**POTENTIAL REGULATORY PROJECTS**

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**Treat private equity investments as not capital assets. The following are articles discussing the issue.**

<https://www.taxnotes.com/insurance-expert/benefits-and-pensions/sun-capital-s-limited-impact-taxation-private-equity-funds/2014/07/01/v7k2?highlight=%22Sun%20Capital%22%20%22Rosenthal%22> (Elias article, Tax Notes).

<https://www.taxnotes.com/tax-notes-federal/financial-instruments-tax-issues/sun-capital-demise-private-equity/2013/08/26/qtml?highlight=%22demise%20of%20private%20equity%22> (Jackel article, Tax Notes).

<https://t.co/ICigU7tMgZ?amp=1> (Rosenthal article, Tax Notes).

<https://t.co/8FiVYFsaKJ?amp=1> (Rosenthal article, Tax Notes).

**Treat the issuance of a partnership profits interest as a taxable event or, alternatively, treat allocations to service partners as compensation for services without regard to risk.**

<https://jackeltaxlaw.com/wp-content/uploads/2020/11/SSRN-id2661623.pdf>

(Prof. Fleischer, SSRN 2015 paper).

“To be workable, the regs would have to depart from the entrepreneurial risk framework and take the position that an allocation for services is a payment for services regardless of risk. In the extreme, this would disallow special allocations altogether (or rather, treat all special allocations as payments for services), and I doubt anyone wants to go that far, certainly outside of the investment fund/real estate context.” Quote from Professor Victor Fleischer, UCI.

“If regulatory action is taken, it is a choice between treating a partnership profits interest as property and tax it upfront as ordinary income (and allow amortizable deductions as the income is later allocated to avoid double taxation) or to continue the deferral but treat allocations to service partners as a payment for services regardless of risk. Outside adverse pressure will result.” Quote from Monte Jackel, Jackeltaxlaw.

**Treat death as a disposition of negative tax basis property. The following is some commentary on the issue.**

1. <https://www.taxnotes.com/tax-notes-today-federal/estate-gift-and-inheritance-taxes/how-read-code-regs-and-rulings-response-willens/2019/11/04/2b2z9?highlight=%22death%20as%20a%20disposition%22> (Jackel letter to the editor, Tax Notes).
2. <https://www.taxnotes.com/tax-notes-today-federal/estate-gift-and-inheritance-taxes/death-remains-disposition/2019/10/21/2b1lk?highlight=%22death%20as%20a%20disposition%22> (Jackel letter to the editor, Tax Notes).
3. <https://www.taxnotes.com/tax-notes-today-federal/interest-income/partnership-interest-transfer-decedent-not-disposition/2019/10/15/2b0sr?highlight=%22death%20as%20a%20disposition%22> (Willens letter to the editor, Tax Notes).
4. <https://www.taxnotes.com/tax-notes-today-federal/property-taxation/dispositions-plain-and-simple/2019/10/28/2b26f> (Willens letter to the editor, Tax Notes).
5. <https://www.taxnotes.com/tax-notes-today-federal/interest-income/death-disposition-redux/2019/10/07/29yl3?highlight=%22death%20as%20a%20disposition%22> (Jackel principal article, Tax Notes).

**Provide guidance on the codified economic substance doctrine of section 7701(o). Commentary from Monte Jackel, Jackeltaxlaw and others.**

The IRS and Treasury refused to issue regulations filling in the blanks under the codified economic substance doctrine in section 7701(o). The reason given was that issuing such guidance would, in effect, being telling judges in actual court cases what they can and cannot do. See <https://www.taxnotes.com/tax-notes-today-federal/partnership-taxation/subchapter-k-and-codified-economic-substance-doctrine/2010/07/20/w5y9?highlight=%22Jackel%22%20%22dawn%20of%20a%20new%20era%22> (Jackel article, Tax Notes).

The result of this lack of guidance is taxpayers pushing the limits on any number of transactions. The partnership anti-abuse rule under reg.§1.701-2 has been ineffective because of doubts about its validity when the common law doctrines do not apply to the case at hand. See <https://www.taxnotes.com/tax-notes-today-federal/partnerships/proving-partnership-antiabuse-reg-has-no-place/2018/05/14/281fm?highlight=%22Maynor%22> and <https://www.taxnotes.com/tax-notes-today-federal/tax-policy/time-revoke-partnership-antiabuse-regulation/2018/02/14/1x9dm?highlight=%22Maynor%22> (Jackel, Chen and Maynor letter to the editor and article, Tax Notes).

A problem area is that the section 6662 penalty is a strict liability penalty.

Regardless, tax administration will be significantly improved by issuing this guidance.

**Revoke or significantly revise the check-the-box regulations.**

The adoption of the check-the-box regulations was issued with some doubt as to its validity although the regulations have been upheld in the self-employment tax area.

The extreme trouble area for these regulations have been the interaction of these regulations with the Internal Revenue Code’s international tax law, particularly disregarded entities.

There have also been issues with retroactive elections which have functioned as a time machine to beat regulation effective dates and have also functioned as a rescission mechanism because the 75-day retroactive period can span taxable years.

The international experts at CC Int’l would like to revise and/or revoke the regulations for foreign entities.

This area should be seriously studied and action taken.