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# Section 892 Income Tax Exemption for Sovereign Wealth Funds

Leveraging New Regulations to Avoid Taxation for Commercial Activities

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TUESDAY, MAY 1, 2012

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# Section 892 Income Tax Exemption for Sovereign Wealth Funds

Leveraging New Regulations to Avoid  
Taxation for Commercial Activities

May 1, 2012

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# Section 892 – General Rule

- Section 892 provides a limited, but useful, exemption from U.S. federal income tax for:
  - certain US source investment income;
  - earned by “foreign governments”;
  - *unless* derived from the conduct of a “commercial activity” or received from or by a “controlled commercial entity.”

# Section 892 – Public Policy

- The exemption reflects the long standing common law doctrine of *sovereign immunity*, i.e., the doctrine that sovereign governments should not be subject to each other's jurisdiction in respect of state activities.
- Two competing policies – encourage investments in the US, but not subsidize active commercial activities or provide an unfair advantage in competing against private businesses.

# Statutory and Regulatory Background

- The exemption was originally enacted as part of the Revenue Act of 1917.
- The Tax Reform Act of 1986 substantially revised the exemption.
- Temporary Regulations were issued in 1988, and on November 2, 2011, the Treasury Department issued Proposed Regulations.
  - The renewed interest in sovereign wealth funds (SWFs), which essentially are government owned investment vehicles funded by foreign exchange assets, likely prompted the clarifications set forth in the Proposed Regulations.

# Section 892 – Overview

- If the Section 892 exemption is not available, then the foreign government is subject to tax in the US in the same manner as a foreign corporation.
- Therefore, unless an applicable income tax treaty provides otherwise, a foreign government can be taxable in the US on:
  - income that is effectively connected with a US trade or business (ECI); or
  - US source income that is so-called fixed or determinable annual or periodic income (FDAP).

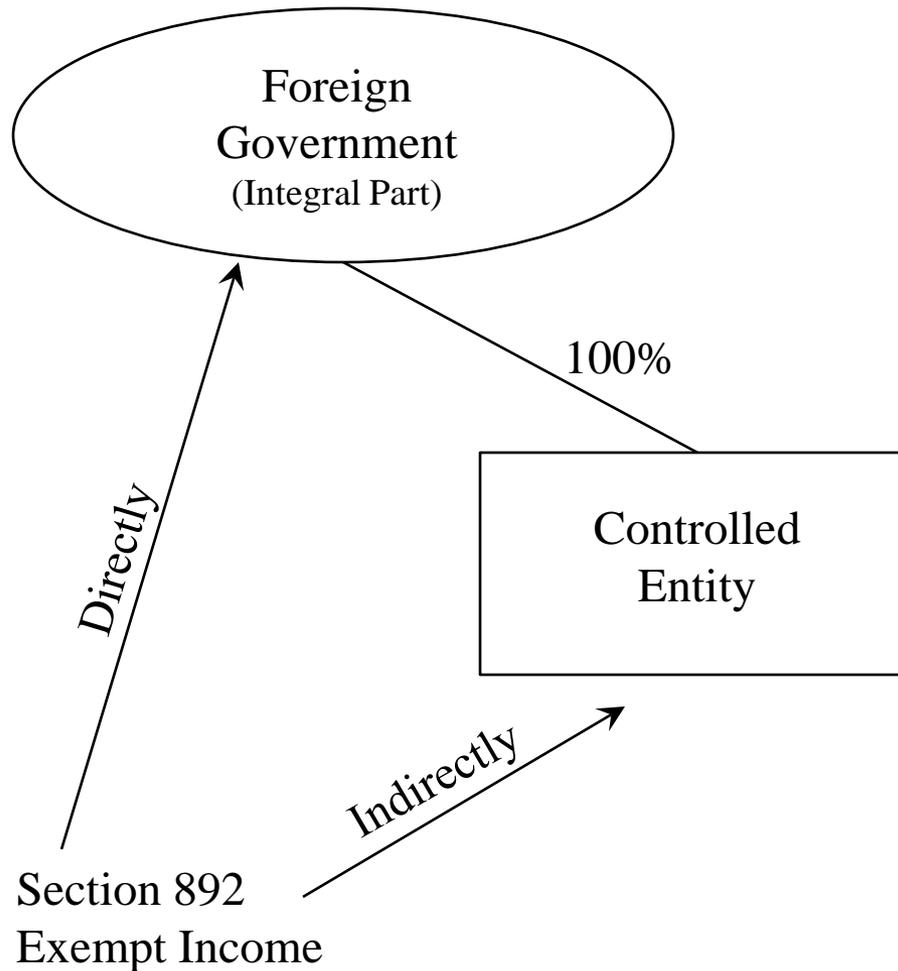
# Who Can Claim the Exemption?

- The exemption applies only to a “foreign government,” which means the “integral parts” or “controlled entities” of a foreign sovereign.
- An “integral part” of a foreign sovereign is essentially the arrangement through which the foreign sovereign exercises its *governmental authority*, and is defined as “any person, body of persons, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a foreign country.”
  - The net earnings of the governing authority must be credited to its own account or other accounts of the foreign sovereign, with no portion inuring to the benefit of any private person.

# “Foreign Government” Defined

- A “controlled entity” of a foreign government is any entity that is separate in form from a foreign sovereign (or otherwise constitutes a separate juridical entity) if it satisfies the following requirements:
  - It is *wholly-owned* and controlled by a foreign sovereign directly or indirectly through one or more controlled entities;
  - It is organized under the laws of the foreign sovereign by which owned;
  - Its net earnings are credited to its own account or to other accounts of the foreign sovereign, with no portion of its income inuring to the benefit of any private person; and
  - Its assets vest in the foreign sovereign upon dissolution.

# “Foreign Government” Defined



# “Foreign Government” Defined

- Not always easy to distinguish between “integral parts” and “controlled entities” of a foreign sovereign.
  - Most SWFs and many pension trust are treated as “controlled entities.”
  - Why the distinction matters -- under Section 892, “controlled entities” generally given less favorable treatment as compared to “integral parts.”

# Section 892 – Exempt Income

- Income of foreign governments from the following investments in the US are specifically covered by the Section 892 exemption:
  - Stocks, bonds or other domestic securities (e.g., interest, dividends, gains, etc.);
  - Financial instruments held in the execution of governmental financial or monetary policy; and
  - Interest on deposits in banks in the US of moneys belonging to such foreign governments.

# Section 892 – Exempt Income

- However, the Section 892 exemption generally does not apply to:
  - gains from the sale of direct interests in real property in the US;
  - rental income from real property in the US;
  - income or gains from the sale of interests in trusts or partnerships; and
  - income from derivatives and other “financial instruments” that are *not* held in the execution of governmental financial or monetary policy.

