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Room 5503  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

*Via Federal eRulemaking Portal*

**Re:** Income of Foreign Governments and of International Organizations: Notice of Proposed Rulemaking

Dear Sir or Madam:

We appreciate the opportunity to submit these comments on the proposed regulations under § 892 as published in the Federal Register on December 15, 2025.

As context for our remarks, we believe it would be helpful for Treasury and the IRS to understand the breadth and intensity of reaction among sovereign investors to both the proposed and recently finalized § 892 regulations.

First, it is important to recall that these regulations were issued in the wake of the so-called “Revenge Tax” – new § 899, initially proposed in early 2025 and subsequently incorporated in the One Big Beautiful Bill Act – which would have denied the benefits of § 892 to foreign governments from certain countries. While ultimately abandoned, proposed § 899 had a significant chilling effect among sovereign investors, and the episode remains fresh in their minds.

Second, following publication of the proposed and final § 892 regulations, we engaged in substantive dialogue with dozens of sovereigns with substantial investments in the United States. While there is widespread appreciation of Treasury’s efforts to provide additional clarity in certain areas, there remains deep concern about three key aspects of the rules:

- the narrowing of the former Limited Partner Exception in the renamed Qualified Partnership Interest Exception;
- the proposed approach to debt, which would treat debt as presumptively commercial absent two narrow safe harbors or a broad, uncertain facts-and-circumstances test; and

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- the expansion of the “effective control” concept in a manner that increases uncertainty about whether customary investor rights cross the control threshold.

Third, these reactions were amplified following publication of a widely-read *Financial Times* article from January 2026 entitled “Washington moves to strip sovereign wealth investors of US tax perk.” The article attracted attention at the highest levels of these organizations – both the C-suite and boards – and triggered numerous internal and cross-institution consultations. What began as technical unease among tax, legal, and finance teams quickly escalated into a perception among senior leadership that the United States may be becoming less hospitable to the significant non-U.S. capital supplied by sovereign wealth funds, public sector pension plans, social security systems, and other government-linked institutions – a sentiment reinforced by the recent memory of the nearly enacted § 899.

Fourth, and perhaps in response to this heightened attention, Secretary Bessent made the following remarks on January 16, 2026:

*@USTreasury’s recent notice of proposed rulemaking under §892 was issued in response to sovereign investors’ requests for greater clarity and certainty.*

*Treasury has received feedback from stakeholders that will inform any final regulations on these technical U.S. tax rules. We 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.*

While these statements are appreciated, they have not fully allayed the concerns of sovereign investors. Many remain apprehensive that the regulations, as drafted, would significantly impact investor behavior and require operational and structural changes to investment platforms and the investments themselves – outcomes that may be inconsistent with the Secretary’s stated goal of preserving established market norms.

We respectfully urge Treasury and the IRS to carefully consider the practical effects of the proposed and final rules and to work closely with the sovereign investor community to ensure that the regulations support the continued flow of stable, long-term capital into the United States without creating unnecessary uncertainty or disruption to established market practices.

Very truly yours,

*/s/Babak Nikraves*

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**Comments and Recommendations on the Acquisition of Debt**  
**(Prop. Treas. Reg. § 1.892-4)**

1. **Recommendation:** *Reverse the Presumption*

The Proposed Regulations published on December 15, 2025 (the “**Proposed Regulations**”) would fundamentally alter the historic approach toward debt by presuming that any acquisition of debt is commercial unless it falls within a safe harbor or passes a facts-and-circumstances test. This approach would represent a significant departure from both the clear language of § 892 itself (which includes “stocks, bonds, or other domestic securities” as qualifying investments) and from longstanding regulatory treatment (which, since 1980, treats “loans” as generally non-commercial). There is no policy or statutory basis for treating an investment in debt as inherently more commercial than an investment in equity. The Proposed Regulations inject significant uncertainty, risk, and administrative burden into the market, potentially disrupting established investment structures and market practice. Treasury should therefore reverse the proposed presumption and treat acquisitions of debt as non-commercial unless there is clear evidence of commercial activity.

2. **Recommendation:** *Expand the First Safe Harbor to Include Non-U.S. Offerings*

The first safe harbor would bless acquisitions of debt issued in U.S.-registered offerings. However, § 892 makes clear that bonds – an example of a registered offering – are not commercial. No distinction is made as to where or how such bonds may be issued, and limiting the safe harbor to U.S.-registered offerings creates an arbitrary distinction without legal basis. As such, the first safe harbor should be made consistent with statutory intent and revised to encompass offerings registered under foreign law as well.

3. **Recommendation:** *Supplement the Second Safe Harbor to Address Private Market Secondaries*

The second safe harbor is limited to acquisitions of debt traded on an “established securities market.” However, a large share of secondary debt market activity occurs via private market transaction or through other channels that may not meet the technical definition of an “established securities market.” Limiting the safe harbor in this way excludes a major segment of secondary market activity. Therefore an additional safe harbor should be provided to capture bona fide secondary market acquisitions, even where trades occur off-exchange or through dealer networks. This would better reflect the realities of modern secondary trading of private market debt securities.

