



IRC Section 892 U.S. Tax Overview



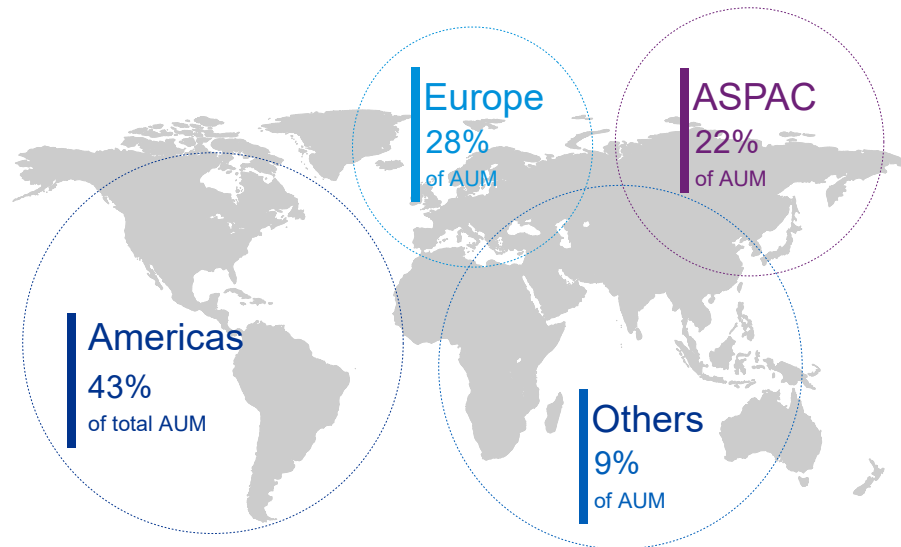
Agenda

- Introduction
- U.S. taxation of sovereign wealth funds
 - U.S. taxation of foreign investors
 - managing section 892 status
 - Real estate considerations
 - FIRPTA Generally
 - USRPHC Testing
- Entity classification
 - U.S. Entities
 - Check-the-Box (“CTB”) classification rules
 - Foreign entity classification rules
 - CTB Election
- Questions/wrap up



Introduction

Institutional investors have a worldwide presence



Total assets under management: US\$47+ Trillion

Acceleration in AUM growth



15%

Increase in assets added by Sovereign Wealth and Pension Funds over the past 12 months.



\$1T

Almost \$1T growth in 2018 for SWFs alone



On average, the top 20 funds invested 42% of assets in equities, 37% in fixed income securities and 21% in alternatives and cash.



Diversification is a key strategy for investment performance.

OECD.org - OECD. (2020). OECD. <https://www.oecd.org/>
Pitchbook.com – Pitchbook (2020). Pitchbook. <https://pitchbook.com/>



KPMG sovereign wealth fund practice

Global practice

- KPMG sovereign wealth fund practice represents over 1,000 cross-functional, industry professionals across the globe
- KPMG is a provider of choice to many of the worlds leading sovereign and public pension institutions
- KPMG brings the aggregate of this knowledge for sovereign and public pension clients, e.g., tax trends, best practices, insights

Investment management integrated

- KPMG sovereign wealth fund practice is a strategic focus priority of the Global Investment Management network
 - Leverage knowledge and professionals from funds, portfolios and managers
 - Provide insight up and down the chain, as well as throughout the evolution and maturity of the fund at the various points (i.e., newly formed, start up, mature funds)

Community leader

- KPMG sovereign wealth fund practice established a peer-to-peer exchange representing industry stakeholders, including government representatives, to inform and be informed, provide insight into best practices and challenges

KPMG institutional investors group

KPMG's Institutional Investors Group's **technical expertise**, insight to current developments and **close ties with local authorities** helps ensure that our clients understand the regulations, trends and the various forces in the market.



Our Asset Management services, which include the Institutional Investor group, are delivered through

3,500+ professionals



including **400** partners

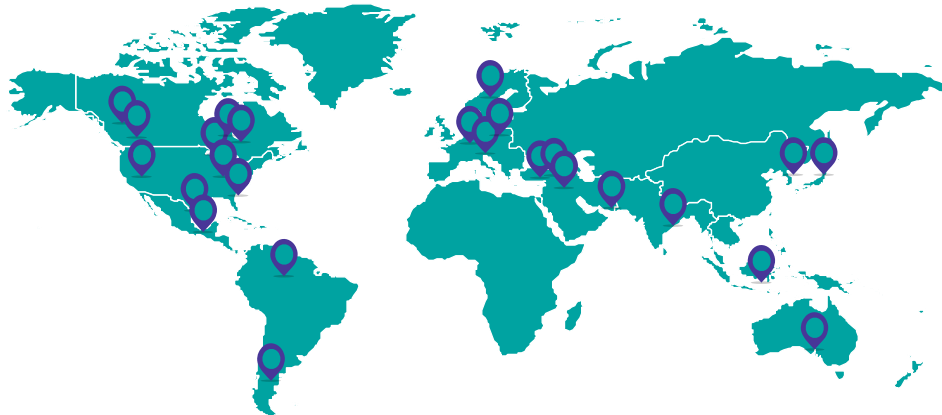


who are part of a global network of member firms whose financial service presence of more than

35,000 partners



and professionals spans **115** jurisdictions covering the world's most prominent financial centers.



KPMG provides professional services to **82%** of the top 50 Sovereign Wealth and Pension Funds combined



U.S. taxation of sovereign wealth funds



U.S. taxation of foreign investors

Overview of common investor tax profiles

Qualified Foreign Pension Fund (“QFPF”)

- A foreign pension plan that meets the requirements as defined in the PATH Act.
- FIRPTA exemption when investing in USRPI.
- ECI and FDAP sensitive but treaty benefits may be available.