# Section 892 – Exempt Income

- The Section 892 exemption is somewhat *limited* today in the sense that a foreign government (like any foreign investor) is already exempt from:
  - certain interest income satisfying the “portfolio interest” exception; and
  - certain US source investment gains (including from trading activities not treated as ECI by reason of the safe-harbor set forth in Section 864(b)).

# Section 892 – Exempt Income

- The practical effect of the foregoing is that the Section 892 exemption is relevant today primarily for certain:
  - Dividends;
  - Non-portfolio interest; and
  - Gains from the sale of stock in certain US real property holding corporations.

# Section 892 – Dividends

- Foreign persons are generally subject to a 30% US withholding tax on US sourced dividends (unless reduced or eliminated by an income tax treaty).
- However, Section 892 exempts a foreign government from this 30% US withholding tax on dividends from non-controlled US corporations.

# Section 892 – Interest

- Generally, foreign persons are exempt from the 30% US withholding tax on US source interest income by reason of the so-called portfolio interest exception.
- Such exception is not available with respect to contingent interest, interest from 10% owned entities, etc.
- However, Section 892 exempts a foreign government from the 30% withholding tax on all interest from non-controlled borrowers that does not otherwise satisfy the portfolio interest exception.

# Section 892 – USRPHCs

- Foreign persons generally are exempt from US tax on gains from the sale of portfolio securities.
- However, by reason of FIRPTA gain on the sale of stock in a US real property holding company (USRPHC) (other than stock in a domestically controlled REIT or certain small interests in publicly traded securities) *is* subject to US tax.
  - USRPHC = a corporation if (i) FMV of its USRPIs equals or exceeds (ii) FMV of its USRPIs, FMV of its real property located outside the US, plus any other assets used/held in a trade or business.
- However, Section 892 exempts a foreign government from US tax on gains from the sale of interests in *non-controlled* USRPHCs.

# Section 892 – Not Exempt

- Again, the public policy here is to not subsidize active commercial activities or provide an unfair advantage over privately owned businesses.
- Accordingly, there are limits on the Section 892 exemption, including with respect to income (such as dividends and interest) earned by a foreign government from certain entities in which it has a controlling interest.
  - The idea here is that payments from a controlled entity look more like a return on a direct investment rather than a return on a passive or portfolio investment.

# Section 892 – Not Exempt

- Therefore, the Section 892 exemption does not cover:
  - any income derived from the conduct of any “commercial activity”;
  - any income received *by*, or received directly or indirectly *from*, a “controlled commercial entity”; and
  - any gain derived from the disposition of any interest in a “controlled commercial entity.”

# “Commercial Activities” Defined

- The Code does not define the term “commercial activities.”
- Rather, the 1988 Regulations define the term broadly to include all activities (whether conducted within or outside the US) that are “*ordinarily conducted with a view towards the production of income or gain.*”
  - [Prop. Reg. clarification re “nature” of activities (discussed below).]

# Commercial Activities – Excluded

- The 1988 Regulations exclude the following investment and trading activities from the definition of “commercial activities”:
  - Investment Exception: “Investments in stocks, bonds, and other securities; loans; investments in financial instruments *[held in the execution of governmental financial or monetary policy]* . . . and the holding of bank deposits in banks.”
  - Trading Exception: “Effecting transactions” in “stocks, securities, commodities *[or financial instruments]*” for a foreign government’s own account, “regardless of whether such activities constitute a trade or business for purposes of Section 162 or a trade or business for purposes of Section 864.”

# Commercial Activities – Excluded

- The Investment Exception and the Trading Exception, however, are generally not available if undertaken as a *dealer*, or if investments (including loans) are made by a “banking, financing or similar business.”

# Commercial Activities – Excluded

- The following also do not constitute “commercial activities”:
  - cultural events (e.g., amateur athletic events, artistic performances and exhibitions);
  - nonprofit activities;
  - governmental functions; and
  - purchasing goods for the foreign government’s own use.

# Commercial Activities – Attribution

- The commercial activities of a partnership are attributed to the partners for purposes of Section 892.
  - [Important new exception under Prop. Regs. for limited partners (discussed below).]
- With respect to “controlled entities” there is no attribution or taint as between brother/sister controlled entities or from a subsidiary controlled entity to its parent; however, commercial activities of a parent controlled entity are attributed to its subsidiary.

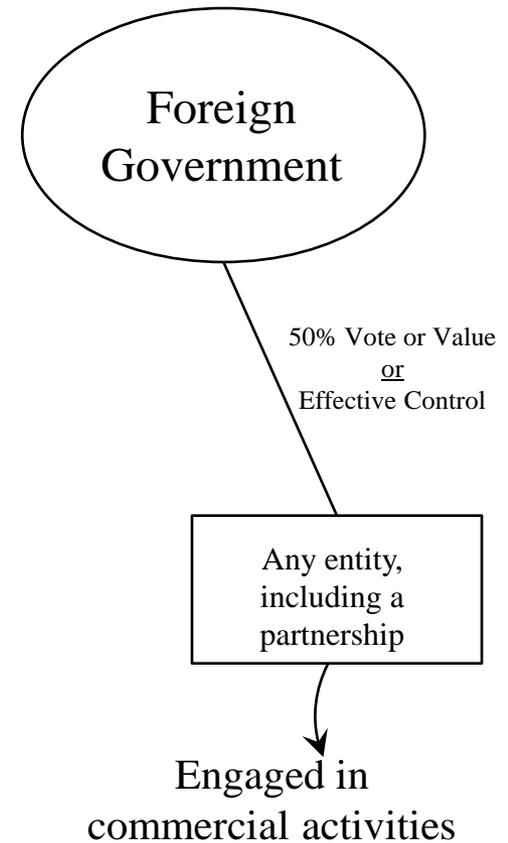
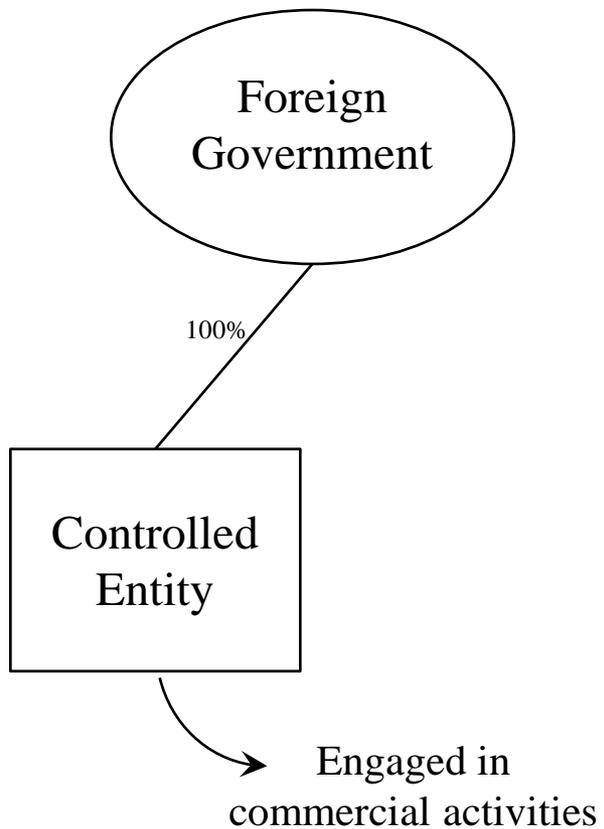
# Controlled Commercial Entity

