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The Real Estate Roundtable

January 19, 2011

The Honorable Timothy Geithner
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Requested Withdrawal of IRS Notice 2007-55

Dear Secretary Geithner:

I write to you today to request that the U.S. Department of Treasury withdraw IRS Notice 2007-55 and that the IRS' previous position regarding REIT liquidating distributions be reinstated. Various commentators have concluded that the IRS position in Notice 2007-55 goes beyond Congressional intent and is insupportable tax policy due to the inconsistent results for foreign shareholders and domestic shareholders engaging in functionally equivalent transactions. Although the commercial real estate market has stabilized somewhat and is projected to continue to improve in 2011, the simple act of withdrawing Notice 2007-55 would further aid and propel the commercial real estate recovery by encouraging foreign equity investment in US real estate at a time when access to equity capital is increasingly the key to full recovery.

This straightforward change would ensure that liquidating distributions by domestically controlled REITs are not subject to the Foreign Investment in Real Property Tax Act (FIRPTA). FIRPTA was enacted as a limited exception to the long-standing U.S. policy of exempting from U.S. federal tax capital gains generated by foreign persons investing in the U.S. economy—unless those gains are effectively connected with the direct conduct of a trade or business in the United States by the foreign person. Congress has long promoted the use of the income tax system as a means of stimulating foreign investment in the United States. Although a capital gains tax on the sale of real property was imposed prior to 1936, since that time both Congress and the Treasury consistently rejected this approach until the enactment of FIRPTA in 1980. Even so, Congress did not intend FIRPTA to add an additional layer of tax on foreign persons investing in U.S. business enterprises through a domestic corporation. I.R.S. Notice 2007-55 goes beyond Congressional intent.

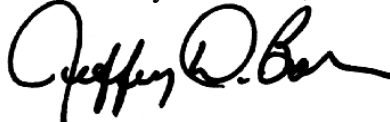
The IRS change in position in 2007 has caused significant anxiety within the foreign investor community and has severely inhibited continued foreign investment in U.S. real estate. In June 2008, the Tax Section of the American Bar Association submitted a detailed discussion of this issue and recommended several changes to the 2007 policy. In making judgments about what the operative U.S. federal tax rules should be in the context of U.S. investment by foreign persons, The Real Estate Roundtable deems critical that the IRS and Treasury consider not only the history and purpose of FIRPTA, but also the practical impact of these subjective determinations in today's economic environment.

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In this early stage of economic recovery, Notice 2007-55 should be overturned to encourage non-U.S. investors to inject capital into the U.S. commercial real estate markets. Such capital flow, jump-started by overturning Notice 2007-55, would provide tremendous relief for the real estate industry, for community banks and other financial institutions now holding troubled mortgages on U.S. properties -- and should thereby encourage foreign equity investment in US real estate at a time commercial real estate values have declined significantly from their highs in the early part of the decade and the required equity to rebalance loans is significant.

I urge you to withdraw the Notice and reinstate the IRS' previous treatment of REIT liquidating distributions as sales of stock. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey D. DeBoer". The signature is fluid and cursive, with a large initial "J" and "D".

Jeffrey D. DeBoer
President and Chief Executive Officer

cc: The Honorable Douglas H. Shulman
Commissioner, Internal Revenue Service