Sovereign wealth/Section 892 investors

- Generally sensitive to attribution of ‘Commercial Activities’.
- Averse to filing US tax returns.
- FIRPTA sensitive
- ECI and FDAP sensitive but treaty benefits and/or 892 may be available.

Non-U.S. persons

- Averse to filing a US tax return.
- FIRPTA sensitive.
- ECI and FDAP sensitive but treaty benefits may be available.

Tax exempt ‘qualified organizations’ and other tax-exempts

- Sensitive to unrelated business taxable income (“UBTI”) from a trade or business or debt-financed properties.
- Examples of ‘qualified organizations’ (“QO”) include educational institutions and pension funds.

‘Super’ tax exempt entities

- Generally thought not to be subject to any U.S. federal tax but may look for same protections as QO.

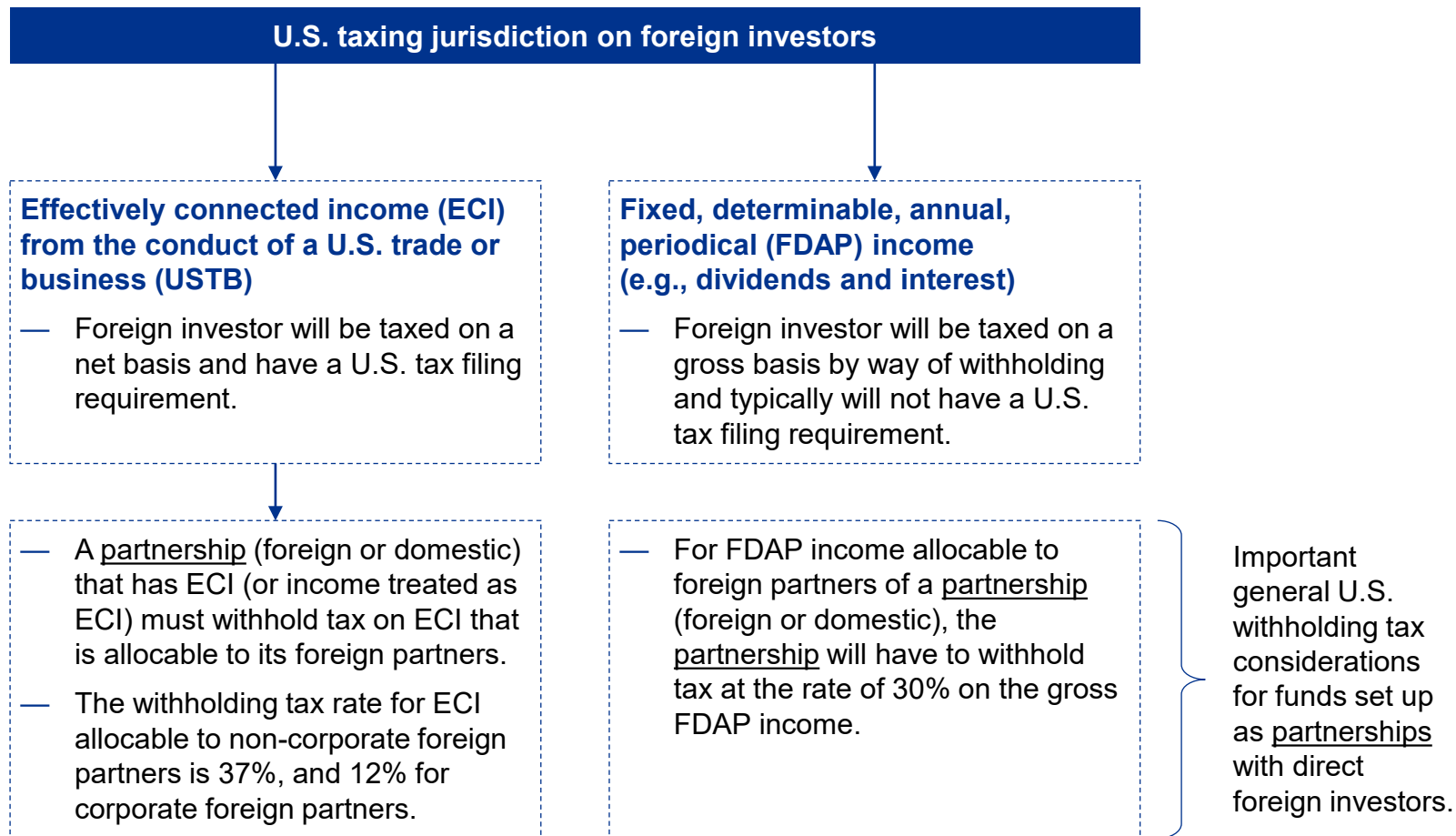
U.S. taxable persons

- Generally invest directly, as they are not averse to filing returns and may use losses that pass through.
- Opposed to two levels of taxation.
- Sensitive to U.S. anti-deferral regimes. (e.g., Sub F, PFIC, & GILTI)
- State nexus can be an issue.