- A “controlled commercial entity” is defined as:
  - a separate entity;
  - engaged in commercial activity (no matter where in the world); and
  - in which the foreign government holds (directly or indirectly):
    - at least 50% of the interests in such entity (by vote or value); or
    - any other interest which provides effective [practical] control of such entity.

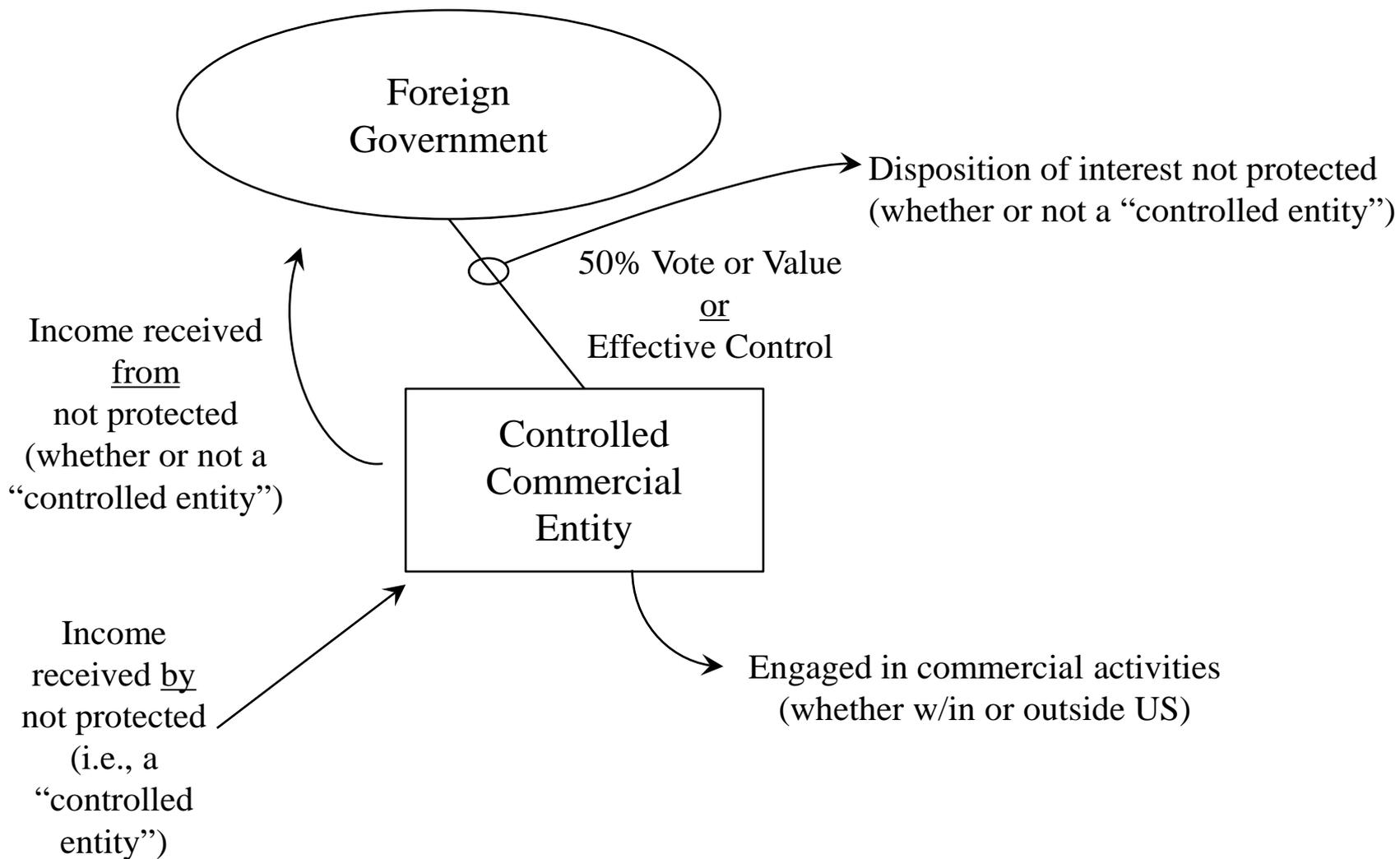
# Controlled Commercial Entity

- Note that a “controlled commercial entity” includes *not only* 100% owned “controlled entities” (otherwise eligible for the Section 892 exemption if not engaged in commercial activities), *but also* other entities in which the foreign government has the requisite controlling interest.