4. **Recommendation:** *Provide Private Credit Examples*

The private credit market, including direct lending, club deals, and syndicated loans, is a significant feature of institutional investment. As the lack of guidance on how such investments will be treated under the facts-and-circumstances test creates material uncertainty, specific examples involving private credit transactions would be helpful. For instance, where a sovereign investor joins a syndicated facility and is not the arranger, does not lead negotiations, and holds a minority position, the investment should be non-commercial. Similarly, participation in “club” deals where terms are set by a lead arranger and the investor has limited input should not, by itself, constitute commercial activity.

5. **Recommendation:** *Improve Shareholder Loan Example (Example 2)*

Example 2 is a welcome addition as it recognizes that shareholder loans warrant an approach different than that for third-party lending. However, the facts do not reflect typical market practice, especially in sectors such as real estate, infrastructure, and private equity where it is common for shareholder loans to exceed the quantum of equity and for loans to be supplied pro rata by shareholders (or by affiliates) in line with equity stakes. To provide meaningful guidance, the example should be revised (or supplemented) to illustrate these common arrangements and to clarify that the mere presence of substantial shareholder loans does not, by itself, raise commercial activity concerns.

6. **Recommendation:** *Clarify Private Placement Example (Example 3)*

While Example 3 is informative, it describes a scenario in which an investor accepts a private placement entirely on a “take-it-or-leave-it” basis, without any negotiation of terms. In practice, however, institutional investors routinely engage in some degree of negotiation, even if limited to minor terms or investor protections. The example should be revised to clarify that ordinary course negotiation or due diligence does not create commercial activity. This clarification would better reflect prevailing market practice and help reduce uncertainty regarding the application of the rules.

7. **Recommendation:** *Improve Distressed Debt Examples (Example 4 and 5)*

Examples 4 and 5 appear to base the determination of commercial activity on an investor’s participation on a creditors’ committee. As currently framed, the examples present investors with a dilemma: either abstain from involvement and risk greater loss or participate to protect their investment and potentially jeopardize their § 892 status. In practice, participation on a creditors’ committee is a common

way for investors to monitor and protect their positions. We suggest that the regulations clarify that involvement on a creditors' committee when limited to actions necessary to preserve or protect an investment should not, by itself, constitute commercial activity. Providing this clarification would reflect established investment practices and help ensure that sovereign investors are not discouraged from prudent asset stewardship in distressed scenarios.

8. **Recommendation:** *Grandfather Existing Investments*

The Proposed Regulations could require sovereign investors to unwind or restructure investments that were made in good faith under the prior regulatory framework, potentially leading to adverse legal, tax, or commercial consequences. To mitigate these risks and avoid unnecessary market disruption, we recommend that Treasury provides appropriate transition relief for existing investments. Specifically, a grandfathering provision for investments entered into before the effective date of the final regulations would help ensure continuity for investors who acted in reliance on prior guidance and support stability across affected markets.

## Comments and Recommendations on Effective Control

### (Prop. Treas. Reg. § 1.892-5)

1. **Recommendation:** *Reframe the EC Inquiry to Exclude Investor-Level Decisions*

Control under § 892 may be established in two principal ways. The first is straightforward: a person or entity holding 50% or more of the total value or voting interests in an entity will be deemed to have control. This test is quantifiable and objective, focusing on measurable attributes – namely, equity ownership and voting power. The dual focus on both value and voting rights is sensible, as it captures scenarios where economic and managerial power may not be perfectly aligned.

For example, in a typical corporate structure, a shareholder with a majority of the stock will generally control the composition of the board of directors, thereby exercising effective management control. However, ownership and control are not always perfectly correlated; special governance arrangements, such as preferred shares or contractual rights, can confer significant power to minority holders. Accordingly, the regulations appropriately examine both the percentage of equity ownership and voting rights to identify control.

The second route to control is more nuanced: under current law, “effective control” (“EC”) can arise when a minority interest, together with other rights or relationships (such as substantial creditor status or contractual arrangements), allows a party to exercise a level of control that is functionally equivalent to majority ownership. Current regulations recognize that such EC may arise from a combination of formal and informal levers.

This second, more qualitative prong raises important practical considerations. While the first test is largely quantitative and focused on governance rights at the management or board level, the EC standard introduces an element of subjectivity that requires an assessment of whether a combination of rights and relationships amounts to *de facto* control of the entity’s operations or strategic direction.

However, the proposed formulation risks opening the door to a potentially limitless inquiry into any and all forms of “influence” that an investor might have, regardless of whether they rise to the level of actual control. In commercial practice, minority investors routinely negotiate for customary protections that are intended to protect their investment, not to seize day-to-day control over a business.