U.S. taxation of non-U.S. persons

U.S. source income	
Business income (“ECI”)	Investment income (“FDAP”)
Effectively Connected Income	Fixed or <i>Determinable</i> , <i>Annual</i> , or <i>Periodical</i> income
— Income effectively connected with a “U.S. trade or business”	— Fixed or determinable, annual or periodical income not connected with a “U.S. trade or business”
— Subject to up to 37%+NII or 21% U.S. federal tax	— Generally subject to 30% U.S. withholding tax, or lower treaty rate (if applicable)
— May be subject to additional 30% Branch Profits Tax (“BPT”)	
— Net-basis taxation	— Gross-basis taxation
— Required to file U.S. federal income tax return	— No U.S. income tax return filing requirement
— Examples: <ul style="list-style-type: none"> - Operating business income - Trader/dealer in securities (special rules) 	— Examples: <ul style="list-style-type: none"> - Dividends - Rents (i.e., triple net leased) - Royalties

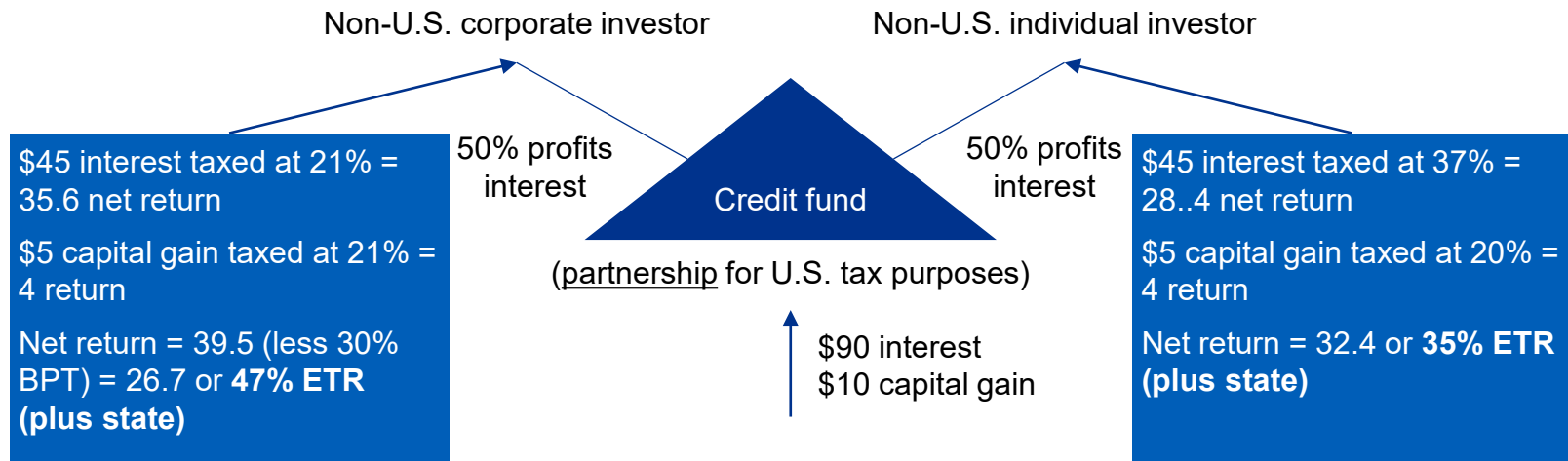
U.S. taxation of non-U.S. persons (continued)



U.S. taxation of non-U.S. persons (continued)

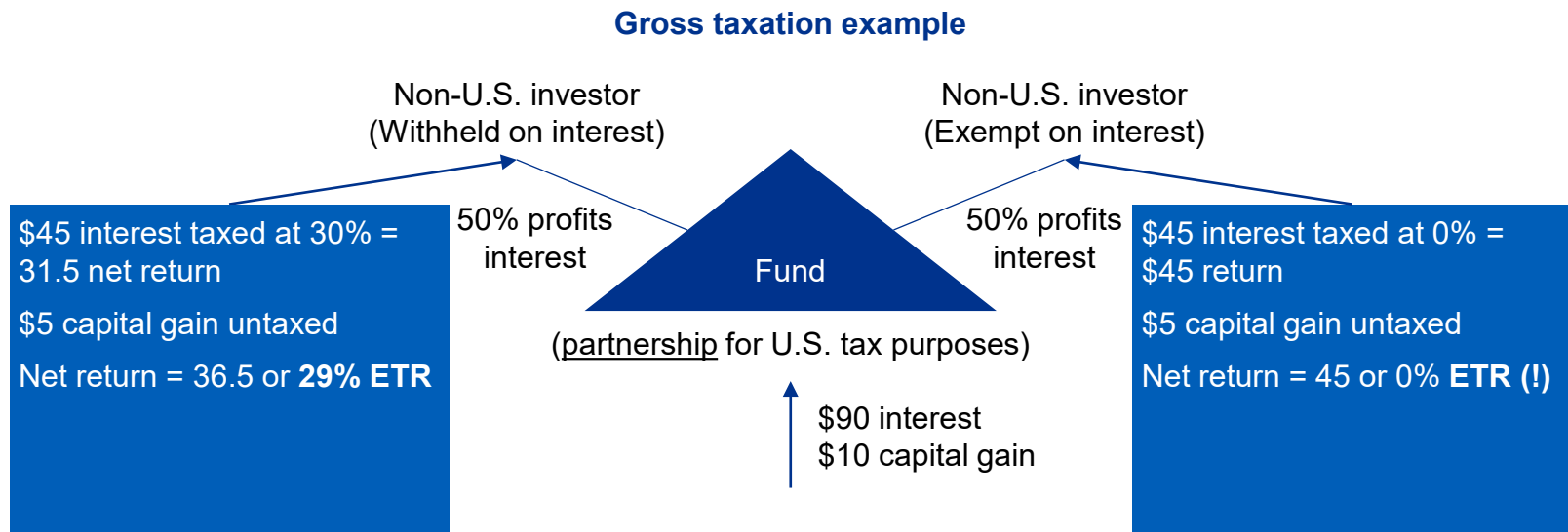
- Under the net taxation regime, non-US investors will generally suffer adverse tax consequences.
- These can be summarized as:
 - A requirement to file a U.S. tax return at the investor level.
 - Taxation at graduated U.S. federal income tax rates substantially similar to that imposed on similar U.S. persons.
 - Example: 37%/20% ordinary/gain tax on natural persons, 21% on corporations plus a branch profits tax of 30% (reduced potentially by a treaty).
 - Varied U.S. state and local tax complications.

