Certain Investor Tax Considerations for Investing in U.S. Funds

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Key Tax Issues for Investors in U.S. Funds

- Classification of the Fund as a “partnership”
- Taxation of Investors – Generally
- Special Issues for U.S. Taxable Investors
- Special Issues for U.S. Tax Exempt Investors
- Special Issues for Non-U.S. Investors

Classification of the Fund as a "Partnership"

- General Rule: Generally, Funds that are structured as limited partnerships under state law are intended to be treated for U.S. federal income tax purposes as "partnerships".

- Treatment of Partnerships for U.S. income tax purposes – Generally:
  - Partnerships are not subject to U.S. federal income tax.
  - Partners in a partnership include in computing their taxable income their allocable share of the partnership's income, gain, loss, deduction, and credit. Accordingly, partners pay tax on their allocable share of the partnership's income regardless of whether any cash distributions are made by the partnership.
  - Result is that the U.S. federal income tax treatment of partnerships is different than entities taxed as c-corporations which taxes the c-corporation on the income at the entity level and also taxes the shareholders upon the receipt of dividends. Thus, in a partnership, there is only one level of U.S. federal and state income tax whereas a c-corporation has two levels of U.S. federal income tax.

- Entities formed under Foreign Law – Generally:
  - The treatment of Funds organized in foreign jurisdictions need to be characterized for U.S. federal income tax treatment too.
  - Certain foreign entities are *per se* corporations. The *per se* corporations are typically publicly-traded entities in the foreign jurisdiction.
  - Foreign entities that are not *per se* corporations can elect to be treated as a partnership for U.S. federal income tax purposes if: (i) the entity has at least 2 members and (ii) no member has liability for the obligations of the entity.
  - Most feeder Funds formed offshore elect to be treated as corporations for U.S. federal income tax purposes

Classification of the Fund as a "Partnership"

- Publicly-traded Partnership Rules
  - General Rule: A "publicly traded partnership" generally is treated as a corporation for U.S. federal income tax purposes. A partnership is a publicly traded partnership if interests therein (i) are traded on an established securities market or (ii) are readily tradable on a secondary market (or the substantial equivalent thereof).
  - Readily Tradable On Secondary Market – General Rules: Under the regulations, interests in a partnership are considered to be readily tradable on a secondary market or the substantial equivalent thereof if: (i) interests in the partnership are regularly quoted by any person, such as a broker or dealer, making a market in the interests; (ii) any person regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to interests in the partnership and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others; (iii) the holder of an interest in the partnership has a readily available, regular and ongoing opportunity to sell or exchange the interest through a public means of obtaining or providing information of offers to buy, sell, or exchange interests in the partnership; or (iv) prospective buyers and sellers otherwise have the opportunity to buy, sell or exchange interests in the partnership in a time frame and with the regularity and continuity that is comparable to that described in the other provisions of this paragraph.
  - Private Placement Safe Harbor: The regulations include a "private placement safe harbor" under which partnership interests can avoid being treated as readily tradable. This safe harbor applies if (i) the partnership interests were issued in a transaction or transactions not requiring registration under the 1933 Act, and (ii) the partnership has no more than 100 partners. For purposes of determining the number of partners, a person owning a partnership interest through a partnership, grantor trust or S corporation (a "flow-through entity") is counted as a partner only if substantially all the value of that person's interest in the flow-through entity is attributable to the underlying partnership and a principal purpose for using a tiered structure was to satisfy the 100-partner condition.
  - Qualifying Income Exception: Even if the interests in the partnership are "readily tradable" under the above-mentioned rules and therefore is a "publicly-traded partnership", the partnership would not be treated as a corporation for U.S. federal income tax purposes for any taxable year in which: (i) it was not registered under the Investment Company Act of 1940 and (ii) at least 90% of its gross income for that year (and each preceding year from the first year in which it was a publicly traded partnership) consisted of "qualifying income." This term is defined to include interest, dividends and gain from the sale or disposition of a capital asset; it also includes any income that would qualify for (a) a regulated investment company (mutual fund) and (b) a real estate investment trust.
  - Practical Application: Most funds seek to organize and operate in a way that precludes publicly-traded partnership characterization. ***However, for a more thorough analysis of the publicly-traded partnership rules, please see our presentation on "publicly traded partnerships."***

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Taxation of Investors – Generally

- Acquisition of Fund Interests
  - General Rule: An Investor, generally, does not recognize gain or loss on the acquisition of Fund interests.
    - ➢ Acquisitions of Fund Interests for Cash – No recognition of gain or loss and no taxation to the Investor
    - ➢ Acquisitions of Fund Interests for Non-Cash Property – Generally, no recognition of gain or loss on the transfer of non-cash property to the Partnership in return for Fund interests.
  - Exceptions:
    - ➢ Investment Company/Diversification Exception: If an Investor makes a capital contribution to the Fund of stocks and securities in return for interests in the Fund, then gain or loss will be recognized by the Investor if the Fund qualifies as an "investment company" and the contribution by the Investor results in "diversification".
      - "Investment Company": A Fund is treated as an "investment company" if: (i) it would be classified as a regulated investment company under the Investment Company Act of 1940 or as a real estate investment trust under IRC Section 856 if it were organized as a corporation, or (ii) more than 80% of the gross asset value of the Fund is attributable to stocks and securities held for investment.
      - "Diversification" Requirement: Generally, a transfer to a Fund will result in "diversification" if 2 or more persons transfer non-identical assets to the Fund. For this purpose, a portfolio of stocks and securities is diversified if: (i) not more than 25% of the value of its assets is invested in stock and securities of any 1 issuer, and (ii) not more than 50% of the value of its assets is invested in stock and securities of 5 or fewer issuers.
    - ➢ Liabilities in Excess of Basis Exception: An Investor will recognize gain if property contributed to the Fund is subject to liabilities in excess of the property's tax basis.
    - ➢ Disguised Sales Exception: An Investor will recognize gain if property transferred is not treated as a capital contribution to the Fund but as a sale or other transfer not in the Investor's capacity as a partner in the Fund.

Taxation of Investors – Generally

- Tax Basis of Fund Interests: An Investor's tax basis in his, her or its Fund interests:
  - Increases by:
    - The amount of cash capital contributions made to the Fund by the Investor
    - The tax basis of non-cash capital contributions made to the Fund by the Investor (net of any liabilities assumed by the Fund)
    - Any increase in the amount of the Investor's allocable share of indebtedness of the Fund
      - An Investor's share of recourse liabilities is the amount by which the Investor bears the economic risk of loss. This means that if the Fund liquidated the Investor would be obligated to make the payment to any person (or a contribution to the Fund) because that liability becomes due and payable and the Investor would not be entitled to reimbursement from another Investor (e.g. persona guarantees of the debt, indemnification agreements, reimbursement agreements, obligations imposed under the partnership agreement, payment obligations imposed under state law, and loans made by the Investor to the Fund).
      - An Investor's share of non-recourse liabilities generally is the same as the Investor's share of the profits of the Fund. Note that non-recourse liabilities are those debts and liabilities of the Fund that no partner bears any economic risk of loss because no partner would be obligated to make the payment on the debt or liability.
    - The amount of the Investor's allocable share of income and gains of the Fund
  - Decreases by:
    - The amount of cash distributions made by the Fund to the Investor
    - The tax basis of non-cash distributions made by the Fund to the Investor
    - Any decrease in the amount of the Investor's allocable share of indebtedness of the Fund
    - The amount of the Investor's allocable share of losses and deductions of the Fund

Taxation of Investors -- Generally

- Allocations of Profits and Losses and Capital Account Maintenance
  - General Rule: Allocations of profits and losses must have "substantial economic effect" in order to be respected for U.S. federal income tax purposes.
    - Economic Effect Test: An allocation must satisfy 3 requirements to have "economic effect".
      - Fund must maintain capital accounts and the capital account of each Partner must reflect the Partner's contributions to and distributions and allocations from the Fund (e.g. the economic arrangements of the Partners)
      - Liquidating distributions from the Fund must be made in accordance with the Partners' relative positive capital account balances
      - Partners are required to restore deficits in their capital account balances upon liquidation of the Fund.
        - Qualified Income Offset Provision: If the Partners are not required to restore deficit capital accounts, then the "economic effect" test may otherwise be met if there is a provision that requires that a Partner with such a deficit is mandatorily allocated items of income and gain (or will not be allocated items of loss or deductions) in order to reduce his, her or its deficit balance.
    - Substantiality Test: An allocation must be "substantial", meaning that the allocations affect substantially the amounts received by the Partner.
    - If an allocation of profits or losses does not have "substantial economic effect", there is a risk that the Internal Revenue Service will re-allocate such profits or losses. If the IRS re-allocates the profits or losses, such re-allocation is likely done in accordance with the Fund's percentage interests (e.g. relative capital contributions, relative interests in cash distributions)
  - ***Common Practice**: Many Funds do not satisfy the technical requirements of the "substantial economic effect" test because they do not specifically provide that liquidating distributions be made in accordance with positive capital accounts. Instead, the liquidating distributions are made in proportion with a set waterfall irrespective of the Partners' respective capital account balances. However, Funds are generally willing to take the tax risk in order to ensure that the distributions match the intended result. The tax risk, however, is minimized because most Funds allocate profits and losses in a manner that is consistent with the Partners' percentage interests in the Fund or otherwise ensure that allocations are done to match the desired liquidating distribution waterfall*.

