

IRS Audits of Private Equity and Investment Funds

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Overview

- Overview of BBA
- Partnership and Related Agreement Drafting Considerations
- Pre-Audit Considerations
 - Election Out
 - AARs
- Status of IRS Partnership Audits
- Audit Considerations
 - Statute of Limitations
 - Imputed Underpayments
 - Modifications
 - Penalties
 - Push-Out Elections

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BBA Overview

- Audit
 - Centralized audit of partnership at partnership level
- Assessment and Collection
 - Default rule is partnership pays tax on imputed underpayment (IU)
 - Tax is calculated at highest tax rate in effect for individuals, estates, trusts, or corporations for reviewed year
 - Current partners bear tax for former partners' underpayment
 - Alternatives for pushing out and pulling in the adjustments to the reviewed year partners.
- Partnership Representative (PR)
 - PR has sole authority to make decisions on behalf of partnership (extending statute, submitting modification requests, settlement, etc.)
 - BBA changed who may be the PR (vs. the TMP) and how the PR is selected and terminated

BBA Overview

- Options to Address Imputed Underpayment
 - Submit Modification Request
 - Amended Returns or Pull-in Procedure
 - Rate Modifications (corporate or individual partners)
 - Tax-exempt partners
 - Multiple imputed underpayments
 - Passive losses of publicly traded partnerships
 - Partnerships with qualified-investment-entity partners
 - Closing agreement
 - Tax treaty modifications
 - Push-Out Election – reviewed year partners pay the tax on their current year return

Partnership and Related Agreement Drafting Considerations

Partnership Representative

- Relevant Agreements for Partnership Representative
 - Partnership Agreement
 - Services Agreement with Third-Party Provider
- Scope of Authority
 - Are actions subject to prior approval of the General Partner?
 - Any notice obligations or duty to keep partners informed?
 - Are provisions regarding termination or replacement of Partnership Representative and designated individual consistent with Code/regulatory requirements?

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