# Controlled Commercial Entity



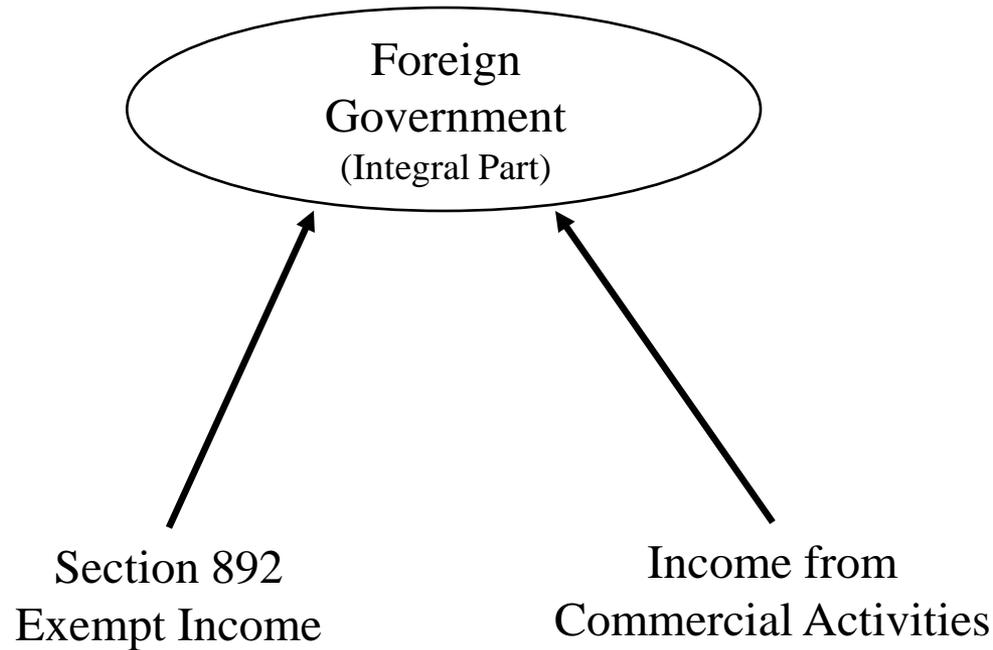
# Controlled Commercial Entity



# Section 892 – “All or Nothing” Rule

- If an “integral part” of a foreign government engages in commercial activity, it will lose the Section 892 exemption *only with respect to* the income from such disqualified activity.
  - That is, the integral part will retain the Section 892 exemption with respect to any other qualifying income it might receive.

# Section 892 – “All or Nothing” Rule

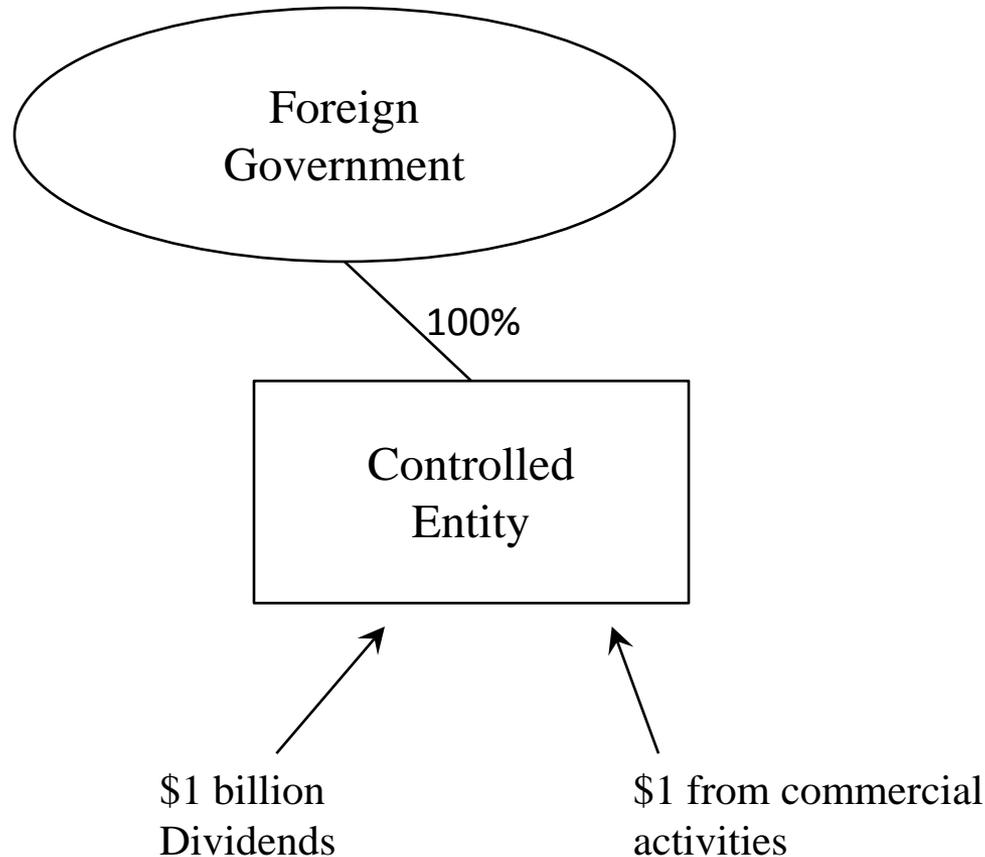


Section 892 still available with respect to non-commercial income (no taint)

# Section 892 – “All or Nothing” Rule

- Again, a “controlled entity” is treated as a “foreign government” and therefore it can claim the Section 892 exemption.
- However, a “controlled entity” will lose the benefits of the Section 892 exemption *entirely* if it engages in any amount of commercial activity anywhere in the world, given that such an entity is now treated as a disqualified “controlled commercial entity.”

# Section 892 – “All or Nothing” Rule



The Section 892 benefit is lost, because (i) the “controlled entity” is now a “controlled commercial entity” and (ii) all income received *by* a “controlled commercial entity” is ineligible for the Section 892 exemption, i.e., otherwise qualifying income is now tainted.

## Section 892 – “All or Nothing” Rule

- The “all or nothing” rule has caused foreign governments to create separate “blocker” entities so as to isolate risk, that is, make and hold investments through separate wholly-owned entities so that there is no taint across such entities.
- Administrative and operational burdens.

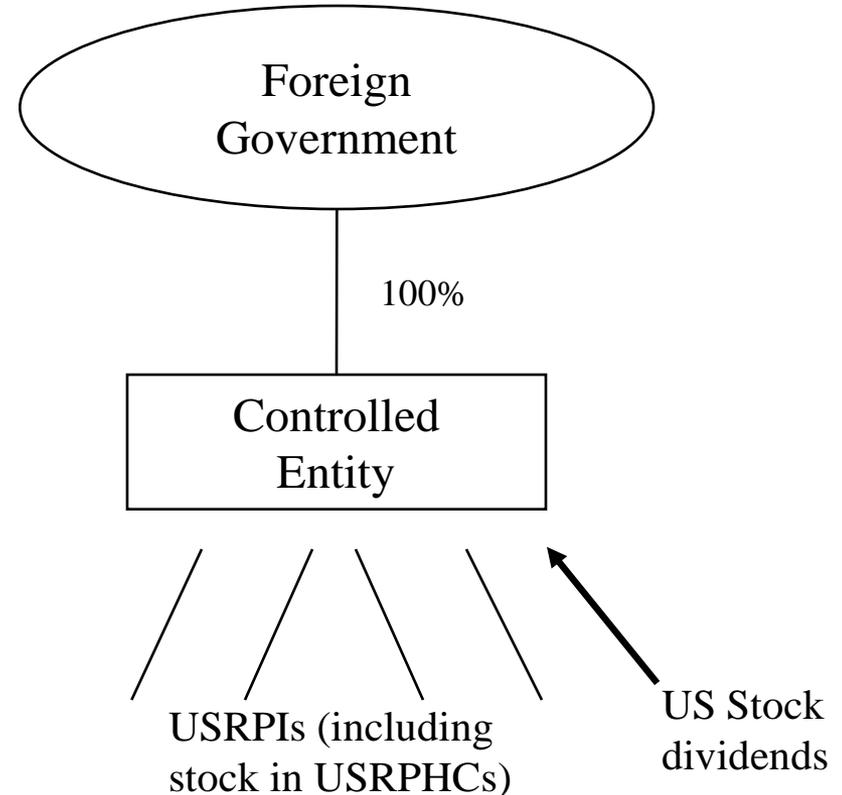
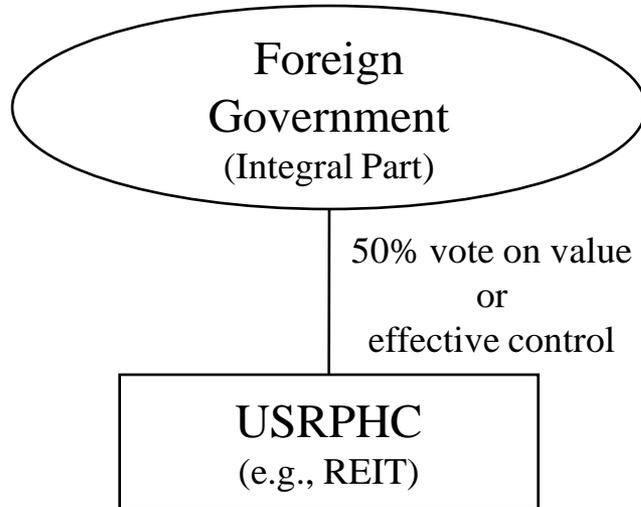
# Traps for the Unwary

