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Person To Contact:
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Legend

Taxpayer =

Foreign HoldCo =
GP =

Holdings LP =

Mortgage LP =

Upper Tier Trust =

Trust =

Series A =

Series B =

State =

Country =

Treaty =

Dear :

This is in response to your letter dated September 23, 2015, requesting that certain interests held in a disregarded entity and a partnership will be considered obligations in registered form, if the interests in those entities are transferable according to the procedures described in section 5f.103-1(c) of the Temporary Income Tax Regulations.

FACTS

Taxpayer is the ultimate manager of a family of private investment funds. Taxpayer is a limited liability company organized under the laws of State. Taxpayer uses a fiscal year ending _____ for federal income tax reporting and an accrual method as its overall method of accounting.

Taxpayer formed the following six entities in connection with the transactions described in this letter. Each entity is a distinct entity type formed under the laws of State and is taxable for federal income tax purposes as outlined below. Each entity (other than GP and entities designated as disregarded entities) uses a fiscal year ending _____ for federal income tax reporting and an accrual method as its overall method of accounting. GP uses the calendar year for federal income tax reporting and an accrual method as its overall method of accounting. As disregarded entities, Upper Tier Trust, Class A and Class B do not possess an annual accounting period or have their own method of accounting.

<u>Entity Name</u>	<u>Entity Type</u>	<u>Formation</u>	<u>Entity Taxable As:</u>
Holdings LP	Limited partnership	State	Partnership
Mortgage LP	Limited partnership	State	Partnership
Upper Tier Trust	Statutory Trust	State	Disregarded entity
GP	Limited liability company	State	Corporation
Series A	Series Trust	State	Disregarded entity
Series B	Series Trust	State	Disregarded entity

Foreign HoldCo is an existing Country company held indirectly by Taxpayer and is taxable as a corporation for federal income tax purposes. Taxpayer represents that Foreign HoldCo is not engaged in the conduct of a trade or business in the United States within the meaning of Section 882(a) and does not maintain a permanent establishment in the United States within the meaning of Article 5 of Treaty.

Foreign HoldCo will become the limited partner in Holdings LP as well as the sole owner of GP. GP will serve as the general partner of Holdings LP and Mortgage LP. The primary activity of Holdings LP will be to invest money contributed to various investment vehicles sponsored by Taxpayer, including Foreign HoldCo. A number of these investors will be non-U.S. persons who are not engaged in the conduct of a U.S. trade or business. Foreign HoldCo will use all the funds that are contributed to it to purchase a limited partnership interest in Holdings LP.

Mortgage LP will hold all of the interests in Series A, a series of Trust. Mortgage LP will own all of the beneficial interests in Upper Tier Trust. Upper Tier Trust will hold all of the beneficial interests in Series B, a series of Trust.

As a result of Taxpayer's interest in Foreign HoldCo, Taxpayer will share in profits and losses allocated by Mortgage LP and Holdings LP. Taxpayer represents that none of Series A, Series B, Upper Tier Trust, Mortgage LP or Holdings LP will operate in a manner that will cause Foreign HoldCo to be engaged in the conduct of a trade or business in the United States within the meaning of either section 871(b) or 882(a)(1) of the Internal Revenue Code (the "Code").

Series A and Series B will use the amounts received as capital contributions to acquire performing, re-performing and non-performing Mortgage Loans (each, a "Mortgage Loan"). The phrase "performing loan" as applied to Mortgage Loans generally refers to loans for which no payment of principal or interest has been past due at any time during the twelve month period preceding any date of determination and the current loan-to-value ratio is less than 100 percent. The phrase "re-performing" as applied to Mortgage Loans generally refers to loans that are no more than 59 days past due preceding any date of determination. These mortgagors have experienced employment challenges or occasional missed payments but are generally improving in credit-worthiness.

A non-performing Mortgage Loan refers to any loan for which any payment of principal or interest is more than 60 days past due or the obligor is in bankruptcy. The point at which certain lenders classify a loan as non-performing, and when it becomes bad debt, may vary depending on local regulations. A nonperforming loan is either in default or close to being in default. Once a loan is nonperforming, the odds that it will be repaid in full are considered to be substantially lower.

Taxpayer represents that Mortgage Loans secured by mortgages are not in registered form within the meaning of section 5f.103-1(c).

Taxpayer anticipates that the independent servicers engaged by Trust to service nonperforming Mortgage Loans will be required to negotiate modifications to certain of these loans in order for the mortgagors to make regular payments on their respective loans. The modifications on these certain Mortgage Loans would constitute "significant modifications" within the meaning of section 1.1001-3(b) of the Income Tax Regulations. Taxpayer expects that significant modifications will be made to Mortgage Loans after the initial 60-day period following Trust formation. Series A and Series B will have the right to acquire Mortgage Loans more than 60 days the formation of Series A and Series B, as well as the ability to dispose of Mortgage Loans at any time. The parties expect that the Mortgage Loans will be acquired by Series A and Series B after such 60-day period, either by purchase or by contribution.

Upper Tier Trust may accept additional contributions that it will contribute to Series B. Series B will use this cash to acquire additional mortgages. Additionally, the owners of Series A and Series B will contribute cash to the relevant Series to fund acquisitions of additional Mortgage Loans. Because Upper Tier Trust, Series A, and Series B have the ability to accept additional contributions of cash and acquire additional Mortgage Loans, Taxpayer represents that Upper Tier Trust, Series A, and Series B have the power to vary their investments.

