KPMG

TaxNewsFlash

United States

No. 2020-206
April 8, 2020

Rev. Proc. 2020-23: Relief for partnerships, allowing amended returns (COVID-19)

The IRS today released an advance version of Rev. Proc. 2020-23 allowing eligible partnerships to file amended returns in lieu of filing an administrative adjustment request (AAR).

Rev. Proc. 2020-23 [PDF 22 KB] allows eligible partnerships to file amended partnership returns for tax years beginning in 2018 and 2019 using a Form 1065, *U.S. Return of Partnership Income*, with the "Amended Return" box checked, and to issue an amended Schedule K-1, *Partner's Share of Income, Deductions, Credits, etc.* to each of its partners.

Reason for Rev. Proc. 2020-23

The *Bipartisan Budget Act of 2015* (BBA) (Pub. L. No. 114-74) (November 2015) generally prohibits partnerships subject to the BBA ("BBA Partnerships") from amending the information required to be furnished to their partners after the due date of the return, unless specifically provided by the Secretary of the Treasury or his delegate. Rev. Proc. 2020-23 exercises that authority to allow a partnership subject to the BBA to file an amended partnership return and issue amended Schedules K-1 under the circumstances described in the revenue procedure.

The *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) (Pub. L. No. 116-136) (March 2020) provides retroactive tax relief that affects partnerships, including relief for the tax years ending in 2018, 2019, and in some cases 2020. Without the option to file amended returns by today's revenue procedure, BBA Partnerships that already filed their Forms 1065 for the affected years generally would be required to file an AAR to take advantage of the CARES Act relief for partnerships.

Rev. Proc. 2020-23 notes that:

> *…filing an AAR would result in the partners' only being able to receive any benefits from that relief on the current tax year's federal income tax return. Thus, if an AAR were filed, the partners generally would not be able to take advantage of CARES Act benefits from an AAR until they file their current year returns, which could be in 2021.*

As noted by the IRS, the AAR process could significantly delay the relief provided in the CARES Act intended to apply to the affected tax years and provide an immediate benefit to taxpayers.

Background regarding the AAR process

As background, the BBA repealed the partnership audit provisions under the *Tax Equity and Fiscal Responsibility Act of 1982* (TEFRA) and introduced a new centralized audit regime for IRS audits of entities required to file Form 1065, *U.S. Return of Partnership Income.* The BBA procedures also fundamentally changed the process for amending Form 1065 and its Schedule K-1, *Partner's Share of Income, Deductions, Credits, etc.* For tax years beginning in 2018, partnerships that are subject to the BBA regime and that seek to adjust an item or amount reflected on an original Form 1065 or Schedule K-1 must file an AAR (an administrative adjustment request) under section 6227.

A partnership filing an AAR must first determine whether the adjustments requested to the original return result in an imputed underpayment (IU). Very generally, "positive adjustments"—i.e., adjustments that increase an item of income or decrease an item of deduction or credit as reported on the original partnership return—will be netted to arrive at an IU amount. "Negative adjustments"—i.e., adjustments that increase a deduction or credit amount or decrease an amount of income—generally will be adjustments that do not result in an IU.

If an adjustment to the original return results in an IU, the partnership must pay the IU when it files the AAR or, alternatively, may elect to "push out" the adjustment to the partners from the reviewed year (or the year for which items are being adjusted under the AAR). However, under the AAR rules, if the adjustment does not result in an IU, the partnership must push out the adjustment to the partners from the reviewed year.

For example, if the only adjustment on the AAR is an adjustment increasing an amount of loss or deduction, the adjustment would not result in an IU, and it must be pushed out to the reviewed year partners. A reviewed year partner that is a passthrough partner and receives a positive adjustment that results in an IU can choose to either pay or push positive adjustments to its own reviewed year partners. However, with respect to negative adjustments, a passthrough partner similarly is required to push those negative adjustments to its own reviewed year partners.

Partners that are individuals or taxable entities must compute their "additional reporting year tax" by determining for each year, beginning with the year that includes the end of the partnership's reviewed year, the amount by which the partner's income tax (Chapter 1 tax) would have increased or decreased, and adjusting attributes appropriately as they would have been adjusted, had the AAR adjustments been properly reported on the partner's return for that year. The sum of those amounts computed for each year through the "reporting year" is then reflected as an **increase or decrease in Chapter 1 tax** on the partner's income tax return **for the reporting year**.

