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The New Partnership Audit Regime: What We Know, What We Do Not and What Is Next

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INTRODUCTION

On November 2, 2015, Congress enacted the Bipartisan Budget Act of 2015 (the ''BBA'').[1] The BBA radically altered the way that the Internal Revenue Service (the ''IRS'') will conduct examinations of partnerships and collect any resulting tax liability. The BBA repealed long-standing partnership examination procedures enacted under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)[2] and the electing large partnership (ELP) rules enacted in 1997.[3]

The examination of partnerships and the collection process has progressed through three different phases, each of which have been marked by a different balance between the aggregate theory and the entity theory of partnerships for tax purposes. Partnership issues under the aggregate theory focus on the treatment for the individual partners in the partnership, and the partnership is merely the sum of its partners. The entity theory treats the partnership as if it were a separate entity for tax purposes.

Prior to the enactment of TEFRA in 1982, all partnerships were examined based on the aggregate theory. The IRS reviewed items reported by a partnership by examining each partner in the partnership. The IRS made adjustments to the returns of the individual partners based on their individual share of the item reported by the partnership, and collected any additional tax liability resulting from such adjustments separately from each partner. The administrative burden on the IRS to conduct separate partner examinations and collect tax under an aggregate theory was significant, and grew worse with the proliferation of tax shelters. Another consequence of partner examinations was the potential for partnership issues to be treated inconsistently among the partners.

In 1982, TEFRA created a unified partnership audit procedure where the IRS reviewed certain partnership issues by examining the partnership itself. The TEFRA partnership provisions represented a shift towards an entity theory in the examination of partnerships. However, the collection process continued under an aggregate theory and required partner-level adjustments that were assessed sometimes years after the unified partnership proceeding.

The TEFRA partnership provisions were difficult to administer. For example, TEFRA contained many complicated, and not entirely clear, rules. Further, the number of partnerships and partners grew exponentially, particularly large partnerships. From 2002 to 2011, the number of large partnerships in the United States almost tripled, bringing the total number to over 10,000 distinct large partnerships. Of those partnerships, nearly two-thirds had more than 1,000 direct or indirect partners.[4] The adjusting and collecting from partners in this environment was too great a burden for the IRS.

The new partnership audit regime represents a greater move to the entity theory of partnerships.

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[1] Pub. L. No. 114-74.

[2] Pub. L. No. 97-248.

[3] *See* §771–§777. Unless otherwise stated, all section references are to the Internal Revenue Code, as amended, and the regulations promulgated thereunder.

[4] *See* GAO, *Large Partnerships: With Growing Number of Partnerships, IRS Needs to Improve Audit Efficiency*, GAO-14-732 (Sept. 18, 2014).

First, any underpayment of tax resulting from a partnership-level examination will be paid by the partnership itself.[5] Second, the partnership's liability will be assessed for the tax year in which the examination concludes, and not the partnership's tax year that was examined.[6]

There are many unresolved questions about the functionality of the new process, as the BBA only enacted a skeletal system to be flushed out by Treasury in regulations. An IRS official stated that it is hoped that final regulations will be issued by January 1, 2018.[7] This article will describe some of the primary features of TEFRA partnership examinations, explain the differences under the new partnership audit regime, and discuss some of the advantages and disadvantages of the new regime.

PARTNERSHIP PROCEEDINGS UNDER TEFRA

Overview

After TEFRA was enacted, there were two different procedures for examining partnerships. First, small partnerships continued under the pre-TEFRA aggregate theory model of separate partner examinations, unless the partnership elected in to the TEFRA partnership procedures.[8] Small partnerships were those that had 10 or fewer partners, and the partnership's partners could only consist of certain entity types.[9]

Second, the unified TEFRA partnership procedures applied to most other partnerships and will be discussed immediately below.

In 1997, Congress added the ELP rules to the Code. Partnerships with more than 100 partners could elect into special rules regarding partnership examination and collection.[10] The ELP rules reflected a greater shift towards the entity theory of partnerships, and contained entity-level collection procedures. Very few large partnerships elected into the ELP regime.[11] Ultimately, many of the elements of the ELP rules were adopted in the new partnership audit regime under the BBA.

