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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:INTL:B05  
PLR-107765-25

Date:  
June 9, 2025

LEGEND

X =  
Entity 1 =

Originator =  
Country A =  
Prior Ruling =  
Date 1 =  
Period of Time 1 =  
Period of Time 2 =  
Number of Loans 1 =  
Number of Loans 2 =  
Amount of Participations 1 =  
Amount of Participations 2 =  
Number of Investors 1 =  
Number of Investors 2 =  
Par Amount =  
Equity Holder =

Administrator =

Dear \_\_\_\_\_ :

This is in response to your letter, dated X, requesting our ruling that income or gain of Entity 1, equity in which is owned by Originator, not be treated as effectively connected with the conduct of a trade or business within the United States.

### FACTS

Originator is an international organization that was established by a multilateral agreement between various governments, including the United States. The United States became a member of Originator pursuant to an act of Congress, and by executive order, the President of the United States designated Originator to be a public international organization entitled to the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act, 22 U.S.C. sections 288 et seq. Originator is not established under the laws of any one member country and is not subject to regulatory oversight by any national regulator.

According to Article 1 of Originator's Articles of Agreement, Originator was established to further economic development by encouraging the growth of productive private enterprise in developing countries. Originator provides loans and risk capital to private enterprises in cases where private capital is not sufficiently available from other sources on reasonable terms. In addition, Originator seeks to mobilize domestic and foreign private capital and to help create conditions conducive to the flow of private capital into productive investment in its member countries. The IRS concluded in Prior Ruling that Originator is an "international organization" as defined in Section 7701(a)(18) and, therefore, that its income is exempt from federal income tax under section 892(b) (to the extent provided therein) and the multilateral agreement under which it was organized. Originator, through Entity 1, has represented that none of the facts material to Prior Ruling have changed.

Originator funds its investment operations from various sources, including from private investors. Historically, Originator has extended loans in two tranches, an "A" piece and a "B" piece. The B piece may differ from the A piece in maturity, currency denomination, and interest rate (e.g., fixed versus floating). However, the A piece and the B piece of a loan to a single borrower are *pari passu* for credit purposes and are subject to cross-default provisions. Since Date 1, Originator has been selling participations of up to 100% in the B pieces to investors. For Period of Time 1, Originator also has been selling participations in the A pieces to investors. Originator has acted as loan servicer with respect to all participations in both the A pieces and B pieces.

In particular, in the past Period of Time 1, Originator has participated A pieces of Number of Loans 1 to Number of Investors 1, totaling Amount of Participations 1. In the past Period of Time 2, Originator also has participated B pieces of Number of Loans 2 to Number of Investors 2, totaling Amount of Participations 2.

To expand its sources of private capital, Originator will organize Entity 1, a foreign corporation which will own participations (the "Participations") in underlying loans originated by Originator (the "Loans"), and which will issue securities collateralized by the Participations to allow private investors to invest indirectly in the Loans. The Participations will be purchased by Entity 1 using cash raised by issuing the Notes (described below). Participations acquired by Entity 1 may also relate to Loans originated by Originator after Entity 1 has been established.

Entity 1 will be organized in Country A and will be classified as a foreign corporation for U.S. federal income tax purposes. Originator has represented on behalf of Entity 1 that, unless Originator's U.S. office is attributed to Entity 1, Entity 1 will have no office or other fixed place of business within the United States. Entity 1 is not entitled to benefits under section 892.

Entity 1 will issue multiple classes of rated notes (the "Rated Notes") that may be rated as investment grade or below investment grade by a recognized rating agency. Counsel to Entity 1 will opine that each class of Rated Notes will, or should, be treated as indebtedness for U.S. federal income tax purposes.

Entity 1 will issue a class of subordinated interests, either in the form of preference shares or subordinated notes (the "Subordinated Interests" and, together with the Rated Notes, the "Notes") that will not be rated and will represent the first loss position in Entity 1's assets (the Participations). In its offering document, Entity 1 will disclose to investors that the Subordinated Interests will be treated as equity for U.S. federal income tax purposes. Entity 1 will issue ordinary shares with nominal value, which, under Country A corporate law, will represent the equity in Entity 1. Those shares, which will have a par value of Par Amount, will be owned by Equity Holder, a third party. Originator has represented on behalf of Entity 1 that each Participation is properly treated as ownership of an interest in the underlying Loan for U.S. federal income tax purposes rather than as an obligation of Entity 1 or some other financial derivative. A Participation may be sold to Entity 1 by Originator after Originator has originated the underlying Loan.

Entity 1 will engage an investment bank, placement agent, and other institutional advisors with relevant experience to structure and market the Notes.<sup>1</sup> Most of the Notes will be sold to investors. Initially, Originator expects to subscribe to and retain all of the Rated Notes rated below investment grade as well as a substantial portion of the Subordinated Interests. Originator may sell some or all of the retained Rated Notes in the future but expects to retain a portion of the Subordinated Interests indefinitely.

