

TAX ALERT

TREASURY RE-RELEASES PROPOSED REGULATIONS IN CONNECTION WITH NEW PARTNERSHIP AUDIT REGIME SET TO GO INTO EFFECT JANUARY 1, 2018 BY FAYE TANNENBAUM, TIMOTHY EVANS, JOHN OHANNESSIAN, STEPHEN BRECHER AND JASON GEISLER

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On Tuesday, June 13, the U.S. Treasury Department and Internal Revenue Service released, for publication in the Federal Register, proposed regulations relating to the new centralized partnership audit regime that was enacted as part of the Bipartisan Budget Act of 2015. The regulations, previously released in January, were subject to a regulatory freeze shortly thereafter based upon a White House directive.

The June 13th proposed regulations are substantially similar to those previously released and provide more detailed guidance on various aspects of the new centralized partnership audit regime, which fundamentally changes the procedure for IRS examination of partnerships. The new regime allows for the examination of partnerships at the partnership level, with relevant adjustments imposed upon the partnership itself, theoretically simplifying the IRS's task of collection.

The proposed regulations affect partnerships for tax years beginning after December 31, 2017, as well as any partnership that elects application of the regime for tax years beginning after November 2, 2015.

What is the Centralized Partnership Audit Regime?

Under the new rules, the IRS will be able to conduct and resolve an IRS examination of a partnership at the partnership level, assessing an entity-level tax on the imputed underpayment in the year in which the adjustment is mailed, unless action is taken to alter that result. For example, if the IRS examines Partnership A's 2018 return and the examination concludes in 2022, the burden of any adjustment will be on Partnership A's partners as they exist in 2022.

The proposed regulations provide welcome guidance relating to several important aspects of the regime, including:

Procedures for Electing out of the Regime

As a default principle, all partnerships are subject to the new rules, although certain partnerships with less than 100 partners, all of which are 'eligible' partners, may be able to opt out. The regulations provide guidance as to what constitutes a partner for purposes of this test. The regulations additionally provide guidance as to what constitutes eligible partners and the time, form and manner in which the election must be made (i.e., the election must be made on a timely filed partnership return for the year in which the election is to be made).

Partnership Representative

The new rules require each partnership to select a Partnership Representative who is vested with full authority to make tax-related decisions on behalf of the partnership with respect to an examination. The proposed regulations provide guidance

regarding who is eligible for this role and how to designate and remove a Partnership Representative.

The new rules allow the IRS to deal only with the Partnership Representative, who will have the authority to bind the partnership without consultation with any of its partners. Partnerships who want to implement procedures to allow partners to be made aware of any assessments before they are finalized by the Partnership Representative must incorporate such language into their agreements. The IRS will deal only with the Partnership Representative and will not impose any requirement to notify the partners and obtain their consent to assessments.

Imputed Underpayments

If a partnership examination adjustment results in an imputed underpayment, the partnership is generally required to account for the underpayment in the year in which the adjustment is made. The regulations, however, provide procedures for modifying that adjustment. Pursuant to the proposed regulations, the Partnership Representative may request modification of the underpayment to more closely reflect the particular tax attributes of the underlying partners. The regulations additionally provide guidance as to the time, manner and form of making such a modification request.

"Push Out" Elections

Proposed regulations also provide guidance as to "push out" elections, which permit the partnership to elect for the reviewed year partners to assume liability for the imputed underpayment. Importantly, the proposed regulations remain silent on the issue of whether the "push out" election can affect tiered partnerships. Treasury has indicated additional guidance on this particular matter will be forthcoming.

Administrative Adjustment Requests

Guidance is also provided concerning the procedure for filing an administrative adjustment request with respect to an item of income, gain, loss or deduction. In addition to providing the framework under which an administrative adjustment request may be made, the regulations discuss the effect of the request, including the year in which requested adjustments must be taken into account by the partnership.

What to Do Now

As things currently stand, the new partnership regime will go into effect for calendar year taxpayers in 2018, allowing approximately 6 months of lead time to assess the impact on your partnership.



Most importantly, partnerships must understand the eligibility requirements for opting out of the new regime, how opting out would affect the partnership and partnership agreements, and the mechanism through which the opt out must be made.

It is also essential for partnerships to consider the impact of the Partnership Representative concept and designate an eligible individual or entity to act in this role, the importance of which cannot be underestimated given its sweeping authority over the process. Strong consideration should be given to incorporating any rights which the partners want to assert regarding these audits into the partnership agreements, as no other mechanism will exist for inclusion of the partners in the audit process.

For additional information and guidance with respect to how these new rules impact your partnership, please contact your Mazars USA LLP professional.

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