

## Section 1061 Carried Interest Regulations: How does this impact me?

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### What's New?

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- Confirmation § 1231 gains are NOT subject to § 1061.
- Confirmation of entity treatment of partnership interest – Except when it's not.
- Loaning money to your manager taints otherwise qualified capital.
- Related party transfers of carry can accelerate gain on otherwise tax-free gifts.
- We still don't know whether non-fund partnerships are subject to § 1061!

## What To Look For

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- Carry . . . Promote . . . Profits Interest . . . Performance Fee
- If a partner has a share of profits greater than its share of capital in exchange for services.
- § 1061 is most clearly directed at funds and mandates a 3-year holding period to measure long-term capital gains.
- § 1061 is generally limited to funds . . . . or is it???

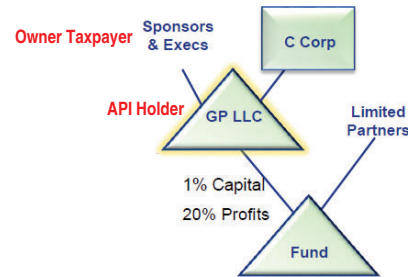
## Background

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- §1061 passed as part of the Tax Cut and Jobs Act
- Effective for tax years beginning after Dec. 31, 2017
- §1061 recharacterizes certain long-term capital gain held less than 3 years to short-term capital gain
- Potential Impact:
  - 40.8% tax rate vs. 23.8% tax rate
  - Maybe more next year . . . .

## Who is Affected?

- Applicable partnership interest **and** applicable trade or business
  - Applies to S-Corporations
  - Applies to Passive Foreign Investment Companies (PFICs) with Qualified Electing Fund (QEF) elections
- Exceptions
  - C-Corporations
  - Capital Interest
  - Non “Applicable Trade or Business” (ATB) Employee
  - Family Office
  - Bona Fide Unrelated Purchaser



## What is an Applicable Partnership Interest (API)?

- An API is an interest in a partnership’s profits that is transferred or held in connection with the performance of substantial services by the taxpayer, or any other related person, in any applicable trade or business (“**ATB**”).
- The proposed regulations expand the definition of a partnership interest for purposes of § 1061 to also include any financial instrument or contract, the value of which is determined, in whole or in part, by reference to the partnership.
- The proposed regulations surprisingly do not provide certainty of whether a partnership interest associated with a one-off, single property joint venture could be an API.

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