All cash received by Entity 1 under the terms of the Participations will be used to pay interest and principal on the Rated Notes, and to make payments on the Subordinated Interests, in accordance with the order of priority for payments set forth in

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<sup>1</sup> Originator will not transfer any portion of the origination fees it receives from borrowers to Entity 1.

Entity 1's organizational documents. Originator represents on behalf of Entity 1 that interest income (including original issue discount) earned by Entity 1 from the Participations, and gain recognized on any disposition of the Participations, will be foreign-source income for U.S. federal income tax purposes.

Originator will extend the Loans in its own name and will not hold itself out as making the Loans on behalf of Entity 1. Originator will remain the lender of record with respect to each Loan and is expected to retain a substantial portion (albeit likely less than half) of each Loan for its own account. Originator has represented on behalf of Entity 1 that Entity 1 will not engage in trading securities for its own account (or otherwise).

As with all the loans it extends, Originator will act as the servicer of each of the Loans and will have the authority to collect payments, exercise creditor rights, and dispose of any defaulted Loans to third-party buyers. The agreement governing the Participations provides that no action taken by Originator shall constitute a partnership, association, joint venture, or other common enterprise between Originator and Entity 1. Originator has represented on behalf of Entity 1 that the Participations are subject to standard market terms and documentation, and that they result in a transfer of beneficial ownership of the Loans for U.S. federal income tax purposes. The gross fees received by Originator for its loan-servicing activities performed for Entity 1 will amount to less than 1% of Originator's annual worldwide gross income.

Other than its obligation to seek consent where contractually agreed, Originator, as servicer and lender of record with respect to the Loans, is not obligated to consider the interests of Entity 1 and the investors in the Notes in making any decisions in respect of any Loan. In particular, Originator will have discretionary power to modify any Loan in ways that Originator believes furthers its economic-development mandate, and may make decisions in originating and administering any given Loan that are different from those of strictly commercial lenders, and which may take into account development considerations in addition to commercial considerations. Although Originator will have certain contractual obligations to Entity 1, these contractual obligations will not require it to modify loans in the best interests of Entity 1 or its investors.

## **LAW**

Under section 882(a)(1), a foreign corporation that is engaged in a trade or business within the United States is subject to U.S. federal income tax on its taxable income which is effectively connected with the conduct of that U.S. trade or business ("ECI"). With respect to a foreign corporation engaged in a U.S. trade or business, sections 864(c)(4) and 865(e)(2), and Treas. Reg. §§ 1.864-5, -6, and -7, provide rules for determining the extent to which the foreign corporation's foreign-source income is ECI.

Under section 864(c)(4)(A), a foreign corporation's foreign-source income generally is not included in ECI. Under an exception to that general rule, section 864(c)(4)(B)(ii) provides that foreign-source interest income and gain from the sale of securities (including debt instruments) may be ECI to the extent it arises from the "active conduct of a banking, financing, or similar business within the United States" or is received by a foreign corporation whose principal business is trading securities for its own account.<sup>2</sup> Under Treas. Reg. § 1.864-4(c)(5)(i)(b), a foreign corporation is treated as engaged in the active conduct of a banking, financing, or similar business in the United States if it "is engaged in business in the United States" and carries on certain enumerated financing activities in the United States, including making loans to the public. In such case, the principles of Treas. Reg. § 1.864-4(c)(5)(ii) may apply. Treas. Reg. § 1.864-6(b)(2)(ii)(b). In the case of foreign-source interest income and gain derived by a foreign corporation, a material factor test applies. Treas. Reg. § 1.864-6(b)(2)(ii)(d), referencing Treas. Reg. § 1.864-6(b)(2)(ii)(a), in turn referencing Treas. Reg. § 1.864-5(b)(2).

Section 864(c)(4)(B) provides that foreign-source interest income and gain of a foreign corporation from debt it holds is ECI only if the foreign corporation has an "office or other fixed place of business" in the United States at some time during the taxable year in which it realizes the income to which that income or gain is attributable.

While an agent's independent status does not prevent a foreign principal from being treated as engaged in a trade or business within the United States, see *de Amodio v. Comm'r*, 34 T.C. 894, 906 (1960), it is relevant in determining whether income is effectively connected with the conduct of that trade or business. Pursuant to section 864(c)(5)(A), the office or other fixed place of business of an agent is attributed to a foreign corporation only if both (i) the agent has the authority to conclude contracts in the name of the foreign corporation and regularly exercises that authority and (ii) the agent is a dependent agent rather than "a general commission agent, broker, or other agent of independent status acting in the ordinary course of his business." Even if the principal and agent are related, the agent may be treated as independent of the principal (based on the facts and circumstances) if the agent is acting in pursuance of its usual trade or business when acting on behalf of the principal. See Treas. Reg. § 1.864-7(d)(3)(ii).

