ADISA™
ALTERNATIVE & DIRECT INVESTMENT SECURITIES ASSOCIATION
Education ▲ Networking ▲ Advocacy

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December 3, 2019

Via Electronic Submission

The Honorable Senator Richard Burr
United States Senate
217 Russell Senate Office Bldg
Washington, D.C. 20510

Re: IRS Notice 2007-55

Dear Senator Burr:

The Alternative & Direct Investment Securities Association ("ADISA"), endorses the bipartisan letter by Senators Johnny Isakson (R-GA) and Robert Menendez (D-NJ) that urges the Treasury Secretary to uphold congressional intent by withdrawing IRS Notice 2007-55. I respectfully request that you join your Senate Finance Committee colleagues by adding your signature to this letter. Repeal of IRS Notice 2007-55 would provide a significant boost to inbound investment in US real estate and infrastructure.

ADISA is the largest association of the retail direct investment industry in the United States. Founded in 2003, ADISA has approximately 5,000 members who employ over 220,000 investment professionals, together serving the interests of more than 2 million investors throughout the country. Direct and alternative investment programs serve a critical need in the creation and ongoing management of diversified investment portfolios. They are essential elements in the capital formation process and help drive growth in the United States economy. ADISA's mission is to ensure that investors, financial professionals and program sponsors are informed and educated about investing and the role that alternative and direct investment programs can play in portfolio construction and investment management.

Problems created by Notice 2007-55 include:

Reversal of well-established tax law and congressional intent:
The 2007 IRS Notice reversed well-established tax law and congressional intent under which a real estate investment trust (REIT) liquidating distributions to foreign shareholders were treated as sales of stock; thus such distributions were not subject to the Foreign Investment in Real Property Tax Act (FIRPTA) in circumstances where such stock sales would not have been subject to FIRPTA. Under the 2007 IRS Notice, liquidating distributions are treated as capital gain distributions subject to FIRPTA, which results in a tax on these foreign investments in U.S. real estate businesses.

Prior to the issuance of the 2007 IRS Notice, foreign shareholders relied on well-established U.S. tax law that treated REIT liquidating distributions as sales of stock. The Internal Revenue Code expressly states that amounts received by a shareholder in a distribution in complete liquidation of a corporation "shall" be treated as full payment in exchange for the stock. Congressional intent has been that liquidating distributions by REITs, as with liquidating distributions of any other corporation, should be treated as sales of stock.

Discourages foreign investors and reduces capital needed to create US jobs

This unintended tax burden discourages foreign investors from putting capital to work to create U.S. jobs and to improve our communities. Withdrawing the 2007 IRS Notice would entice an infusion of foreign capital into the U.S. commercial real estate market. Even modest reforms that Congress made to the FIRPTA statute in 2015 (P.L. 114-113) are estimated to have injected billions of dollars in foreign investment into several primary and secondary U.S. commercial real estate markets.[1] With this new investment came jobs in the construction, development, and service-related industries. While this increased foreign capital investment is a positive and welcomed development, trillions of dollars in global capital are estimated to be available that could be invested in the U.S. real estate market.[2] Our tax policies should welcome such investment, not discourage it.

Tax Disparity between REIT shareholders

The 2007 IRS Notice created tax disparity between REIT shareholders in economically parallel positions. Specifically, REIT liquidating distributions to domestic shareholders are treated as sales of stock, while such distributions to foreign shareholders are treated as capital gain distributions. This tax imposed solely on foreign investment in U.S. real estate can have a discouraging impact on such investment. Since liquidating distributions are the economic equivalent of a shareholder selling all of its stock in a REIT, there is little reason why the tax treatment should be different. A bipartisan letter sent to the Treasury Secretary on October 10, 2017, and signed by 32 House Ways and Means Committee members expressed the same sentiment.

In closing, we urge withdrawal of the 2007 IRS Notice in order to restore Congress' intended treatment of liquidating distributions, encourage increased foreign investment in U.S. real estate, and further spur job creation in the United States. Such investment serves to finance projects here at home—putting contractors, tradesmen, and others to work constructing, upgrading, and improving U.S. commercial real estate properties and infrastructure assets, such as roads and bridges.

Both the business and labor communities recognize that FIRPTA reform is a win-win for the American economy. ADISA stands ready to assist in any analysis or to help in any way as your office continues the good work it does on behalf of your constituents and the American people. Thank you for the consideration of ADISA's request to sign onto Senators Isakson's and Menendez's bipartisan letter to Treasury encouraging the repeal of Notice 2007-55.

Respectfully submitted,

Greg Mausz

Greg Mausz
President

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1 In 2016, the first year that these FIRPTA reforms were in force, investments of foreign capital increased in several cities. Mazur, Jonathan et al., *4Q16 United States Capital Markets Report*, at 8 (Newmark Grubb Knight Frank, 2017), *available at* http://www.ngkf.com/home/research/us-market-reports/4q16-united-states-capital-markets-report.aspx.

2 In 2010, one report estimated that $2.8 trillion of global capital is available for investment in the U.S. real estate market. Rosen, Kenneth T. et al., *FIRPTA Reform: Key to Reviving Commercial Real Estate, Executive Summary*, at i (Rosen Consulting Group, March 2010), *available at* http://www.investinamericacoalition.org/wp-content/uploads/2019/04/CHISR01A-1033732-v2-Rosen_-_FIRPTA_Reform_-_Key_to_Reviving_Commercial_Real_Estate.pdf.

CC The Honorable Bill Cassidy
The Honorable John Cornyn
The Honorable Mike Crapo
The Honorable Steve Daines
The Honorable Mike Enzi
The Honorable James Lankford
The Honorable Robert J. Portman
The Honorable Pat Roberts
The Honorable Tim Scott
The Honorable John Thune
The Honorable Patrick J. Toomey
The Honorable Todd Young
The Honorable Michael F. Bennet
The Honorable Sherrod Brown
The Honorable Maria Cantwell
The Honorable Benjamin L. Cardin
The Honorable Thomas R. Carper
The Honorable Robert P. Casey
The Honorable Catherine Cortez-Masto
The Honorable Margaret Wood Hassan
The Honorable Debbie Stabenow
The Honorable Mark Robert Warner
The Honorable Sheldon Whitehouse
The Honorable Senator Ron Wyden, Ranking Member Senete Finance Committee