



PENDING TAX EXTENDERS LEGISLATION MAY INCLUDE TAXATION OF CARRIED INTERESTS IN PARTNERSHIPS

In numerous press releases over the last two weeks, both the House Ways and Means Committee and the Senate Finance Committee, along with their respective Chairs, Sander Levin and Max Baucus, have indicated a desire to pass as quickly as possible a roughly \$30 billion tax extenders package. The proposed enactment date for the tax extenders legislation has been stated to be no later than Memorial Day, May 31, 2010. As originally described, the tax extenders package was intended to address numerous areas, including individual tax relief, business tax relief, the extension of numerous expired energy incentives, disaster relief, community assistance, and a handful of miscellaneous provisions.

In a release dated May 11, 2010, Sander Levin, as Chairman of the House Ways and Means Committee, announced that lawmakers are nearing an agreement to include a provision that will phase in higher taxes on carried interests as part of the tax extenders package. Levin said the provision would eventually tax carried interests, a form of partnership equity compensation granted to managers and sweat equity partners, at the top individual marginal income tax rate. According to Chairman Levin, the change would apply across the board with no industry carve outs, and the revenue raised would help offset the renewal of dozens of temporary tax provisions that expired at the end of 2009 and that are being extended in the tax extenders legislation. Chairman Levin said in his remarks there could be a House vote on the legislation as early as the week of May 17, 2010.

Although the budget proposals published by the Obama Administration for the past two years have indicated the inclusion of some type of carried interest tax legislation, it was generally thought this would not occur until later in 2010 or thereafter. The possibility of having carried interest legislation enacted sooner than originally proposed and with an immediate effective date is an obvious surprise. Further, contrary to many of the comments made by Chairman Levin, comments by Congressional staffers indicate that there may be various last-minutes changes and “compromises” proposed to this legislation, which could result in one or more of the following:

1. A delayed effective date as opposed to an immediate effective date;
2. Instead of a phase-in of higher rates, taxation of carried interests at a blended tax rate that is a rate between capital gains rates and ordinary income rates (20% or 25%);
3. Possible limited or full grandfathering as to existing carried interests; and
4. Certain industry or activity carve outs, including, for small business, real estate, and oil and gas.

As this situation develops and additional information is known about both the timing and form of possible carried interest tax legislation, there will be additional Alerts provided. However, in the meantime, if you have questions concerning this Client Alert and the taxation of carried interests, please contact one of the attorneys listed below.

CONTACTS:

Roger D. Aksamit

713.951.5885

Roger.Aksamit@tklaw.com

Kevin Thomason

214.969.2561

Kevin.Thomason@tklaw.com

Mary A. McNulty

214.969.1187

Mary.McNulty@tklaw.com

R. David Wheat

214.969.1468

David.Wheat@tklaw.com

Emily A. Parker

214.969.1502

Emily.Parker@tklaw.com

Todd Lowther

713.653.8667

Todd.Lowther@tklaw.com

DOMESTIC OFFICE LOCATIONS:

Austin

98 San Jacinto Boulevard, Suite 1900
Austin, Texas 78701 USA
+1.512.469.6100
Fax +1.512.469.6180

Houston

333 Clay Street, Suite 3300
Houston, Texas 77002 USA
+1.713.654.8111
Fax +1.713.654.1871

Dallas

One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201 USA
+1.214.969.1700
Fax +1.214.969.1751

New York

900 Third Avenue, 20th Floor
New York, New York 10022-4728 USA
+1.212.751.3001
Fax +1.212.751.3113

Fort Worth

801 Cherry Street, Unit #1
Burnett Plaza, Suite 1600
Fort Worth, Texas 76102 USA
+1.817.347.1700
Fax +1.817.347.1799

San Antonio

4040 Broadway, Suite 615
San Antonio, Texas 78209 USA
+1.210.225.2285
Fax +1.210.225.7045

This Client Alert is sent for the information of our clients and our friends. It is not intended as legal or tax advice or an opinion on specific circumstances. The lawyers at Thompson & Knight LLP are available to assist you in working through any of these topics.