If a foreign corporation is engaged in the active conduct of a banking, financing, or similar business in the United States, and has a U.S. office or other fixed place of business (including through attribution from an agent), foreign-source income or gain from debt securities is attributable to the U.S. office (and therefore is ECI) only if (i) the securities themselves are attributable to the U.S. office, and (ii) the securities were acquired from making loans to the public, in the course of distributing the securities to the public, or for the purpose of satisfying banking reserve requirements. Treas. Reg. §§ 1.864-6(b)(2)(ii)(b) and 1.864-4(c)(5)(ii)(a). Under Treas. Reg. § 1.864-4(c)(5)(iii), a

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<sup>2</sup> Neither Originator nor Entity 1 will have a principal business of trading securities for its own account.

security is attributable to a U.S. office “only if such office actively and materially participated in soliciting, negotiating, or performing other activities required to arrange the acquisition of the stock or security.”

### ANALYSIS

As described above, Entity 1’s foreign-source income from the Participations would be ECI only if (i) Originator’s activities in the United States in originating and modifying the Loans would be treated as performed on behalf of Entity 1; (ii) those activities would constitute the active conduct of a banking, financing or similar business;<sup>3</sup> and (iii) Originator’s U.S. office would be attributed to Entity 1. Originator’s U.S. office would be attributed to Entity 1 only if Originator were considered an agent that has and regularly exercises the power to conclude contracts on behalf of Entity 1, and if Originator would not be considered an agent of independent status acting in the ordinary course of its trade or business.

For purpose of your requested ruling, it is necessary to determine whether Entity 1’s foreign-source income and gain from the Participations would be treated as ECI if it were engaged in the active conduct of a banking, financing or similar business. Various factors taken together support the conclusion in this case that it would not. These include:

- Originator is a not-for-profit international organization. The pricing and terms of the Loans made by Originator reflect its unique mission rather than an attempt by Originator to make a profit. Thus, it does not have customers in the normal sense those terms are used in analyzing activities under section 864 and the regulations thereunder.
- Originator retains decision rights with respect to the Loans, including the right to agree with a borrower to modifications of a Loan even if not in the best interests of Entity 1 or the Note investors.
- Entity 1 is a separately incorporated entity that merely allows Originator to finance loans made by it more efficiently. The only ongoing relationship between Originator and Entity 1 is that Originator will perform the functions it is required to perform under the loan participation and servicing agreements.
- Entity 1 will engage Administrator to act as trustee and as collateral administrator. Administrator will hold the Participations on behalf of the Note

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<sup>3</sup> As noted above, if Entity 1 is not engaged in a banking, financing, or similar business, and is not engaged in trading for its account (and Originator has represented on behalf of Entity 1 that Entity 1 will not be so engaged), Entity 1’s foreign-source interest income cannot be ECI. Section 864(c)(4)(A).

investors and will receive amounts paid on the Participations and distribute payments to Note investors in accordance with the indenture under which the Notes will be issued.

- Originator and Entity 1 are legally independent of each other, other than Originator's ownership of certain equity interests in Entity 1, which is disregarded in testing independence. The funding of Entity 1 is structured by independent financial institutions.
- Originator and Entity 1 are economically independent of each other. Originator has conducted operations for many years and is securitizing loans at this point through a securitization vehicle rather than directly to have a new source of funding. Originator is not economically dependent on its retained ownership in Entity 1. In turn, Entity 1's financing is structured by an independent financial institution and the independent parties acquiring its securities. Upon entering into the Participations, Entity 1's economic relationship will be with the borrowers under the Loans, not with Originator (other than in Originator's capacity as a holder of certain equity interests in Entity 1).
- Originator retains decision rights with respect to the Loans, including the right to agree with a borrower to modifications of a loan even if not in the best interests of participants.
- Originator deals with borrowers as a principal for its own account.

### **RULING**

Based solely on the information submitted and the representations made, Entity 1's income and gain from the Participations are not treated as effectively connected with the conduct of a trade or business within the United States.

In accordance with section 4.01(3) of Rev. Proc. 2025-7, 2025-1 IRB 301, this ruling does not address whether Entity 1 is engaged in a trade or business within the United States.

### **CAVEATS**

The ruling contained in this letter is based upon information and representations submitted by Entity 1 and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the ruling request, and it is subject to verification on examination.

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.

This ruling is directed only to Entity 1. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

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,

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Matthew S. Blum  
Senior Technical Reviewer, Branch 5  
Office of the Associate Chief Counsel  
(International)

cc: