The National Public Liaison Practitioner Meeting

Centralized Partnership Audit Regime (BBA)

Including a brief overview of the LB&I / Pass-through Entities (PTE) initiatives

September 2024

Agenda

- LB&I / Pass-through Entities Initiatives
  - Presented by Maria Dolan, Deputy Director, Pass-Through Exam Strategy and Promoter Program, Pass-through Entities Practice Area, IRS Large Business and International Division

- Centralized Partnership Audit Regime (BBA)
  - Presented by David Caizzi, Technical Advisor to the Deputy Director, Pass-Through Exam Strategy and Promoter Program, Pass-through Entities Practice Area, IRS Large Business and International Division

LB&I Initiatives

- Priorities under the Strategic Operating Plan
  - Initiative 3.3 Expand enforcement for large partnerships
  - Initiative 3.4 Expand enforcement for high income and high wealth individuals
- Pass-Through organization
- Current compliance efforts
  - Campaigns
  - Large Partnership Compliance (LPC) program
  - Soft letters / compliance alerts
- Recent guidance on basis shifting transactions

Overview of BBA

The Bipartisan Budget Act of 2015 (BBA) replaced the partnership audit procedures under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the electing large partnership rules. It is generally effective for partnership taxable years beginning on or after January 2018.

Adjustments are proposed / assessment are made at the partnership level and the partnership is liable for a tax imputed on those adjustments (IRC § 6221(a)). A partnership may:

- Pay the imputed underpayment tax (IU)
- Request modification of the IU to reduce or eliminate the tax (IRC § 6225(c))
- Elect to have the partners take into account the adjustments and pay their applicable tax (IRC § 6226)

A partnership subject to the BBA cannot file an amended return and instead may file an administrative adjustment request (AAR) (IRC § 6227)

Partners must file their returns consistent with the partnership return (IRC § 6222):

- An inconsistent position on a partner's return can be adjusted under math error procedures unless the partner provides a notice of inconsistent treatment.

Scope of BBA

BBA only applies to partnership-related items (PRI) (Treas. Reg. § 301.6241-1(6)(ii))

- PRI is 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 an IU and 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 any partner's distributive share of any such item or amount

TEFRA applied to taxes under Subtitle A, which included chapter 1 taxes, as well as taxes under chapter 2, 3, and 4:

- BBA only applies to chapter 1 taxes
- Section 6241 provides rules for coordination with taxes under chapter 2, 2A, 3, and 4 (See IRM 4.31.9.6 for special rules regarding audits under chapter 2 and 2A)

Relevant Years

- Reviewed year (I.R.C. § 6225(d)(1)): Partnership taxable year under audit
- Adjustment year (I.R.C. § 6225(d)(2)): Partnership taxable year of a final determination by a court or if timely petition not filed, partnership taxable year when the FPA is mailed; partnership taxable year an AAR is filed
- Reporting year (Treas. Reg. § 301.6226-3(a)): Partner's tax year that includes the year that the audited partnership sent the push out statement
- Intervening year (Treas. Reg. § 301.6226-3(b)(3)): Year between the reporting year and the reviewed year

Bipartisan Budget Act (BBA) **Roadmap for Taxpayers**

CENTRALIZED PARTNERSHIP PROCESS

FILING/AUDIT SELECTION

Taxpayer Files Original Return

- For all tax years beginning 01/01/2018 and forward, partnerships are automatically BBA unless taxpayer meets the criteria and "Elects Out of BBA" on a timely filed return
- Partnership Representative (PR) is designated on the filed return and will have sole authority to act on behalf of the partnership

AAR

- If filed, must be filed prior to issuance of NAP

Return Selected For Examination

- Verification of PR by exam team

AUDIT PROCESS

Examination

- Examination steps to complete the audit issues generally remain unchanged under BBA procedures

Notice of Preliminary Partnership Examination Changes

Notice of Proposed Partnership Adjustment (NOPPA)

- Final imputed underpayment (IU) is determined

Taxpayer Can File an Appeal

- Partnership can not appeal an issue/matter more than once

POST AUDIT**

Modification

- Modification requests may be submitted to reduce the IU amount shown on the NOPPA
- The partnership is responsible for providing all required information to the IRS for review and approval of the request

