

New IRS Audit Rules: Partnerships and LLCs Should Name A Partnership Representative For IRS Audits

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New legislation will govern IRS audits of partnerships and LLCs for tax years beginning **after December 31, 2017**. The new rules will affect both existing LLCs and partnerships as well as new partnership and LLC agreements, private placement memoranda and any document which deals with the grant, redemption or sale or transfer of a partnership or LLC interest.

Under the new rules, the IRS will conduct a single partnership audit, and partners have no rights to participate. A “partnership representative” will have the **sole authority** to act on a partnership’s behalf with the IRS. If an audit results in an adjustment, the default rule is that the partnership itself will be liable for the taxes. Partnerships may, however, elect to push out the tax liability to their partners (including persons that were partners for the audited year and subsequently left the partnership).

Partnership and LLC agreements should have an additional section naming a partnership representative and perhaps limiting the representative’s ability to make decisions on behalf of the partnership without partner approval. The agreement also might address situations where the partnership is liable for additional taxes based on an IRS audit and the mechanisms for paying that liability.

Because former partners may be liable for taxes even after they leave a partnership, and have no right to independently settle or challenge audit adjustments, the new rules will also impact partnership and membership interest purchase agreements, redemption agreements, merger agreements and dissolution agreements.

You may want to discuss this matter with your equity sponsor to determine how your LLC agreement should be amended to address these new rules.

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