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Department of the Treasury  
Washington, DC 20224

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Date:  
November 08, 2024

LEGEND

Taxpayer =

Investment Partnership =

State =

Region =

Operational Support =

Management Activities =

Year 1 =  
Year 2 =  
Date 1 =  
a =  
b =

Dear :

This is in reply to a letter dated May 13, 2024, and subsequent correspondence, submitted on behalf of Taxpayer. Taxpayer requests the following rulings:

- (1) the portion of payments from Investment Partnership paid to Taxpayer attributable to Taxpayer's capital interest in the partnership are treated as not constituting gross income for purposes of section 856(c)(2) and (3) of the Internal Revenue Code (the "Income Tests");
- (2) payments from Taxpayer's non-U.S. disregarded entities paid to Investment Partnership that are attributed to Taxpayer as a result of its capital interest in the partnership are treated as not constituting gross income for purposes of the Income Tests; and
- (3) certain agreements are not gross assets for purposes of section 856(c)(4).

#### FACTS

Taxpayer was formed as a State corporation in Year 1. Taxpayer elected to be taxed as a Real Estate Investment Trust ("REIT") under sections 856 through 859 beginning with its taxable year ended Date 1. Taxpayer represents that Taxpayer has qualified as a REIT since its election and intends to continue to qualify as a REIT.

Taxpayer owns b percent of Investment Partnership. Investment Partnership is a partnership for federal income tax purposes. The remaining a percent is owned by a domestic taxable REIT subsidiary ("TRS") that is wholly owned by Taxpayer.

Taxpayer owns wireless and broadcast communications systems (the "Telecommunication Assets") in the U.S. and foreign countries, including foreign

countries located in Region. Taxpayer holds certain non-U.S. real property in Region through non-U.S. entities disregarded from Taxpayer (the “Non-U.S. DREs”).

Taxpayer’s Non-U.S. DREs are in the business of renting space on Telecommunication Assets. The Non-U.S. DREs receive rents from tenants who lease space on the Telecommunication Assets. Taxpayer represents that the rents received by the Non-U.S. DREs qualify as rents from real property for purposes of the Income Tests and constitute substantially all of the Non-U.S. DREs’ income.

Taxpayer also owns Telecommunication Assets through Investment Partnership. Taxpayer represents that Investment Partnership’s primary business is leasing space on Telecommunication Assets. Investment Partnership also holds stock in subsidiary REITs and other minor investments. Taxpayer represents that, other than the DRE Payments, substantially all of Investment Partnership’s gross income is rents from real property within the meaning of section 856(d) and dividends from qualified REITs.

Taxpayer has or will enter into intercompany agreements related to its Telecommunication Assets in Region in order to (i) ensure that the appropriate entity is adequately compensated as a result of its centralized management structure; (ii) appropriately reflect Taxpayer’s current operations; and (iii) comply with section 482, the regulations under section 482, and other transfer pricing principles.

#### The Partnership Payment Agreement

Taxpayer provides Operational Support to Investment Partnership with respect to the Telecommunication Assets in the U.S. and foreign countries. Taxpayer represents that Investment Partnership uses the Operational Support for its own business in the management of Investment Partnership. Investment Partnership also provides the Operational Support to the Non-U.S. DREs. Taxpayer represents that Investment Partnership does not provide the Operational Support it receives from Taxpayer to any unrelated third party. Therefore, the Operational Support is used to manage the Telecommunication Assets owned by Taxpayer through Investment Partnership and the Non-U.S. DREs. Taxpayer represents that it provides Operational Support to Investment Partnership as part of Taxpayer’s and its directors’ fiduciary duty to manage the REIT and is not rendering or furnishing services to tenants, nor is it managing or otherwise operating the Telecommunication Assets.

Taxpayer (or its DREs) entered into an intercompany payment agreement with Investment Partnership (the “Partnership Payment Agreement”). Taxpayer represents that the Partnership Payment Agreement provides that Investment Partnership may pay Taxpayer a payment for the Operational Support with respect to the Telecommunication Assets (the “Partnership Payments”).

