

ALERT



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Transferring Carried Interests

A carried interest in a private equity or venture capital fund is a right to receive a share of future fund profits, over and above those associated with a capital investment. Carried interests in newly formed venture capital and private equity funds have a very low value relative to their potential future value. That trait makes a carried interest an attractive asset for an estate planning transfer to one's children or other family members.

Transferring carried interests can be difficult for a few reasons. First, only a transfer of vested carried interests is considered to be "complete" for gift tax purposes. Thus, unvested carried interests cannot be effectively transferred. Moreover, if a transfer of carried interest is not accompanied by a proportionate transfer of capital interest, certain tax code provisions may apply with significant adverse tax consequences.

The Trusts & Estates Group at Kirkland & Ellis has developed a method by which a principal of a venture capital or private equity fund can transfer the economic benefits of his or her carried interest to a trust for children or other family members without the foregoing impediments. By selling a cash-settled option on the carried interest to a trust, rather than transferring the carried interest itself, previously existing obstacles fall by the wayside. In addition, the gift tax exposure due to potential misvaluation of the carried interest is reduced through the use of the option.

Should you have any questions about the matters addressed in this Alert, please contact the following Kirkland & Ellis partners or the Kirkland & Ellis attorney you normally contact.

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