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**Q & A from 3/2022 Webinar:  
 “Charitable Gifts of Hedge Funds, PE/Real Estate Funds and  
 Carried/Profit Interests”**

<p><b>Is it ever better to have the charity continue to hold the Hedge Fund or Private Equity vehicle?</b></p>	<p>Totally depends on the DAF or charity's Investment Policy (IPS). Very, very few will hold a contribution in that form unless they are not able to easily exit.</p>
<p><b>I presume there is a similar issue regarding capital commitments for PE in addition to venture capital (i.e., committed but uncalled)?</b></p>	<p>Yes, although it's possible the uncalled amount for the PE investment would be smaller compared to a VC position (just because PE gifts tend to be more “seasoned” than VC, at least from what we see).</p>
<p><b>With a real estate LLC - when the donor gets an appraisal is it done on the underlying real estate or the LLC entity?</b></p>	<p>Great question - most always both. Very few real estate appraisers will (or SHOULD) sign an 8283 for an LLC interest. Normally, a business appraiser (like us) will take the underlying real estate appraisal and complete a qualified LLC appraisal and then sign the 8283. The IRS is beyond prickly if the 8283 says an LLC interest is donated, but then the appraisal is for real estate. Not good.</p>
<p><b>Is the appraisal cost often cost-prohibitive? One of my clients was recently offered a gift of an interest in a REIT, but the appraisal was so expensive that the donor decided not to make the gift.</b></p>	<p>Super generally, we see (and charge ourselves) between \$3-12K or so based on size/complexity. So, we don't see a lot of donations less than \$150-200K just because of this but there can be other ways to reduce cost in some cases.</p>

<p><b>Do you appraise REIT interests?</b></p>	<p>Private REITs yes - if it can be donated to charity, we can appraise it!</p>
<p><b>Are there materials you offer that quickly and simply advertise the benefits of donating such assets you are talking about today? And, maybe, help the charity reference Charitable Solutions as a transaction partner?</b></p>	<p>We are horrible on the marketing front so working with marketing companies like Crescendo, Stelter, etc. is usually best for digital or print materials. We are happy to be referenced but most don't - the charity usually just goes through their normal gift acceptance process and if they need help in anyway, they reach out to us (or our other evil competitors who are all very nice and good!).</p>
<p><b>What organizational documentation should the charity require before proceeding with each of these gifts?</b></p>	<p>The answer is always, it depends of course, but generally, you will want to see most recent financials, operating/partnership agreements, last few years K1s as an example.</p>
<p><b>How does this possible long-term hold play with taxes on Excess Business Holdings for the charity? Is it applicable in the same way that it would be for a gift of privately held stock?</b></p>	<p>Generally (key word), excess business holdings don't apply. Usually, excess business holdings relate to an operating business with the charity's holding (plus ALL related party interests) exceed 20% of the voting stock. So, in most cases, it won't apply.</p>
<p><b>How does Sec 1061 impact the hedge fund owner's deduction for a donation of a hedge fund interest that she originally received via an incentive allocation?</b></p>	<p>From what we can tell, Sec. 1061 is going to result in a required three-year holding period for capital gains treatment, even if there was an election to treat the incentive allocation as taxable when received.</p>
<p><b>Are donations of a carried interest in a VC fund more challenging than a carried interest in a PE fund?</b></p>	<p>Generally, roughly the same. The challenge is more based on the characteristics/timing of the carry itself so when the charity is likely to get something and when the carry is extinguished are usually the critical points.</p>

<p><b>Can you touch on Reits?</b></p>	<p>There are multiple flavors here. I assume you mean private REITs, which as Ryan just mentioned, usually have a ton of debt by design. So usually there is a potential bargain sale, UBIT and other issues and we see many of these with debt more than 75% loan to value. So that usually kills these deals - less than 25% debt to value is more possible but still similar issues.</p>
<p><b>Also, have you seen a fund manager give a carry allocation to a charity (as opposed to the manager donating a portion of their own carry)?</b></p>	<p>We've seen this proposed, but not sure we've ever seen a case where it is done. The issue is that the gift would occur from the LLC – it is the entity issuing the carry to the charity. That is fine, but the owners of the LLC would receive the deduction proportionate to their ownership via the K-1. It is basically an asset gift, and all the owners would need to agree.</p>
<p><b>Re UBIT where we would receive a partnership or LLC interest: various times when I've raised this issue, someone breezily tells me, just create a C corp blocker. Well, I say, could we be substituting a new issue for the UBIT issue, that new issue being the entity level tax for a C corp--and I say, there needs to be running of the specific numbers, by financial/accounting types before we assume that a C corp is the answer. And, having some UBIT liability is not always fatal to us accepting the LLC/partnership interest gift (and sometimes there's the 5/5/10 exception to UBI). So, would you say the blocker C corp idea is not always the answer (sorry for the leading question :))</b></p>	<p>Yes, for exactly the reasons laid out in the question here. The UBIT may not be meaningful enough to justify the effort and C-corp taxation.</p>
<p><b>But wouldn't an ordinary income asset's deduction be limited to cost basis? And if they received it by carry, the basis is \$0....</b></p>	<p>Possibly, if a revised carried interest rule did not treat the carry as a capital asset. However, the current leading proposal does still treat the interest as a capital asset, even though the income realized is ordinary income.</p>

<p><b>If there is a change to the carried interest rule, how would one get around the assignment of income doctrine if it's a bonus?</b></p>	<p>The donation would need to occur before the payout amount or bonus was determined. Basically, the donor would need to give the carry after it was classified as a long-term capital asset, but before the cash payout.</p>
<p><b>Also, does valuation become easier if the PE is coming closer to the end of its life? What are you recommending?</b></p>	<p>It could be easier, if the portfolio companies are in the sale process – that typically makes the valuation work easier. However, if it was a stub PE interest, then the stub may not be easy to value, as the remaining portfolio assets may not be performing.</p>
<p><b>So in all these scenarios, it is usually to one specific charity, and this all can't be done inside a DAF, correct?</b></p>	<p>If the DAF is willing to accept the interest, it can all be done inside a DAF. But it is totally dependent on the gift acceptance policies and overall tolerance for the long-term hold, uncertain payout structure, possible UBIT, etc. that we discuss in the webinar.</p>
<p><b>Do these types of interests have traditional buy-sell or cross-purchase agreements in place?</b></p>	<p>Sometimes. I'd expect to see them with LP interests in PE or VC funds, but perhaps not with carried interests, since those are “insider” assets for fund management.</p>
<p><b>Are distributions from carried interest set to pay above a given performance watermark or specific tranche?</b></p>	<p>Either or both!</p>
<p><b>Another option for liquidating a p.e. interest is selling it on the secondary market.</b></p>	<p>Yes, and we have done this on one occasion. The secondary market usually entails significant discounts, so donors and charities should consider what their appetite is for a below-market price.</p>