ROLL CALL
THE SOURCE FOR NEWS ON CAPITOL HILL SINCE 1955

Unlocking Foreign Investment to Fix U.S. Infrastructure: A Bridge to Bipartisanship | Commentary

By Jeffrey D. DeBoer
June 11, 2014

Outdated tax rules are depriving the U.S. of billions of dollars in foreign investment. The must pass transportation bill is a rare bi-partisan opportunity for Congress to implement pro-growth tax reform and put Americans to work on our nation's crumbling roads and bridges. With political gridlock increasingly the norm, our national leaders must seize opportunities to advance commonly held objectives.

Lawmakers in both political parties should capitalize on this opportunity to fix our broken transportation system and put Americans back to work.

The federal Highway Trust Fund, which finances road construction, bridges, and mass transit systems, is nearly insolvent. Historically, Republicans and Democrats have come together to make the transportation investments that are vital to American productivity and economic growth. However, the Trust Fund's traditional revenue source, the federal gas tax, is providing far less revenue today than is needed and the discussion over potential new sources of revenue has stymied Congressional action.
Clearly, a new approach is needed and policies that harness the power of outside private capital must be part of the answer.

Meanwhile, the U.S. is among the world's favorite places to invest. Yet today's tax laws actively discourage investment from overseas in one of the places where it could have a tremendous economic impact – the commercial real estate industry, which today represents 13 percent of U.S. GDP by revenue and generates or supports over 9 million American jobs. One punitive tax regime in particular, known as the Foreign Investment in Real Property Tax Act of 1980 was enacted during the American farm crisis more than thirty years ago. Foreign investors regularly cite FIRPTA as a major impediment to investing in the United States. In a survey of foreign investors released in January, 76 percent reported that relief from FIRPTA would have a positive or major effect on their investment activity.

There are many reasons that Congress should reform FIRPTA. For example, more than $2.4 trillion worth of commercial real estate loans mature by 2018. Borrowers will need to secure new equity funding options or risk foreclosure, leaving communities with even more vacant storefronts, lost jobs, lower tax revenues and a deeper economic hole. Moreover, it subjects foreign investment in U.S. real estate to a much higher tax burden than applies to a foreign investor purchasing a U.S. stock or bond, or an investment in any other asset class. Christopher Lee, founder of Highstar Capital, one of the largest firms in the United States dedicated to investing in private infrastructure projects, notes that some of the capital unlocked by FIRPTA reform “could replace state and local spending on infrastructure, much of which is tax exempt and a drain on federal resources.”

Fortunately, Senators Robert Menendez, D-N.J., and Michael B. Enzi, R-Wyo., and Representatives Kevin Brady, R-Tex., and Joseph Crowley, D-N.Y., have introduced bipartisan legislation to reform FIRPTA. The legislation is sponsored by 41 Senators (25 Democrats and 16 Republicans) and 60 Representatives (29 Democrats and 31 Republicans), with more joining almost every day.

In addition, President Obama actively supports FIRPTA reform. His last two budgets have included a FIRPTA proposal to tax foreign pension plans the same way we tax domestic pension plans on their real estate and infrastructure investments as part of his plan to “Rebuild American Partnership.” According to the White House, “foreign investors including large foreign pension funds regularly cite FIRPTA as an impediment to their investment in U.S. infrastructure and real estate assets.”

Foreign institutional investors will inevitably play a major role in the future of infrastructure financing. Our nation needs policies to help in the best way possible.
Global institutional investors manage well over $65 trillion in assets, including $17 trillion in private pension plans alone. Transportation and infrastructure investments offer stable and predictable income streams, act as a hedge against inflation, and allow investors to diversify their holdings. In the case of pension funds, the long time horizon of an infrastructure project can match the long duration of pension liabilities. The Organisation for Economic Cooperation and Development estimates that private, cross-border investment in infrastructure will increase in the years ahead.

Innovative financing proposals, such as reform of the Foreign Investment in Real Property Tax Act , would unlock billions of private capital for investment in U.S. infrastructure projects. At the same time, FIRPTA reform would help build the bipartisan political goodwill needed to advance a major highway bill. Free-market conservatives and pro-labor progressives agree on the need to reform the punitive and antiquated FIRPTA law and agree that our nation’s infrastructure needs rebuilding.

Let’s do both and reform FIRPTA quickly as a way to finance the rebuilding of America.

Jeffrey D. DeBoer is President and CEO The Real Estate Roundtable