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The Real Estate Roundtable

March 20, 2025

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

Re: Request for Expedited Withdrawal of Final Regulations on
“Domestically Controlled Qualified Investment Entities”

Dear Secretary Bessent:

The Real Estate Roundtable respectfully requests that the Treasury Department reconsider (and ultimately withdraw on an expedited basis) final regulations issued in April 2024 under the Foreign Investment in Real Property Tax Act. The regulations are deterring capital formation and investment in job-creating real estate and infrastructure projects in the United States. Withdrawal of the final regulations would remove an unnecessary regulatory hurdle that serves no clear purpose, would lower the cost of capital for private sector entrepreneurs, and would spur new and productive real estate investments in communities across the country.

Under the final regulations, Treasury, in an act of broad regulatory overreach, invented a new “Look-Through Rule” to determine whether an entity qualifies as domestically controlled for FIRPTA purposes. As described in the attached supplement, the Look-Through Rule reversed decades of well-settled tax law, severely misconstrued the statute, and contradicted Congressional intent. The statutory interpretation advanced by the prior Administration—that the words “directly or indirectly” require the upward attribution of stock through a taxable C corporation—is, in its entirety, directly at odds with the language of Section 897(h), the Congressional intent behind Section 897(h) as reflected in its legislative history, basic rules of statutory interpretation, Treasury’s prior FIRPTA regulations, and prior IRS rulings and case law on the constructive ownership of stock.

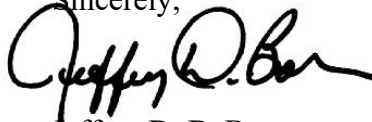
In short, the final regulations were an invalid exercise of Treasury’s rulemaking authority—a conclusion that was true at the time the regulations were issued, but has become especially apparent in light of the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), issued in the months following the promulgation of the Final Regulations, where the Court significantly narrowed the deference to which regulatory agencies such as the Treasury are entitled when rulemaking.

Moreover, as taxpayers feared, the Look-Through Rule has impaired real estate's access to capital at a critical economic juncture. 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. Unfortunately, foreign investment in U.S. commercial real estate has fallen significantly in recent years. Foreign capital as a share of total U.S. commercial real estate investment fell from more than 16% in 2018 to less than 6% in 2024. This decline in foreign capital makes it more expensive and more difficult to move forward with investments that create jobs, boost local tax revenue, and improve communities. These foreign investment trends and their implications for U.S. commercial real are addressed in greater detail in the attached supplement and accompanying materials.

In issuing the Look-Through Rule, Treasury reached well beyond its regulatory authority and invented a rule that contradicts the statute and is damaging the U.S. real estate market. For these reasons, we request that the Look-Through Rule be withdrawn. Moreover, in light of the ongoing damage to the markets that the final regulations are causing, we request that the intention to withdraw the regulations be communicated to taxpayers as promptly as possible through a Notice or other sub-regulatory guidance, along with clarity that taxpayers may immediately rely on the forthcoming withdrawal.

Thank you in advance for your consideration of these comments. We appreciate your attention to these issues, and please do not hesitate to have your staff contact me with questions or requests for additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey D. DeBoer". The signature is fluid and cursive, with the first name being the most prominent.

Jeffrey D. DeBoer

President and Chief Executive Officer

Attachments