

Talking. Secondaries.

Demystifying the secondaries market
Part 8: Transfer taxes



Transfer taxes are a key issue on secondary transactions. Generally, this issue can be navigated with a combination of early tax advice and contractual risk allocation between Buyer and Seller.

Transfer taxes/stamp duty

What is the issue?

- Transfer taxes can be distinguished from withholding taxes on proceeds (see [Part 6 – Talking. Secondaries.](#), where we previously discussed the ECI).
- Transfer taxes are taxes payable when transferring the ownership of certain assets from one person to another (e.g., UK stamp taxes payable on the transfer of shares). They are charged as a percentage of the purchase price for the asset.
- On a conventional LP-trade, the issue is whether the transfer of interests in the fund triggers a liability to transfer taxes.
- Transfer taxes can also be relevant to transfers of the assets held by the fund (e.g. on a pre-sale reorganisation or continuation fund transfer).

Why does it matter?

- Transfer taxes can add to the cost of the transaction.
- Detailed execution mechanics can be required to mitigate transfer tax risks (e.g. signing the transfer documentation offshore).

When do transfer taxes apply?

- Whether transfer taxes are payable on a transaction turns on the tax rules of the jurisdiction in which the relevant entity/asset is established. Local transfer tax advice is therefore key.
- Having said that, there are some general international trends. Most jurisdictions do not levy transfer taxes on transfers of partnership interests or interests in regulated fund vehicles (but see below for the UK). For this reason, transfer taxes are not generally payable on fund interest transfers.
- In contrast, share transfers are often subject to transfer taxes (e.g. on a GP-led transfer of portfolio companies to a continuation fund).

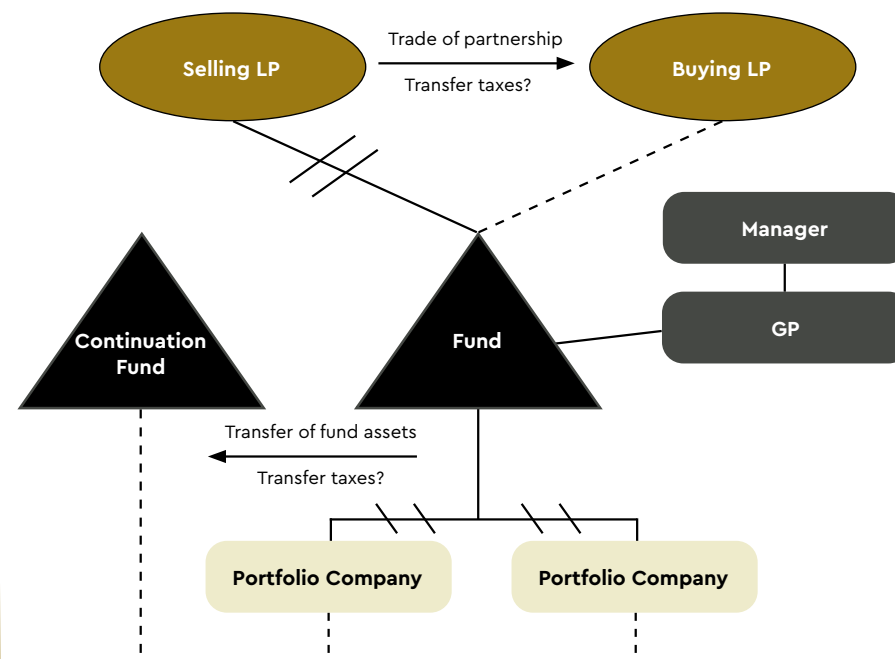


Contractual risk allocation

The risk of transfer taxes on the transfer of interests in the fund are generally split 50:50 between Buyer and Seller.

The position for other transfer taxes, such as on the transfer of the fund assets in a GP-led secondary, is subject to commercial negotiation.

Transfer of Partnership Asset & Fund Assets



UK stamp duty & partnership interests

- In the UK, stamp duty is technically chargeable on certain partnership interest transfers, but because stamp duty is not an assessable tax, it is generally not paid.
- Parties may choose to sign transaction documentation offshore. This may ensure the transfer falls outside of the territorial scope of UK stamp duty and/or mitigate any potential penalty.
- Detailed provisions are often included in the transaction documents to allocate the liability for paying any eventual stamp duty charge if the duty ever needs to be paid.

Our secondaries platform

Travers Smith has extensive experience in complex private markets transactions, with a focus on liquidity solutions across the private markets capital structure with exposure across all asset classes.

70+

We advise over 70 GPs across our firm.

£92bn

In transaction value during the last c.five years.

\$4tn+

Assets managed by our clients in the private capital sector.

150+

Specialists focused on private equity, infrastructure, financial sponsor and M&A transactions. 30 of these dedicated specialists are partners in the business.

\$5bn+

In 2022 we advised on the deployment of \$5.1bn+ in commitments across more than 100 primary, co-investment and fund-of-one transactions.

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M&A transactions acted on since 2016.

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The Drawdown Awards
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**Private Equity
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IFLR 1000
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regulatory: Non-contentious
Tier 1



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Head of Asset Management



Elena Rowlands
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Tosin Adeyeri
Partner



Phil Bartram
Partner



Victoria Bramall
Partner



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