

An aerial view of the London skyline at dusk, featuring prominent skyscrapers like The Shard and the Gherkin, with a mix of modern glass buildings and older architecture. The sky is filled with soft, golden light from the setting sun, creating a dramatic backdrop for the event information.

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IFSWF
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IFSWF General Counsel Summit

Fund Investing: Deep Dive on Side Letter Terms for SWFs
Key U.S. Tax Considerations

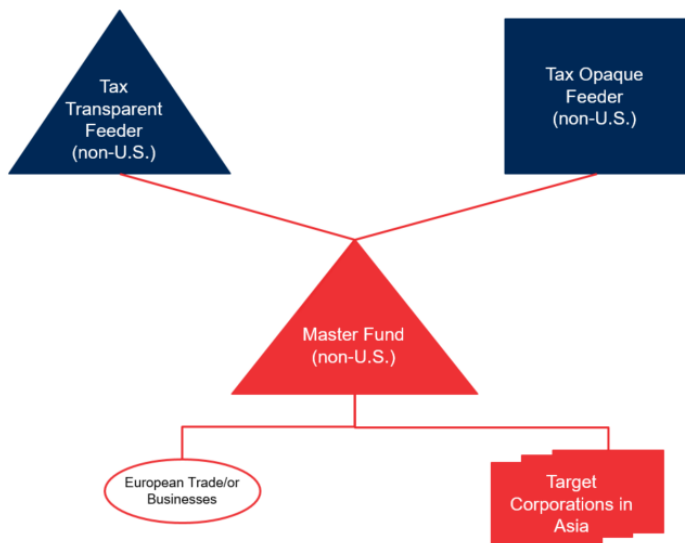
London | 7 - 9 June 2023

Key U.S. Tax Provisions

- Protections to preserve Section 892 status and benefits
 - Controlled commercial entity status (>50% ownership)
 - Commercial activity income (“CAI”)
 - Distinction between “integral part” and “controlled entity” of foreign sovereign
 - Controlled entity’s Section 892 status across all investments can be tainted from 1\$ of U.S. or non-U.S. CAI
- Protections against income effectively connected with a U.S. trade or business (“ECI”)
 - Even where investment is blocked, ECI can have material impact on economic returns
- Covenant to not invest in “United States real property holding corporation”
- Protections to address U.S. partnership audits now conducted at the entity level
- Covenants for general partners to provide Section 1445 and Section 1446(f) withholding certifications
- Indemnity for costs associated with audits of carried interest waivers



Example 1

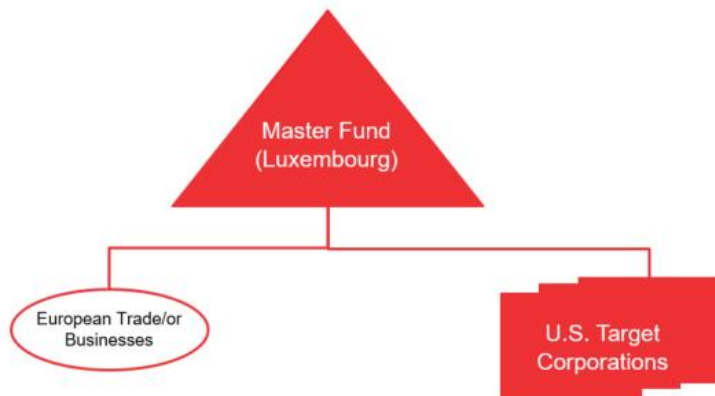


“Controlled entity” of foreign sovereign investing in structure

- No U.S. investments so no ECI and no U.S.-source CAI
- But European businesses downstream can trigger non-U.S. CAI – if not blocked, this income can taint investor’s Section 892 status across **all** of its investments
- Consider investing through corporate blocker feeder



Example 2



“Controlled entity” of foreign sovereign investing in structure

- ECI from operating income blocked
- If no USRPHC protection and U.S. Target corporations hold substantial amounts of U.S. real property, disposition of shares therein can be ECI and subject investor to U.S. tax liabilities and filing requirements
- If no CAI protection, non-U.S. CAI can taint investor’s Section 892 status
- Can request covenant that blocker will be used downstream or feeder blocker



Questions



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