



February 13, 2026

The Honorable Scott Bessent
Secretary, Department of the Treasury
Acting Commissioner, Internal Revenue Service
Washington, D.C.

Re: [REG-101952-24] Income of Foreign Governments and of International Organizations

Dear Secretary Bessent:

On behalf of the Institute for Portfolio Alternatives (the "IPA"),¹ we appreciate the opportunity to comment on REG-101952-24 (the "Proposed Regulations"), issued by the Internal Revenue Service (the "IRS") and the Department of the Treasury (the "Department") on December 12, 2025, under Section 892 of the Internal Revenue Code of 1986, as amended (the "Code").

Section 892 traces back to the long-standing doctrine of sovereign immunity that pre-dates the Code and reflects a deliberate policy choice by Congress to encourage inbound investment by foreign governments, including sovereign wealth funds and certain international pension funds, by distinguishing investment income from commercial activity income. That framework has supported decades of stable investment into U.S. markets, including in private capital strategies that fuel small and mid-sized businesses, housing development, infrastructure and local economic growth.

Sovereign wealth funds and international public pensions are critical sources of long-term capital for the U.S. economy. In practice, sovereign investment often functions as a vote of confidence that encourages additional participation by non-U.S. corporate and individual investors that do not benefit from any special U.S. tax exemptions under the Code.

¹ For more than 40 years, the IPA has served as the leading voice for global asset managers, distributors and service providers in the private markets and alternative investment industry. We deliver best-in-class education for practitioners and champion policies that expand investor access to wealth-building private market strategies, including real estate, credit, infrastructure, private equity and venture capital, among other asset classes. These investments offer lower correlation to public markets, strengthen retirement outcomes and enhance portfolio diversification while operating within robust investor-protection standards. Over the past 25 years, private market and alternative investments have driven more than \$1 trillion in capital formation, playing a critical role in fueling national and local economic growth.



As a result, changes that may have the unintended result of discouraging sovereign investment risk broader downstream effects, including reduced non-U.S. investment flows into our economy from fully taxable non-U.S. investors.

We commend the Department and the IRS for engaging with stakeholders and for seeking to provide greater clarity through targeted safe harbors and principles-based standards. We also recognize the stated objective of preserving established market practices while continuing to support sovereign wealth fund investment in the United States.

At the same time, several aspects of the 2025 Proposed Regulations depart from long-standing market practices and could introduce uncertainty and unintentionally chill sovereign and other non-U.S. investment, particularly in private credit and private equity strategies that are central to U.S. capital formation.

To better align the final regulations with the policy objectives of Section 892, to avoid unnecessary disruption to U.S. capital markets, and to be consistent with established market practice, we respectfully offer the following recommendations.

1. Expand and clarify the debt-acquisition “investment” safe harbors.

We support the use of safe harbors to delineate when debt acquisition constitutes “investment” rather than “commercial activity,” and we appreciate the inclusion of safe harbors for registered offerings and qualified secondary market acquisitions. These safe harbors, however, are drawn too narrowly relative to modern debt markets.

Rule 144A offerings and comparable foreign registered or supervised offerings are standard mechanisms for broadly distributed, intermediated debt issuance to institutional investors, including sovereign investors. Such a narrow safe harbor would not, as a practical matter, serve as a meaningful benefit to taxpayers.

To better reflect established market practice, we recommend that the final regulations expand the debt-acquisition safe harbors to at a minimum include Rule 144A offerings and offerings conducted under sufficiently comparable foreign securities regimes. In addition, we recommend that the safe harbors should be expanded to include debt instruments acquired in a secondary “old and cold” manner.

In addition, from the perspective of a sovereign investor, shareholder loans to an investment fund or joint venture are a routine and integral feature of the investment relationship and should not be treated as commercial activity. Such loans are typically used to align capital contributions, manage liquidity, or bridge timing differences in connection with a sovereign’s equity investment, and are undertaken solely by virtue of the sovereign’s status as an owner. They are not extended to the market, are not part of a lending business, and do not reflect an intent to earn returns through commercial financing activity.

Including these owner-driven financing arrangements within the definition of commercial activity would mischaracterize ordinary investment support as operational conduct and would create unintended consequences for common fund and joint-venture structures used by sovereign investors. Excluding shareholder loans in this context would more accurately reflect their economic role, preserve the intended boundaries of the safe harbor, and provide clarity.