Net taxation example



U.S. taxation of non-U.S. persons (continued)

- Under the gross taxation regime, non-US investors will generally be taxed substantially similar to passive investments in the U.S. public capital markets:
 - Generally, the U.S. will treat the returns as either interest or capital gain.
 - Interest is generally subject to 30% gross basis withholding tax, reduced by either a statutory exception or a treaty (often to 0% withholding).
 - Capital gain/market discount generally not subject to U.S. tax.
 - Generally no U.S. state or local tax.



Effectively Connected Income (ECI)

- Is foreign person engaged in U.S. trade or business?
 - Test is intensely factual
 - Favorable exemptions for trading in shares and securities for Fund's own account (i.e., non-dealer activities)
- Is income effectively connected with U.S. trade or business?
 - Generally, only U.S.-source income treated as ECI, but foreign-source income attributable to U.S. office may also be ECI
 - Limited “force of attraction” rule for non-FDAP U.S.-source income
 - FDAP U.S.-source dividend, interest and capital gains income treated as ECI if meet either asset use test or business activities test

Trade or business

— Trade or Business

- A foreign taxpayer is engaged in business only if its activities for production of income, wherever located, are **considerable, continuous, and regular**. (See *Pinchot v. Commissioner*, 113 F.2d 718 (2nd Cir, 1940))
- A foreign taxpayer engaged in business is deemed to carry on the business in the U.S. only if all or a significant part of the business activities are located in the U.S. or the U.S. is the situs of activities, comprising a portion of the business, which are considerable, continuous, and regular. (See *Continental Trading, Inc. v. Commissioner*, 265 F.2d 40 (9th Cir, 1959))
- Imputation from partnership to its partners (§ 875(1))
 - Safe Harbors (§ 864(b))
 - Trading in stocks or securities (cannot have an office/FPB in U.S.)
 - Trading for taxpayer's own account



managing section 892 status

Foreign government overview

Foreign governments

- §892 exempts U.S. tax on:
 - Investments in U.S. stocks, bonds, or other securities
 - Dividends and interest income
 - Gain from dispositions of U.S. stocks, bonds, or other securities
 - Gain from dispositions of **minority interests** in USRPHCs
 - Bank deposit interest
 - Investments in the U.S. in financial instruments held in the execution of governmental financial or monetary policy
 - If ineligible for §892 Exemption, then treated like any other foreign person

If §892 applies, foreign governments are exempt from U.S. taxation on certain U.S.-source income

§892 Highlights

Foreign governments

- Controlled Entity (“CE”) cannot engage in commercial activity from anywhere in the world, as determined on an annual basis
- Commercial activities can be attributed from partnerships
- Commercial activities is broader than being engaged in a trade or business
 - Thus, possible to have income from commercial activities that is not also ECI
- If CE is engaged in commercial activity it is a Controlled Commercial Entity (“CCE”) ineligible for 892 benefit
- USRPHC is deemed to be engaged in commercial activities
- 2011 Proposed Regulations provide a Limited Partner Exception to commercial activity attribution; LP agreements and local law should be reviewed to determine no active management participation

§892 status of CE must be continually monitored

Who is eligible?

Section 892 exemption

- Exempts foreign governmental entities from U.S. tax on certain types of U.S. source income

Integral part of foreign government

- Person, body of persons, organization, agency, bureau, fund, instrumentality, or other body that constitutes a **governing authority** of a foreign country (includes political subdivisions)
- No portion may inure to the benefit of any private person

Controlled Entity (“CE”) of a foreign government

- Separate in form from a foreign sovereign **but wholly owned and controlled** (e.g., a **separate juridical entity**)
- Organized **under the laws of the foreign sovereign** by which it is owned
- No portion may inure to the benefit of any private person, and assets vest in the foreign sovereign upon dissolution of the CE

Section 892 applies to the integral part or CE of a foreign government

What constitutes commercial activity?

Commercial activity

- Includes all activity **inside or outside the U.S.** conducted with a view towards the current or future production of income
- Not the same test as engaging in a U.S. trade or business

Commercial activity attribution rules

- Attribution rules may apply to attribute the commercial activity of one entity to another
 - Downwards from Parent to Subsidiary
 - Upwards from partnership to Partner
 - No upwards attribution from Subsidiary to Parent

USRPHC rule

- A USRPHC is deemed to be engaged in commercial activities

Commercial activities must be monitored on a worldwide basis

What income qualifies and does not qualify?

Qualified investment income exempt from U.S. tax

- Dividends and interest income from U.S. stocks, bonds, or other securities (i.e., FDAP)
- Gains from dispositions of securities and income from securities
- Gains from dispositions of **minority interests** in **USRPHCs**, including non-DC REITs

Exceptions where Section 892 exemption does not apply

- Income derived from the **conduct of any commercial activity**
- Income received (directly or indirectly) from **a controlled commercial entity (“CCE”)**
- Income from the disposition of an interest in a CCE

892 exempts passive income if not engaged in commercial activity

What is a controlled commercial entity?

