



January 04, 2018

The Honorable Orrin G. Hatch, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Kevin Brady, Chairman
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Ron Wyden
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard E. Neal
Ranking Member
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

Re: Request for Delay in Effective Date on Partnership Audit Provisions in the Bipartisan Budget Act of 2015

Dear Chairmen and Ranking Members:

The [Bipartisan Budget Act of 2015](#) (the “Act”) established a new “Centralized Partnership Audit Regime” (the “Regime”) to replace the existing procedures, commonly referred to as the TEFRA¹ regime. The Act established the effective date for this change as tax years generally beginning after December 31, 2017. Although the effective date has now passed, Treasury and the IRS have not provided all of the necessary procedures and guidance for taxpayers to make informed decisions. In the interest of good tax policy and fair administration, Congress should a delay the effective date of the Regime and authorize the IRS to continue to audit partnerships using the existing TEFRA regime during the delay period.

The American Institute of CPAs (AICPA) respectfully requests that Congress enact enabling legislation to delay the effective date for one year until December 31, 2018. This new Regime represents a significant departure from previous law. It requires a substantial effort on the part of the Department of the Treasury (“Treasury”), the Internal Revenue Service (IRS), the tax practitioner community and the affected taxpayers (which includes virtually every partnership and their partners) to develop new rules, regulations and procedures to establish a fair, equitable and administrable Regime.

Furthermore, the recent passage of [Pub. L. No. 115-97](#)² by Congress will require Treasury and the IRS to redirect significant levels of resources to providing taxpayers with urgent, critical guidance on the substantial changes to the tax code, many with immediate and even retroactive effective

¹ [Tax Equity and Fiscal Responsibility Act of 1982](#).

² An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018

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dates. It is widely anticipated that this process will negatively impact the ability of the agencies to issue other regulatory projects, such as the guidance on the Regime.

We have previously commented on a number of the reasons for this recommended delay, as well as provided suggested legislative language to implement it, in our [comment letter](#) of June 13, 2017.

Issues and Concerns Supporting a Delay in Effective Date

1) Regulations Have Not Been Issued or Contain Significant Gaps

On January 18, 2017, Treasury and the IRS issued a Notice of Proposed Rulemaking (REG-136118-15) for this new “Centralized Partnership Audit Regime.” Those proposed regulations were not submitted to the Federal Register prior to a regulatory freeze imposed by the new administration and have since been withdrawn. On June 14, 2017, Treasury and the IRS finally reissued these [proposed regulations](#). A 60-day comment period was followed by a public hearing on September 18, 2017. The AICPA and other stakeholders submitted [comments](#) in response to the proposed regulations and [testified](#) at the hearing.

The proposed regulations issued in June marked several critical areas as “Reserved” and indicated that guidance on these matters was planned for later release. The [2017-2018 Priority Guidance Plan](#) issued by Treasury on October 20, 2017 contained a separate section on necessary guidance related to the new Regime with five specific items listed:

1. General guidance under new partnership audit rules.
2. Regulations addressing administrative and judicial review rules.
3. Regulations addressing the push out election by tiered structures.
4. Regulations addressing adjustments to bases and capital accounts and the tax and book basis of partnership property.
5. Regulations addressing the operation of certain international provisions in the context of the centralized partnership audit regime, including rules relating to the withholding of tax on foreign persons, withholding of tax to enforce reporting on certain foreign accounts, and the treatment of creditable foreign tax expenditures of a partnership.

On November 30, 2017, Treasury and the IRS issued proposed regulations for item number 5 concerning international tax rules ([REG-119337-17](#)). A comment period on this proposal remains open until January 29, 2018.

On December 19, 2017, Treasury and the IRS issued proposed regulations for item 2 concerning judicial review and item number 3 concerning the push out election by tiered structures ([REG-120232-17](#), [REG-120233-17](#)). A comment period on this proposal remains open until March 19, 2018. In addition, several items included in the proposed regulations issued on June 14, 2017 were

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either removed or changed significantly from the original provisions, furthering increasing the burden on taxpayers attempting to understand and comply with the new Regime.

On December 29, 2017, Treasury and the IRS issued [T.D. 9829](#), *Election Out of the Centralized Partnership Audit Regime*. These final regulations generally follow the proposal issued in June, failing to make any of the requested modifications submitted by numerous commentators. In order to elect out of the Regime, a partnership must meet the requirements of these regulations for every day of their tax year, making it impossible for any partnership to adapt in time to qualify for the election out for calendar year 2018.