Taxpayer represents that interests in Series A, Series B, Upper Tier Trust, Mortgage LP and Holdings LP will be transferable only pursuant to procedures described in section 5f.103-1(c)(1) and therefore are in registered form within the meaning of this regulation. Specifically, interests in these entities will be transferable only by surrender of the old interest and either reissuance by these entities of the old interest or through issuance of a new instrument to the new holder. Alternatively, the right to receive distributions of principal and interest on the assets held by each of Series A, Series B, Upper Tier Trust, Mortgage LP and Holdings LP will be transferable only through a book entry system maintained by such entity. If a book entry system is employed, such system will meet the requirements of section 5f.103-1(c)(2). Taxpayer further represents that Mortgage LP and Holdings LP have no trustees, will be managed by GP, and have a profit-making activity as one of their purposes.

Taxpayer's business reasons for the transaction include providing indirect investors in Holdings LP and Foreign HoldCo with a return on their investment that is above-market on a risk-adjusted basis. The business reasons also include enabling Taxpayer to earn income from the overall performance of Mortgage Loans.

LAW

Section 163(f)(1) disallows a deduction for interest on any registration-required obligation unless such obligation is in registered form. Section 163(f)(2) defines the term, "registration-required obligation" as an obligation (including any obligation issued by a governmental entity) other than an obligation which (i) is issued by a natural person, (ii) is not of a type offered to the public, or (iii) has a maturity (at issue) of not more than one year.

Section 1.163-5T(d)(1) provides that a pass-through or participation certificate evidencing an interest in a pool of mortgage loans which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner (or similar evidence of interest in a similar pooled fund or pooled trust treated as a grantor trust) ("pass-through certificate") is considered to be a "registration-required obligation" under section 163(f)(2)(A) and section 1.163-5(c) if the pass-through certificate is described in section 163(f)(2)(A) and section 1.163-5(c) without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 163(f)(2)(A) and section 1.163-5(c).

Section 1.871-14(a) provides that no tax shall be imposed under section 871(a)(1)(A), 871(a)(1)(C), 881(a)(1) or 881(a)(3) on any portfolio interest as defined in sections 871(h)(2) and 881(c)(2) received by a foreign person. Under sections 871(h)(2) and 881(c)(2), interest must be paid on an obligation that is in registered form to qualify as portfolio interest. The term “registered form” has the same meaning given such term by section 163(f). Sections 871(h)(7) and 881(c)(7). Section 1.871-14(c)(1)(i) provides that the conditions for an obligation to be considered in registered form are identical to the conditions described in section 5f.103-1.

Section 1.871-14(d)(1) provides that interest received on a pass-through certificate qualifies as portfolio interest if the interest satisfies the conditions in section 1.871-14(c)(1) without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 1.871-14(c)(1)(ii). This paragraph only applies to payments made to the holder of the pass-through certificate from the trustee of the pass-through trust and does not apply to payments made to the trustee of the pass-through trust.

Section 5f.103-1(c)(1) provides generally that an obligation 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 section 5f.103-1(c)(2), or (iii) the obligation is registered as to both principal and stated interest with the issuer (or its agent) and may be transferred through most of the methods described in (i) and (ii) above.

Section 5f.103-1(c)(2) provides that an obligation will 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. A book entry is record of ownership that identifies the owner of an interest in the obligation.

Section 301.7701-4(c)(1) of the Procedure and Administration Regulations provides that, an investment trust with a single class of undivided beneficial interest in the trust assets is classified as a trust if there is no power under the trust agreement to vary the investment of the certificate holders.

ANALYSIS

The purpose of the registration requirement for certain obligations is to prevent the underreporting of tax on gains on sales on both taxable and tax-exempt securities

and to ensure that securities will be sold (or resold in connection with the original issue) only to persons who are not United States persons. See section 1.163-5(c)(1)(i).

Taxpayer has represented that Mortgage Loans are not in registered form. Section 1.163-5T(d)(1) provides that an interest (a “pass-through certificate”) in a trust that is treated as a grantor trust is considered to be an obligation in registered form if the pass-through certificate is in registered form “without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates” is in registered form. None of Mortgage LP, Holdings LP, Upper Tier Trust, Series A or Series B is treated as a grantor trust under section 301.7701-4(c)(1). Section 1.163-5T(d)(1) does not specify what type of arrangements may qualify as similar pooled funds.

In this case, the interests in each of Mortgage LP, Holdings LP, Upper Tier Trust, Series A, and Series B will be transferable only pursuant to the procedures described in section 5f.103-1(c)(1). Interests in each of Mortgage LP, Holdings LP, Upper Tier Trust, Series A, and Series B will be transferred in accordance with section 5f.103-1(c)(1)(i). Alternatively, each of Mortgage LP, Holdings LP, Upper Tier Trust, Series A, and Series B will maintain a book entry system (as described in section 5f.103-1(c)(2)), and the right to receive distributions of principal and interest on Mortgage Loans will be transferable only by such book entry system.

CONCLUSION

We conclude, based on the facts of this case, that the interests in each of Mortgage LP, Holdings LP, Upper Tier Trust, Series A, and Series B are similar evidences of interest in a similar pooled fund within the meaning of section 1.163-5T(d)(1), and that if the requirements of section 5f.103-1(c)(1) are satisfied, the interests in each of Mortgage LP, Holdings LP, Upper Tier Trust, Series A, and Series B will be considered obligations in registered form.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed or implied regarding whether any payment of interest on the interests in any of Mortgage LP, Holdings LP, Upper Tier Trust, Series A, and Series B will qualify as portfolio interest for purposes of sections 871 and 881. Furthermore, no opinion is expressed or implied as to whether Mortgage LP, Holdings LP, Upper Tier Trust, Series A, or Series B is engaged in a trade or business within the United States or whether the interest in Mortgage LP, Holdings LP, Upper Tier Trust, Series A, or Series B is effectively connected with that trade or business.

This ruling is directed only to the taxpayer 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, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)