

Partners as Employees? IRS Says Not So Fast

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Last month, the Internal Revenue Service (the “IRS”) and the Treasury Department (“Treasury”) issued final and temporary regulations that clarify the employment tax treatment of partners in a partnership that provide services to a disregarded entity owned by the partnership. The new regulations provide that the partners are treated as self-employed, rather than as employees of the disregarded entity. As a consequence, the partners are not eligible to participate in, and may be subject to less favorable tax rules for their benefits under, certain employee benefit plans.

Instead, an individual who is a partner and provides services to the partnership is treated as self-employed. In releasing the new regulations, the IRS and Treasury requested comments on:

- the appropriate application of this principle in the context of tiered partnerships; and
- circumstances in which it may be appropriate to permit a partner also to be an employee of the partnership.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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