§ 1.860G–3 Treatment of foreign persons.

(a) Transfer of a residual interest with tax avoidance potential—(1) In general. A transfer of a residual interest that has tax avoidance potential is disregarded for all Federal tax purposes if the transferee is a foreign person. Thus, if a residual interest with tax avoidance potential is transferred to a foreign person, the sponsor is liable for the tax on any excess inclusion that accrues with respect to that residual interest.

(2) Tax avoidance potential—(i) Defined. A residual interest has tax avoidance potential for purposes of this section unless, at the time of the transfer, the transferor reasonably expects that, for each excess inclusion, the REMIC will distribute to the transferee residual interest holder an amount that will equal at least 30 percent of the excess inclusion, and that each such amount will be distributed at or after the time at which the excess inclusion accrues and not later than the close of the calendar year following the calendar year of accrual.

(ii) Safe harbor. For purposes of paragraph (a)(2)(i) of this section, a transferor has a reasonable expectation if the 30-percent test would be satisfied were the REMIC’s qualified mortgages to prepay at each rate within a range of rates from 50 percent to 200 percent of the rate assumed under section 1272(a)(6) with respect to the qualified mortgages (or the rate that would have
(3) Effectively connected income. Paragraph (a)(1) of this section will not apply if the transferee’s income from the residual interest is subject to tax under section 871(b) or section 882.

(4) Transfer by a foreign holder. If a foreign person transfers a residual interest to a United States person or a foreign holder in whose hands the income from a residual interest would be effectively connected income, and if the transfer has the effect of allowing the transferor to avoid tax on accrued excess inclusions, then the transfer is disregarded and the transferor continues to be treated as the owner of the residual interest for purposes of section 871(a), 881, 1441, or 1442.

(b) Accounting for REMIC net income—

(1) Allocation of partnership income to a foreign partner. A domestic partnership shall separately state its allocable share of REMIC taxable income or net loss in accordance with §1.702–1(a)(8). If a domestic partnership allocates all or some portion of its allocable share of REMIC taxable income to a partner that is a foreign person, the amount allocated to the foreign partner shall be taken into account by the foreign partner at the same time as the time prescribed for other income of the shareholder, participant, or patron from the trust, company, fund, or organization.


TAX BASED ON INCOME FROM SOURCES WITHIN OR WITHOUT THE UNITED STATES

DETERMINATION OF SOURCES OF INCOME

§ 1.861–1 Income from sources within the United States.

(a) Categories of income. Part I (section 861 and following), subchapter N, chapter I of the Code, and the regulations thereunder determine the sources of income for purposes of the income tax. These sections explicitly allocate certain important sources of income to the United States or to areas outside the United States, as the case may be; and, with respect to the remaining income (particularly that derived partly from sources within and partly from sources without the United States), authorize the Secretary or his delegate to determine the income derived from sources within the United States, either by rules of separate allocation or by processes or formulas of general apportionment. The statute provides for the following three categories of income:

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