Taxation of Investors – Generally

- Distributions by the Fund
  - Distributions of Money:
    - Distributions of money are not taxable to the Investor to the extent that the distributions do not exceed the Investor's tax basis in his, her or its Fund interests.
    - Distributions of money in excess of the Investor's tax basis in his, her or its Fund interests are taxable to the distributee Investor as gain from the sale or exchange of a capital asset.
  - Distributions of Marketable Securities:
    - General Rule: For purposes of the distribution rules relating to money distributions, "marketable securities" are generally treated as "cash". The term "marketable securities" includes cash, stocks, bonds, and other financial instruments that are actively traded as of the date of the distribution. Accordingly, the value of the marketable securities distributed will be tax-free to the extent of basis in the distributee Investor's interest in the Fund and taxable gain to the extent such value in excess of such basis.
    - "Investment Partnership" Exception: The general rule that "money" includes "marketable securities" does not apply where the distributing Fund is an "investment partnership" and where the distributee Investor is an "eligible partner."
      - "Investment Partnership" Defined: An "investment partnership" is any partnership that has never engaged in a trade or business and substantially all of the assets (by value) of which have always consisted of money, stock in a corporation, and certain other investment-type assets. The following are not trades or businesses: (i) any activity undertaken as an investor, trader or dealer in investment-type assets, (ii) reasonable management services provided to an investment partnership, and (iii) reasonable and customary services provided in assisting with the formation, capitalization, or offering of interests in a corporation or other entity in which the partnership holds or acquires a significant equity interest.
      - "Eligible Partner" Defined: An "eligible partner" is any partner who, before the distribution, did not contribute any property to the partnership other than investment-type assets.
  - Distributions of Other Property:
    - Distributions of all other property are not taxable to the Investor.
  - Tax Basis of Distributed Property:
    - Distributions in Liquidation – The tax basis in the distributed property will be the same basis as the Partner 's basis in the Fund interests.
    - Distributions Not in Liquidation – The tax basis in the distributed property will be the same as the Partnership's basis in the property.

Special Issues for U.S. Taxable Investors

- Syndication Expenses: Syndication expenses of a Fund are not deductible by the Fund or its Investors. Instead, an Investor's allocable share of these expenses increases the basis of the Investor's interest in the Fund. Examples of syndication expenses include: expenses associated with offering materials, registration fees, legal fees of the placement agent and fees related to tax opinions and tax disclosure provided by the Fund to prospective Investors.

- Organizational Expenses: Organizational expenses of a Fund are not deductible by the Fund or its Investors. Instead, organizational expenses are amortized or capitalized at the election of the Fund. If amortized, the amortization period must be at least 180 months from the period the Fund commences. If the Fund terminates before the end of the amortization period, then the unamortized organizational expenses may be deducted by the Investors provided that the Fund elected to amortize the expenses. If the Fund fails to elect to amortize the expenses and then terminates, the Investors can only take a capital loss for the organizational expenses.

- Investment Interest Expenses: A non-corporate U.S. Investor is entitled to deduct its share of investment interest only to the extent of investment income of that Investor. Investment interest is generally any interest allocable to property held for investment. Accordingly, if a Fund incurs debt to make acquisitions, a non-corporate U.S. Investor is entitled to deduct his, her or its share of the interest on such debt only to the extent of its "net investment income". "Net investment income" is the excess of the investment income (e.g. interest, dividends, and gains from investment property) over the investment expenses.

