

# CLIENT ALERT

## Recent Developments in Partnership Audits

Jan.03.2019

In the last two weeks of December, there was a flurry of activity surrounding the implementation of the new Centralized Partnership Audit Regime. If your holiday celebrations did not include reading about partnership audits, below is a brief summary of the recent developments you may have missed.

### IRS announces intent to issue new proposed regulations

On December 20, 2018, the IRS announced its intention to issue proposed regulations on two new partnership matters.

First, the IRS intends to propose regulations that will allow the IRS to directly audit a partner without applying the Centralized Partnership Audit Regime. Under the to-be-proposed regulations, the IRS can decide that the centralized regime does not apply to an adjustment of a partnership-related item if (1) the item does not arise in an audit of a partnership, (2) the partnership-related item adjustment is made as part of an adjustment to a non-partnership-related item, and (3) the treatment of the partnership-related item is based on information from the person under examination.

Second, the IRS intends to propose regulations that bar any partnership with a qualified subchapter S subsidiary (QSub) partner from electing out of the Centralized Partnership Audit Regime. The IRS said regulations are needed because, otherwise, if a partnership has a QSub partner, the partnership could have more than 100 ultimate partners and still elect out of the regime. However, the IRS said there will be an exception in the forthcoming regulations that allows a partnership with a QSub partner to elect out of the regime if certain requirements are met.

Both regulations will be issued pursuant to Section 6241(11), which gives the IRS authority to issue regulations that exclude special enforcement matters from the Centralized Partnership Audit Regime.

### IRS released final regulations

On December 21, 2018, the IRS released final regulations on several topics under the new centralized partnership audit procedures, including: (1) scope of the Centralized Partnership Audit Regime; (2) requirement that a partner's return be consistent with the partnership return; (3) determination and modification of an imputed underpayment, and adjustments that do not result in an imputed underpayment; (4) election for alternatives to payment of the imputed underpayment; (5) administrative adjustment requests, (6) notices of proceedings and adjustments, (7) assessment, collection, and payment of imputed underpayments, (8) interest and penalties related to imputed underpayments, and (9) judicial review of partnership adjustments.

In the preamble to the regulations, the IRS stated the role of IRS Appeals in the Centralized Partnership Audit Regime is expected to be addressed in future guidance.

## IRS issues forms

The IRS has also been releasing the new and revised final partnership-related forms and instructions reflecting the new regime. The forms released in the last month include Form 8979, Partnership Representative Revocation, Designation, and Resignation; Schedule B-2 (Form 1065) Election out of the Centralized Partnership Audit Regime and its instructions; and Form 1065 U.S. Return of Partnership Income and instructions (still in draft form). The forms and instructions are [available here](#).

## U.S. Tax Court proposes new rules for partnership cases

On December 19, 2018, the U.S. Tax Court [announced](#) interim and proposed amendments to its Rules of Practice and Procedure reflecting the new Centralized Partnership Audit Regime.

Under new Tax Court Rule 255.2(b), when a partnership petitions the Tax Court to challenge a Notice of Final Partnership Adjustment, the petition must identify the partnership representative, the imputed underpayment determined by the IRS, the petitioner's asserted imputed underpayment, and any modifications to the imputed underpayment to which the IRS did not consent.

The rules also provide that the Tax Court has the power to remove a partnership representative for cause and to order the partnership to designate a successor representative. However, the Tax Court explicitly stated that it was not taking a position whether it may appoint a partnership representative. See Tax Court Rule 255.6.

The Tax Court rules reinforce the importance of the partnership representative—the rules reflect that only the partnership representative can file a petition on behalf of the partnership. If the petition is filed by someone other than the partnership representative, the Tax Court does not have jurisdiction.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

### **David B. Blair**

Partner – Washington, D.C.  
Phone: +1 202.624.2765  
Email: [dblair@crowell.com](mailto:dblair@crowell.com)

### **Teresa Abney**

Counsel – Washington, D.C.  
Phone: +1 202.624.2667  
Email: [tabney@crowell.com](mailto:tabney@crowell.com)