



TaxNewsFlash

United States

No. 2018-081
March 1, 2018

Notice 2018-18: Future “carried interest” regulations to clarify partnership interests held by S corporations

The IRS today released an advance version of Notice 2018-18 that states that the Treasury Department and IRS intend to issue regulations providing guidance on the application of section 1061 and specifically that the regulations will provide that the term “corporation” under section 1061(c)(4)(A) does not include an S corporation.

Notice 2018-18 [PDF 13 KB] thus clarifies that the future regulations will provide that the term “applicable partnership interest” for purposes of one of the exceptions under section 1061 does not include a partnership interest directly or indirectly held by an S corporation.

Read a related IRS release: [IR-2018-37](#)

Background

The new tax law (Pub. L. No. 115-97, enacted December 22, 2017) added section 1061 to the Code, to address the taxation of “applicable partnership interests.”

Under that provision, if one or more “applicable partnership interests” were held by a taxpayer at any time during the tax year, some portion of the taxpayer’s long-term capital gain with respect to those interests may be treated as short-term capital gain. The provision requires that, to obtain long-term capital gain treatment for applicable partnership interests, the required asset-holding period must be greater than three years.

New Code section 1061 applies only with respect to “applicable partnership interests.” To qualify as such, the partnership interest has to be transferred to, or held by, the taxpayer in connection with the performance of substantial services by the taxpayer (or a related person) in any “applicable trade or business.”

Two exceptions may apply to exclude treatment of certain partnership interests as applicable partnership interests. Specifically, under:

- Section 1061(c)(4)(A), an applicable partnership interest does not include a partnership interest held by a corporation.
- Section 1061(c)(4)(B), an applicable partnership interest does not include a capital interest that provides the partner with a right to share in partnership capital commensurate with: (1) the amount of capital contributed (determined at the time of receipt of the partnership interest); or (2) the value of the interest included in income under section 83 upon receipt or vesting.

New section 1061 provides authority for the issuance of regulations or other guidance as necessary to carry out the purposes of the provision.

Read a more-detailed discussion of section 1061 in a KPMG report: [New tax law: Issues for partnerships, S corporations, and their owners](#) [PDF 589 KB]

Notice 2018-18

Today's notice states that the to-be-issued regulations will clarify that the term "corporation" in section 1061(c)(4)(A) does not include an S corporation.

The regulations are to be effective for tax years beginning after December 31, 2017 (that is, the effective date for section 1061).

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to be applied to any specific reader's particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)