

## Andy Howlett Comments on Intercompany Transfers of Partnership Interests in Tax Notes

### **"Comments Vital for Intercompany Partnership Interest Transfers"**

#### ***TAX NOTES***

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Andy Howlett commented on why the Internal Revenue Service (IRS) had to punt on the treatment of intercompany transfers of partnership interests in the final regulations on business interest expense limitations, as well as the IRS's suggested model and possible alternatives. After the release of the 2018 proposed section 163(j) regulations (REG-106089-18), practitioners immediately informed the IRS that the example of the intercompany sale of the partnership interest is flawed. Under section 163(j), when a partner sells all or substantially all its interest, the excess business interest expense (EBIE) that hasn't been deducted gives rise to a basis increase in the partnership interest immediately before the disposition. "That makes sense because if not for that rule, when the partner disposes of [its] partnership interest, it would have lost the benefit of that EBIE forever and that wouldn't make any sense because no one would be able to take a benefit from it either," Howlett said.

Howlett added that under the facts in the example, "you theoretically get to the correct result," but only under the specific facts provided, not under general principles. He noted that the example doesn't work if the intercompany transaction resulted in a gain, rather than a loss, because then there would be "no way to take into account the benefit of EBIE until the partnership [leaves] the group, even though the partnership is creating income in subsequent years."