2. Clarify that customary minority “stewardship” protections do not constitute effective control.

The 2025 Proposed Regulations’ expanded definition of “effective control” risks uncertainty regarding customary minority investor protections that are intended to safeguard invested capital, rather than to convey meaningful influence over operation. Sovereign wealth funds frequently require negative consent rights, information rights and defensive protections to steward large, illiquid investments and to satisfy internal governance obligations. These rights do not confer day-to-day operational control and historically have not been treated as commercial activity for purposes of Section 892.

A narrower formulation of the effective control test that excludes ordinary capital protection rights would more accurately reflect the economic and governance realities of minority investments, particularly in fund and joint-venture structures. A more focused test that distinguishes between protective vetoes and affirmative decision-making rights would better reflect economic reality, promote administrability, and preserve the intended scope of the regulations without undermining their anti-abuse objectives.

Moreover, a clear safe harbor for minority investor protections under the effective control test is necessary to preserve the practical availability of the qualified partnership interest (“QPI”) exception in Treasury Regulations § 1.892-5(b)(iii). The QPI framework requires both the absence of management participation and the absence of effective control, while expressly permitting rights that serve only to protect a partner’s capital investment and do not involve day-to-day operations.

As drafted, however, the proposed regulations could be read to treat any veto or negative consent right, including these permitted capital protection rights, as evidence of effective control. That interpretation would effectively nullify the QPI exception by disqualifying minority investors who hold only customary protective rights and lack any operational authority. Absent clarification, the “effective control” test in the Proposed Regulations could therefore operate in tension with, and unintentionally undermine, the QPI exception as articulated in the final regulations released on December 15, 2025.

Without further clarification and a more tailored formulation of the “effective control” test, the 2025 Proposed Regulations could discourage sovereign wealth fund participation in private equity and private credit where defensive rights are routinely exercised and as essential part of the business deal. In particular, a sovereign wealth fund’s ability to

exercise defensive restructuring rights with respect to “old and cold” debt investments, including as a member of the creditors' committee, is a fundamental investor right to protect its interest as a provider of capital and should not be treated as giving rise to effective control and commercial activity.

We recommend that the final regulations expressly confirm that customary minority protections designed to protect investments do not, standing alone, result in effective control.

3. Provide meaningful transition relief or grandfathering to avoid market disruption.

Although the 2025 Proposed Regulations are generally prospective, the changes to effective control and debt-acquisition standards could have significant implications for existing investments, financing arrangements and fund structures that were established in reliance on prior guidance and long-standing market practice. Retroactive economic consequences, even if not formally retroactive in application, would undermine investor confidence and could disrupt U.S. capital markets.

To mitigate these risks, we recommend either:

- Grandfathering – permit explicit grandfathering for investments and legally binding commitments entered into prior to the finalization of the proposed regulations, regardless of funding status; or
- Extended transition period – a transition period of at least ten years during which existing investments and commitments may continue to rely on prior Section 892 interpretations so that sovereign investors can realign governance or financing terms without forced restructurings and market disruption.

Either approach would be consistent with the stated intent to preserve established market practices while providing clarity going forward.

4. Provide practical reliance standards for withholding agents.

Given the fact-specific nature of effective control, we recommend that the final regulations confirm that withholding agents may rely on a sovereign investor's valid IRS Form W-8EXP (and, for U.S. real property holding corporations, an applicable non-recognition certificate) without independently determining effective control. Requiring withholding agents (e.g., brokers or fund administrators) to assess another party's facts, often based on information they cannot access, would chill transactions and invite unnecessary disputes. A clear reliance rule for withholding agents would reduce friction and enhance certainty.

* * * * *

The IPA strongly supports policies that attract inbound capital to the United States, reinforce confidence in U.S. markets and strengthen our economy. We respectfully urge the Treasury and the IRS to refine the 2025 Proposed Regulations in a manner that fully advances Section 892's long-standing objective of encouraging inbound sovereign investment while avoiding unintended consequences of disruption for the broader private markets ecosystem.

Thank you for the opportunity to comment on the Proposed Regulations. We look forward to continued engagement with the Department and the IRS to solidify policies that maximize inbound investment into the U.S. economy. Please contact Jeff Evans, IPA's director of government affairs and policy, at jevans@ipa.com, with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anya Coverman', with a long horizontal flourish extending to the right.

Anya Coverman
President & CEO