Controlled Commercial Entity (“CCE”)

- An entity over which a foreign government exercises **control**
 - Legal control greater than 50% by vote or value
 - Effective practical control
- Engages in **commercial activities** anywhere in the world

Consequences of CCE status

- CCE is not entitled to Section 892 exemption on **ANY** of its otherwise qualifying income (subject to inadvertent commercial activity exception – 2011 Proposed Regulations)
- **USRPHC that is a CE is deemed to be a CCE** and ineligible for Section 892 benefit for **ALL** of its U.S. investments

Income from CCE not eligible for §892 exemption

2011 proposed regulations

Duration of CCE determination clarified

- If an entity is a CCE at any point during a calendar year, it will constitute a CCE for the full calendar year
- CCE determinations are made annually and reset each year
 - For example, if an entity is determined to be a CCE on August 3, 2013 and “cures” its CCE status by December 31, 2013, and does not otherwise engage in commercial activities in 2014, its status resets and it should not be a CCE for the full 2014 calendar year

Limited partner exception

- Modifies the partnership commercial activity attribution rule
- Limited partner (“LP”) must not have rights to participate in the management and conduct of the partnership’s business
 - Must review partnership agreement and local law rights
- LP income from commercial activities not eligible for the Section 892 exemption but does not taint other qualifying income

LP exception provides significant structuring opportunities

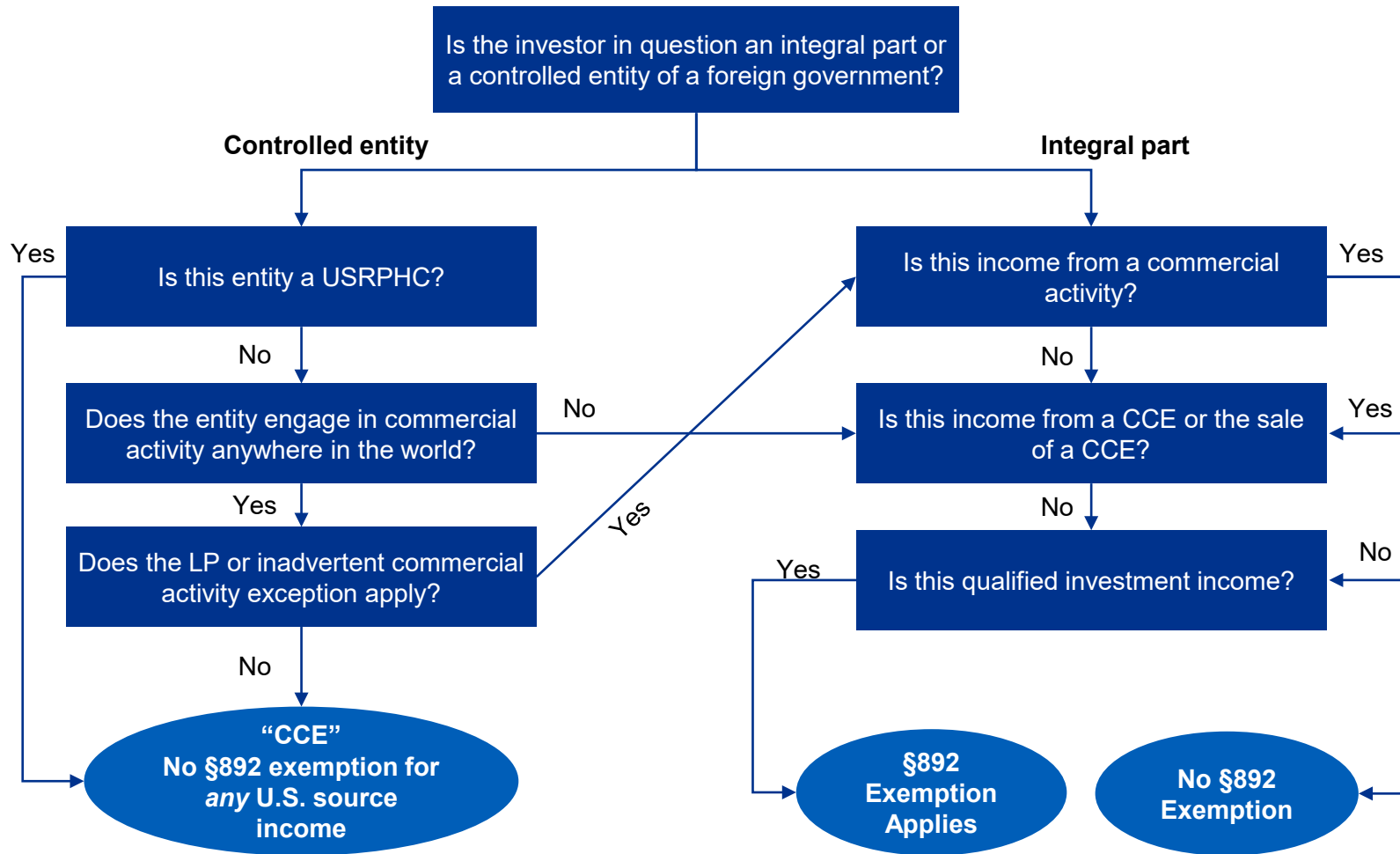
2011 proposed regulations (continued)

Exception for inadvertent commercial activity

- Inadvertent failure to avoid commercial activity must be:
 - “Reasonable”
 - Promptly cured
 - Must comply with certain recordkeeping
- Safe harbour for reasonableness (otherwise facts and circumstances test)
 - The value of the assets used in the activity is less than 5% of the entity’s total assets, and
 - The commercial activity income is less than 5% of the entity’s total gross income (the “5% Safe Harbour”)
- Inadvertent commercial activity income not eligible for the Section 892 exemption but does not taint other qualifying income

