

Insights: Publications

Guidance is Definitive, Reality is Frequently Inaccurate: The Lingering Saga of Rev. Rul. 91-32

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Partnership and international taxation are two of the most mind-numbing and inconsistent areas of the law. Even more confusion occurs when the two intersect, such as when a nonresident sells an interest in a U.S. partnership. Many have wasted precious time and abundant ink to come up with a solution. The IRS first tried in Rev. Rul. 91-32, concluding that a nonresident would be subject to tax if the partnership had assets producing income generated from property in United States. Although the guidance was appropriately criticized for being statutorily inconsistent, this Note argues that it nonetheless got to the right policy outcome. In 2017, the Tax Court disagreed with the long-standing IRS guidance; it declined to defer to the IRS's interpretation and held that a nonresident selling a U.S. partnership interest would not be subject to tax. Fearing abuse, Congress enacted a “look-through” approach in § 864(c)(8) that requires nonresidents to pay tax on the gain from the sale of a U.S. partnership under certain circumstances. Unfortunately, Congress created a burdensome system for nonresidents trying to sell their partnership interest.