The Latest on the Taxation of Carried Interests

June 20, 2011

By ***Joe Wallin*** and ***Michael Gentile***

A proposal to change the tax treatment of carried interests was included in the Obama Administration's 2012 Revenue Proposals. Unlike proposals introduced by the Treasury in the past, which would have been applicable to all partnerships, this iteration is limited to carried interests in an "investment partnership." The proposal defines an "investment partnership" as a partnership in which a majority of its assets are investment-type assets (i.e., certain securities, real estate, interests in partnerships, commodities, cash or cash equivalents, or derivative contracts with respect to those assets) and over half of the contributed capital is from partners in whose hands the partnership interests constitute property held for the production of income. The operative rules of the Treasury's proposal are similar to those of the carried interest legislation introduced by Max Baucus on September 16, 2010 (which was not enacted), and would significantly change the way in which carried interests are taxed.

The proposal introduced by the Treasury.

The Treasury's explanation of this proposal.

The Administration has been proposing to raise the tax on carried interest over the past several years. Given that history, it seems unlikely that this latest proposal will become law. However, perhaps passage now is more likely than in the past because of the narrower scope of the proposal and the ongoing debt limit negotiations.