

Client Update Government Proposes Partnership Audit Regulations – This Time for Real

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On June 14, the Treasury Department and the IRS published proposed regulations under the partnership audit regime. The proposed regulations are almost identical to those released in January, which were effectively withdrawn in response to the “regulatory freeze” order from President Trump. The prior rules are described in our previous [client update](#). Many had hoped that Treasury would revise the rules to reflect taxpayer comments. For the most part, that has not proved to be the case.

PUSH-OUT ELECTION FOR TIERED PARTNERSHIPS LOOKS MORE PROMISING

Some good news: Treasury seems willing to engage on how to make the “push out” election work for tiered partnerships. While the proposed regulations reserve on the mechanics, Treasury intends to publish additional regulations with an approach on this issue “in the near future” and invites comments.

CRITICISM OF THE PARTNERSHIP REPRESENTATIVE RULES

The partnership representative rules have been roundly criticized. Concerns include:

- the power of the partnership representative to bind the partnership, even if it acts outside its authority under the partnership agreement;
- that the rules do not easily allow partnerships to replace a partnership representative; and
- the ability of the IRS to select a partnership representative if the partnership fails to adequately select one.

The proposed regulations made no change to these rules.

WHAT TO DO NOW

Partnership agreements should be drafted with these rules in mind. The rules allow the IRS to collect taxes from a partnership for prior years when the

partners and sharing may have been different. Partnership agreements should address how these tax liabilities are shared. They should also appoint a partnership representative and allow the partnership to collect information from partners.

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Please do not hesitate to contact us with any questions.