Procedures necessary to qualify for inadvertent commercial activity exception

Foreign government – §892 qualification



Fund implications

Implications for funds

- If CE is engaged in “commercial activity,” ***anywhere in the world***, directly, or by virtue of a fund investment, then the controlled entity is no longer eligible for §892 benefits on *any U.S. source income*
- partnership agreements will provide standards regarding an obligation to avoid causing a controlled entity from engaging in commercial activity
- LP agreements and local law should be reviewed to determine no active management participation
- Funds typically use “Blocker Corporations” or REITs to address commercial activity concerns

partnership agreements will provide for limitations on commercial activity

Typical Section 892 Investor Prohibitions

- Acquisition, holding and disposition of any Asset, in such a manner that will require the Client, as a result of such activity, to pay net income taxes or to file income tax returns in any jurisdiction
- invest in stock or securities, including without limitation, stapled stock or securities, issued by or in reference to any entity that is not properly classified as a *per se* corporation under the U.S. Code, including without limitation, any partnership or trust
- Invest in stock or securities, including without limitation, stapled stock or securities, issued by or in reference to any entity, regardless of whether properly classified as a corporation under the U.S. Code, if any income or gain received by or credited to the Client hereunder with respect to such stock or securities would be treated under the U.S. Code as effectively connected with the conduct of a trade or business

Section 892 Investor – Allowed Investments

- An entity (including a partnership) that has default status as a corporation under the U.S. Code and has not made an election to be classified as other than a corporation under the U.S. Code;
- a partnership that: (a) has duly elected to be classified as a corporation under the U.S. Code; or (b) is classified as a publicly traded partnership under the U.S. Code; and is not described in section 7704(c) of the U.S. Code,
- a trust that is classified as a business entity under the U.S. Code and has duly elected to be classified as a corporation under the U.S. Code.
- a U.S. REIT, but only if such stock is: (a) part of a class of stock which is regularly traded on an established securities market located in the United States; and (b) at all times following such investment, the stock of such a class held by or on behalf of the Client, pursuant to this Agreement or otherwise, constitutes in the aggregate less than five percent (5%) of the number of outstanding shares of such a class



Real estate considerations



FIRPTA generally

What does FIRPTA do?

Treatment as Effectively Connected with a U.S. Trade or Business

“For purposes of this title, gain or loss of a nonresident alien individual or a foreign corporation from the disposition of a *United States real property interest* (“**USRPI**”) shall be taken into account –

- (A) In the case of a nonresident alien individual, under section 871(b)(1), or
- (B) In the case of a foreign corporation, under section 882(a)(1)

As if the taxpayer were engaged in a trade or business within the United States taxable year and as if such gain or loss were effectively connected with such trade or business.”

Intent: Tax non-U.S. persons’ gain from dispositions of USRPI in the same manner that U.S. persons are taxed on such gain

What does this mean?

If a non-U.S. person disposes of a USRPI, any resulting gain or loss is:

DEEMED to be income that is effectively connected with a U.S. trade or business (i.e., ECI)

THUS gains/losses are subject to *net-based taxation* and triggers a *U.S. tax return filing obligation*

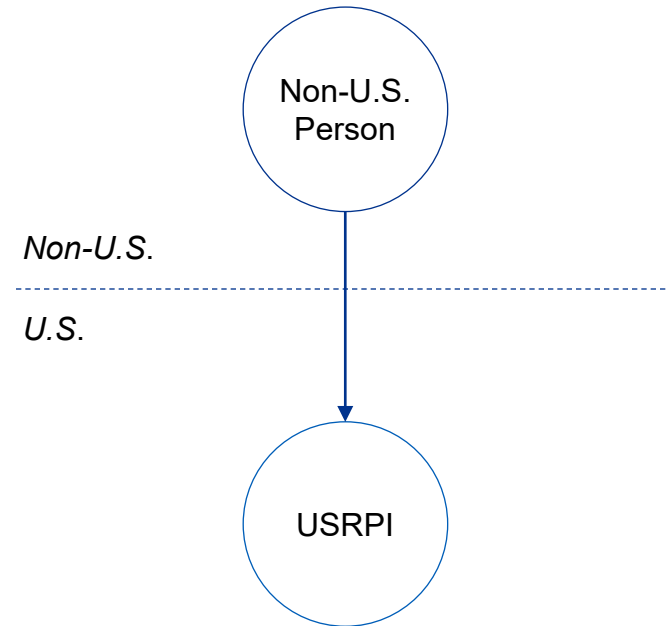
REGARDLESS of whether such non-U.S. person was *actually engaged* in a U.S. trade or business with respect to such USRPI or not.

(Considerable, continuous, regular standard not necessary)

What is USRPI?

The term “United States Real Property Interest” includes –

- “An interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States or Virgin Island”
- “The term real property includes the following three categories of property:
 - Land and unsevered natural products of the land (e.g., timber, growing crops, mines);
 - Improvements (i.e., building, any other inherently permanent structure, or the structural components of either);
 - Building.”



What is NOT a USRPI?

General Rule: Non-U.S. persons will be subject to U.S. tax under FIRPTA when they:

- Dispose of an “interest” in USRPI
 - May also be subject to branch profits tax
- Dispose of an “interest” in USRPHC
 - Note that a USRPHC is not itself a USRPI – rather, stock or other interest in a USRPHC is a USRPI
- Dispose of a partnership interest in USRPI
- Receive a distribution from a REIT that is attributable to gain from the REIT’s sale or exchange of USRPI

Four Exceptions:

- Publicly Traded Exception
 - Non-REITs
 - REITs
- DC REIT Exception
- QFPF Exception
- Qualified Shareholder Exception
 - Qualified shareholders will not be subject to FIRPTA tax on (a) gain from disposition of REIT stock; and (b) the receipt of 897(h)(1) Distributions from REITs
 - This exception has very narrow application and would primarily benefit foreign public REITs in a limited number of jurisdictions.

