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REPORT

PRIVATE FUNDS YEAR IN REVIEW

KEY TAX DEVELOPMENTS THAT SHAPED THE INDUSTRY IN 2024

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PRIVATE FUNDS YEAR IN REVIEW: KEY TAX DEVELOPMENTS THAT SHAPED THE INDUSTRY IN 2024

In 2024, several significant tax developments emerged that are set to impact the private fund industry in 2025. These changes include pivotal US Tax Court (Tax Court) opinions, updates to Internal Revenue Service (IRS) forms, and new regulations proposed by the IRS and the US Department of the Treasury (Treasury). Private equity funds, hedge funds, and other private investment funds, along with their investors and advisors, should be cognizant of these developments. This report highlights some of the most critical developments affecting these stakeholders.

TCJA PROVISIONS SCHEDULED TO SUNSET

Several critical provisions of the 2017 US Tax Cuts and Jobs Act (TCJA) are set to expire at the end of 2025. These include the top ordinary income tax rate of 37% for tax years beginning before January 1, 2026. Absent legislative action, the rate will increase across all tax brackets, culminating in a 39.6% top rate. The implications of a higher rate may influence preferences in structuring investments and private funds.

Another provision set to sunset absent further legislative action is the $10,000 cap on the deduction for state and local taxes. In IRS Notice 2020-75, the IRS provided that certain pass-through entities would mitigate the full effect of this limitation by electing into certain pass-through entity tax regimes (PTE Regimes). If the $10,000 limitation expires, it is unclear whether these PTE Regimes will remain relevant. In such a case, managers that have opted into any PTE Regimes should weigh the costs of continued compliance with such regimes against their benefits (including any benefit that may be available with respect to alternative minimum tax considerations, among others).

The TCJA also introduced a 20% deduction for certain qualified business income derived from a partnership, S corporation, or sole proprietorship. This deduction generally does not apply in the private fund area, as it does not include income generated from investment and investment management activities. As such, it is unclear whether the sunsetting of this provision would materially impact managers and others in the private fund industry.

Additionally, the Base Erosion and Anti-Abuse Tax is scheduled to increase from 10% to 12.5% by the end of 2025, the foreign-derived intangible income deduction is scheduled to be reduced from 37.5% to 21.875% for tax years after 2025, and the deduction for global intangible low-taxed income is scheduled to be reduced from 50% to 37.5% at the end of 2025.

We do not currently anticipate that these changes would have a material impact on the private fund industry, but we encourage managers to review their structures for any associated implications. In particular, any managers with structures that include US source payments to foreign affiliates (such as a US manager paying a foreign subadvisor) or that include US leveraged blocker structures would want to consider potential consequences of these rate changes.

The expirations present both challenges and potential opportunities to taxpayers currently subject to these provisions.

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YA GLOBAL TWICE REVISITED

In our previous fund year in review, we discussed the much-anticipated Tax Court opinion[1] (the 2023 Opinion) regarding the somewhat unusual facts of YA Global Investments, LP, a Cayman Islands fund (YA Global), and its private fund activities. Briefly, YA Global provided funding to portfolio companies through convertible debentures, standby equity distribution agreements (SEDAs), and other securities. Under a SEDA, YA Global committed to purchasing up to a specified dollar value of a portfolio company's stock over a fixed period, typically two years. The portfolio companies were generally small, microcap companies that would have been unable to procure funds from conventional sources such as commercial banks.

The IRS issued final partnership administrative adjustments (FPAAs) for YA Global's 2006 through 2009 taxable years, reflecting the IRS's position that YA Global was engaged in a US trade or business during the years at issue and thus was liable for a withholding tax under Section 1446[2] on the portion of its taxable income effectively connected with that trade or business (ECI) that was allocated to foreign partners. In its 2023 Opinion, the Tax Court agreed with the IRS for YA Global's 2006, 2007, and 2008 taxable years, holding that it was engaged in a US trade or business by attributing the activities of YA Global's US manager to the fund. Thus, the Tax Court held that YA Global was liable for withholding taxes under Section 1446 for the portion of its ECI allocable to its foreign partners in its 2006, 2007, and 2008 taxable years.

