical loan covenants that shift tax-law risk to domestic parties.
- Lawmakers also contemplated retroactive application to income from investments made months or years prior—a move that would have undermined global confidence in U.S. property markets.
- Policymakers dropped Section 899 from OB3 Act after the G7 pledged to exempt the U.S. from the OECD Pillar Two global minimum tax. Congressional Republicans have said they are prepared to reconsider the proposal if needed.

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.

- In March 2025, RER resubmitted detailed comments challenging the legality of the FIRPTA look-through rule and describing its harm to U.S. real estate and the broader economy. The letter asked the new administration to repeal the provision on several grounds:
    - **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.
- On Oct. 21, 2025, in a very welcome development, Treasury issued proposed regulations that would repeal the FIRPTA look-through rule for domestically controlled REITs. The preamble to the proposed regulations conveyed the adminstration's strong agreement with the policy and economic arguments in RER's March 2025 letter.

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.

Avoid Enacting Section 899 or Make Substantial Revisions to the Proposal: 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.