Invest in America and Bring Back Jobs

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BY PETER LOWY
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For the first time in 30 years, the country is seriously considering a reform of the federal tax code. Any significant tax reform should include the elimination of the seriously flawed Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). Since its enactment, FIRPTA has done nothing but cause tremendous harm to the U.S. economy and its citizens. Republicans and Democrats agree that reforming FIRPTA would result in significant job creation in the U.S. and an immediate increase in U.S. infrastructure investment.

Proposals to reform FIRPTA have been supported by individuals and groups over the full range of the political spectrum, including the International Union of Painters and Allied Trades, the Real Estate Roundtable, and the Organization for International Investment. It is a rare thing for academics, business firms, and unions to come to an agreement that a tax is seriously flawed and should be reformed.

FIRPTA subjects foreign investment in U.S. real property to a much higher tax burden than foreign investment in any other class of assets. Generally, foreign investors are not subject to any U.S. tax when they buy or sell stock and securities in U.S. companies. For example, foreigners can invest in Google, Apple, GE, Ford, and Nike, and the U.S. doesn't tax any gain when they sell their stocks or securities. But the rule is different for U.S. real estate companies. If a foreigner invests in a U.S. real estate company, we tax them under FIRPTA on any gain they receive from that investment.

Repealing FIRPTA would remove barriers to foreign investment in U.S. real estate—including in U.S. infrastructure. Such investment could have a significant economic impact. In a January confirmation hearing, Transportation Secretary Elaine Chao stressed the importance of private investment in U.S. infrastructure and argued that institutional investors remain a largely untapped source of substantial investment. Yet, foreign institutional investors remain reluctant to invest in U.S. infrastructure because assets like toll bridges, transmission towers, tunnels, and roadbeds are subject to FIRPTA taxation. Large investors in infrastructure have stated that U.S. infrastructure projects would attract much more foreign capital if FIRPTA were repealed.

Both the Trump Administration and Democratic Congressional Leadership have emphasized that "job creation and economic growth are priorities" for tax reform. Repealing FIRPTA would accomplish both of those priorities. Transportation improvements, infrastructure build-outs, and thousands of jobs would flow from the commercial real estate investment generated by FIRPTA repeal. Even the minor FIRPTA reforms in 2015 generated tens of billions of dollars of new investment in the U.S., including in secondary markets. This increase in foreign investment, however, only scratches the surface of the economic benefits that reforming FIRPTA might bring, with one leading study concluding that an estimated $2.8 trillion of global capital is available for U.S. real estate. The 2015 reforms were led by a bipartisan group of legislators: Representatives Kevin Brady (R-TX) and Joe Crowley (D-NY) in the House, and Senators Bob Menendez (D-NJ) and Mike Enzi (R-WY) in the Senate. Over 95 percent of the Republicans and Democrats on both the Senate Finance Committee and the Ways and Means Committee signed on as co-sponsors of the 2015 reforms, and, uniquely, FIRPTA reform continues to have significant bipartisan support in Congress.

The proposal to repeal FIRPTA is not a new idea. The author of FIRPTA, Senator Malcolm Wallop (R-WY), originally introduced the Act in 1980 to protect Wyoming farmland from being acquired by foreigners. Senator Wallop soon realized, however, the detrimental effect on the economy and repeatedly sought to repeal FIRPTA. He supported a FIRPTA repeal bill introduced by Senator Barry Goldwater (R-AZ) in 1984. Senator Wallop himself introduced, and Senator Lloyd Bentsen (D-TX) cosponsored, legislation that would have repealed FIRPTA in 1985. Wallop even went so far as to state that "FIRPTA has grown into a gorilla which terrorizes foreign investors, treaties, and the free market, to the detriment of all but the tax technicians." The Senate Finance Committee approved full FIRPTA repeal in 1986, noting that the "FIRPTA rules… reduce aggregate demand for U.S. real property and, therefore, lower its price to the disadvantage of prospective U.S. sellers."

FIRPTA repeal presents a rare point of political unanimity and economic opportunity. Both sides of the aisle agree that repealing FIRPTA would create much-needed domestic jobs and strengthen U.S. infrastructure. Congress and the Trump Administration shouldn't let this golden opportunity slip by. Now is the time to repeal FIRPTA.

Peter Lowy is Chief Executive Officer of Westfield Corporation, a leading global shopping center company with significant investment in the U.S. He also serves as the Chairman of the Invest in America Coalition.