New Partnership Audit Rules: Update and Drafting Considerations

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Overview

- Summary of New Partnership Audit Rules
- Drafting Issues in Partnership and LLC Agreements and Purchase Agreements
- Sample provisions for:
  - Tax Decisions Provision
  - Partnership Representative (appointment, etc.)
  - Partnership or Operating Agreement (indemnity, withholding, etc.)
  - Disclosure Documents

Bipartisan Budget Act of 2015

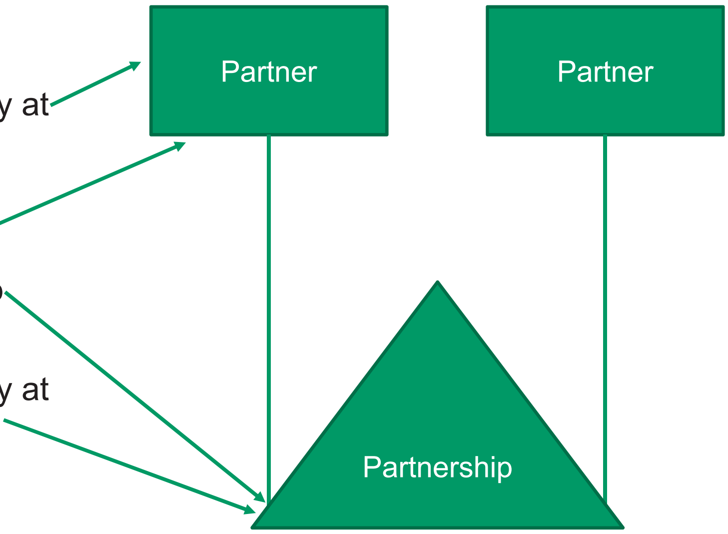
- Congress repealed and replaced the 1982 Tax Equity and Fiscal Responsibility Act (TEFRA) with a new regime for partnership tax adjustments.
- New rules focus on partnership-level determinations, assessments and collection of tax.
- Game changer that will force most partnerships to amend partnership agreements.

Bipartisan Budget Act of 2015 (cont.)

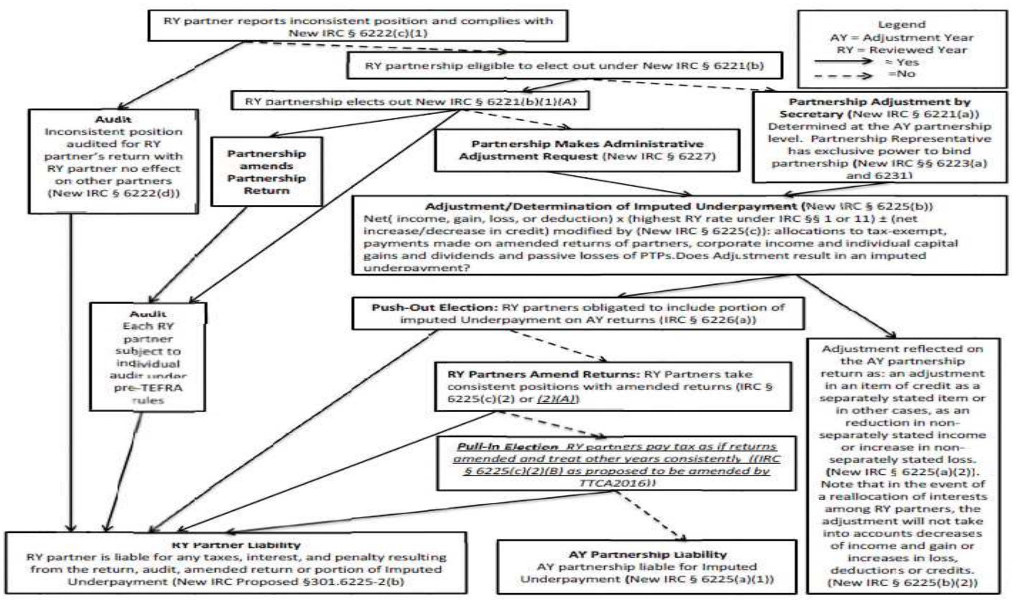
- **Why get rid of TEFRA?**
  - IRS did not have the resources or capability to audit large partnerships and multi-tiered partnerships because of the complexity of allocating adjustments to ultimate partners.
  - The use of partnerships and LLCs has increased dramatically, but IRS audits of partnerships have not increased due to administrative burdens in auditing partnerships.
  - Revenue Raiser. Congress estimates audits under the new rules will raise $10 billion in tax revenue.

Impact of BBA

- Pre-TEFRA:
  - Audit and Liability at partner level
- TEFRA:
  - Partner liable
  - Audit partnership
- BBA:
  - Audit and Liability at partnership level



Centralized Partnership Audit Regime (BBA Rules)



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