- USRPHCs
- Wholly-owned entities (including single member LLCs)
- Partnerships holding USRPHCs

# Traps for the Unwary – USRPHCs

- A USRPHC (or foreign corporation that would be a USRPHC if it was a US corporation) *is* treated as engaged in commercial activity.
- Therefore, if a foreign government has the requisite controlling interest, such a USRPHC can be a “controlled commercial entity.”

# Traps for the Unwary – USRPHCs

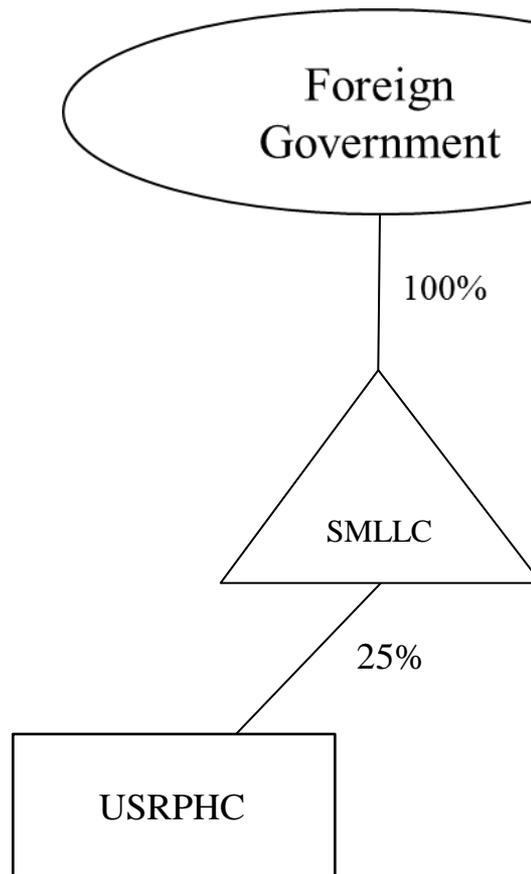


If “controlled entity” would qualify as a USRPHC if domestic, Section 892 exemption lost as to (i) US dividends and (ii) gain on sale of non-controlled USRPHCs.

# Traps for the Unwary – SMLLCs

- Note that under the check-the-box rules, an entity wholly-owned by a Foreign Government is automatically classified as a corporation.
- Therefore, a single member LLC (SMLLC) wholly-owned by a foreign government is a *per se* corporation (and not a disregarded entity) and therefore can be “controlled commercial entity.”

# Traps for the Unwary – SMLLCs

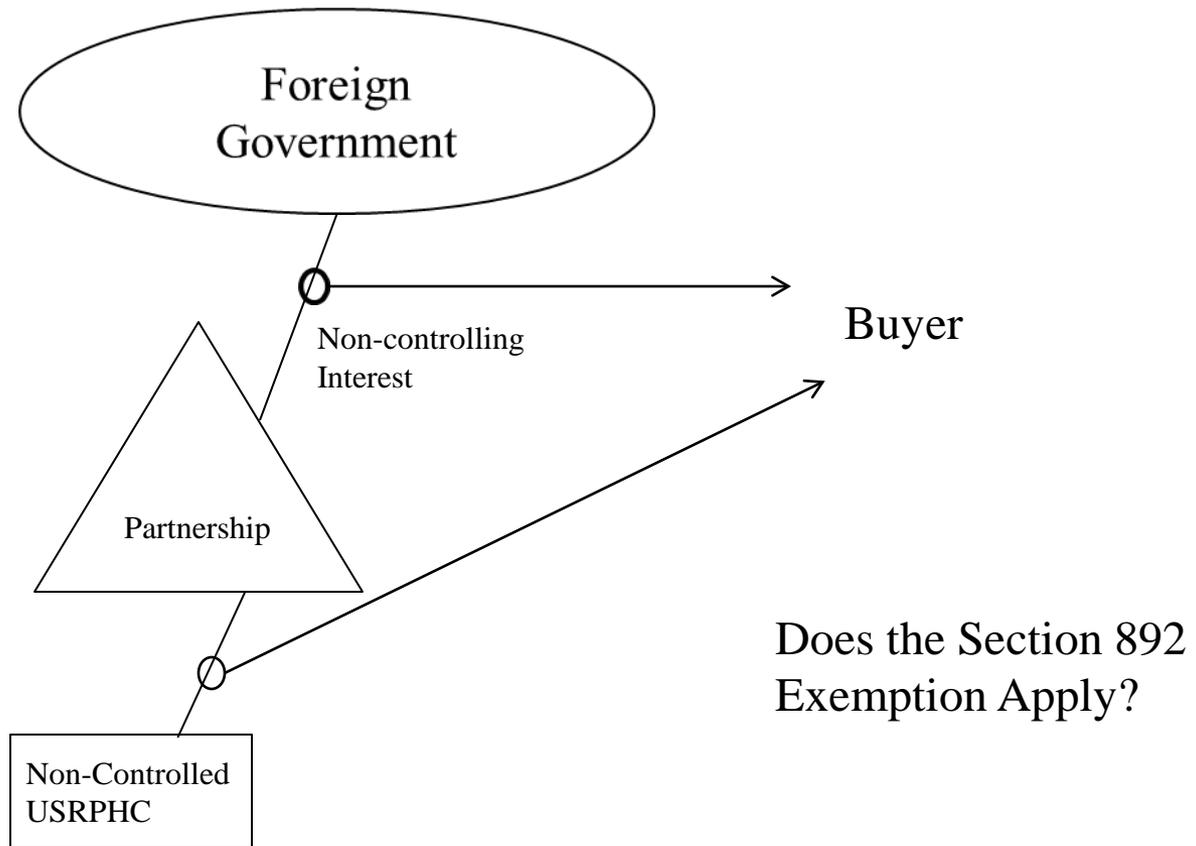


SMLLC here would qualify as a USRPHC; accordingly, it is a “controlled commercial entity.” Compare result if Foreign Government instead held 25% stock interest directly.

