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“Attorneys May Be on the Hook for Advocating Transactions Deemed 'Abusive' by Pending IRS Rule,” The American Lawyer

Jasen Hanson Adds to Discussion in The American Lawyer Article

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In a recent article published in The American Lawyer on July 11, 2024, Atlanta-based Shareholder Jasen Hanson adds to the discussion on tax and deal lawyers preparing for enhanced regulatory oversight of wealthy clients. Some are engaging in what the Internal Revenue Service (IRS) considers “abusive” basis-shifting transactions following last month’s proposed rules by the tax collecting agency. The new rule would not only enhance disclosure requirements for high-net-worth clients, but regulatory scrutiny may come with lawyers and accountants that advocate for alleged tax avoidance schemes. The article also included insight from other tax attorneys and examined how this proposed regulation of the final IRS Rule could impact new legislation and affect partnerships where there is a transfer of interest.

“To many lawyers, the disclosure requirements would undermine the usually iron-clad protections of attorney-client privilege,” said Hanson. “Any good lawyer would assert attorney-client privilege as the general response to that kind of question. It’s a rule with more gray area than the IRS would be willing to admit. They will assert the tax shelter exception to attorney-client privilege.”

Hanson further explains that an established body of case law holds that client confidentiality doesn’t apply to advocacy of tax avoidance schemes, making it important for lawyers and accountants to inform clients about the risks of engaging in any transactions subject to IRS scrutiny.

When the agents investigate a taxpayer for tax malfeasance, Hanson said it’s common for the taxpayer to shift the blame to the accountants and lawyers who advised them.

Tax and deal lawyers are preparing themselves for the upcoming proposal made last month, concerning “basis shifting” in the IRS initiative to crack down on complex tax maneuvers.

For the full article, subscribers may [click here](#).