

Partnerships Must Prepare for New Audit Regime

Originally posted in January, the IRS has reissued a proposed regulation that implements the centralized partnership audit regime. Mandatory implementation is set to take effect on January 1, 2018.

Replacing the unified audit procedures enacted by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), the newly reissued rules will assess and collect tax at the partnership level. Partnerships with tax years beginning after December 31, 2017 will be subject to the new audit regime.

What does this mean for partners and partnerships?

The new rule allows the IRS to assess and collect tax, interest and penalties resulting from an audit adjustment directly from the partnership itself at the time of the audit, rather than collecting from individual partners. The IRS will no longer be tracking each partner's liability and collecting payment. Instead, "partnership representatives" will be put into place. These representatives are not required to be partners and independent advisory firms may be chosen to eliminate any self-interest. The partnership representative could elect to "push out" the liability of current partners to the partners who were in place during the "review-year" under audit. In order for a push-out to occur, a statement that identifies each reviewed partner's share of the partnership adjustments must be provided to the IRS and each review-year partner.

What should partnerships do in the meantime?

Until the IRS provides additional guidance and the rules become settled for the new audit regime, most partnerships should elect out of an audit, post-2017, if eligible to do so. Eligibility for electing out of an audit requires the partnership to have less than 100 partners. Partnerships should review their agreements and include provisions to cover audits under the old and new regime. Decisions on push-outs and other liability should be included in the agreements. Also, because the IRS will only look to the decisions of the partnership representative, responsibilities and duties need to be included in the partnership agreement.

Conclusion

An IRS hearing took place on September 18 on the proposed regulation. Partnerships are hoping for guidance in amending their agreements. Although the AICPA and other groups have asked Congress and the IRS to delay the Jan 1, 2018 start date, partnerships have little choice but to assume it will hold.