TEFRA Partnership Procedures

Under TEFRA, the primary review of partnership issues occurred at the partnership level, and adjustments for the resulting tax occurred at the partner level.

Partnership-Level Examinations

The IRS was required to examine ''partnership items'' in a unified partnership proceeding.[12] In summary, partnership items were those items that were ''more appropriately determined at the partnership level than at the partner level.''[13] The applicability of penalties to an adjusted partnership item was determined at the partnership level.[14]

Participation in Partnership-Level Examinations

After partnership items were determined at the partnership level, partnership adjustments became final at the conclusion of the proceeding.[15] The IRS assessed deficiencies against each individual partner, and not against the partnership in the unified proceeding.[16]

Under TEFRA, the Tax Matters Partner (the ''TMP'') of the partnership was responsible for acting on behalf of the partnership in the partnership proceeding. Generally, the TMP was a partner in the partnership designated by the partnership, or selected by the IRS in the absence of a valid designation, pursuant to several ordering rules.[17]

The TMP had authority during the TEFRA partnership proceeding to take certain actions. For example, the TMP could extend the statute of limitations on behalf of the partnership, which extension affected the statutes of limitations of each of the partnership's partners.[18] Also, the Code imposed on the TMP certain obligations. For example, the TMP was required to communicate with the other partners regarding the progression of the partnership's examination.[19]

Recognizing the aggregate theory of partnerships even in the entity-level proceeding, TEFRA granted partners rights in the partnership proceeding. All partners had the right to participate in administrative proceedings.[20] Only certain partners could be bound to a settlement in the partnership proceeding without their approval.[21] Partners could petition the IRS's proposed partnership adjustments in U.S. Tax Court if the TMP did not.[22]

Partner-Level Proceedings

If a partnership proceeding resulted in adjustments to partnership items, the IRS made computational adjustments to determine the tax liability of those that were partners in the partnership during the year under

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[5] *See* new §6221(a). Note, the ''new'' identifier refers to Code sections after the enactment of the BBA.

[6] *See* new §6225(b)(1).

[7] *See* David Van Den Berg, *IRS Seeking to Issue Partnership Audit Regs by 2018*, Tax Notes Today (Oct. 3, 2016).

[8] *See* §6231(a)(1)(B)(i). Once the partnership elected to apply the TEFRA rules, subsequent tax years were treated under TEFRA unless the Secretary consented to the partnership's revocation of the election. *See* §6231(a)(1)(B)(ii).

[9] *See* §6231(a)(1)(B)(i).

[10] *See* §775(a)(1)(A).

[11] *See* DeCarlo and Shumofsky, ''Partnership Returns, 2013,'' *Statistics of Income Bulletin* 7 (Fall 2015).

[12] *See* §6221.

[13] §6231(a)(3); Reg. §301.6231(a)(3)-1.

[14] *See* Reg. §301.6221-1(c).

[15] *See* §6230(c)(4).

[16] *See* §6225.

[17] *See* §6231(a)(7); Reg. §301.6231(a)(7)-1.

[18] *See* §6229(b)(1)(B).

[19] *See* §6223(g).

[20] *See* §6224(a).

[21] *See* §6224(c)(3)(B).

[22] *See* §6226(b).

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examination.[23] If the partner's items could not be automatically adjusted because there were issues unique to the partner that had to be considered, the IRS would propose deficiency adjustments and the partner could challenge such adjustments prior to payment.[24]

If a partner's items did not require consideration of information specific to the partner, the IRS assessed the partner directly.[25] As a result, a partner could only seek judicial review of the IRS adjustments against the partner by paying the liability in full and seeking a refund.[26]

The IRS directly assessed any penalties imposed in the partnership proceeding, and partners had to assert partner-level defenses in refund jurisdiction.[27]

The Complexities of the TEFRA Partnership Provisions

In some instances, merely identifying the TMP with the authority to speak on behalf of the partnership was a difficult and time-consuming process.[28]

During the examination, determining whether an item was a partnership item subject to examination in the partnership proceeding was sometimes complicated, with significant consequences for making an incorrect decision. If an item was ultimately determined to be a partnership item and it was not addressed in the partnership proceeding, there was no ability to make adjustments to the item.