Additionally, the Tax Court determined that YA Global was required to recognize gain under the "mark-to-market" rule of Section 475(a)(2) for each of its 2006, 2007, and 2008 taxable years as a result of the Tax Court's holding that YA Global was a "dealer in securities" under Section 475(c)(1)(A). Regarding YA Global's 2009 taxable year, which raised additional issues outlined below, the Tax Court noted it would address such additional issues subsequent to briefing by YA Global and the IRS in light of the 2023 Opinion.

YA Global's 2009 Taxable Year

The parties identified the following issues that remained to be decided for YA Global's 2009 taxable year: (1) whether the increase in value of YA Global's interest in an Australian portfolio company (Compass Resources Ltd. (Compass)) during 2009 was attributable to "securities" subject to the mark-to-market rules under Section 475; and (2) whether any of YA Global's 2009 ECI was properly allocated to foreign special purpose vehicles (SPVs) to which YA Global issued Schedules K-1 for that year.[3]

On August 8, 2024, the Tax Court issued its opinion[4] (the 2024 Opinion) with respect to the remaining issues. The Tax Court concluded, consistent with its 2023 Opinion, that (1) YA Global was a "dealer in

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[1] 161 T.C. No. 11.

[2] All Section references are to the Internal Revenue Code of 1986, as amended.

[3] The Tax Court also addressed (1) the value of accrued interest in convertible debentures held by YA Global on December 31, 2009, for purposes of determining its mark-to-market gain or loss for the year under Section 475(a)(2); and (2) whether YA Global was required to accrue for 2009 an amount of interest that it wrote off on its books. The resolution of these additional issues are outside the scope of this report.

[4] The Tax Court issued its opinion as a memorandum opinion. The Tax Court instructs that a memorandum opinion is issued in a regular case that does not involve a novel legal issue. A memorandum opinion addresses cases where the law is settled or factually driven. A memorandum

securities" subject to the mark-to-market rules in Section 475(a)(2), thereby requiring YA Global to recognize gains and losses on the Compass securities held on December 31, 2009 as if it had sold them for their fair market value; (2) YA Global's 2009 ECI was property allocated to the foreign SPVs; and (3) the Tax Court's conclusion in its 2023 Opinion regarding YA Global's engagement in a US trade or business equally applied to YA Global's 2009 taxable year, thereby rendering YA Global liable for withholding taxes on its 2009 ECI allocated to the foreign SPVs.

The facts of the case are briefly summarized below.

A Dealer in Compass Securities

In November 2007, YA Global entered into a convertible loan agreement with Compass, an Australian mining company. Compass borrowed $36 million in total under such agreement between 2007 and 2008. On January 29, 2009, Compass entered into voluntary administration.[5] At such time, YA Global held Compass stock and warrants, and convertible debt, but only the convertible debt had any value on YA Global's books by the end of 2009.

YA Global, as one of Compass' creditors, submitted a proposal to recapitalize Compass in 2009, a variation of which was ultimately approved by Compass' shareholders and creditors in 2010. The recapitalization proposal entitled YA Global to receive new Compass stock in exchange for its pre-recapitalization interest in Compass. Under the proposal, YA Global was also required to provide additional funds to Compass totaling approximately $42 million. In its 2009 financial statements, YA Global reported the value of its interest in Compass as $148,269,798, despite the fact that the convertible debt that it held was valued at only $31,961,281 in YA Global's books.

The difference between the value attributed to the convertible debt ("securities" within the meaning of Section 475(c)(2)) and the total value of YA Global's interest in Compass was accounted for in YA Global's books as an "other asset" valued at $116,308,517. This "other asset" was reported on YA Global's federal income tax return as part of the $103,852,672 of "unrealized appreciation" not taken into account for tax purposes.[6]

YA Global argued that the $116,308,517 was not attributable to a "security" within the meaning of Section 475(c)(2). The Tax Court disagreed, finding that YA Global did not meet its burden of proving that any portion of the $148,269,798 it had reported on its financial statement was attributable to one or more assets that were not "securities."