Taxpayer represents that it will treat a percent of the Partnership Payment (the amount attributable to Taxpayer's wholly owned TRS's a percent interest in Investment Partnership) as non-qualifying income for purposes of the Income Tests.

Taxpayer represents that the Partnership Payment Agreement is not treated as an asset under generally accepted accounting principles ("GAAP") in accordance with Accounting Standards Codification 350-30-23-3. Taxpayer further represents that the Partnership Payment Agreement does not appear on Taxpayer's financial statements and would not appear even if the GAAP financial statements were prepared on a separate company basis for Taxpayer.

### The DRE Payment Agreement

Investment Partnership provides support to the Non-U.S. DREs by performing Management Activities. The Management Activities are primarily performed in the United States. Investment Partnership also provides the Operational Support received from Taxpayer to the Non-U.S. DREs. Taxpayer represents that the Management Activities and Operational Support provided to the Non-U.S. DREs located in Region by Investment Partnership would be part of Taxpayer's, and its directors', fiduciary duty to manage the REIT if performed by Taxpayer, as distinguished from rendering or furnishing services to tenants or managing or operating the properties.

Separately, territorial or country specific management is performed in the country of each Non-U.S. DRE. Territorial management and personnel perform functions such as establishing and preserving customer relationships, maintaining assets, and operating the day-to-day necessities of the local business. Taxpayer represents that no income is remitted to Investment Partnership for these local activities.

Investment Partnership entered into an intercompany payment agreement with the Non-U.S. DREs (the "DRE Payment Agreement"). Taxpayer represents that the DRE Payment Agreement provides that the Non-U.S. DREs pay Investment Partnership appropriate compensation for the Operational Support and Management Activities provided to them in Region (the "DRE Payments"). Taxpayer represents that Investment Partnership allocates to each Non-U.S. DRE its allocable share, if any, of the Operational Support and Management Activities. Thus, any DREs outside of Region are not allocated a share of Region's headquarters Management Activities or Operational Support provided to Region.

Taxpayer represents that the DRE Payment Agreement is not treated as an asset under GAAP in accordance with Accounting Standards Codification 350-30-23-3. Taxpayer represents that the DRE Payment Agreement does not appear on Investment Partnership's financial statements and would not appear even if the GAAP financial statements were prepared on a separate company basis for Investment Partnership.

## LAW AND ANALYSIS

Income Tests

Section 856(c)(2) provides that, for a corporation to qualify as a REIT, at least 95 percent of the corporation's gross income (excluding gross income from prohibited transactions) must be derived from dividends; interest; rents from real property; gain from the sale or other disposition of stock, securities, and real property (other than property described in section 1221(a)); abatements and refunds of taxes on real property; income and gain derived from foreclosure property; certain commitment fees; gain from certain sales or other dispositions of real estate assets; and certain mineral royalty income.

Section 856(c)(3) provides that, for a corporation to qualify as a REIT, at least 75 percent of the corporation's gross income (excluding gross income from prohibited transactions) must be derived from rents from real property; interest on obligations secured by mortgages on real property or on interests in real property; gain from the sale or other disposition of real property (other than property in described in section 1221(a)); certain dividends or distributions on, and gains from the sale or disposition of, shares in other REITs; abatements and refunds of taxes on real property; income and gain derived from foreclosure property; certain commitment fees; gain from certain sales or other dispositions of real estate assets; and qualified temporary investment income.

Section 856(c)(5)(J) provides that to the extent necessary to carry out the purposes of part II of subchapter M, the Secretary is authorized to determine, solely for purposes of such part, whether any item of income or gain which (i) does not otherwise qualify under section 856(c)(2) or (3) may be considered as not constituting gross income for purposes of section 856(c)(2) or (3), or (ii) otherwise constitutes gross income not qualifying under section 856(c)(2) or (3) may be considered as gross income which qualifies under section 856(c)(2) or (3).