Under TEFRA, the statute of limitations was often troublesome. There was a separate statute of limitations with respect to the partnership return and each of the partners' tax returns.[29] The IRS had to monitor the applicable statute and obtain consent to extend the statutes.

According to the Government Accountability Office, IRS examinations of partnerships, particularly partnerships with complex ownership structures, were exceedingly rare under TEFRA.[30] Further, a higher percentage of TEFRA partnership examinations resulted in no changes being proposed as compared to large C corporations.[31]

[23] *See* §6225, §6231(a)(5), §6321(a)(6); Reg. §301.6231(a)(6)-1.

[24] *See* Reg. §301.6231(a)(6)-1(a)(3).

[25] *See* Reg. §301.6231(a)(6)-1(a)(2).

[26] *See* §6230(c)(1). Although, again, the underlying partnership adjustment was final and could not be challenged. *See* §6230(c)(4).

[27] *See* Reg. §301.6231(a)(6)-1(a)(3), §301.6221-1(c), §301.6221-1(d).

[28] *See* GAO, *Large Partnerships: With Growing Number of Partnerships, IRS Needs to Improve Audit Efficiency*, GAO-14-732 (Sept. 18, 2014).

[29] §6229(a), §6501(a).

[30] *See id.* (stating that the IRS examined less than one percent of large partnership returns).

[31] *See id.*

THE NEW PARTNERSHIP AUDIT REGIME

Overview

As discussed above, the TEFRA rules were so difficult to administer that very few examinations of large partnerships were conducted and of those, few resulted in any change to the partnership's treatment. Congress enacted the BBA to simply the partnership examination and collection process.

The new partnership audit regime goes into effect for tax years beginning after December 31, 2017.[32] However, partnerships can elect to have the new partnership audit regime apply starting with tax years beginning after November 2, 2015.[33]

Partnership-Level Examinations

Similar to TEFRA, examinations of partnership issues will occur at the partnership level. Adjustments made to ''items of income, gain, loss, deduction or credit of a partnership,'' the partners' distributive shares, and the applicability of penalties will be determined at the partnership level.[34]

The BBA replaced the TMP role with a ''Partnership Representative.'' The role of the Partnership Representative is very different than the role of the TMP under TEFRA. First, unlike the TMP, the Partnership Representative does not need to be a partner of the partnership.[35] The Partnership Representative will presumably be designated by the partnership on its Form 1065, similar to the designation of the TMP under TEFRA. Second, the Partnership Representative has significantly greater authority than a TMP. Specifically, the Partnership Representative has the power to bind the partnership and all partners in any administrative or judicial proceeding.[36]

A significant change from TEFRA is that partners do not have any right to participate in partnership proceedings.

Collection of Underpayments

Imputed Underpayments

Under the new partnership audit regime, partnership examinations may result in several adjustments. An ''imputed underpayment'' is calculated by netting

[32] Pub. L. No. 114-74, §1101(g)(1).

[33] Pub. L. No. 114-74, §1101(g)(4). Treasury issued temporary regulations regarding procedures for partnerships to make the election to have the new partnership audit regime apply to eligible tax years before the regular effective date. *See* T.D. 9780, 81. Fed. Reg. 51,795 (Aug. 5, 2016). Generally, the regulations provide that the election should be made when the IRS contacts the partnership that an eligible year has been selected for examination. *See id.*

[34] *See* new §6221.

[35] *See* new §6223(a).

[36] *See* new §6223(b).

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all adjustments made in the partnership examination and taking the net adjustment at the highest applicable tax rate under §1 or §11.[37] Currently, the tax rate for the imputed underpayment will be 39.6%, the highest individual rate.