# Traps for the Unwary – Partnerships Holding USRPHCs

- Again, a foreign government's gain from sales of *direct* non-controlled USRPHCs *is* covered by the Section 892 exemption.
- However, gains from dispositions of interests in partnerships and trusts are *not* covered by the Section 892 exemption.
- Where a partnership holds a non-controlled USRPHC, unclear whether Section 892 applies if partnership interest sold or if partnership sells USRPHC.

# Traps for the Unwary – Partnerships Holding USRPHCs



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# Section 892 Income Tax Exemption for Sovereign Wealth Funds: Leveraging New Regulations to Avoid Taxation for Commercial Activities

May 1, 2012

John T. Lillis  
Jeremy M. Naylor

## II. Section 892 Proposed Regulations – Overview

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- **Issued on November 2, 2011**
- **Modify definition of commercial activity**
  - Nature of activity vs. intent of activity
  - Investments in derivatives and financial instruments
  - Dispositions of U.S. real property interests
- **Rules applicable to controlled commercial entities**
  - Exception for inadvertent commercial activities
  - Annual determination
- **Modify rules applicable to partnerships**
  - No attribution of commercial activities from partnerships in certain circumstances
  - Partnerships engaged in trading
- **Reliance on proposed regulations**

## II. Section 892 Proposed Regulations – Overview

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- **Rules relax definition of commercial activities and attendant consequences**
- **Rules do not change the general tax rules applicable to U.S. source income earned by foreign governments**
  - Rules do not liberalize types of income eligible for 892 exemption

## II. Section 892 Proposed Regulations – Definition of Commercial Activity – In General

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- **Commercial activities broadly defined under Temporary Regulations**
- **Under Temporary Regulations, purpose of activity determinative**
  - “activities ordinarily conducted with a view towards production of income or gain”
  - Intent test can be helpful in certain circumstances
    - Purpose of activity, while commercial in nature, is in support of non-commercial activity
      - Shareholder lending to company.
- **Under Proposed Regulations, nature of activities is determinative**
  - “Only the nature of the activity, not the purpose or motivation, is determinative”
    - More objective, certain test; less flexible
- **Activity may be commercial even if not a trade or business for purposes of § 162 of the Code**
  - Temporary Regulations specify only § 864 of the Code

## II. Section 892 Proposed Regulations – Definition of Commercial Activity – Financial Instruments

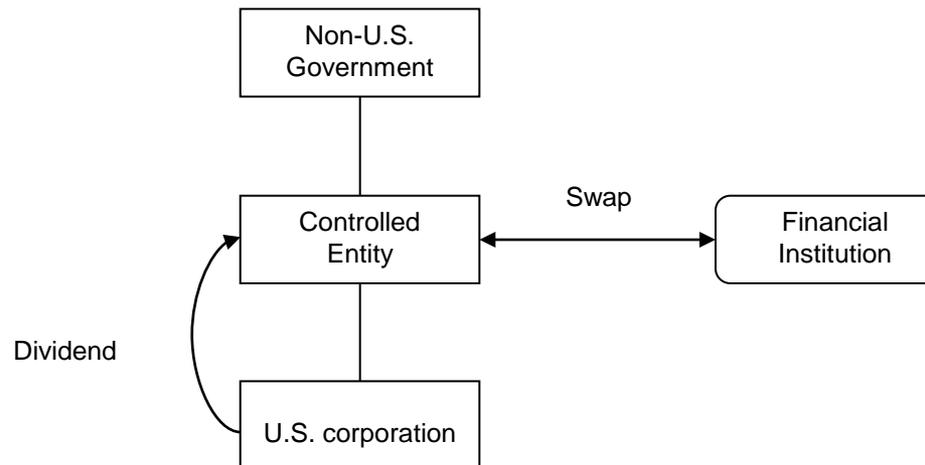
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- **Rules relaxed for investments in financial instruments**
  - No longer required that financial instruments held in the execution of governmental financial or monetary policy to avoid commercial activities
    - Income from financial instruments may still be subject to tax
      - For the Section 892 exemption to apply, the financial instrument must continue to be held in the execution of governmental/monetary policy
      - However, most financial instruments do not result in U.S. source income
  - Recognition that financial instruments are an important part of any investment portfolio
- **Proposed Regulations allow both investment in and trading in financial instruments**
  - General trading exception from commercial activities amended to add reference to “financial instruments”
    - Definition of financial instruments: “any forward, futures, options contract, swap agreement or similar agreement in a functional or nonfunctional currency, or in precision metals”

