

Miller & Chevalier

The Evolving Partnership Audit Rules

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Agenda

- I. Overview
- II. Filing the Return
- III. Administrative Adjustment Requests
- IV. The Audit Begins
- V. The Audit Ends
- VI. Disputed Items – Appeals
- VII. Disputed Items - Court

New Centralized Partnership Audit Regime

- Audit is conducted at partnership level
 - Applies to all partnerships unless they are eligible to and timely elect out
 - No small partnership exception
- All partnership-related items are determined in the partnership proceeding
 - Only partnership-level statute of limitations is relevant
- The partnership must pay the “imputed underpayment” unless it elects to “push out” the adjustments to reviewed-year partners
- If the partnership does not pay or push, IRS can assess against partners according to proportionate share

How Did We Get Here?

- Bipartisan Budget Act of 2015 (the BBA) as modified by:
 - The Protecting Americans from Tax Hikes Act (the Path Act) (December 2015)
 - The Tax Technical Corrections Act of 2018 (TTCA) (March 2018)

How Did We Get Here?

- Regulations
 - June 2017: proposed regulation with several bracketed items (REG-136118-15)
 - Nov. 2017: proposed regulations on coordination for international issues (REG-119337-17)
 - Dec. 2017: proposed regulations on “push out” through tiers and administrative items (REG-12032-17 and 120233-17)
 - Jan. 2018: final regulations on electing out (TD 9829)
 - Feb. 2018: proposed regulations on adjusting tax attributes (REG-118067-17)
 - Aug. 2018: final regulations regarding partnership representative (TD 9839)
 - Aug. 2018: re-proposed regulations to take into account changes from the TTCA (REG-136118-15)
 - Feb 2019: final regulations for portions of the Aug. 2018 proposed regulations (TD 9844)

Filing the Return

- Partnership considerations
 - Whether to elect out
 - Eligibility
 - How to make election
 - Ability to amend K-1s
 - Access to information and control of audit
 - Selection of Partnership Representative
 - Eligible Entity / Eligible Individual
 - Any applicable provisions in partnership agreement
 - PR Authority
 - Notices and communications/coordination with partners
- Partner considerations
 - Consistency rule
 - Form 8082 required for any inconsistent positions
 - Any applicable provisions in partnership agreement requiring consistent reporting
- Note that control over these decisions should be addressed in the partnership agreement.

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