- Basis Adjustments of the Fund's Assets: Funds generally have the authority to elect to adjust the basis of the Fund's assets in connection with certain distributions to Investors or certain transfers of interests in the Fund. Such adjustments are mandatory after: (i) any distribution that would trigger a "substantial basis reduction" (a negative adjustment in excess of $250,000), or (ii) any transfer of an interest in the Fund if the Fund has a "substantial built-in loss" at the time of the transfer (if the basis of the assets exceeds the fair market value of the assets by more than $250,000).
  - Electing Investment Partnership Safe Harbor: If the Fund is an "electing investment partnership", then the Fund will not be deemed to have a substantial built-in loss and will not be required to adjust the tax basis of its assets upon a transfer of interests. In lieu of the basis adjustment, the Fund would merely limit the allocation of future losses to the transferee partner. An "electing investment partnership" must: (i) issue all interests pursuant to a private offering within 24 months of the first capital contribution, (ii) provide substantial restrictions on the right of partners to force a redemption of their interests, and (iii) have a term not to exceed 15 years.

Special Issues for U.S. Taxable Investors

- Tax Rates
  - Capital Gains and Capital Losses: Most Funds operate in a way that generates capital gains and capital losses. This is because most (if not all) of the Funds' activities are attributable to buying and selling portfolio investments that are characterized as "capital assets."
    - Capital Assets Defined: A "capital asset" is defined by the Code as any property held by a taxpayer but does not include stock in trade of the taxpayer, property of a kind which is properly included in the taxpayer's inventory, and property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Generally, the test for determining whether any property is a capital asset or not is centered on whether the property is primarily held for sale to customers in the ordinary course of the taxpayer's trade or business.
    - Short-Term Capital Gains and Losses: The gains and losses of a Fund will be subject to short-term capital gains rates for non-corporate investors with respect to portfolio investments that are held for not more than one year. Short-term capital gains are taxed at ordinary income tax rates, the maximum rate of which for individual investors is currently 39.6%. For corporate taxpayers, the maximum income tax rate is 35%.
    - Long-Term Capital Gains and Losses: The gains and losses of a Fund will be subject to long-term capital gains rates for non-corporate investors with respect to portfolio investments that are held for more than one year. The maximum long-term capital gains rate is 20%. For corporate taxpayers, the maximum income tax rate is 35%.
    - Excess Capital Losses over Capital Gains: The excess of capital losses over capital gains may be offset against the ordinary income of an individual taxpayer, subject to an annual deduction limitation of $3,000. Capital losses of an individual taxpayer may generally be carried forward to succeeding tax years to offset capital gains and then ordinary income (subject to the $3,000 annual limitation). Capital losses of a corporate taxpayer may be offset only against capital gains, but unused capital losses may be carried back three years (subject to certain limitations) and carried forward five years.
  - Net Investment Income Tax: In addition to the tax rates attributable to capital gains and ordinary income, current law also provides that for taxable years beginning after December 31, 2012, individuals (other than non-resident aliens) will be subject to an additional 3.8% United States federal tax on the lesser of (i) their net investment income, and (ii) the excess of their adjusted gross income (determined with certain modifications on account of certain foreign earned income and related deductions) over a threshold amount of $250,000 in the case of a taxpayer filing a joint return or a surviving spouse, $125,000 in the case of a married taxpayer filing a separate return, and $200,000 in all other cases.

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Special Issues for U.S. Taxable Investors

- Qualified Small Business Stock:
  - Gain Exclusion General Rules: Non-corporate taxpayers that sell or exchange qualified small business stock" (QSBS) can exclude 50% of the gain on the sale of the QSBS if the stock was acquired at original issue and held by at least 5 years. Note that, pursuant to the American Taxpayer Relief Act of 2012: (i) the gain exclusion is 75% for QSBS acquired after February 17, 2009 and before September 28, 2010, (ii) the gain exclusion is 100% if the QSBS was acquired after September 27, 2010 and before January 1, 2014, and (iii) for certain empowerment zone businesses, the gain exclusion is 60% with respect to gain attributable to periods before 2019 (unless one of the higher 2009 or 2010 percentages applies). However, the QSBS rules do not allow the taxpayer to take both the exclusion and also apply the maximum capital gains rates to the balance. As a result, the non-excluded amount of gain is subject to a 28% capital gains tax rather than the 20% capital gains rate.
  - Reinvestment General Rules: Non-corporate taxpayers may rollover the gain from the sale of QSBS by reinvesting in new QSBS in to another class of stock of the same issuer or of a new issuer. In such case, the holding period of the original QSBS will tack onto the holding period of the new QSBS for purposes of the 5 year holding period requirement.
  - "Qualified Small Business Stock" Defined": To qualify as QSBS: (i) the taxpayer must have acquired the stock at original issuance; (ii) the issuer must be a domestic c-corporation (other than a DISC, RIC, REIT or FASIT) for substantially the entire holding period of the taxpayer; (iii) the aggregate gross assets (meaning cash and aggregate adjusted basis of other property) of the issuer must not exceed $50 million at any time on or after August 10, 1993 and immediately before and after the date of issuance; and (iv) the issuer must use at least 80% of its assets, measured by value, in the active conduct of one or more qualified trades or businesses.

