

# Obama administration international tax proposals

An extract from Rain or Shine? July 2009

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The current proposals include a scheme to tax a partner's services partnership interest ('SPI') (as well as gains from the sale of SPI) or carried interest as ordinary income and not at reduced tax rates as allowed under current law. Unless specific exemptions are met, foreign entities that elect to be disregarded from a US tax perspective ('DE') will become regarded, and expense deductions, except for research and development-related expenses, allocable to unrepatriated foreign earnings will be limited. Furthermore, the proposal includes a limitation on foreign tax credits to the average foreign tax rate imposed on the taxpayer's CFCs income. There are also proposals to revoke current IRS rules that allow foreign investors, through the use of notional principal contracts and equity swaps, to avoid US withholding tax while continuing to receive the economic benefit.

It is clear that the proposed tax reforms will pose significant challenges for private equity, hedge fund and venture capital funds. With a proposed effective date of 31 December 2010 and a potential acceleration of the CTB and codification of economic substance proposals in early 2010, investment funds will only have a short period of time to assess the impact of the changes on their current structures and implement planning ideas as needed.

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