ATTENTION PARTNERS:
New IRS Partnership Audit Rules Bring Big Changes
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ATTENTION PARTNERS: New IRS Partnership Audit Rules Bring Big Changes
AGENDA

• Old Rules/New Rules
• How Does It Work?
• Alternatives
• What to Think About and Do Now
• Trouble Spots
• Key Takeaways
OLD RULES / NEW RULES
OLD RULES

• Partnership audits governed by TEFRA since 1982
• What are the old / current rules?
• Why the change?
NEW RULES

• Legislation passed in 2015- Effective for years beginning after 12/31/2017
• Adjustment and Assessment both at the partnership level
  – Eliminated the IRS from engaging numerous partners for separate assessments
HOW DOES IT WORK?
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Tax matters partner is replaced with a **Partnership Representative**

Exam notices and assessments will now be sent to **only** the Partnership

Tax rate
1. Tax matters partner is replaced with a **Partnership Representative**

- This person can be a partner or anyone else
- Must have a substantial presence in the US
- May be an entity, but an individual must also be identified
- If an individual is not identified, the IRS will select one. Likely the partner with the largest % of ownership
Sole authority to act on behalf of the partnership and all of its partners on the following matters:

• Agreeing to binding settlements
• Agreeing to a notice of a final partnership adjustment
• Agreeing to payment of the partnership liability at the partnership level
• Agreeing to extend the statute of limitations
• The IRS is not required to communicate with anyone other than this representative
2. Exam notices and assessments will now be sent to **only** the Partnership Representative.

The tax is considered assessed in the year the exam closes (Not the year under exam).

90 days to ... petition the Tax Court!
3. What’s the tax rate?

The highest rate of tax in effect for the year under exam
• The highest individual rate in effect for

2018 is 39.6%

• Even if all partners are C Corporations, the Partnership will pay the 39.6% rate
• This assessment does not take into account the character of income, so capital gains, qualified dividends, etc. are all taxed at the 39.6%
1. PAYMENT BY PARTNERS
2. OPTING OUT OF THE NEW RULES OVERALL
ALTERNATIVES

1 Payment By Partners

• Within 45 days of notice of final adjustment, elect to issue a revised Schedule K-1 for the year of exam
• Adjustment is calculated and reported in the year the exam closed, not the year under exam

⚠️ The IRS has not issued clear guidance on this yet
Opting Out

No action is considered Opting In (by default). Only partnerships with fewer than 100 K-1’s and whose partners are individuals, corporations, or estates can opt out by filing an annual election.

Partnerships that have other partnerships or trusts as partners may not elect out of the new rules.
WHAT SHOULD I BE THINKING ABOUT
KEY QUESTIONS

- Information sharing requirements
- Taxpayer representative: selection, resignation/removal, indemnification
- Obligations of former partners
- Buyers - Risk for prior-period tax liability will now be part of the negotiation
- Sellers - push-out election
ALL new partnership agreements must address the new audit regime
- Taxpayer rep appointment
- Restrictions with transfers
Purchase & Sale agreements should be redrafted or amended to address:

- Elections
- Partner obligations such as cooperation, tax reimbursements, claw backs
TROUBLE SPOTS
1. What if partners have suspended loss carryovers?
2. What if partners have an NOL carryover?
3. Partnership interests held by an IRA or tax exempt entities
4. Should new partners be responsible for prior partner’s tax liability?
5. What happens to partner basis?
6. State taxes
KEY TAKEAWAYS

- Time for action is now
- Monitoring - the IRS is authorized to issue more regulations (but has yet to issue clearer guidance)
- Annual Elections need to be made on timely filed returns
- Amendments to agreements
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