It is important to note that a negative additional reporting year tax may decrease the partner's reporting year tax to zero (or below), allowing refund of any overpayment for the reporting year, but it does not appear that it can independently generate a refund, when a taxpayer is not overpaid for the year. Furthermore, it appears that there is no ability to carry forward or back the portion of the decrease in tax that is effectively unused on the reporting year return.

In understanding the reason for the relief provided in Rev. Proc. 2020-23, it is important to note that under the AAR process, adjustments for additional losses or deductions, as are contemplated to arise under the CARES Act, are ultimately reflected as a decrease in Chapter 1 tax in the reporting year, which generally would be 2020 for partnerships that file an AAR in 2020 to take advantage of the CARES Act relief provisions. As a result, the AAR process may not only result in a delay of receiving a benefit, as noted by the IRS in the Revenue Procedure, but may also obviate the ability for taxpayers to benefit from the intended retroactive relief, due to lower anticipated chapter 1 tax liability in 2020.

Rev. Proc. 2020-23

Rev. Proc. 2020-23 allows "eligible partnerships" (BBA Partnerships that filed Forms 1065 and furnished Schedules K-1s to their partners for tax years beginning in 2018 or 2019 prior to April 8, 2020) to file an amended return to make adjustments with respect to those returns—instead of filing an AAR.

Eligible partnerships must file such amended Forms 1065, and furnish Schedules K-1, **before September 30, 2020**.

Notably, although Rev. Proc. 2020-23 appears to be aimed at allowing amendments that permit partnerships to take into account relief provisions from the CARES Act, the revenue procedure makes clear that amended tax returns may take into account "any other tax attributes to which the partnership is entitled by law." Accordingly, it appears that BBA Partnerships may utilize the amended return procedure in Rev. Proc. 2020-23 to adjust any other items from tax years beginning in 2018 or 2019, regardless of whether the items are adjusted as a result of the CARES Act provisions.

Under the BBA, partners are required to treat partnership-related items (as defined in in the BBA rules) consistently on their own returns with how the BBA Partnership treated those items on its return. For purposes of this rule, an amended return filed under Rev. Proc. 2020-23 replaces any prior return filed for the BBA Partnership, including any AAR previously filed by the partnership, for purposes of determining the BBA Partnership's treatment of partnership-related items.

In order to take advantage of the option to file an amended return for the 2018 or 2019 tax years, a BBA partnership must file, either in paper or electronically, a Form 1065 and furnish corresponding amended Schedules K-1. The partnership is directed to check the "Amended Return" box on the Form 1065, and write "FILED PURSUANT TO REV PROC 2020-23" at the top of the amended return. Further, the partnership must attach a statement with each Schedule K-1 sent to its partners with the same notation.

Rev. Proc. 2020-23 notes that filing the amended return electronically may allow for faster processing of the amended return.

A BBA Partnership that is currently under audit for a tax year beginning in 2018 or 2019 may take advantage of the ability to file an amended return under the revenue procedure only if it notifies the IRS revenue agent coordinating the partnership's audit in writing either before or contemporaneously with filing the amended return under Rev. Proc. 2020-23 and provides the agent with a copy of the amended return.

If a BBA Partnership has previously filed an AAR for the 2018 or 2019 tax years and wishes to file an amended return for the same tax year, the partnership is to use the items as adjusted in the AAR, instead of as reflected on the originally filed partnership return.

Implications of GILTI proposed regulations

If, under Notice 2019-46, 2019-37 I.R.B. 695, a partnership applied the rules of the proposed "GILTI" (global intangible low-taxed income) regulations under Prop. Reg. section 1.951A-5 for its tax years ending before June 22, 2019, the partnership may continue to apply the rules of Prop. Reg. section 1.951A-5 for purposes of filing an amended Form 1065 for such tax years under the Rev. Proc. 2020-23 if the partnership furnishes amended Schedules K-1 consistent with those proposed regulations and provides appropriate notifications to its partners in accordance with the principles of Notice 2019-46. Nothing in Rev. Proc. 2020-23 changes a partnership's obligation to provide information described in section 5.02 of Notice 2019-46.

If a partnership applies the final GILTI regulations under Reg. section 1.951A-1(e), any amended Schedules K-1 issued under Rev. Proc. 2020-23 must be consistent with those final regulations.

For more information, contact a tax professional with KPMG's Washington National Tax:

Ossie Borosh | +1 (202) 533 5648 | oborosh@kpmg.com

Gregory Armstrong | +1 (202) 533 8816 | gregoryarmstrong@kpmg.com

Curtis Wilson | +1 (202) 533 3376 | curtiswilson@kpmg.com