Once the IRS issues a notice of proposed partnership adjustment, there are certain provisions of which partnerships may avail themselves to reduce the amount of an imputed underpayment. First, the BBA references several modifications to the imputed underpayment to address the unique status of any of the partnership's partners such as tax-exempt partners and qualified dividend treatment in the case of individuals.[38] Second, the imputed underpayment is reduced for any partner that amends its return for the partnership's taxable year under examination to reflect its share of the partnership's adjustments.[39] The partnership has 330 days after the notice of proposed partnership adjustment to submit documentation to support the modification.[40]

Judicial Review of Partnership Adjustment

Within 90 days of the issuance of the notice of final partnership adjustment, the Partnership Representative, on behalf of the partnership, may file a petition to challenge the IRS's adjustments in the U.S. Tax Court, in federal district court, or in the Court of Federal Claims.[41] In order to pursue refund jurisdiction, the partnership must deposit in full the imputed underpayment amount remaining on the date of filing, or make good faith efforts to satisfy this prepayment requirement.[42]

Collection from the Partnership Under §6225

The greatest change from TEFRA is that, under the new partnership audit regime, the imputed underpayment, interest, and any penalties thereon will be paid by the partnership.[43] This default rule under the new regime represents the adoption of the entity approach with respect to partnership collections. Some practitioners have mused whether the BBA is the first step in the elimination of pass-through treatment for partnerships.

Another change from TEFRA is that the IRS will collect from the partnership for the year in which the final partnership adjustments are made (the "adjustment year"),[44] rather than for the taxable year subject to the examination (the "reviewed year").[45] This will result in some partners being economically responsible for tax with respect to items for which they were not originally attributable.

Under the BBA, all payments made by the partnership are nondeductible expenses, even interest.[46]

Push-Out Election Under §6226

Within 45 days of receiving a notice of final partnership adjustment, a partnership may make an election to subsequently issue its partners' Schedules K-1 to account for their share of the adjustments.[47] This "push-out" procedure allows the partners, rather than the partnership, to pay any additional tax liability resulting from the partnership examination.[48]

The partners that will take the adjustments into account are the partners of the partnership during the reviewed year.[49] The partners will take the adjustments into account for the year in which they receive the revised Schedules K-1.[50] The cost to the partners of the push-out election is a 2% higher rate of underpayment interest.[51]

Where penalties are imposed in the partnership proceeding, the push-out election applies to such penalties. Similar to adjustments, the partners responsible for penalties are those partners during the partnership's reviewed year. It is unclear whether the reviewed-year partners must take penalties into account for the reviewed year or for the adjustment year.[52]

Statute of Limitations

The general three-year statute of limitations (SOL) does not change under the BBA. The three-year SOL runs from the later of (1) the filing date of the partnership return, (2) the due date of the return, including any extensions, or (3) the date an AAR is filed for the partnership with respect to that tax year.[53]

There are modifications to the general SOL to account for the various time periods under the new partnership audit regime. The IRS cannot issue a notice of final partnership adjustment until 330 days after the notice of proposed partnership adjustment is issued, in order to accommodate the period during which the partnership can seek to modify the imputed underpayment.[54] Thus, the SOL does not expire for 330 days after a notice of proposed partnership adjustment is issued.[55] Further, where the partnership submits all required documents to the IRS to request a modification

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[37] *See* new §6225(b)(1).
[38] *See* new §6225(c)(3), §6225(c)(4).
[39] *See* new §6225(c)(2).
[40] *See* new §6225(c)(6).
[41] *See* new §6234(a).
[42] *See* new §6234(b).
[43] *See* new §6221, §6233(a)(1)(B), §6233(2).
[44] *See* new §6225(d)(2)
[45] *See* new §6225(d)(1).
[46] *See* new §6241(4).
[47] *See* new §6226(a).
[48] *See id.*
[49] *See id.*
[50] *See* new §6226(b)(1).
[51] *See* new §6226(c)(2).
[52] *See* new §6226(c)(1).
[53] *See* new §6235(a)(1). If the partnership's gross income is underreported by more than 25%, the SOL is extended to six years. *See* new §6235(b).
[54] *See* new §6231(a) (as amended).
[55] *See* new §6235(a)(3).

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of the imputed underpayment, the SOL does not expire for 330 days after the partnership's submission.[56]

Election Out of the New Partnership Audit Regime

Similar to TEFRA, some examinations of partnership issues will continue on a partner-by-partner basis. Unlike TEFRA, these partnerships will default into the new partnership audit regime and must affirmatively opt out.[57]

A partnership must meet two requirements to be eligible to opt out. First, the partnership generally must have 100 or fewer partners to which it issues K-1s.[58] Also, all of the partners of the partnership must be individuals, estates of deceased partners, S corporations, C corporations, or foreign companies that would be treated as C corporations if they were domestic corporations.[59] Thus, a partnership with any partner that is a trust, treated as a partnership, and potentially a disregarded entity is unable to elect out of the new partnership audit regime.[60]

An eligible partnership that wants to opt out of the new partnership audit regime entirely must file the election on its timely filed return, and satisfy disclosure and notice requirements.[61]

IMPACT OF THE NEW PARTNERSHIP AUDIT REGIME

Benefits of the New Partnership Audit Regime

Partnerships

Under the default rule, partnerships will be paying tax, interest and penalties where they were previously fully pass-through entities. Thus, a benefit of the new partnership audit regime is the ability to elect out of the default rule and potentially the regime entirely.

At a minimum, it is widely expected that most partnerships will choose the push-out election in all cases other than where the imputed underpayment amount is *de minimis*. In order to have cash flow to pay a partnership-level tax under the default rule, a partnership might need to hold back amounts from partner distributions (or borrow funds). Further, the default rule may adversely impact current partners if the expense is attributable to partners that have left the partnership. Although partners pay a higher rate of interest under the push-out election, partners might receive the benefit of an interest deduction as opposed to interest being wholly nondeductible when paid by the partnership.[62]

Where available, most partnerships eligible to opt out of the new partnership audit regime probably would benefit from passing the burden of examination and payment to its partners. In a truly ''small'' partnership with a majority partner, that partner might benefit from the partnership being subject to the new partnership audit regime and the other partners sharing the expense of a partnership examination. Further, that majority partner potentially might benefit greatly from the new partnership audit regime and taking adjustments into account in the adjustment year, if he intended to exit the partnership in the near term. Query whether Congress will amend the BBA provisions, or whether regulations can be issued, to reduce the types of partnerships for which opt-out is available?

Tax Administration

From a tax administration perspective, the new partnership audit regime might be less burdensome for the IRS in both the examination and the collection phases. While the IRS may still need to work through the designation and selection of Partnership Representatives, the IRS will be able to communicate and negotiate strictly with the Partnership Representative during the examination. With respect to collections, the default rule of payment by the partnership will significantly reduce the IRS's time spent on collections, at least in those cases where the partnership does not choose to push out adjustments. Where a partnership chooses to push-out, the partnership, and not the IRS, is responsible for making adjustments to its partners in the first instance.[63] The IRS will need to develop a process to ensure that all of the partners take the adjustments into account similar to an information return matching system. However, that process might be complicated by the partners' ability to take tax attributes into account for interim tax years between the reviewed year and the adjustment year.[64]

The new regime should also increase tax compliance. It is expected that the new regime will lead to an increase in the number of partnership examinations, particularly with respect to large partnerships. The new partnership audit regime is estimated to result in an additional $10 billion of tax revenue each year.[65]

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[56] *See* new §6235(a)(2).

[57] *See* new §6221(b)(1)(A). *Cf.* §6231(a)(1)(B)(i) (small partnerships must opt in to TEFRA).

[58] *See* new §6221(b)(1). There is a lookthrough for partnerships have partners that are S corporations, which will result in some partnerships being unable to opt out of the new partnership audit regime. The statements that the S corporation provides to its shareholders will count as if the partnership issued such statements directly for purposes of determining whether the partnership issues 100 or fewer K-1s. *See* new §6221(b)(2)(A).

[59] *See* new §6221(b)(1)(B).

[60] *Cf.* CCA 200250012 (a partnership with partner that is treated as a disregarded entity for tax purposes cannot constitute a small partnership eligible to elect out of the TEFRA partnership procedures).

[61] *See* new §6221(b)(1)(D).

[62] *See* §163; new §6241(4).

[63] *See* new §6226(a)(2).

[64] *See* new §6226(b)(3).

[65] *See* GAO, *Large Partnerships: With Growing Number of*

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Disadvantages of the New Partnership Audit Regime

All partners in partnerships have lost rights in administrative and judicial partnership proceedings that they previously had under TEFRA. Partners can be bound by the Partnership Representative in an administrative or judicial proceeding without the partners' approval.[66] Also, partners may not receive information regarding partnership proceedings under the new regime. Partners will no longer receive notices from the IRS,[67] and there are no statutory provisions that require the Partnership Representative to notify the partners of the initiation or the progress of an audit beyond the partners' share of proposed or final adjustments.[68]

Partners can try to obtain information and limit the actions of the partnership or the Partnership Representative through the addition of provisions in the partnership agreement in order to preserve some of their former rights. However, minority partners likely will not be in position to negotiate any protection in a partnership agreement.

Partners who acquire an interest in an existing partnership risk bearing the economic cost of adjustments made with respect to years for which they were not partners in the partnership. Under the default partnership payment rule of new §6225, adjustments for reviewed years are taken into account in the adjustment year.[69] At a minimum, incoming partners should perform increased due diligence with respect to prior partnership returns. Also, partners can try to negotiate an indemnity from the seller in the buy-sell agreement with respect to tax liability stemming from prior periods.

Guidance Needed Under the New Partnership Audit Regime

Most of the new partnership audit regime must be fleshed out by Treasury and the IRS in regulations. It is hoped that regulations implementing the various provisions of the new partnership audit regime will be final in January 2018.[70]

Interested groups have started to submit comments on what issues should be addressed in the regulations and how those issues should be addressed.[71] Below is a discussion of two areas of a procedural nature where guidance may be necessary.

Review by IRS Appeals

Under the BBA, there is no explicit reference to a partnership's ability to protest proposed partnership adjustments before the IRS Appeals.

The BBA keys the partnership's right to seek judicial review of the IRS's determination off of the notice of final partnership adjustment.[72] Presumably, the partnership's ability to seek administrative review with IRS Appeals will key off of the notice of proposed partnership adjustment. This process should be analogous to the TEFRA appeals process, in which a partnership receives a 60-Day Letter and files a protest with IRS Appeals.[73]

If a partnership protests a notice of proposed partnership adjustment with IRS Appeals and takes advantage of the ability to provide documentation to modify the imputed underpayment, the partnership could be before both the Examination Division and IRS Appeals at the same time.

Some commentators have suggested that there should also be a mechanism for IRS Appeals to review an adverse determination made by the Secretary that a partnership did not sufficiently substantiate its ability to claim a modification to the imputed underpayment.[74]

Partner-Level Defenses to Penalties

The BBA does not contain any procedures regarding the assertion of partner-level defenses to penalties imposed in the partnership proceeding. For example, a partner may want to raise the defense of reasonable cause to avoid the imposition of an accuracy-related penalty with respect to that partner's share of the partnership's imputed underpayment.

As discussed above, under TEFRA, defenses were raised in a partner-level refund proceeding after payment.[75]

In connection with a push-out election where the partners are responsible for payment, the refund proceeding likely remains the procedure for partners to raise partner-level defenses. However, under the default rule where the partnership will pay the penalty (along with tax and interest), it is unclear whether partners will have an ability to raise partner-level defenses.

Proposed Changes to Partnership Audit Rules

Recognizing that there are several unresolved issues with the BBA, Congress introduced the Tax Technical Correction Act of 2016 (the "TTCA").[76]

Partnerships, IRS Needs to Improve Audit Efficiency, GAO-14-732 (Sept. 18, 2014).

[66] *See* new §6223(b).

[67] *See* new §6231.

[68] *See* new §6223.

[69] *See* new §6225(d).

[70] *See* David Van Den Berg, *IRS Seeking to Issue Partnership Audit Regs by 2018*, Tax Notes Today (Oct. 3, 2016).

