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Partnership Audit Update



Presenter



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Don Susswein leads RSM's Washington National Tax group in the areas of partnerships and financial instruments. Don has decades of experience as a private practitioner and has also served as a tax advisor to the U.S. government. Don is an active member of the Tax Policy Advisory Committee of the Real Estate Roundtable, and played a leading role in their efforts to improve recent tax legislation and legislative proposals affecting real estate and other structured investments.

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Potential Sources of Guidance

- ◆ Statutory provisions as enacted in 2015
- ◆ Joint Committee Bluebook (post-enactment)
- ◆ Proposed 2016 Technical Corrections (likely to be enacted)
- ◆ Proposed IRS Regulations

Major Technical Corrections

- ◆ Push-out is available throughout the tiers of a multi-tiered arrangement, and partner overpayments are also taken into account.
- ◆ Partnership may also avoid entity-level tax to the extent its partners pay amounts due on “limited scope” amended returns.
- ◆ Scope of unified audit is much broader, including any “partnership-related item.”
- ◆ “Netting” rule for entity-level tax is overridden to take into account theoretical partner-level limitations (e.g., 212 deductions vs. 162 deductions).

Planning Advice?

- ◆ Assume that 2016 Technical Corrections will be enacted
 - ◆ Supersedes 2015 statute and JCT Bluebook explanation
 - ◆ Confirms “push-out” through the tiers will be allowed, avoiding any risk of entity-level tax
 - ◆ Even if push-out is *not* elected, entity-level tax computations are affected by all theoretical/potential partner-level issues
- ◆ Most of the Proposed Regulations will mainly affect ministerial or mechanical issues arising in the audit, and are not of *urgent* importance

To amend or not to amend?

- ◆ The basic structure of the new rules is now apparent, and little will change by regulations, assuming the technical corrections bill is enacted.
- ◆ New, unitary resolution of all partnership issues will raise potential conflicts of interest and other business issues. Much more important than mechanical changes – like changing TMP to “Partnership Representative.”
- ◆ Although audits may not occur until 2019 or 2020, the business issues will arise as early as January 2018, as uncertain tax issues arise in real time.

Now or later?

- ◆ Some conflicts may be easier to resolve now, in the abstract, than later, when real dollars are at stake.
- ◆ At a minimum, disclosure of risks may be prudent, together with requirement that partnership keep partners informed of audit-related developments.
- ◆ Also, various parties may need reassurance or indemnification now, before making new investments or taking on managerial tasks.

Selected Business Issues (i)

- ◆ Should partnership documents *require* a push-out election?
 - ◆ This will ensure that “current” partners do not bear the costs of underpayments of “former” partners.
 - ◆ Or should some, possibly small or immaterial items be addressed at the entity level?
 - ◆ Should “reserves” be considered in some cases?
- ◆ Will partnership representative be authorized to make any compromises or concessions? Or will consent of all affected partners be required? What kind of indemnifications will be needed? Who will control, and bear the administrative costs of, a unified, partnership-level controversy?

Selected Business Issues (ii)

- ◆ Would restructuring make sense to avoid application of the new rules?
 - ◆ Note that REITs are permissible investors in “exempt” partnerships with 100 or fewer partners.
 - ◆ REITs are also permissible assets for “exempt” partnerships with 100 or fewer partners.
- ◆ With tiered partnerships, will it be necessary to ensure prompt information flow, so that push-out can be timely and effective through the tiers?

For more information



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