



February 13, 2026

The Honorable Kenneth J. Kies
Assistant Secretary of Tax Policy
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Kenneth J. Kies
Chief Counsel (Acting)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Electronically submitted at www.regulations.gov
CC:PA:01:PR (REG-101952-24)

RE: Guidance Relating to Income of Foreign Governments and of International Organizations (REG-101952-24)

Dear Assistant Secretary and Acting Chief Counsel Kies:

On behalf of our members, the American Investment Council (the “AIC”) appreciates the opportunity to respond to the request for comments in the Notice of Proposed Rulemaking. Our comments will focus primarily on two issues under the proposed regulations – the proposed expansion of when an acquisition of debt is treated as a commercial activity and the proposed facts and circumstances test for determining effective control.

The AIC¹ is an advocacy, communications, and research organization established to advance access to capital, job creation, retirement security, innovation, and economic growth by promoting responsible long-term investment. The AIC’s members are the world’s leading private equity and private credit firms, united by their commitment to growing and strengthening the businesses in which they invest.

Private equity investments strengthen the economy, grow businesses, provide jobs and improve the lives of millions of Americans. In 2024, the U.S. private equity sector “directly employed 13.3 million workers throughout the U.S. economy earning \$1.1 trillion in wages and benefits and generating \$2.0 trillion of GDP.”² Private equity funds

¹ For further information about the AIC and its members, please visit <http://www.investmentcouncil.org>.

² EY, “Economic contribution of the U.S. private equity sector in 2024,” p. 1 (March 2025), *available at* <https://www.investmentcouncil.org/wp-content/uploads/2025/03/EY-AIC-2024-Economic-contribution-of-the-US-private-equity-sector.pdf>.

invest in a wide range of businesses of all sizes and industry sectors across the country, including manufacturing, technology, retail, energy and health care. Approximately 85% of PE-backed businesses were small businesses (less than 500 employees) and the median-sized PE-backed business employed 72 workers.³ These investments are fueled by a wide array of investor types, including foundations, insurance companies, public pension funds, and sovereign wealth funds (SWFs). According to a recent study, the latter two account for roughly 70% of all PE assets under management (AUM) globally⁴ and SWFs accounted for approximately 35% of the total growth in private equity AUM in 2025.⁵ Consequently, the tax treatment of SWFs is critically important for continued growth and investment in our industry.

Final Regulations

For this reason, we are extremely grateful for several modifications made by Treasury and the IRS in the final regulations that will provide greater certainty regarding eligibility for the section 892 exemption.

For example, we believe the inclusion of the new qualified partnership interest exception generally significantly improves the limited partner exception in the proposed regulations by clarifying and limiting the circumstances where commercial activities will be attributed to a SWF limited partner. The greater clarity regarding the scope of impermissible management activities, the exclusion (from management rights) of rights merely to protect and monitor capital investment, and the new 5% safe harbor for certain small partnership interests are all welcome additions in this area.

We also appreciate the modification in the final regulations limiting application of the per se rule for United States Real Property Holding Corporations (USRPHCs) to domestic companies. This will provide investors greater certainty by preventing foreign corporations from becoming a deemed “controlled commercial entity” (CCE), causing them to lose the benefit of the section 892 exemption.

We believe each of these changes in the final regulations will encourage and enhance investment growth by SWFs in the U.S. economy.

³ Id. at p. 10.

⁴ See Boston Consulting Group, “Sovereign Wealth Funds and Public Pension Funds Are Reshaping Private Markets,” *Global Principal Investors Report 2024*, p. 4, (December 9, 2024), available at <https://www.bcg.com/publications/2024/global-principal-investors-report>.

⁵ See Bain & Company, “Private Equity Outlook 2025: Is a Recovery Starting to Take Shape?” *Global Private Equity Report* (March 3, 2025), available at <https://www.bain.com/insights/outlook-is-a-recovery-starting-to-take-shape-global-private-equity-report-2025/>.

Proposed Regulations

We are concerned, however, that certain changes in the proposed regulations will counteract the benefits provided in the final regulations and is chilling SWF investment in the United States, causing it to migrate overseas. Significantly, the proposed regulations reduce the threshold standard for when a debt acquisition constitutes “commercial activity” causing section 892 not to apply. Specifically, a debt acquisition generally will be treated as a commercial activity, unless it is characterized as an “investment” under either an ambiguous, non-exclusive facts-and-circumstances test or two relatively limited safe harbors,⁶ both of which should be broadened. The proposed regulations shift the long-standing principle of section 892 by creating an assumption that all loan acquisitions are commercial activity. A reversal of the assumption and expansion of the safe harbors would provide clarity without disrupting existing markets. For example, the first safe harbor should be expanded to include private secondary market offerings, such as Reg S and 144A offerings, as well as other similar offerings where the buyer has no significant ability to negotiate terms with the issuer.

