TaxNewsFlash

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Legislative update: Finance Chairman Wyden introduces carried interest bill

U.S. Senate Finance Committee Chairman Ron Wyden (D-OR) and committee member Senator Sheldon Whitehouse (D-RI) re-introduced legislation to change the taxation of carried interests—the "Ending the Carried Interest Loophole Act."

According to a **press release** issued by the Finance Committee in conjunction with the bill's introduction, the proposed legislation "would close the entire carried interest loophole – re-characterization of income from wage-like income to lower-taxed investment income and deferral of tax payments." It further states that other versions of carried interest legislation have only addressed "half of the problem – recharacterization of income."

A one-page overview released by the Senate Finance Committee indicates that the Joint Committee on Taxation (JCT) has estimated that the bill would raise approximately $63 billion over 10 years.

Documents

Read **text** [PDF 48 KB] of the bill.

Read a **one-page summary** [PDF 80 KB] of the legislation.

Read a **detailed summary** [PDF 167 KB] of the legislation.

KPMG observation

Today's bill is substantially similar to legislation that Senator Wyden introduced in 2019 (i.e., in the previous Congress).

The current bill follows a "deemed loan" model that is similar in some respects to that proposed by former Ways and Means Chairman Camp in 2014. However, instead of recharacterizing future income to ordinary as such income is allocated by the partnership, Wyden's proposal would tax the partner **currently** on an "imputed interest amount" characterized as ordinary income. For a detailed discussion of Wyden's 2019 proposal, read an **August 2019 report** [PDF 231 KB] prepared by KPMG LLP: *What's News in Tax: The Wyden bill: A new approach to taxing carried interest.*

Nonetheless, today's proposal reflects some minor changes to Wyden's 2019 proposal—the most significant relating to the definition of invested capital (which is relevant to determining the amount of the deemed loan under a model that essentially imputes interest on a deemed loan to the sponsor). The detailed summary of today's bill indicates that invested capital generally is intended to mirror section 704(b) capital, except that it would exclude untaxed built-in gain and loss.

There are other minor changes to the determination of fair market value of a partnership interest under section 83, the definition of an applicable financial instrument, the definition of securities, and the targeted topics for regulatory authority.

Notably, the $63 billion revenue estimate is significantly larger than the estimate for a prior carried interest bill introduced by then Ways and Means Committee ranking member Levin in 2015. Levin's bill proposed a different regime for taxing carried interest that addressed character but not timing of income inclusion. That bill was estimated to raise only approximately $15.6 billion over a 10-year period.