

IRS Releases Internal Memorandum Regarding Lending in the United States by Foreign Persons

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The Internal Revenue Service (the “IRS”) has released an internal memorandum (the “Memorandum”), from the Office of Chief Counsel to the Director of Field Operations in Manhattan (Financial Services), which concludes that a foreign corporation is engaged in a lending business in the United States because its agent, a separate and possibly unrelated corporation, originates loans in the United States. Although a Chief Counsel memorandum does not constitute authority on which a taxpayer may rely, it does provide insight into the views of the IRS. The Memorandum does not provide a detailed analysis of the activities that constitute a lending business, but instead focuses on the attribution of a separate party’s office to a foreign corporation. It notes, however, that the lending activities at issue were “considerable, continuous and regular.”

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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