Certain examples provided in the proposed regulations also seem to expand the risk that a debt acquisition will be deemed to be a “commercial activity” and the section 892 exemption will not apply to interest (or other income) earned on the debt.⁷ For instance, one example indicates that even a single one-off loan may constitute “commercial activity” if the SWF (or its representative) acted as a lender, materially participated in the negotiations, and does not own an equity stake in the debt issuer.

A second example indicates that a “significant modification” of a debt instrument constitutes “commercial activity” where the SWF or its representative was a member of the creditors’ committee that materially participated in negotiating and structuring the terms of the modified debt.⁸ This applies even where the debt was not distressed when acquired and the modification was prompted by a later default. This is contrary to normal commercial practices.

It also is difficult to reconcile Example 5 with the facts and circumstances test in Proposed Treas. Reg. sec. 1.892-4(c)(1)(ii)(C). Example 5 seems to treat “material participation” in negotiating and restructuring debt as a super factor whereas the facts and circumstances test only lists it as one of eight factors that need to be considered in determining whether an acquisition of debt is an investment. For example, in the case of a debt-for-debt exchange, it would seem the fact that the SWF at the time of acquisition of the original debt had no reasonable expectation (e.g., based on a decline in the financial

⁶ The safe harbors are: (i) the acquisition of debt in a registered offering, provided the underwriters are unrelated to the acquirer; or (ii) the acquisition of certain publicly traded debt from a seller that is not the issuer and is not related to (or under joint management) with the acquirer. See Proposed Treas. Reg. sec. 1.892-4(c)(1)(ii)(B).

⁷ See Proposed Treas. Reg. sec. 1.892-4(c)(1)(ii)(D)(2), *Example 1*.

⁸ Proposed Treas. Reg. sec. 1.892-4(c)(1)(ii)(D)(6), *Example 5*.

condition or credit rating between issuance and acquisition) that the unmodified debt would default would be at least weighed as an equally relevant factor in determining whether the modified debt was an investment or not. This seeming inconsistency between the treatment of the two factors causes uncertainty that makes it difficult to determine when debt acquired in a debt modification will constitute a commercial activity or an investment under the proposed regulations. Similarly, Example 2 causes some uncertainty whether 80% is a threshold for application of the notion that providing debt to a company in which the lender has an equity interest does not constitute loan origination. This threshold is too high and the example should be clarified that a lower equity ownership also meets that factor.

Another concern with the proposed regulations is the uncertainty created by the new “facts and circumstances” test for effective control.⁹ Under current law, an entity engaged in commercial activities is treated as a CCE if a foreign government “controls” it, including through “effective control.” Under the proposed regulations, effective control generally means any interest in or relationship with the entity that results in control (directly or indirectly) of the operational, managerial, board-level, or investor-level decisions of the entity. This determination is generally made based on all the facts and circumstances. Uncertainty regarding the ambit and application of this subjective test could significantly inhibit investment by SWFs in the United States.

Given the chilling effect on investment some of our members are already seeing following the release of the proposal, we are grateful that Secretary Bessent already has responded to some of these concerns by stating that any final regulations “will preserve established market practices and continue to support current and future sovereign wealth fund investment in the United States as we drive economic growth for the benefit of all Americans.”¹⁰ Building on this much-appreciated leadership, the market would benefit from a public statement from the Department of Treasury reiterating that proposed regulations do not have binding effect and that Section 892 current law remains in place and controlling unless and until final regulations are effective. We stand ready to work with the Department to encourage continued investment in the United States, while avoiding what we believe were unintended potential consequences of the rule as written. We would welcome an opportunity to further discuss the concerns outlined above in addition to other potential concerns; and how best to achieve that common objective.

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⁹ Proposed Treas. Reg. sec. 1.892-5(c)(2)(i).

¹⁰ Scott Bessent (@SecScottBessent), “President Trump’s policies are driving trillions of dollars in investment into the United States.” X (formerly known as Twitter), January 17, 2026, 9:41 P.M., <https://x.com/SecScottBessent/status/2012716991837008359>.

Thank you in advance for your consideration of our comments. We would be happy to meet at any time to discuss these issues further and answer any questions you might have.

Sincerely,

/s/ Rebekah Goshorn Jurata
General Counsel
American Investment Council