Section 1.856-3(g) of the Income Tax Regulations provides that a REIT that is a partner in a partnership is deemed to own its proportionate share of each of the assets of the partnership and is deemed to be entitled to the income of the partnership attributable to such share. For purposes of section 856, the interest of a partner in the partnership's assets is determined in accordance with the partner's capital interest in the partnership. The character of the various assets in the hands of the partnership and items of gross income of the partnership retain the same character in the hands of the partners as in the hands of the partnership for all purposes of section 856.

Section 1.856-4(b)(5)(ii) provides that the trustees or directors of the REIT are not required to delegate or contract out their fiduciary duty to manage the REIT itself, as distinguished from rendering or furnishing services to the tenants of its property or managing or operating the property. Thus, the trustees or directors may do all those things necessary, in their fiduciary capacities, to manage and conduct the affairs of the

REIT itself. For example, the trustees or directors may establish rental terms, choose tenants, enter into and renew leases, and deal with taxes, interest, and insurance, relating to the REIT's property. The trustees or directors may also make capital expenditures with respect to the REIT's property (as defined in section 263) and may make decisions as to repairs of the REIT's property (of the type which would be deductible under section 162), the cost of which may be borne by the REIT.

Legislative history indicates that Congress intended part II of subchapter M to apply to certain "organizations specializing in investments in real estate and real estate mortgages." H.R. Rep. No. 2020, 86th Cong., 2d Sess. 4 (1960), 1960-2 C.B. 819, 820. Congress intended to restrict the beneficial tax treatment of part II of subchapter M to "what is clearly passive income from real estate investments, as contrasted to income from the active operation of businesses involving real estate." *Id.*

Section 301.7701-2(c)(2)(i) provides that for federal tax purposes, a business entity that has a single owner and is not a corporation is generally disregarded as an entity separate from its owner.

Requested Rulings 1: The portion of the Partnership Payments attributable to Taxpayer's b percent capital interest in Investment Partnership will be treated as not constituting gross income for purposes of the Income Tests.

Taxpayer will provide the Operational Support to Investment Partnership. Investment Partnership will use the Operational Support to manage the Telecommunication Assets Taxpayer owns through Investment Partnership and the Non-U.S. DREs and will not provide the Operational Support to unrelated third parties. Pursuant to the Partnership Payment Agreement, Investment Partnership will remit a Partnership Payment as compensation to Taxpayer for the Operational Support. Additionally, Taxpayer is attributed b percent of all of Investment Partnership's income as a b percent partner in Investment Partnership. Because the Partnership Payment is derived from income that is already included in Taxpayer's gross income, including b percent of the Partnership Payment in Taxpayer's gross income would cause the amounts to be counted twice for purposes of the Income Tests.

Moreover, Taxpayer's gross income attributable to the Partnership Payments represents an amount that Taxpayer, as a partner in Investment Partnership, is charging itself to perform functions that, based on Taxpayer's representations, Taxpayer could perform directly without adverse tax consequences.

Under these circumstances, excluding the portion of the Partnership Payments attributable to Taxpayer's b percent capital interest in Investment Partnership from Taxpayer's gross income for purposes of the Income Tests is consistent with the purposes of Part II of subchapter M.

Requested Ruling 2: The DRE Payments attributable to Taxpayer as a result of its b percent capital interest in Investment Partnership will be treated as not constituting gross income for purposes of the Income Tests.

Taxpayer's Non-U.S. DREs are in the business of renting space on Telecommunication Assets and substantially all of their income is qualifying rents from real property. As disregarded entities, all the income earned by Taxpayer's Non-U.S. DREs is included in Taxpayer's gross income. Taxpayer, through its Non-U.S. DREs, will pay Investment Partnership DRE Payments for the Operational Support and Management Activities. Taxpayer will be attributed b percent of the DRE Payments paid to Investment Partnership because Taxpayer is a b percent partner in Investment Partnership. Thus, Taxpayer's gross income will include both the income earned by its Non-U.S. DREs and its b percent share of the DRE Payments paid by its Non-U.S. DREs to Investment Partnership. Because the DRE Payments are derived from income already included in Taxpayer's gross income, including its share of the DRE Payments in Taxpayer's gross income would cause the amounts to be counted twice for purposes of the Income Tests.