## II. Section 892 Proposed Regulations – Definition of Commercial Activity – Financial Instruments

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- **Example:**



## II. Section 892 Proposed Regulations – Definition of Commercial Activities – U.S. Real Property Interests

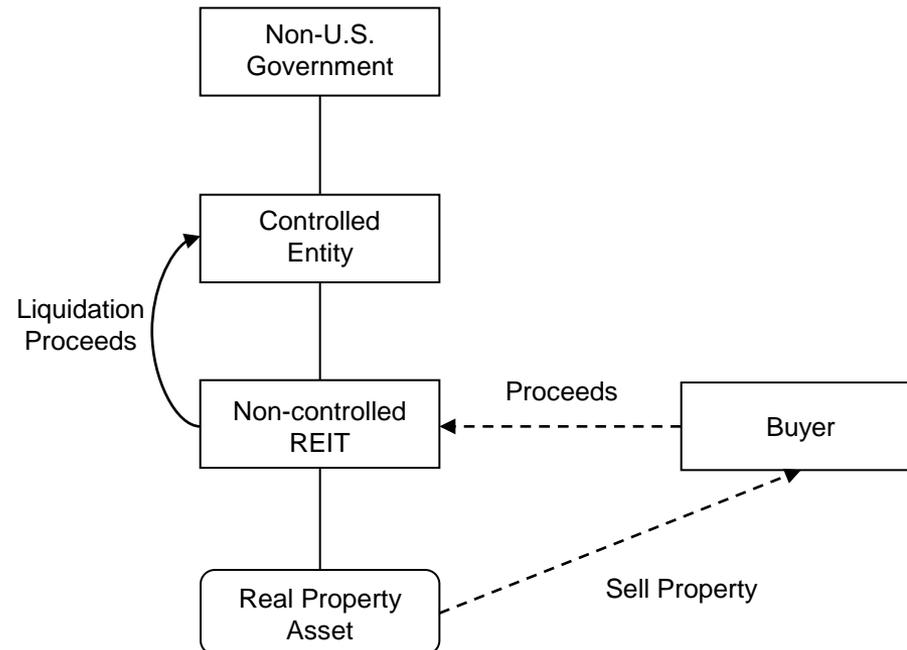
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- **A disposition of a U.S. real property interest does not by itself give rise to commercial activities**
  - Gain still may be subject to tax under Foreign Investment Real Property Tax Act of 1980 (“FIRPTA”)
  - E.g., disposal by a foreign government of a direct interest in U.S. real property or shares of a REIT or other USRPHC which is also a controlled entity
- **Notice 2007-55 result unchanged by Proposed Regulations**
  - REIT disposes of real property asset and liquidates (or otherwise distributes the proceeds from the disposition)
  - Distribution proceeds attributable to sale of real estate asset treated as capital gain from disposition of a U.S. real property interest, subject to FIRPTA and not exempt under 892
  - However, disposal by REIT of U.S. real property interest will not give rise to commercial activities, per the Proposed Regulations

## II. Section 892 Proposed Regulations – Definition of Commercial Activities – U.S. Real Property Interests

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- Notice 2007-55 Example:



## II. Section 892 Proposed Regulations – Rules for Controlled Commercial Entities

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- **Controlled Commercial Entity**

- Reminder: Controlled entities of sovereigns generally exempt under Section 892, but not if controlled commercial entities
- CCE = Entity engaged in commercial activities in which foreign government (directly or indirectly)
  - holds at least 50% of the interests in such entity, or
  - has “effective practical control” over the entity

- **Under Temporary Regulations, “all or nothing” rule applies**

- Even \$1 of commercial activities income (or no income, but commercial activities) results in entity becoming CCE and potentially losing the benefit of Section 892 forever

## II. Section 892 Proposed Regulations – Rules for Controlled Commercial Entities

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- **Proposed Regulations relax “all or nothing” rule**
- **“Inadvertent” commercial activities ≠ commercial activities**
  - Section 892 exemption from tax still does not apply
- **Requirements:**
  - Failure to avoid conducting commercial activity is “reasonable”
  - Commercial activity is promptly cured; and
  - Certain record maintenance requirements and other procedures are met

## II. Section 892 Proposed Regulations – Rules for Controlled Commercial Entities

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- **When is failure to avoid conducting commercial activities “reasonable”?**
  - Facts and circumstances determination, taking into account:
    - Number of commercial activities conducted in current and prior years
      - Proposed Regulations do not provide for a safe harbor (e.g., 2 per year?)
    - Amount of income earned from commercial activities as a percentage of total income
    - Amount of assets used in the conduct of commercial activities as a percentage of total assets
  - For commercial activities attributed through partnerships, the investor’s proportionate share of the partnership’s assets and income used in or attributable to commercial activities are taken into account

## II. Section 892 Proposed Regulations – Rules for Controlled Commercial Entities

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- **When is failure to avoid conducting commercial activities “reasonable”?**
  - Due diligence of activities is required
    - Maintain written policies and operational procedures to monitor worldwide activities
      - Remember – commercial activities conducted outside the U.S. are relevant
    - Management level employees required to take steps to establish, follow and enforce these procedures
    - Unclear precisely what these policies are supposed to include
      - Designate compliance person?
      - Maintain checklist, spot-check? Reviews?
  - Government or controlled entity must undertake ongoing due diligence

## II. Section 892 Proposed Regulations – Rules for Controlled Commercial Entities

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- **When is failure to avoid conducting commercial activities “reasonable”?**
  - Safe harbor for de minimis commercial activities
    - Value of assets used in commercial activities no more than 5% of the total value of the entity’s assets on the entity’s balance sheet for the taxable year; and
    - Income earned from commercial activities no more than 5% of the entity’s gross income for the taxable year as reflected on its income statement as prepared for financial accounting purposes.
  - Procedural requirements described above still must be met

## II. Section 892 Proposed Regulations – Rules for Controlled Commercial Entities

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### ■ Cure requirement

- Commercial activities must be “promptly” cured
- Entity discontinues conduct of commercial activities within 120 days after discovering the commercial activity
  - E.g., divestiture of activity giving rise to commercial activity
  - Transfer to related entity o.k.
  - For SWF investing into a private equity fund, ability to ensure transfer is critical
    - Negotiate now for ability to transfer as of right to affiliates.
  - What does “discovering” mean? Whose knowledge is relevant?
    - Email receipt of K-1 or Form 8805 (Foreign Partner information statement of Section 1446 withholding tax) sufficient “discovery”?
    - Investment manager’s knowledge imputed to sovereign investor?

## II. Section 892 Proposed Regulations – Rules for Controlled Commercial Entities

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- **Record Maintenance Requirement**
  - Proposed Regulations require that “adequate” records of each discovered commercial activity and cure must be maintained.
  - Unclear what “adequate” records means
    - Log book?
    - Email correspondence?
    - Something more formal?
    - Entity by entity recordkeeping?