As in the 2023 Opinion, the Tax Court in its 2024 Opinion concluded that YA Global was a "dealer in securities" (within the meaning of Section 475(c)(1)), requiring YA Global to recognize gain or loss as if each security it held on December 31, 2009 had been sold for its fair market value on that date (i.e., including the $148,269,798 reported by YA Global on its financial statements).

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opinion can be cited as legal authority, and the decision can be appealed. *See* US Tax Court, [Guidance for Petitioners, Things That Occur After Trial].

[5] Voluntary administration is a process initiated under Australian law when a company is insolvent and cannot pay its debts. The process involves appointing an independent administrator to take control of the company and restructure it, hopefully providing a better outcome for creditors than liquidation. It is essentially a form of controlled "bankruptcy."

[6] But for the inclusion of its interest in Compass, YA Global had a net unrealized loss on its securities in 2009.

ECI Allocations to Foreign Partners in 2009

US and foreign investors in YA Global generally participated in the YA Global fund through one of two "feeder" funds: YA Global Investments (US), LP (YA Onshore) and YA Offshore Global Investments, Ltd. (YA Offshore), respectively. In 2009, YA Global's general partner established SPVs for the benefit of investors in YA Onshore and YA Offshore. The SPVs facilitated redemption requests made by investors. Each investor requesting redemption (of either YA Onshore or YA Offshore) could either receive an in-kind distribution of securities or an ownership interest in one of the SPVs. The SPVs held pro rata participation interests in YA Global's securities and would receive cash distributions as YA Global liquidated its securities in the ordinary course of business. The SPVs could not participate in new YA Global deals.

YA Global issued Schedules K-1 for its 2009 taxable year to, among others, YA Offshore and four foreign SPVs. The Schedules K-1 issued to the foreign SPVs reported allocations to them of each item of income, loss, and deduction shown on YA Global's Schedule K and reported substantial capital accounts in YA Global at the end of 2009.

As in its 2023 Opinion, the Tax Court concluded that YA Global was engaged in a US trade or business for its 2009 taxable year. The Tax Court explained that YA Global offered no reason the conclusions reached in the 2023 Opinion did not apply equally for its 2009 taxable year.

YA Global argued, however, that it should not be liable for withholding taxes with respect to amounts allocated to the foreign SPVs because they were not "partners" for tax purposes in YA Global (even if they were technically members of the fund) and could not have ECI allocated to them under applicable tax rules, i.e., the foreign SPVs were merely co-owners in illiquid assets. YA Global contended that even if the foreign SPVs were partners in YA Global for tax purposes, allocations of income to them were not distributive shares under applicable rules but were allocations made to them in their capacity as non-partners attributable to withdrawn capital.

The Tax Court explained that the record did not establish that the investors in the foreign SPVs held undivided interests in the securities held by YA Global. Thus, the Tax Court considered the tax consequences of the foreign SPV participation interests being contractual rights to sale proceeds of securities. The Tax Court concluded that in such circumstances, the foreign SPVs were partners in YA Global, and the fund's Section 1446 withholding tax liability for 2009 included tax on the foreign SPVs' allocations of the fund's ECI. More specifically, the Tax Court concluded that the foreign SPVs owned capital interests in YA Global under the now-repealed Section 704(e)(1) (i.e., the family partnership rule),[7] as in effect for 2009, requiring such SPVs to be partners for tax purposes.

Additionally, even if Section 704(e)(1) was inapplicable, the Tax Court concluded that the foreign SPVs were partners in YA Global for tax purposes under the *Culbertson*[8] facts and circumstances test.[9]

[7] Before its repeal, Section 704(e)(1) provided: "A person shall be recognized as a partner for purposes of this subtitle if he owns a capital interest in a partnership in which capital is a material income-producing factor, where or not such interest was derived by purchase or gift from any other person."

[8] *Comm'r v. Culbertson*, 337 U.S. 733 (1949).

[9] The Supreme Court in *Culbertson* explained that "[t]he question [of whether a family partnership is real for income tax purposes] is not whether the services or capital contributed by a partner are of sufficient importance to meet some objective standard supposedly established by the *Tower* case, but whether, considering all the facts—the agreement, the conduct of the parties in execution of its provisions, their statement, the testimony of disinterested persons, the relationship of the parties, their respective abilities

Thus, the Tax Court held that ECI allocated to the foreign SPVs in 2009 rendered YA Global liable for withholding taxes under Section 1446.

Takeaways

YA Global's unique facts may limit the applicability of the Tax Court's US trade or business and "securities dealer" conclusions. Nonetheless, private funds and their investors should consider these issues as applied by analogy to their structure and activities. Private funds engaged in private lending structures should especially consider these issues in light of the IRS's active campaign on financial services entities engaged in a US trade or business. Such campaign addresses whether foreign investors are subject to US tax on ECI from lending transactions engaged in a US trade or business through issue-based exams.

Foreign investors who only trade stocks and securities for their own account are not engaged in a US trade or business under the safe harbor rule set forth in Section 864(b)(2). The safe harbor rule, however, is not available to dealers in stocks or securities, or to entities engaged in a lending business, or to foreign investors in partnerships engaged in such activities. Accordingly, many private funds and their advisors should carefully consider any private lending structure utilized in the fund complex.

YA Global's *Loper Bright* Request

Separate from the issues resolved in the 2024 Opinion, YA Global filed on July 11, 2024 a motion for permission to seek reconsideration of the 2023 Opinion. YA Global argued that although its request to reconsider was filed after the 30-day period set by Tax Court Rule 161, the Supreme Court's ruling in *Loper Bright Enterprises Inc. v. Raimando*[10] was an intervening change in law warranting reconsideration of the Tax Court's conclusions in its 2023 Opinion.

In *Loper Bright*, the Supreme Court overturned the *Chevron* doctrine, a 40-year precedent requiring courts to give deference to regulatory interpretations of ambiguous statutes so long as such interpretations were reasonable.[11] YA Global contended that *Loper Bright* required the Tax Court to revisit its 2023 Opinion holding that YA Global could not reduce its Section 1446 withholding tax liability for 2007 and 2008 by the amount of expenses incurred by YA Offshore. YA Global argued that the Tax Court erred by relying solely on Treasury's Section 1446 regulations and did not independently interpret all applicable statutory provisions (i.e., Sections 1446, 1463, and 1464).

In an order dated August 27, 2024, the Tax Court denied YA Global's motion, explaining that *Loper Bright* could have changed controlling law only if the *Chevron* doctrine were controlling law in its 2023 Opinion that YA Global's Section 1446 withholding tax liability for 2007 and 2008 could not be reduced by partner-level expenses. The Tax Court's order noted that it did not rely on Treasury's interpretations of Sections 1446 or 1464 for its conclusions regarding YA Global's withholding tax liability for 2007 and 2008. Thus, the Tax Court denied YA Global's motion to move for reconsideration.

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and capital contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise." *Comm'r v. Culbertson*, 337 U.S. at 742.

[10] 603 U.S. __ (2024).

[11] Please see our firm's discussion of the *Loper Bright* decision's implications for the IRS, Treasury, and taxpayers here.

Takeaways

The retroactive applicability of *Loper Bright* to previously decided private fund tax cases is likely to continue to be a hot-button issue. Private funds and sponsors should consider the impact, if any, of this issue on their structures and activities. We will monitor relevant cases and provide updates to our clients as relevant.

LIMITED PARTNER EXCEPTION TO SELF-EMPLOYMENT TAX AND *SOROBAN* REVISITED

In our prior fund year in review, we discussed the Tax Court opinion in *Soroban Capital Partners LP v. Commissioner*,[12] regarding exemptions from the Self-Employed Contribution Act (SECA) tax on allocations to certain limited partners. In *Soroban*, the Tax Court addressed for the first time the application to active partners of the Section 1402(a)(13) exception for limited partners. The limited partner exception under Section 1402(a)(13) generally excludes a limited partner's distributive share of partnership income or loss from self-employment tax. Section 1402(a)(13) states that "there shall be excluded the distributive share of any item of income or loss of *a limited partner, as such, other* than guaranteed payments described in section 707(c)" (emphasis added).

In its decision, the Tax Court held that the limited partner exception does not apply to a partner who is limited in name only, but rather that it applies only to a limited partner who is functioning as a limited partner. The Tax Court determined that when applying the limited partner exception, a functional analysis test must be used to determine whether a partner was acting as a limited partner or if the partner instead is a partner who is limited in name only. The proceedings in *Soroban* are ongoing, as the IRS and the taxpayer are litigating over how to apply the functions analysis test to the limited partners at issue in the case.

The Tax Court recently revisited this issue, issuing a December 23, 2024 memorandum in *Denham Capital Management LP v. Commissioner*.[13] Under the facts at issue, a private equity firm organized as a Delaware limited partnership provided certain investment advisory services. Certain partners of the limited partnership claimed their distributive shares of income were excludable under the limited partner exception. The Tax Court applies the functional analysis test per *Soroban* and found that partners who were "active and fundamental contributors" to the limited partnership failed to demonstrate that they are passive investors for purposes of the SECA limited partner exemption. Instead, the court found they were not limited partners due to their active involvement in the partnership's management, making their distributive shares of partnership income subject to SECA.

In a further development, several taxpayers organized as state law limited partnerships that have filed Tax Court petitions challenging the IRS's interpretation of the Section 1402(a)(13) exception for limited partners. For example, Sirius Solutions LLLP appealed the holding in *Soroban* to the Fifth Circuit. The Fifth Circuit has scheduled oral argument in Sirius's appeal for February 6, 2025. Similarly, MKP Capital Management LP filed a Tax Court petition with a similar position.

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[12] 61 T.C. No. 12.

[13] Denham Capital Management LP v. Commissioner, T.C. Memo. 2024-114 (Dec. 23, 2024).

Takeaways

Denham Capital Management LP is the first Tax Court opinion to interpret and apply the functional analysis test determined applicable under *Soroban*. Given the Tax Court has held a second time that the limited partner exception did not apply under the facts of the case, managers that are structured as state law limited partnerships should consider the application of these cases for any partners claiming the limited partner exception. We will review further developments in this matter as the cases proceed, including those involving taxpayers challenging the IRS interpretation upheld in *Soroban*.

IRS PASS-THROUGH COMPLIANCE UNIT

As discussed in our prior fund year in review, the IRS began utilizing funding allocated to it through the Inflation Reduction Act (IRA) to improve its audit process and increase tax compliance. These changes are intended to meet IRS goals and objectives outlined in the IRS's IRA Strategic Operating Plan announced in April 2023. As part of the implementation of its Strategic Operating Plan, the IRS established in September 2023 a new pass-through unit within the Large Business and International (LB&I) division to more efficiently conduct audits of all pass-through entities (including partnerships, S corporations, and trusts). The stated goal of the IRS is to "reverse our historically low audit rates for complex arrangements employed by certain high-wealth individuals and large entities, while at the same time improving the taxpayer experience through a more tailored exam approach."[14]

The IRS announced on October 22, 2024 that such a new pass-through field operations unit began work in LB&I, meeting "Objective Three: Fairness in Enforcement" described in the Strategic Operating Plan. The new unit is also a significant part of the overall expanded enforcement efforts that focus on high-income and high-wealth individuals, partnerships, and large corporations that have seen drops in audit rates during the prior decade.

Additionally, in its announcement the IRS reiterated other important changes to help dedicate resources and support to this complex compliance space, including that: (1) it launched examinations of 76 of the largest partnerships with average assets of more than $10 billion that includes hedge funds, real estate investment partnerships, publicly traded partnerships, large law firms, and other industries, and (2) the IRS Chief Counsel created the new associate office that will focus exclusively on pass-through entities (drawn from the current Passthroughs and Special Industries office).

Takeaways

While empirical data is required to determine whether the new pass-through unit within LB&I will increase audit rates and streamline workflows with respect to pass-through entity audits, private funds should ensure they are prepared for IRS examination with an expectation of increased audit over the next several years. These issues may put more pressure on some side letter and operating agreement negotiations, such as negotiation over which parties (the manager or the investors) bear costs of fund tax audits or defense or settlement of particular audit issues (e.g., carry waivers and fee waivers).

[14] IR-2024-276 (Oct. 22, 2024).

FINAL DC REIT REGULATIONS

The IRS released in April 2024 final regulations on what constitutes a domestically controlled real estate investment trust (DC REIT). An interest in a DC REIT is not a US real property interest, and therefore a foreign person's gain on the sale or disposition of a DC REIT interest is not subject to US federal income tax or withholding under the Foreign Investment in Real Property Tax Act rules. The final regulations generally follow the proposed regulations that we reviewed in our prior fund year in review, with some notable differences.

The final regulations, similar to the proposed regulations, apply a look-through approach to determining whether a REIT is domestically controlled. More specifically, REIT stock held by a "look-through person" will be treated as being held by the look-through person's shareholders, partners, or beneficiaries, as applicable, through tiers of look-through persons until the ultimate "non-look-through persons" are identified and their proportionate interests in the underlying REIT are determined.

Under the final regulations, foreign-controlled domestic corporations are treated as look-through persons. A foreign-controlled domestic corporation is a non-public domestic corporation in which more than 50% of the stock is held directly or indirectly by foreign persons (including qualified foreign pension plans and foreign governments). By contrast, the proposed regulations had used a 25% foreign-controlled threshold.

A transition rule applies under the final regulations. The transition rule treats domestic corporations that own REIT shares as domestic, even if they would be look-through persons under the final regulations. For the transition rule to apply, US real property interests acquired by the REIT after April 25, 2024 cannot exceed 20% of the total fair market value of all US real property interests the REIT owns, and the REIT cannot have a significant change in ownership. In general, a significant change in ownership occurs when more than 50% of the REIT stock changes ownership (directly or indirectly) compared to ownership on April 25, 2024. Special rules apply for pending transactions.

Takeaways

Private fund managers should carefully review existing fund structures that may be relying on DC REIT status in order to assess the impact that the final regulations have on those structures. Also, managers will want to review fund agreements and side letters to determine whether the finalization of the regulations would have an impact on any aspects of those agreements.

Similarly, investors in DC REITs may wish to confirm that the funds in which they have invested using such DC REITs are able to continue to rely on DC REIT status to avoid FIRPTA. Managers should also be aware of the transition rules, noting that REITs that intend to qualify as DC REITs based on the transition rule should monitor their assets and stock ownership on an ongoing basis.

RICS IN THE PRIVATE FUND MARKET

In recent years, funds structured as "regulated investment companies" for US federal income tax purposes (RICs) have participated in the private fund market with increasing regularity. Very generally, RICs historically avoided investing in entities treated as partnerships for US federal income tax purposes (except for RICs that invested substantially all their assets in corresponding master funds). Private funds, at least in the US market, are often structured as partnerships for tax purposes, so RICs historically did not invest in them.

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Despite this historic practice, RICs are increasingly investing in private funds. Some private fund managers are launching RICs, incorporating RICs into their structures or converting separately managed accounts or private funds into RICs. Managers now launch certain RICs with the express objective of investing in underlying private funds. In a noteworthy example of this broader trend, registration documents for a number of closed-end RICs investing in private funds through secondary purchases were filed with the US Securities and Exchange Commission in 2024.

Takeaways

RICs are subject to special tax rules—in particular, RICs must comply with limitations on the types of income they receive and the diversification of their assets, and they must meet certain distribution requirements. These requirements differ significantly from rules applicable to private funds, and the application of some of the RIC requirements in the context of private fund structures is not clear. As investors, RICs have sensitivities that differ from those of other institutional investors.

RICs participating in private fund investments need to think carefully about the application of the RIC requirements in the private fund context, evaluate potential investments with an eye to compliance, and work with private fund managers and other market participants (e.g., secondary sellers) to manage compliance. Managers launching RICs or incorporating RICs into their structures for the first time need to carefully understand the RIC requirements and build due diligence and compliance safeguards to ensure satisfaction of the requirements.

IRS CREATES STANDARDIZED FORM FOR SECTION 83(B) ELECTIONS

In November 2024, the IRS released Form 15620, which is a form for making Section 83(b) elections. Section 83(b) generally provides taxpayers with the option to elect to include the fair market value of nonvested property over the amount, if any, paid for the property at the time of transfer in gross income at the time of grant, as opposed to when the property vests.

In the private fund space, some managers will make "protective" Section 83(b) elections with respect to profits interest grants (such as a carried interest). These elections are referred to as "protective" because such grants may avail themselves of favorable tax treatment per certain IRS revenue procedures upon grant even without a Section 83(b) election. However, it is not unusual to make the protective election in the event that the profit interest fails to qualify under the requirements of such revenue procedures. Taxpayers may choose to use the new form or may continue using their own version if they choose to do so.

Takeaways

The form is not identical to forms often used in the market by taxpayers based on prior IRS guidance in this area. In deciding whether to use the new form for Section 83(b) election, we encourage taxpayers to seek tax advice on whether the IRS form or a taxpayer form is preferable.

GENERATIVE AI IN TAX

We would be remiss not to mention the proliferation of generative artificial intelligence (GenAI) in the fund tax space. GenAI is expected to enhance and expedite data management processes, which may improve tax compliance functions and tax management issues for private funds.

The IRS has also been highlighting its GenAI plans, including to select taxpayers to audit and to examine appeals case memoranda. These tools are in part developed by a partnership between the IRS Office of Research, Applied Analytics, and Statistics and LB&I's Data Solutions office.

Takeaways

GenAI is becoming a part of tax compliance and business operations, including at taxpayer and government levels. Private funds should consider whether it makes sense to include GenAI in their tax functions and tax planning workstreams. We will continue to monitor these developments and update our clients as relevant.

How We Can Help

Morgan Lewis adopts a comprehensive, client-focused approach to AI, emphasizing Responsible AI practices and robust governance mechanisms. The firm's AI strategy is guided by three core pillars: AI Education, AI Governance, and AI Tools, which ensure the ethical, secure, and efficient deployment of AI technologies. A key part of our approach is client collaboration. By engaging clients in the AI implementation process, we ensure that our use of AI is aligned with their needs. This collaborative approach has helped us leverage generative AI to drive efficiencies, streamline workflows, and ultimately deliver higher-quality legal services. We are happy to discuss these opportunities with you further.

TRUMP-VANCE ADMINISTRATION IMPLICATIONS

During his 2024 election campaign, President Donald Trump discussed various tax-related proposals that he may advance during his administration. In addition to extending some of the TCJA provisions discussed herein, President Trump signaled he may impose broader tariffs on imports, reduce the corporate tax rate for certain companies producing domestic goods, and reinstate 100% bonus depreciation for certain qualifying companies, among others.

On January 20, 2025, President Trump issued an executive order titled Regulatory Freeze Pending Review, which directs federal agencies, including the Treasury, to stop all rulemaking activity pending within the agency and to consider all rules already published as paused for 60 days. We will continue to monitor developments in this area and provide updates to clients as relevant.

Stay Informed

Visit our Trump-Vance Administration Policies and Priorities resource center and subscribe to our mailing list for the latest on programming, guidance, and current legal and business developments involving the Trump-Vance administration.

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