Moreover, Taxpayer's gross income attributable to the DRE Payments represents an amount that Taxpayer, as a partner in Investment Partnership, is charging itself to perform functions that, based on Taxpayer's representations, Taxpayer could perform directly without adverse tax consequences.

Under these circumstances, excluding Taxpayer's share of the DRE Payments from Taxpayer's gross income for purposes of the Income Tests is consistent with the purposes of part II of subchapter M.

### Asset Tests

Section 856(c)(4)(A) provides that in order for a corporation to qualify as a REIT for a taxable year, at the close of each quarter of the taxable year, at least 75 percent of the value of the corporation's total assets must be represented by real estate assets, cash and cash items (including receivables), and Government securities.

Section 856(c)(4)(B)(i) provides that in order for a corporation to qualify as a REIT for a taxable year, at the close of each quarter of the taxable year, not more than 25 percent of the value of its total assets is represented by securities (other than those includible under section 856(c)(4)(A)).

Section 856(c)(4)(B)(ii) provides that in order for a corporation to qualify as a REIT for a taxable year, at the close of each quarter of the taxable year, not more than 20 percent of the value of its total assets is represented by securities of one or more TRSs.

Section 856(c)(4)(B)(iii) provides that in order for a corporation to qualify as a REIT for a taxable year, at the close of each quarter of the taxable year, not more than 25 percent of the value of its total assets is represented by nonqualified publicly offered REIT debt instruments.

Section 856(c)(4)(B)(iv) provides that in order for a corporation to qualify as a REIT for a taxable year, at the close of each quarter of the taxable year, except with respect to a TRS and securities includible under section 856(c)(4)(A), not more than 5 percent of the value of its total assets is represented by securities of any one issuer, the REIT does not hold securities possessing more than 10 percent of the total voting power of the outstanding securities of any one issuer, and the REIT does not hold securities having a value of more than 10 percent of the total value of the outstanding securities of any one issuer.

Section 1.856-2(d)(3) provides that in determining the investment status of a REIT, the term "total assets" means the gross assets of the REIT determined in accordance with GAAP.

Requested Ruling 3: The Partnership Payment Agreement and DRE Payment Agreement are excluded from Taxpayer's total assets for purposes of section 856(c)(4).

Taxpayer represents that the Partnership Payment Agreement and DRE Payment Agreement (together, the "Intercompany Payment Agreements") are not assets for GAAP purposes and would not be shown as assets even if the GAAP financial statements were prepared on a separate company basis for each payee. Therefore, the Intercompany Payment Agreements are excluded from Taxpayer's total assets for purposes of section 856(c)(4) to the extent they are not assets of Taxpayer for GAAP purposes.

## CONCLUSION

Based on the facts submitted and representations made, we conclude the following:

- (1) the portion of Partnership Payments attributable to Taxpayer's b percent capital interest in Investment Partnership will be treated under section 856(c)(5)(J)(i) as not constituting gross income for purposes of the Income Tests;
- (2) the DRE Payments attributed to Taxpayer as a result of its b percent capital interest in Investment Partnership will be treated under section 856(c)(5)(J)(i) as not constituting gross income for purposes of the Income Tests; and
- (3) the Intercompany Payment Agreements are not gross assets of Taxpayer for purposes of section 856(c)(4) to the extent they are not assets of Taxpayer for GAAP purposes.



This ruling's application is limited to the facts, representations, Internal Revenue Code sections, and regulations cited herein. 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 as to whether Taxpayer otherwise qualifies as a REIT; whether the rental income from the Telecommunication Assets is qualifying REIT income under the Income Tests; whether any of Taxpayer's or Investment Partnership's activities are fiduciary duties to manage the REIT itself that Taxpayer may perform itself without adverse tax consequences; whether the Intercompany Payment Agreements are assets under GAAP; or whether any of Taxpayer's or Investment Partnership's transfer pricing positions comply with section 482 or the regulations thereunder.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Powers of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Vanessa Mekpong  
Assistant to the Branch Chief, Branch 1  
Office of Associate Chief Counsel  
(Financial Institutions & Products)

cc: