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## IRS CLARIFIES POSITION REGARDING EMPLOYEE-PARTNER STATUS

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The IRS has long held the position that an individual partner in a partnership may not also be an employee of such partnership for tax purposes. This position also applies to individual members of a limited liability company that is treated as a partnership for tax purposes. The effect of this position is to subject any salary and/or bonuses received by the individual partner from the partnership to self-employment taxes, as opposed to employment taxes, and to limit the individual partner's participation in the employee benefit plans of the partnership.

The IRS's position had previously been unclear as to whether an individual partner in a partnership could also be an employee of a disregarded entity (*i.e.*, a single-member limited liability company) owned by such partnership. The IRS has now issued temporary regulations which provide that an individual partner in a partnership may not also be an employee of a disregarded entity owned by such partnership. Accordingly, any salary and/or bonuses received by the individual partner from the disregarded entity will be treated as paid by the partnership and subject to self-employment taxes, and the individual partner's participation in the employee benefit plans of the disregarded entity will be limited. The temporary regulations will apply on the later of: (i) August 1, 2016, or (ii) the first day of the latest-starting plan year following May 4, 2016, of an affected employee benefit plan sponsored by an entity that is disregarded as an entity separate from its owner for any purposes under such temporary regulations.

Additionally, the IRS has asked for comments on whether an exception should be allowed for employees in a partnership who obtain a small ownership interest in the partnership as an employee compensatory award or incentive and on how to address tiered partnerships (*i.e.*, an individual partner treated as an employee of a subsidiary partnership).

Please contact the Thompson & Knight attorney with whom you regularly work or any of the following employee benefits attorneys to discuss this development.

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