Special Issues for U.S. Tax-Exempt Investors

- Unrelated Business Income Tax – Generally: Tax-exempt Investors are subject to U.S. federal and state income tax on their "unrelated business taxable income" (UBTI). UBTI is gross income derived by the tax-exempt Investor from any unrelated trade or business, less deductions allocable thereto and less certain modifications.
- Exclusions from UBTI: The modifications generally exclude from UBTI most income earned by the Fund that could be allocated to a tax-exempt Investor. These modifications include: dividends, interest, and gains from the disposition of property other than inventory and property held to customers. Thus, capital gains are generally excluded from UBTI calculation.
- Debt-Financed Income as UBTI: Income that is not otherwise classified as UBTI is treated as UBTI if it is derived from property that is "debt-financed". Property is "debt-financed" if it is held for the production of income and there is "acquisition indebtedness".
  - "Acquisition Indebtedness" Defined: Acquisition indebtedness is the unpaid amount any indebtedness:
    - Incurred in acquiring or improving the property
    - Incurred before the acquisition or improvement of the property if the indebtedness would not have been incurred but for the acquisition or improvement
    - Incurred after the acquisition or improvement of the property if the indebtedness would not have been incurred but for such acquisition or improvement and it was reasonably foreseeable, at the time of the acquisition or improvement, that the indebtedness would be incurred
  - Calculation of UBTI Due to Debt-Financed Property: If a tax-exempt Investor has debt-financed property, it includes in income as UBTI the percentage of income (not in excess of 100%) the percentage of income that is the same as the debt/basis percentage.
- UBTI and Partnerships:
  - If a Fund invests in a business treated as a partnership for U.S. federal and state income tax purposes, then the tax-exempt Investor will be allocated its share of the UBTI of the business whether because of the classification of income of the business or because of th existence of debt-financed property (unless the the tax-exempt investor or the Fund invests in the business through a blocker corporation).
- Structuring to Avoid UBTI: Funds that expect to generate UBTI generally offer the tax-exempt Investors the ability to invest directly into an "Alternative Investment Vehicle" that is taxed as a corporation (a Blocker Corporation). The Blocker Corporation may be above the Fund or below the Fund but, in either case, such Blocker Corporation would protect the tax-exempt Investors from incurring UBTI. However, such Blocker Corporation would be subject to normal corporate taxes on its allocable share of the income earned.

Special Issues for Non-U.S. Investors

- General Rules: The U.S. federal income tax consequences to non-U.S. Investors depends upon whether the Fund is engaged in a U.S. trade or business. If the Fund is not engaged in a U.S. trade or business, then the non-U.S. Investors are subject to U.S. federal income tax only on U.S. source income. If the Fund is engaged in a U.S. trade or business, then the non-U.S. Investors are also treated as engaged in a U.S. trade or business. In such cases, the non-U.S. Investors would be subject to U.S. federal income tax on income that is effectively connected with such U.S. trade or business and is required to file their own U.S. federal income tax returns.
- Fund Engaging in U.S. Trade or Business:
  - General Rule: A non-U.S. person is engaged in a U.S. trade or business if it is engaged in regular and continuous business activities within the United States.
  - Hedge Fund Trading Safe Harbor: A non-U.S. person who trades in stock and securities in the U.S. is not treated as engaged in a U.S. trade or business. The safe harbor applies to buying and selling publicly-traded stocks and securities, including short sales, buying and selling options and futures contracts and most hedging activities that are typical of hedge fund investment activities.
  - Private Equity Funds and Venture Capital Funds:
    - General Activities Excluded from U.S. Trade or Business Characterization: Private equity funds and venture capital funds typically do not qualify for the Trading Safe Harbor since their activities include negotiating for the acquisition and disposition of private companies, arranging for debt-financing for the acquisition of such private companies, and participating in the management of such private companies from time to time. Under various case law, these activities have been held to be similar to activities of a shareholder that is involved with its investments and, as such, are not activities that are characterized as a U.S. trade or business. As a result, a typical private equity fund or venture capital fund is not considered to be engaged in the U.S. trade or business simply because of its buying and selling of its investments along with some ancillary management activities.
    - Investing in Partnerships Engaged in U.S. Trade or Businesses: Many private equity funds and venture capital funds invest in portfolio companies that are treated as partnerships for U.S. federal income tax purposes. In such event, to the extent that the portfolio companies are engaged in the U.S. trade or business, the private equity funds and venture capital funds will likewise be treated as engaged in a U.S. trade or business.
  - Withholding Obligations: If the Fund is engaged in a U.S. trade or business, it is required to withhold U.S. tax from amounts allocable to the non-U.S. Investors that are effectively connected with such U.S. trade or business and to remit such amounts to the Internal Revenue Service. For individual Investors, the rate would be the highest U.S. federal income tax rate for individuals. For corporate Investors, the rate would be the highest corporate rate.

