Tag, You're It: Changes in Partnership Tax Liability Collection and Audit

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Overview

- Summary of New Partnership Audit Rules
- Drafting Issues in Partnership and LLC Agreements and Purchase Agreements
- Sample provisions

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- Congress repealed and replaced the 1982 Tax Equity and Fiscal Responsibility Act (TEFRA) with a new regime for partnership tax adjustments.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.
  - Collection efforts at individual partner level.
  - The use of partnerships and LLCs has increased dramatically, but IRS audits of partnerships have not increased due to administrative burdens in auditing partnerships.
  - Electing Large Partnership (ELP) Rules weren't working. Less than 1% of large partnerships elected to be subject to these rules.
  - Revenue Raiser. Congress estimates audits under the new rules will raise $10 billion in tax revenue.

Effective Date of New Partnership Audit Procedures

- Effective for partnership tax years beginning after 2017.
- Partnerships may elect to have the rules apply earlier.
  - » Should any partnership elect in early?
- TEFRA rules did not apply to certain small partnerships; new rules apply to all partnerships unless the partnership elects out.

Highlights of New Partnership Audit Procedures – Partnership Pays Tax!

- Audit and Litigation. Requires partnership-level resolution of all items of partnership income, deduction, gain, loss or credit.
- Assessment. **Default rule is that the partnership (not the partners) is assessed tax liability on the "Imputed Underpayment Amount."**
  - » "One Stop Shopping" eases collection efforts for IRS.
  - » "Imputed underpayment amount" is the <u>net</u> non-favorable adjustments to the partnership tax year multiplied by the applicable tax rate.
  - » Tax assessed at the highest rate applicable to individuals (39.6% currently), unless the partnership can demonstrate that the tax rate should be lower (corporate partners or individual partners subject to lower capital gains or dividend rate).

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