FIRPTA: The QFPF exception

- **Qualified foreign pension funds and entities wholly owned by such funds are exempt from FIRPTA taxation**
- **A qualified foreign pension fund is defined as any trust, corporation, or other organization or arrangement:**
 - Created outside of the U.S.;
 - Established to provide retirement or pension benefits to current or former employees;
 - Which does not have a single participant or beneficiary owning more than 5% of its assets;
 - Subject to government regulation and annual reporting in its home country; and
 - Where contributions to the entity are deductible or excluded from income or taxation on such entity that is deferred or taxed at a reduced rate
- **This exemption applies to direct investments or investments through partnerships and private equity funds**



USRPHC testing

What is a USRPHC

“The term “United States real property interest” includes –

- “Any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes that at no such time a United States real property holding corporation (“**USRPHC**”) [in the **5 year period** ending on the date of the disposition of such interest]

USRPHC means any corporation if –

The FMV of

$$\frac{\text{USRPI}}{\text{USRPI} + \text{Non-U.S. RPI} + \text{T/B Assets}} \geq 50\%$$

USRPHC testing

— U.S. corporation is actually a USRPHC if it meets a FMV test

- Generally, a domestic corporation whose principal assets are USRPIs is a USRPHC
 - FMV of USRPIs = 50% or more of FMV of following assets: USRPIs (including interests in USRPHCs), foreign real property, and assets used in trade or business
 - Look-through rules apply to partnerships and CFCs
 - If corporation is USRPHC at any point in time, stock held by foreign person treated as USRPI for next five years even if test not met at time of disposition or at any other time during five years

Summary

Overview of U.S. federal tax consequences for SWF investors in U.S. real estate

Indirect investments (Through REIT) ⁴	Ordinary REIT dividend ¹	0%
	Capital gain REIT dividend	21%+30% branch profits tax
	Interest income ²	0%
	Capital gains on sale of non-DC REIT stock	0% ⁶
	Capital gains on sale of DC REIT stock	0%
Indirect investments (Through leveraged C-Corp)	Ordinary C-Corp dividend ¹	0%
	Interest income ²	0%
	Capital gains on sale of C-Corp stock	0% ⁶
Direct investments (Including holding through an LP)	Rental income (ECI)	21% + 30% branch profits tax
	Interest income ^{2, 5}	30%/0%
	Capital gains	21% + 30% branch profits tax

Note:

1. The U.S. tax rates may be reduced by applicable treaties for dividends, interest and branch profits tax where conditions are met. Certain pension funds may also be exempt under applicable treaties.
2. 0% rates assume portfolio interest exemption conditions are met.
3. §892 provides exemptions for certain foreign government entities (which may include sovereign wealth fund investors) from U.S. tax on certain types of U.S. source **passive** income except for:
 - Income derived from the conduct of any commercial activities;
 - Income received (directly or indirectly) from a controlled commercial entity (“CCE”); or
 - Income from the disposition of an interest in a CCE.
4. All rates assume no state taxes.
5. Interest income will be taxed as rental income if it is treated as ECI; if it is treated as a FDAP income, a 0% rate will apply.
6. A 0% rate applies if the sovereign wealth fund investor owns less than 50% by vote or value.



Entity classification



U.S. entities

U.S. entities and tax classification – Summary

Legal Form	Corporation		<u>partnership</u> (GP, LP, LLP)	Limited Liability Company (LLC)		
Tax Classification	C Corp.	S Corp.	<u>partnership</u>	<u>partnership</u>	Corporation	Disregarded
Taxpayer:	Entity	Shareholder	Partner	Partner	Entity	Tax Treatment Looks to Owner
Flow-through of tax attributes/losses:	No	Yes	Yes	Yes	No	
Avoid double tax inefficiency:	No	Yes	Yes	Yes	No	
Tax consolidation available:	Yes	No	No	No	Yes	
Limited liability:	Yes	Yes	No (GP)	Yes	Yes	
Flexibility of income allocations:	No	No	Yes	Yes	No	

From a U.S. federal income tax perspective. Note that the table above shows general tax treatments by entity classification.

C corporations

C Corporations

- Subject to corporate level income tax on taxable income
- Highest federal corporate tax rate is currently 21%
- Typical state tax rate is generally between 5% and 9%
- Taxable income differs from GAAP income

Consolidated tax groups

- Similar to GAAP, a consolidated tax return may be filed for one or more chains of U.S. corporations connected through stock ownership with a parent corporation
- The common parent corporation must own at least 80% of the voting stock and 80% of the value, either directly or indirectly, through other includable corporations
- benefits of filing a consolidated return include the ability to offset the income of one corporation with losses generated by another corporation

S corporations

S Corporations

- The “S Corporation” designation is a tax concept only
- S corporations are generally flow-through entities (except in certain states)
- Shareholders are taxed on the S corporation’s income, even if the income is retained by the corporation
- Various requirements are necessary to be eligible for S corporation status
 - Shareholder requirements and one class of stock requirement

partnerships

partnerships

- partnerships are generally flow-through entities
- Types of partnerships include:
 - General partnership (GP)
 - Limited partnership (LP)
 - LLP
 - LLC (multiple members, unless elects corporate status)
- Tax treatment is generally the same
- Partners are taxed on the partnership's income, even if the income is retained by the partnership

LLCs

LLCs

- Default classification for domestic entity
 - partnership (if at least 2 members)
 - Disregarded entity/division (single member LLC)
- Can elect tax classification (i.e., “check-the-box”)
 - Corporation or S corporation
- State and foreign tax treatment generally follows federal tax treatment ~~may differ~~

Disregarded entities

Branch and single member LLC

- Branch
 - Operations of a branch are included in the operations of its owner and the branch generally does not file any separate income tax returns
- Single member LLC
 - If single member LLC does NOT elect to be treated as a corporation, it is treated as a disregarded entity for federal and most state income/franchise tax purposes
- Note: Some states impose income/franchise tax on single member LLCs even if the single member LLC does not elect to be treated as a corporation