[71] *See, e.g., Comments to on the Bipartisan Budget Act of 2015 Partnership Audit Procedures*, American Bar Association (June 6, 2016).

[72] *See* new §6226.

[73] *See* §6223(d)(2).

[74] *See* new §6225(c)(7).

[75] *See* Reg. §301.6231(a)(6)-1(a)(3), §301.6221-1(c), §301.6221-1(d).

[76] *See* H.R. 6439.

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Although the TTCA has not passed, it has strong bipartisan support and could become law in 2017.[77]

The TTCA proposed corrections that address several issues about the BBA that have been raised by commentators. The most significant proposed change relates to the treatment of tiered partnerships.[78] Whereas the BBA was unclear how the push-out election would operate in a tiered-partnership structure, the TTCA would provide for push-out procedures for partners that are themselves partnerships.[79] Also, under the TTCA, an upper-tiered partnership would be required to disclose additional information to the IRS, or potentially a third party, in order to effectuate collections, including information on the partnership's individual partners.[80]

Another provision introduced in the TTCA is what some are calling a ''pull-in'' method. Under the ''pull-in method,'' the imputed payment can be reduced without requiring reviewed-year partners to file amended returns.[81] Instead, the partners can make changes in their subsequent-year returns and pay the resulting tax, and provide the IRS with information to substantiate that the amount the partners paid is correct.[82]

Also, the TTCA would add a new section addressing when there is a ''partnership adjustment,'' which is defined as ''any adjustment to a partnership-related item.''[83] A ''partnership-related item'' would be defined as:

(i) Any item or amount with respect to the partnership (without regard to whether or not such item or amount appears on the partnership's return and including any item or amount relating to any transaction with, basis in, or liability of the partnership) which is relevant (determined without regard to this subchapter) in determining the tax liability of any person under chapter 1, and

(ii) any partner's distributing share of any item or amount described in clause (i).[84]

As can be seen, ''partnership-related item'' is very broad and is similar in reach to ''partnership items'' under the TEFRA unified partnership proceeding rules.

Another important aspect of the TTCA is that it authorizes the Secretary of the Treasury to promulgate regulations specific to foreign partnerships.[85] The TTCA envisions that the IRS and Treasury will create a new regime for the examination of foreign partnerships.[86]

Finally, the TTCA would also clarify the rules governing the statute of limitations. Regardless of whether a partnership modifies the imputed underpayment or employs the pull-in method, the act provides that the IRS will be able to assess the amount of tax due for the partner's affected tax year (either the reviewed year or the adjustment year).[87] This clarification also benefits individual partners in that it ensured that partners entitled to a refund will not be barred by the statute of limitations.[88]

CONCLUSION

The new partnership audit regime represents a sea change with respect to the way most partnerships will be examined by the IRS going forward. Partnerships, partners, and industry groups are watching whether the TTCA will pass and are eagerly awaiting the issuance of regulations in order to better understand how the IRS and Treasury will implement the BBA.

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[77] *See* Laura Davison and Aaron E. Lorenzo, *Hill Briefs: Partnership Audit Fix; Koskinen Removal Efforts*, 235 Daily Tax Rep. G-3 (Dec. 7, 2016).

[78] *See* H.R. 6439, §204.

[79] *See* H.R. 6439, §204(a)(4)(A)(ii).

[80] *See* H.R. 6439, §204(a)(4)(A)(i).

[81] *See* Ruchelman, Brenner, Partain, and Stevens, *Congress Looks to Fix New Partnership Audit Rules* (Dec. 14, 2016), available at http://www.capdale.com/congress-looks-to-fix-new-partnership-audit-rules.

[82] *See* H.R. 6439, §203(a)(2)(B).

[83] H.R. 6439, §201(a)(2)(A).

[84] H.R. 6439, §201(a)(2)(B).

[85] *See* H.R. 6439, §206(h)(10)(B)(v).

[86] *See id.*

[87] *See* H.R. 6439, §206(f).

[88] *See* H.R. 6439, §206(e).

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