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KPMG report: IRS “GLAM” requiring holding-period segmentation when cash or property contributed to corporation without issuance of shares

The IRS Office of Chief Counsel issued a Generic Legal Advice Memorandum (“GLAM”) concluding that when a shareholder contributes cash or property to a wholly owned corporation in a transaction qualifying under section 351, but no new shares are issued by the transferee corporation, the holding period of the portion of each share of the transferor’s stock that is attributable to the contribution is determined by reference to the transferred money or other property.

The GLAM—[AM 2020-005](#) [PDF 99 KB] (dated May 22, 2020, and released May 29, 2020)—does not constitute published guidance, and it does not have precedential effect. It does, however, clearly stake out the IRS’s litigating position on an issue as to which there has been considerable uncertainty—whether a sole shareholder’s holding period in its pre-existing stock remains unaffected when the shareholder contributes cash or other property to a corporation without the issuance of new shares, or whether instead the contribution results in segmentation of the holding period. This issue has been the subject of considerable discussion as it relates to investments made by private equity funds in their corporate portfolio companies to finance “add-on” investments in light of section 1061, which requires a three-year holding period for certain private equity fund sponsors to qualify for long-term capital gains treatment on carried interest allocations.

The GLAM does not specifically address private equity add-on investments, but its reasoning appears to apply equally in that context, and the position set forth in the GLAM would also have implications for a number of other Code provisions that require compliance with stock holding period requirements to qualify for particular tax benefits.

Read a [June 2020 report](#) [PDF 257 KB] prepared by KPMG LLP that describes the GLAM and its reasoning and then offers some initial impressions regarding the GLAM and the implications of its holding period segmentation conclusion

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