## II. Section 892 Proposed Regulations – Rules for Controlled Commercial Entities

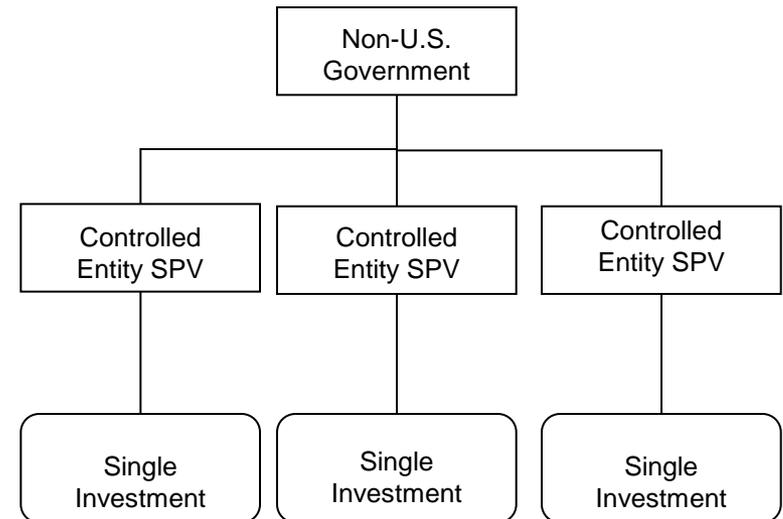
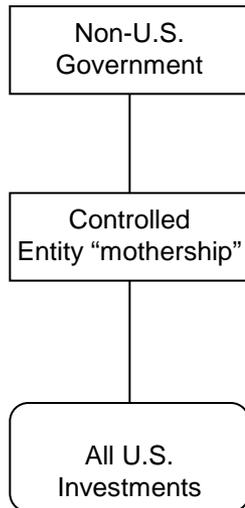
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- **Annual Determination of Controlled Commercial Entity Status**
  - Under Temporary Regulations, concern that once an entity becomes a CCE, it loses the Section 892 exemption forever.
  - Proposed Regulations provide that the determination of CCE status (and the availability for the Section 892 exemption) is done on an annual basis
    - Some implications of annual testing left open in Proposed Regulations
      - Is CCE status retroactive to the beginning of a year?
      - Does the sovereign investor need to notify withholding agents of change in status?
    - Important relaxation of the rules as the “forever tainted” approach of the Temporary Regulations drove much of the complex structuring/tax planning adopted by government controlled entities.

## II. Section 892 Proposed Regulations – Rules for Controlled Commercial Entities

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- Examples of Typical tax planning under Temporary Regulations:
  - “Mothership” Approach
  - “Multiple Blocker” Approach



## II. Section 892 Proposed Regulations – Rules Applicable to Investments in Partnerships

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- **Limited Partner Exception to Partnership Attribution of Commercial Activities**
  - In general, a partnership's activities are attributed to its partners
  - Under Temporary and Proposed Regulations, if a partnership is engaged in commercial activities, its partners are treated as so engaged
    - Exception under both sets of Regulations for “trading” activities
  - Thus, controlled entities who are partners in partnerships conducting commercial activities may become CCEs
    - True, even if commercial activities income is not allocated to the controlled entity/SWF

## II. Section 892 Proposed Regulations – Rules Applicable to Investments in Partnerships

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- **Limited Partner Exception to Partnership Attribution of Commercial Activities**
  - Proposed Regulations eliminate attribution of commercial activities to “limited partners”
    - An entity not otherwise conducting commercial activities will not be deemed to be engaged in commercial activities solely because it holds an interest as a “limited partner” in an entity classified as a partnership for U.S. federal income tax purposes.
      - Again, income from commercial activities will not be exempt
      - Effect of exception is to further release pressure on controlled entities investing in private equity/real estate industries
        - However, because of the tax cost associated with commercial activities income, this exception, while welcome, will not change how funds structure their investments.
        - Sovereign investors will still want to be shielded from tax.

## II. Section 892 Proposed Regulations – Rules Applicable to Investments in Partnerships

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- **Limited Partner Exception to Partnership Attribution of Commercial Activities**
  - Who is a “Limited Partner”?
    - Members of LLCs classified as partnerships can qualify as limited partners
    - Similarly shareholders/members of foreign corporations or trusts that have “checked the box” to be classified as partnerships
  - Cannot participate in management
    - Holder has no rights to participate in management and conduct of the partnership’s business,
    - Under law of jurisdiction in which partnership is organized or
    - Under organizational documents
  - Certain “major decision” rights excepted
    - Consent over extraordinary events
    - Admission/expulsion of partners; liquidation of partnership; amendment of partnership agreement; sale of substantially all of partnership’s assets, etc.

## II. Section 892 Proposed Regulations – Rules Applicable to Investments in Partnerships

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- **Limited Partner Exception to Partnership Attribution of Commercial Activities**
  - What other rights could cause exception to not apply?
    - Advisory board seat
      - Some input into decision making – approval of valuations, resolution of conflicts, approval of certain actions under partnership agreement
    - Opt out rights/veto rights over certain investments
    - Special rights granted pursuant to side letter?
  - Attribution of control rights through affiliated entities?
    - SWF organizes subsidiary to hold small partnership interest with management rights
    - SWF owns larger “passive” limited partner interest
    - Does subsidiary’s management rights taint SWF’s limited partner interest/exception from commercial activities?
      - In general no subsidiary – parent attribution of commercial activities
      - Analogize to effective practical control test? Directly or indirectly.

## II. Section 892 Proposed Regulations – Rules Applicable to Investments in Partnerships

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- **Partnership's trading activities not treated as commercial activities**
  - Temporary Regulations included an exception from commercial activities for governments trading for their own account
    - Including through broker or agent
  - Temporary Regulations did not explicitly include trading activities conducted by a partnership in which the government is a partner.
  - Proposed Regulations include explicit exception from commercial activities for trading conducted by a partnership and attributed to a foreign government.
    - Most practitioners believe this is confirmation of existing law/regulation

## II. Section 892 Proposed Regulations – Reliance on Proposed Regulations

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- **Preamble to Proposed Regulations provides that they may be relied on by taxpayers pending finalization**
  - IRS officials have asserted that they cannot be relied upon for positions taken in the past.
- **Temporary Regulations still also in effect**
  - Query whether taxpayers have the ability to “pick and choose”

## II. Section 892 Proposed Regulations – Open Questions/Issues, Steps to Take

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- **Further clarity on kind of record maintenance/due diligence procedures that sovereign investors need to maintain**
  - However, sovereign investors should start to implement some sort of procedures now
- **What is the continuing purpose of the “deemed USRPHC” rule?**
  - Given that a disposition of a U.S. real property interest is not a commercial activity, it is unclear what policy is furthered by treating non-U.S. corporations that would be USRPHCs were they domestic as controlled commercial entities
- **Facts and circumstances test regarding inadvertent commercial activities should be clarified further**
  - The safe harbor approach is useful, but it is unclear how much weight the IRS would give to various “facts and circumstances”.
    - Is a relevant fact whether a sovereign investor received assurances from a fund that the fund would minimize commercial activities risk? Is it enough that the sovereign investor analyzed the asset class and made an (erroneous) determination regarding commercial activities risk?

## II. Section 892 Proposed Regulations – Open Questions/Issues, Steps to Take

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- **Limited Partner exception encourages sovereign investors to invest through partnership structures rather than through managed accounts**
  - Commercial activities conducted by a partnership may not be attributed to the investors
  - No similar exception for contractual management arrangements such as investment management agreements
- **No policy reason for this apparent preference. So long as investor is passive, form of investment should not matter**

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