Therefore, it is important to distinguish between influence and control. Influence, in the form of investor protections or ordinary course consent rights, is a feature of virtually all institutional investment arrangements and does not, in and of itself, amount to control. The absence of clear standards risks conflating prudent risk

management with operational control, potentially sweeping in arrangements that fall well short of actual managerial or board-level authority.

We recommend that the EC analysis focus on rights or relationships that provide the ability to direct or dictate the entity's operational, managerial, or board-level decisions. Investor-level decisions should not be equated with control over day-to-day management or policy. Focusing the inquiry at the board or management level is consistent with established legal concepts of control and provides a more workable framework for investors and regulators alike.

2. **Recommendation:** *Consider a "White List" or Safe Harbor*

Should Treasury determine that a broader inquiry into EC is nevertheless necessary, we recommend creating a "white list" of common investor rights and protections that would not, whether by themselves or in combination, constitute EC – not unlike the approach taken under the Qualified Partnership Interest Exception ("QPIE").

Establishing such a safe harbor would greatly streamline EC analyses and provide much-needed certainty to investors without undermining the purpose of the control test. This approach is consistent with longstanding market practice and the regulatory treatment of similar concepts in other contexts. It would also greatly enhance the ability of investors to rely upon QPIE which the final regulations have unfortunately limited.

Clear standards for EC are essential to ensure that the § 892 rules operate as intended while not discouraging legitimate investment activity or imposing undue compliance burdens. We urge Treasury to adopt a focused, management-level approach to control, or, in the alternative, to provide a clear safe harbor for customary investor protections.

3. **Recommendation:** *Grandfather Existing Arrangements in the EC Context*

The application of new or revised standards for determining EC may have significant retroactive effects on existing investment structures. Sovereign investors have structured their investments and governance arrangements in reliance on the long-standing, current regulatory framework and prevailing interpretations of what constitutes EC under § 892. If the proposed regulations (or any future guidance) were to alter the criteria for EC, investors could find themselves unexpectedly in violation of the new standards, despite having acted in good faith and in compliance with prior rules.

To avoid such unintended consequences, we strongly recommend that Treasury include a grandfathering provision for existing arrangements entered into before the effective date of any final regulations. This would ensure that sovereign

investors are not compelled to renegotiate or restructure legacy investments – potentially triggering adverse legal, commercial, or tax outcomes – solely due to a change in the regulatory definition of EC. Grandfathering would help preserve investor expectations, provide market stability, and avoid unnecessary disruption to ongoing investments that were established under the former guidance.

Such transition relief would be consistent with principles of fairness and regulatory certainty, allowing investors adequate time to evaluate and, if necessary, adjust future investment structures in light of the clarified standards.

4. **Recommendation:** *Prevent Aggregation of Interests among Functionally Independent Foreign Governments*

In considering the application of the EC rules, it is important to recognize that many foreign sovereigns possess multiple investment entities (whether sovereign wealth funds, public sector pension funds, or other government-linked institutions) that qualify as foreign governments under § 892. These entities often operate independently from one another and have separate mandates, governance structures, and investment strategies, and to the extent there may be overlap in strategy, may occasionally find themselves competing for the same deals. Very few, in our experience, discuss let alone coordinate their investment activities with one another.

Requiring the aggregation of interests held by such functionally distinct organizations for purposes of determining control or EC under § 892 can lead to unfair and impractical outcomes. While it may be appropriate to consider whether these entities together meet a clear, objective numerical threshold of ownership or voting power, extending aggregation to encompass special rights, contractual arrangements, or other forms of influence introduces significant challenges.

First, independent entities may have no visibility into the governance rights or contractual relationships that another entity (even one linked to the same foreign sovereign) may have negotiated with a portfolio company or investment vehicle. Expecting these organizations to monitor or inquire into each other's arrangements is unrealistic and could create undue compliance burdens.

Second, the IRS would also face substantial practical obstacles in policing such aggregation, given the lack of transparency and the functional independence of these entities, not to mention the fact that many of their investments are in unlisted companies for which limited information is publicly available.

To address these concerns, we recommend that the regulations expressly recognize the *prima facie* functional independence of distinct foreign government entities and limit the circumstances in which aggregation is required. Specifically, this could be accomplished by:

- Limiting aggregation to situations where there is evidence of coordinated action or shared control;
- Restricting aggregation to objective, easily ascertainable thresholds (such as ownership percentage or voting power) and excluding subjective or non-public information regarding special rights or influence; and
- Providing clear guidance and, where appropriate, a presumption of independence for government entities with separate management, boards, and investment policies.

Recognizing functional independence in the aggregation analysis would align the rules with commercial reality, reduce compliance complexity, and provide greater certainty to sovereign investors and the IRS alike. It would also avoid penalizing foreign governments for the existence of multiple, independent investment arms, each acting autonomously to fulfill its own mandate.