
New Partnership Audit & Assessment Rules

Gray Reed & McGraw Legal Alert

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As part of the Bipartisan Budget Act of 2015, Congress repealed the Tax Equity and Fiscal Responsibility Act (TEFRA) and replaced it with new partnership audit and assessment rules applicable to many partnerships, both large and small, for tax years beginning after December 31, 2017. These new rules constitute a substantial departure from TEFRA and will significantly affect many business and investment partnerships.

Under the new rules, any additional tax liability (including interest and penalties) resulting from an IRS audit will be determined and may be assessed and collected at the partnership level rather than the individual partner level.

The new rules also apply to limited liability companies with more than one member, so long as the limited liability company has not elected to be taxed as a corporation.

The purpose of the new rules is to streamline the partnership audit and collection process for the IRS. The frequency of partnership audits can be expected to increase as a result of the changes.

Partnerships will now have to designate a “partnership representative” with a substantial U.S. presence. The partnership representative need not be a partner, and will have sole authority to act on behalf of and make binding decisions for the partnership with respect to an audit.

Absent a special election, partnerships will be taxed at the highest applicable individual tax rate on any “imputed underpayment” amount. Future guidance is expected to permit partnerships to reduce the tax rate for certain partners (e.g., tax-exempt and corporate partners).

Current partners may be liable for tax attributable to years in which they were not partners while former partners may not receive any benefit from a favorable adjustment.

Certain partnerships may qualify to elect out of these new rules.



Our Takeaway

Although the new law has a delayed effective date, partnerships should incorporate provisions reflecting the recent changes into existing and future partnership agreements if those partnerships expect to be conducting business after 2017.

The details of the law and the new provisions can be quite complicated and, admittedly, a bit confusing. If you have any questions or need further information, please feel free to contact any of the following members of our [tax department](#): [Jennifer Gurevitz](#), [David Gair](#), [Tom Rhodus](#), [Dan Kroll](#), [Chris Morales](#). It's our pleasure to be of service to you.

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