Final Partnership Adjustment (FPA)

PARTNERSHIP PAY OR PUSHOUT*

PAY

PUSHOUT*

CLOSING PROCEDURES

*Pushout Responsibilities

- Partnership is no longer liable for the IU
- Partnership will provide statements to its partners, and the IRS, on what adjustments and amounts, are being pushed out

TIMEFRAMES

30 DAYS

Issuance of NAP must be at least 30 days after date of L2205D

270 DAYS

Issuance of the NOPPA starts the 270 day modification request period

45/90 DAYS

Issuance of FPA starts:
- 45 days to elect pushout
- 90 days to petition court

TAXPAYER NOTIFICATIONS

- Notice of selection for examination **Letter 2205D**
- Notice of administrative proceeding (NAP) **Letter 5893/5893A**
- Notice of preliminary partnership exam changes and IU (summary report package) **Letter 5895 Form 14791/886A**
- BBA 30-day letter **Letter 5891 Form 14791/886A**
- Notice of proposed partnership adjustment (NOPPA) **Letter 5892/5892A Form 14792/886A**
- Modification determination package **Letter 5975 Form 15027**
- Notice of final partnership adjustment (FPA) **Letter 5933/5933A Form 15027/886A**

** For information about mandatory registration and electronic filing of Post Audit forms, see https://www.irs.gov/BBAeSubmit

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IRS

Election Out of BBA (IRC § 6221(b))

- Partnerships with 100 or fewer eligible partners can elect out of BBA on their timely filed return, original return
- Annual election
- Partnerships that elect out of BBA generally are not subject to the BBA rules and can still filed amended returns and amended Schedules K-1
- If the partnership elects out of BBA, the IRS audits the partners rather than the partnership

Partnership Representative (PR) (IRC § 6223)

- A PR designation is made each tax year made on the partnership return
- The PR is the person with sole responsibility to bind the partnership and partners under BBA
- A PR can be any person (doesn't have to be a partner) with a substantial presence in the US
  - Substantial presence in the US means the person has a US TIN, US phone and street address, and is able to meet with IRS at a mutually convenient time.
  - If PR is an entity, there must be a designated individual (DI) who also has a substantial presence in the US

Statute of Limitations (IRC §6235)

- Period to make adjustments is generally within the later of:
  - 3 years after later of date return is due or filed, or AAR is filed
  - 270 days (plus extension of the time to request modification) after the date everything is required to be submitted in modification
  - 330 days (plus extension of the time to request modification) after the Notice of Proposed Partnership Adjustment (NOPPA) is issued
- IRS has additional time to make adjustments in certain cases, including when no return is filed, fraud, and listed transactions

Modification (IRC §6225(c); Treas. Reg. §301.6225-2)

Once a proposed imputed underpayment (IU) is provided to the PR on a NOPPA, PR can request to modify the IU:

- There are several types of modification requests stated in the Statute and Regulations
- Can only be made within 270 days of issuance of the NOPPA (plus any extensions granted)
- IRS has complete discretion to approve or deny modification request
  - Can go to Appeals if modification request denied
- Electronic submission through IRS portal only; need secure access
  - Signed under penalties of perjury
  - Includes forms required for modification being requested
  - Must include organization structure, allocations required through tiers to partner relevant to the modification request

Push Out Election (IRC §6226)

Once the PR receives the final partnership adjustment (FPA), the PR can elect to push out the underlying adjustments rather than pay the IU:

- Push out is a 2-step process:
  - Make the election
  - Provide the push out statements to the partners and the IRS
- Can only be made within 45 days of issuance of the FPA

  Once push out process is complete, Partnership is no longer liable for the IU resulting from the adjustments pushed out:
  - The correct tax is paid by the review year partners – recalculate what they would have owed and report on their Reporting year tax return (including impact on Intervening tax years)
  - Partner pays 2% additional interest charge for push out after audit
- Similar to Modification submission, Push Out process is electronic submission through IRS portal only; need secure access

IRS BBA information and resources

- General Information

  https://www.irs.gov/businesses/partnerships/bba- centralized-partnership-audit-regime

- BBA Audit Process

  https://www.irs.gov/businesses/partnerships/bba-partnership-audit-process

- Taxpayers can also receive email updates

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