

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:Br2-PLR-116444-99

Date:

August 8, 2000

Re:

Legend

Parent =
Sub 1 =
Sub 2 =
Country 1 =
Country 2 =
Business =

This replies to your letter on behalf of Sub 1 dated October 5, 1999, in which you requested a ruling that certain obligations would be considered obligations in registered form within the meaning of section 881(c)(2)(B)(i) of the Internal Revenue Code.

You also requested rulings that interest on the obligations will constitute portfolio interest under sections 871(h)(2)(B) and 881(c)(2)(B), that Sub 2 will not be subject to tax under section 881(a)(1) or 881(a)(3) on amounts received on the obligations, and that neither the borrowers nor Sub1 will be required by section 1442 to deduct and withhold tax on such amounts paid to Sub 2. We must decline to issue these requested rulings pursuant to section 7.01 of Rev. Proc. 2000-1, 2000-1 I.R.B. 21.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Parent is a Country 1 corporation. Parent is engaged in Business in Country 1 and other countries. Although Parent formerly operated in the United States through a branch, it no longer conducts any business in the United States other than through subsidiaries.

Sub 1 is a wholly owned, third tier U.S. subsidiary of Parent. Sub 1 is also engaged in

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Business. It is a member of an affiliated group that files a consolidated federal income tax return.

Sub 2 is a Country 2 corporation. Sub 2 is a wholly owned, second tier subsidiary of Parent. Sub 2 is also engaged in Business. Sub 2 is not engaged in the active conduct of a trade or business within the United States, and is not licensed to carry on Business in any jurisdiction of the United States.

Sub 2 is exempt from income tax in Country 2. Dividends from Sub 2 are included in the income of Parent in Country 1. Sub 2 is not included in any consolidated return filed by Parent or its subsidiaries in Country 1.

Sub 1 invests in certain secured loans. These loans are secured by real property mortgages on almost exclusively commercial property located in the United States. Sub 1 rarely sells any of the loans it originates.

Sub 1 has expanded its capacity to make loans to borrowers faster than the growth of its investment needs for these loans. At the same time, Sub 2 has increased its need to invest its assets in appropriate investments. As a consequence, Sub 1 proposes to obtain funding from Sub 2 or other companies for a portion of the loans that it generates. Sub 1 may also sell some of the loans it originates to Sub 2 or other companies in transactions negotiated at arm's length.

In the case of loans generated by Sub 1 to U.S. borrowers and funded by Sub 2, and in the case of loans originated by Sub 1 and sold to Sub 2, the loans will be represented by promissory notes, each of which will provide that it may be sold, transferred or assigned only upon delivery of written notification to Sub 1 that a sale, transfer or assignment of the note has been duly executed by the holder. Sub 1 will be responsible, as agent appointed by the issuers of the notes, for recording such transfers in a registration book kept for such purposes. Sub 1 will record in the registration book any transfer for which it receives such notification. Sub 1 may retain the services of a domestic bank or other unrelated financial institution, or possibly a domestic or Country 1 affiliate, for the purpose of maintaining such registration book. The registration book itself, or an accurate and complete copy thereof, will be maintained at all times within the United States. The record keeping obligations of Sub 1 will be unaffected by any transfers of the notes.

Pursuant to a loan servicing agreement, in consideration for an arm's length servicing fee, Sub 2 will appoint Sub 1 to receive payments from the borrowers on Sub 2's behalf. Sub 1 may retain the services of a domestic bank or other unrelated financial institution, or possibly a domestic or Country 1 affiliate, for assistance in servicing the loans. All payments from the borrowers will be made to Sub 1 within the United States and will be payable in U.S. dollars. The loan servicing agreement will provide that Sub 2 will furnish to Sub 1 a Form W-8BEN with respect to the payments on the notes. It is

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anticipated that Sub 1 will continue to collect interest payments from the borrowers and otherwise service the loans so long as they are held by Sub 2. If the loan servicing agreement is terminated for any reason, Sub 2 will engage the services of another U.S. person to service the loans, so that the borrowers need not remit payments outside the United States.

Section 881(c)(2) of the Code defines portfolio interest for purposes of the repeal of tax on interest of foreign corporations received from certain portfolio debt investments under section 881(c). Section 881(c)(2)(B)(i) refers to interest that is paid on an obligation in registered form. Section 881(c)(7) provides that, for purposes of section 881(c), the term "registered form" has the meaning given such term by section 163(f). Section 5f.103-1 of the Income Tax regulations defines the meaning of "registered form" under section 163(f) of the Code.

Section 5f.103-1(c) provides that an obligation issued after January 20, 1987, pursuant to a binding contract entered into after that date, is in registered form if:

(i) The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and transfer of the obligation may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder,

(ii) The right to the principal of, and stated interest on, the obligation may be transferred only through a book entry system maintained by the issuer (or its agent) (as described in paragraph (c)(2) of this section), or

(iii) The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and may be transferred through both of the methods described in subdivisions (i) and (ii).

Paragraph (c)(2) of section 5f.103-1 provides that an obligation shall be considered transferable through a book entry system if the ownership of an interest in the obligation is required to be reflected in a book entry, whether or not physical securities are issued. It provides also that a book entry is a record of ownership that identifies the owner of an interest in the obligation.

In this case, Sub 1 is obligated to maintain a registration book as agent of the issuers of the obligations. The obligations may be transferred only upon delivery of written notification to Sub 1. Thus, the ownership of the obligations is required to be reflected, and the owners of the obligation identified, in book entries in the registration book maintained by the agent of the issuers. Thus, based upon the facts and representations presented, we conclude that the obligations are in registered form under section 5f.103-1 of the regulations.

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No opinion is expressed regarding: (i) whether any payment of interest on the obligations will qualify as portfolio interest for purposes of sections 871, 881 1441 and 1442 of the Code, (ii) whether the transfers from Sub 1 to Sub 2 are bona fide sales or whether Sub 2 is the creditor of the mortgage loans, (iii) whether Sub 2 is engaged in a trade or business within the United States and whether the interest is effectively connected with that trade or business, (iv) whether the beneficial owner of the obligation is not a U.S. person, or (v) whether the statement requirements of section 871(h)(5) are satisfied.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, this letter is being sent to your authorized representative.

Sincerely,
Phyllis Marcus
Chief, Branch 2
Office of the Associate Chief Counsel (International)