Special Issues for Non-U.S. Investors

- Fund Not Engaging in U.S. Trade or Business – U.S. Source Income:
  - General Rule: Even if the Fund is not engaged in a U.S. trade or business, its non-U.S. Investors are subject to U.S. federal income tax on their allocable share of "fixed and determinable annual or period income" (FDAP) from U.S. sources. FDAP includes dividend income and interest income (other than certain portfolio interest and interest on bank deposits). Generally, capital gains are excluded from taxation in the U.S. unless the taxpayer was present in the U.S. for 183 days or more and is considered a non-resident alien).
  - Withholding Obligations: If the Fund has FDAP, it is required to withhold U.S. tax from amounts allocable to the non-U.S. Investors and to remit such amounts to the Internal Revenue Service. The withholding rate is 30%. However, to the extent that a treaty applies, the rates may be reduced according to the treaty. In such instances, the Fund would require supporting documentation that the non-U.S. investor is subject to reduced withholding. ***A thorough analysis of U.S. tax withholding is beyond the scope of these materials. For more information on U.S. tax withholding and how these obligations affect funds, please review the Tax Withholding materials in the Funds Formation section of DuaneMorris.com.***

- Structuring to Avoid Taxation for Non-U.S. Investors: Funds that expect to generate income effectively connected with U.S. trade or businesses or FDAP income from U.S. sources generally offer the non-U.S. Investors the ability to invest directly into an "Alternative Investment Vehicle" that is taxed as a corporation (the Blocker Corporation). The Blocker Corporation may be above the Fund or below the Fund but, in either case, such Blocker Corporation would protect the non-U.S. Investors from incurring personal U.S. income taxation. However, such Blocker Corporation would be subject to normal corporate taxes on its allocable share of the income earned.

Special Issues for Non-U.S. Investors

- Foreign Account Tax Compliance Act (FATCA): FATCA generally requires a Fund to withhold 30% with respect to any "withholdable payments" made to a non-U.S. Investor that is a "foreign financial institution" (FFI) unless the non-U.S. Investor enters into an agreement with the IRS to report the identities and certain other information about their "U.S. accounts" or is otherwise a deemed compliant FFI. The goal of FATCA is to prevent tax evasion by U.S. persons using foreign accounts to hold their investments.
  - "Withholdable Payments" Defined: Generally, "withholdable payments" include: (i) all U.S. source income such as interest (including original issue discount), dividends, rents, salaries, wages, annuities, compensations, remunerations, emoluments and other FDAP income from U.S. sources; and, (ii) beginning in 2015, gross proceeds from the sale or other disposition of property that could produce interest or dividend income from U.S. sources. The term "withholdable payments" does not include income that is effectively connected with a U.S. trade or business and does not include foreign source income.
  - "Foreign Financial Institution" (FFI) Defined: Generally, FFIs include any entity organized outside of the U.S. that: (i) accepts deposits from customers in the ordinary course of a banking business; (ii) holds financial assets for the account of others; (iii) is engaged in investing, reinvesting, or trading in securities, partnership interests or commodities; and (iv) is an insurance company that issues or is obligated to make payments with respect to a financial account.
  - Many jurisdictions have now entered into InterGovernmental Agreements ("IGAs") with the U.S. in relation to FATCA. The use of an IGA means that FFIs in the jurisdictions involved will comply with FATCA through the IGA, as implemented into local law. This generally renders compliance with FATCA less onerous.
  - ***A thorough analysis of FATCA is beyond the scope of these materials and, since the enactment of FATCA, similar laws are being developed globally. For more information on FATCA and global information exchange and how these affect funds, please review the FATCA materials in the Funds Formation section of DuaneMorris.com.***

Further information

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