



TaxNewsFlash

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Proposed regulations: Special enforcement matters, centralized partnership audit regime

The U.S. Treasury Department and IRS today released for publication in the Federal Register a notice of proposed rulemaking (REG-123652-18) that would except certain partnership-related items from the centralized partnership audit regime that was created by the “Bipartisan Budget Act of 2015” and sets forth alternative rules that will apply.

The centralized partnership audit regime does not apply to a partnership-related item if the item involves a “special enforcement matter.”

Read the [proposed regulations](#) [PDF 308 KB] (16 pages as published in the Federal Register on November 24, 2020)

The proposed regulations also reflect related and clarifying amendments to the final regulations under the centralized partnership audit regime, including the rules for determining an imputed underpayment under section 6225 and the cease-to-exist rules under section 6241. Comments about these proposed regulations must be received by January 25, 2021.

Background

Notice 2019-06 announced that Treasury and the IRS intended to propose regulations addressing two special enforcement matters under section 6241(11), namely that:

- The IRS may determine that the centralized partnership audit regime will not apply to adjustments to partnership-related items in certain limited circumstances; and
- Partnerships with a qualified subchapter S subsidiary (QSub) are not eligible to elect out of the centralized partnership audit regime except by applying a rule similar to the rules for S corporations under section 6221(b)(2)(A) to the QSub partner.

Notice 2019-06 provided that the proposed regulations under section 6241(11)(B)(vi) would concern two matters that have been determined to present special enforcement considerations.

- The first matter concerned certain situations when an adjustment during an examination of a person (other than the partnership) requires a change to a partnership-related item. According to the IRS notice, the proposed regulations would allow the IRS to “effectively and efficiently focus on a single partner or a small group of partners with respect to a limited set of partnership-related items without unduly burdening the partnership and avoiding procedural concerns about the appropriate level at which such items must be examined.”
- The second matter concerned situations when a QSub is a partner in a partnership. The proposed regulations, as anticipated in Notice 2019-06, would provide that this situation presents special enforcement considerations because partnership structures with QSubs as partners “could have far more than 100 ultimate partners, including many thousands, and still potentially elect out of the centralized partnership audit regime.” As further noted in the IRS notice, allowing such a large partnership to elect out of the centralized partnership audit regime “would give rise to significant enforcement concerns for the IRS and frustrate the efficiencies introduced by the centralized partnership regime.”

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Proposed regulations

The proposed regulations released today describe the comments received in response to Notice 2019-06 and include proposed rules (as set out in the IRS notice) as well as several other rules regarding special enforcement matters under section 6241(11).

Among other notable items, the proposed regulations do not include a rule that would allow a partnership with a QSub as partner to elect out of the centralized partnership audit regime. According to the preamble:

Although Notice 2019-06 states that the proposed regulations would have applied a rule similar to the rules for S corporations under section 6221(b)(2)(A) to partnerships with a QSub as a partner, the Treasury Department and the IRS have reconsidered that approach.

* * *

Therefore, if a QSub is a partner in a partnership and required to be furnished a statement by the partnership under section 6031(b), that partnership will not be eligible to make an election under section 6221(b) to elect out of the centralized partnership audit regime.

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