KIRKLANDPEN

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KIRKLAND & ELLIS LLP

Private Equity Newsletter

Proposed Legislation Would Increase Tax on Publicly Traded Private Equity Management Partnerships

PENpoints

Under the proposed bill, a publicly traded partnership or LLC that derives income from investment adviser or asset management services would be taxed as a corporation.

Senators Baucus and Grassley, the Democratic Chairman and ranking Republican member of the Senate Finance Committee, introduced legislation on June 14 that would tax as a corporation any publicly traded partnership or limited liability company (a "PTP") that directly or indirectly derives income from investment adviser or asset management services. The proposed legislation is generally aimed at transactions similar to the February 2007 Fortress IPO and the pending Blackstone IPO.

Under current law, a PTP is generally taxed as a corporation unless at least 90 percent of its gross income consists of "qualifying income," generally interest, dividends, capital gains, real property rents, and certain income related to minerals and natural resources. PTPs in the Fortress IPO and the pending Blackstone IPO were structured to meet this 90-percent-qualifying-income exception (e.g., by causing management fee income to flow into a C corporation blocker with any net fee income (net of C corporation income tax) flowing up to the PTP as dividend income).

Under the proposed legislation, a PTP would not be entitled to rely on the 90-percent-qualifying-income exception, and hence would be taxed as a corporation, if it has, directly or indirectly, any income or gain derived from investment adviser services or asset management services, read broadly to encompass (1) capital gains and dividend income from a general partner's carried interest in a private equity fund and (2) dividend income from a blocker corporation receiving management fees for providing services to a private equity fund.

If enacted in its current form, the proposed legislation would generally be effective for partnership taxable years beginning after June 14, 2007, subject to a five-year transition rule postponing corporate tax treatment for a PTP that, as of June 14, 2007, either (i) was already publicly traded or (ii) like Blackstone, had filed a registration statement with the SEC for an initial public offering. Thus, the proposed legislation appears to allow the Fortress and Blackstone PTPs to be taxed as partnerships for five years. Any new transaction would not receive the benefits of this five-year transition rule.

The proposed PTP legislation does not address the taxation of carried interests in private equity funds as ordinary income, a topic we understand Congress continues to study.

If you have any questions about the matters addressed in this Kirkland PEN article, please contact the following Kirkland authors or your regular Kirkland contact.

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PENbriefs

The Supreme Court Raises the Bar for Antitrust (and Perhaps Other) Plaintiffs

Corporate antitrust defendants routinely spend millions of dollars fighting allegations of illegal conduct. Using a bare-bones complaint to launch the case, plaintiffs can then fish for evidence through the discovery process. Recently, the United States Supreme Court handed antitrust defendants a significant victory. Kirkland partners Colin R. Kass and Mark L. Kovner discuss this recent ruling in a Kirkland *Alert*, available at the following link:

http://www.kirkland.com/files/tbl_s14Publications/Document1303/1784/Twombly_Alert.pdf

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PENnotes

Kirkland's Advertising & Trademark Law Seminar
Chicago, IL
July 17, 2007
Kirkland partners Ross M. Weisman, P.C. and Paul R. Garcia, P.C. will host this seminar, which will explore important legal developments surrounding advertising and trademarks. For more information, please contact Kate Peters at +1 (312) 616-2934 or kjpeters@kirkland.com.

Kirkland's 2nd Annual Real Estate Private Equity Symposium
New York, NY
September 6, 2007
Kirkland partner Stephen G. Tomlinson, P.C., will host this seminar focusing on current legal developments in the real estate and private equity law areas. For more information, please contact Abigail Williams at +1 (212) 446-6445 or awilliams@kirkland.com.

The PLI Institute: Mergers & Acquisitions – What You Need to Know Now – 2007
Chicago, IL
September 27-28, 2007
Kirkland partner R. Scott Falk, P.C. will co-chair this seminar, which will focus on important developments and trends in M&A law in the year ahead.

Kirkland's Private Equity/LBO Seminar
San Francisco, CA - October 5, 2007
New York, NY - October 12, 2007
Chicago, IL - October 19, 2007
Various Kirkland partners will present at this Kirkland seminar reviewing the legal, tax, structuring and practical negotiating aspects of complex private equity deals. For more information, please contact Courtney Hudson at +1 (312) 649-3837 or chudson@kirkland.com.

International Bar Association Annual Convention
Singapore
October 15, 2007
Kirkland partner David Eich will join the International Bar Association's private equity subcommittee as a panelist to discuss "Club Deals: Legal, Ethical and Practical Issues when Representing a Private Equity Consortium."

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Kirkland & Ellis LLP's Private Equity Practice

Kirkland & Ellis LLP's private equity and venture capital attorneys handle leveraged buyouts, early-stage venture capital investments, later-stage growth equity transactions, recapitalizations, going-private transactions and the formation of private equity and venture capital funds on behalf of more than 200 private equity firms in every major market around the world. Kirkland was named the 2006 "USA Law Firm of the Year" by Chambers & Partners for providing superior service in all practice areas.

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