U.S. entity classification rules

Treas. Reg. §§ 301.7701-1 through -4

- “Eligible entity” may elect its classification for U.S. tax purposes
 - Business entity
 - Entity recognized for U.S. tax purposes (i.e., joint conduct of business and sharing of profits (something more than mere co-ownership of property or agreement to share costs))
 - Not otherwise classified as a trust under Treas. Reg. § 301.7701-4 or otherwise subject to special tax treatment under the Code
 - Not classified as a corporation under Treas. Reg. § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8)

Treas. Reg. §§ 301.7701-1 through -4 (continued)

- Multi-owner eligible entities may elect to be:
 - Corporations, or
 - partnerships
- Single-owner eligible entities may elect to be:
 - Corporations, or
 - Disregarded as separate from owner
- “Default” classification absent election
 - US Corporation – Corporate
 - US partnership / LLC – Flow-through (partnership or disregarded entity)
- Form 8832 (Entity Classification Election) used to elect other than default classification or change classification



Foreign entity classification rules

Foreign entity classification

- Check-the-box regulations provide that certain foreign entities are “per se” corporations
 - E.g., U.K. Public Limited Company, German AG
 - Per se corporations are treated as corporation and are not eligible to make an election
- Default classification based on liability of owners
 - All members have limited liability: default is association
 - At least one member has unlimited liability:
 - Single member: default is disregarded as separate from owner
 - Multiple member: default is partnership

301.7701-2: Per se corporations

American Samoa, Corporation

Argentina, Sociedad Anonima

Australia, Public Limited Company

Austria, Aktiengesellschaft

Barbados, Limited Company

Belgium, Societe Anonyme

Belize, Public Limited Company

Bolivia, Sociedad Anonima

Brazil, Sociedade Anonima

Bulgaria, Aktsionerno Druzhestvo.

Canada, Corporation and Company

Chile, Sociedad Anonima

People's Republic of China, Gufen Youxian Gongsi

Republic of China (Taiwan), Kufen Yu-hsien Kung-szu

Colombia, Sociedad Anonima

Costa Rica, Sociedad Anonima

Cyprus, Public Limited Company

Czech Republic, Akciova Spolecnost

Denmark, Aktieselskab

Ecuador, Sociedad Anonima or Compania Anonima

Egypt, Sharikat Al-Mossahamah

El Salvador, Sociedad Anonima

Estonia, Aktsiaselts

European Economic Area/European Union, Societas Europaea

Finland, Julkinen

Osakeyhtio/Publikt Aktiebolag

France, Societe Anonyme

Germany, Aktiengesellschaft

Greece, Anonymos Etairia

Guam, Corporation

Guatemala, Sociedad Anonima

Guyana, Public Limited Company

Honduras, Sociedad Anonima

Hong Kong, Public Limited Company

Hungary, Reszvenytarsasag

Iceland, Hlutafelag

India, Public Limited Company

Indonesia, Perseroan Terbuka

Ireland, Public Limited Company

Israel, Public Limited Company

Italy, Societa per Azioni

Jamaica, Public Limited Company

Japan, Kabushiki Kaisha

Kazakstan, Ashyk Aktsionerlik Kogham

Republic of Korea, Chusik Hoesa

Latvia, Akciju Sabiedriba

Liberia, Corporation

Liechtenstein, Aktiengesellschaft

Lithuania, Akcine Bendroves

Luxembourg, Societe Anonyme

Malaysia, Berhad

Malta, Public Limited Company

Mexico, Sociedad Anonima

301.7701-2: Per se corporations (continued)

Morocco, Societe Anonyme

Netherlands, Naamloze

Vennootschap

New Zealand, Limited Company

Nicaragua, Compania Anonima

Nigeria, Public Limited Company

Northern Mariana Islands,
Corporation

Norway, Allment Aksjeselskap

Pakistan, Public Limited Company

Panama, Sociedad Anonima

Paraguay, Sociedad Anonima

Peru, Sociedad Anonima

Philippines, Stock Corporation

Poland, Spolka Akcyjna

Portugal, Sociedade Anonima

Puerto Rico, Corporation

Romania, Societe pe Actiuni

Russia, Otkrytoye Aktsionerney
Obshchestvo

Saudi Arabia, Sharikat Al-
Mossahamah

Singapore, Public Limited
Company

Slovak Republic, Akciova
Spolocnost

Slovenia, Delniska Druzba

South Africa, Public Limited
Company

Spain, Sociedad Anonima

Surinam, Naamloze
Vennootschap

Sweden, Publika Aktiebolag

Switzerland, Aktiengesellschaft

Thailand, Borisat Chamkad
(Mahachon)

Trinidad and Tobago, Limited
Company

Tunisia, Societe Anonyme

Turkey, Anonim Sirket

Ukraine, Aktsionerne Tovaristvo
Vidkritogo Tipu

United Kingdom, Public Limited
Company

United States Virgin Islands,
Corporation

Uruguay, Sociedad Anonima

Venezuela, Sociedad Anonima or
Compania Anonima



Check-the-Box ("CTB") election

Making the CTB election

- IRS Form 8832 – 75-day rule
- Can request relief for late filed initial classification CTB elections for newly formed eligible entities where election is effective on date of formation
 - Rev Proc 2009 – 41 Supercedes Rev Proc 2002-15, & 2002-59
 - Extends reasonable cause relief to changes in entity classification elections and also extends the time for filing late entity classification elections to three years and 75 days of the requested effective date of the eligible entity’s classification
- Requires reasonable cause for failing to make timely CTB election

5-year prohibition in making changes

- Generally, an eligible entity that makes a CTB election to change its classification may not change its classification again by CTB election during the succeeding 60 month period.
- Exception – rule not applicable to CTB elections made as of the date of formation, because those are initial elections rather than change in classification elections.



What questions
do you have?



Thank you



Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.



kpmg.com/socialmedia

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2021 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved NDP106519-1A

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.