Given the complexity of the Regime and the substantial number of comments received by Treasury and the IRS in response to the June 14th proposed regulations, significant revisions to all the proposed regulations seems likely. Failure to issue temporary or final regulations after the effective date of a new and untested procedural section of the Internal Revenue Code is inefficient and imposes undue burdens on taxpayers and the IRS.

Even if some taxpayers were able to take actions and make decisions based on the proposed regulations, there are significant areas of concern with them. For example, the critical question of how to apply adjustments to partners' outside basis and capital accounts, as well as the partnership's basis and book values, are still unknown. Without any guidance on how the new Regime will affect such a basic element of subchapter K, taxpayers are unable to make informed decisions, particularly on needed revisions to their partnership agreements.

2) Proposed Technical Corrections Bill Would Clarify and Modify Elements of the Regime

On December 6, 2016, the Tax Technical Corrections Act of 2016 (the "Bill") was introduced in the 114th Congress as H.R. 6439³ and S. 3506⁴ on a bipartisan, bicameral basis. The Bill would directly impact and significantly change portions of the Regime. These changes provide improvements to the IRS's ability to fairly and equitably administer the new regime, while reducing the administrative burdens on both the IRS and taxpayers. The proposed changes also provide additional certainty to taxpayers regarding their obligations following an examination, while better assuring that the proper amount of tax is imposed on the appropriate taxpayer.

The proposed regulations reference the possibility that enactment of the technical correction provisions in the Bill may occur and the likely need to modify and re-issue portions of the regulations after these technical corrections are enacted.

³ [H.R. 6439 - Tax Technical Corrections Act of 2016](#).

⁴ [S. 3506 - Tax Technical Corrections Act of 2016](#).

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3) The Impact on Financial Reporting Standards Remains Unclear

Partnerships preparing financial statements under Generally Accepted Accounting Principles (GAAP) will require guidance on how to report not only actual assessments imposed and paid, but potential future examinations and assessments. As an example, the relevance of ASC 740, *Income Taxes*,⁵ and FAS 5, *Accounting for Contingencies*,⁶ are among the concerns that accounting professionals have raised.

There remains a significant lack of clarity and substantive disagreements among tax and accounting professionals on the question of whether payments made to the IRS as a result of examinations under the new Regime represent obligations of a partnership or merely payments by a partnership on behalf of its partners. Given the multitude of elections available to a partnership following an assessment under the new Regime, different and even multiple answers to that question are possible for each examination.

Without further clarity from Treasury and the IRS on how adjustments will affect some of the basic elements of subchapter K, it is unrealistic to expect the accounting standards setters to provide authoritative answers to these questions.

4) Partnerships Need to Amend or Draft Their Partnership Agreements

Virtually every partnership currently operating in the United States (U.S.), regardless of size, will need to amend its partnership agreement to reflect provisions of the new Regime. Perhaps most importantly, they will need to establish procedures for appointing, replacing and working with the new Partnership Representative which replaces the existing Tax Matters Partner in dealing with the IRS.

Absent even temporary regulations on many key elements of the new Regime, it is not realistic for attorneys and accountants to accurately determine the proper provisions for each of their partnership clients. Indemnity provisions, claw-back provisions, notice provisions, mandatory election provisions and other important provisions need to undergo discussion, drafting and approval by every partner. Many of these provisions should properly take effect prior to the beginning of any tax year covered by the new Regime, meaning by January 1, 2018. This timeframe is simply not feasible.

⁵ [Financial Accounting Standards Board Accounting Standards Codification 740.](#)

⁶ [Statement of Financial Accounting Standards No. 5.](#)

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5) The Impact on State Tax Law Remains Uncertain

Most states have no current provision allowing them to collect an audit assessment directly from a partnership operating within their borders. How the states are informed of the results of IRS audits under the new Regime, as well as what new policies and procedures they must enact into law to enable them to receive the correct additional state tax on their appropriate share of any adjustment, are two examples of the concerns facing every state tax department.

The Multi-State Tax Commission along with a number of interested parties, including the AICPA, have begun to address these issues and are developing a model response. However, the complexities of developing a system that provides fairness and ease of administration to both taxpayers and the tax agencies requires substantial time and resources. Attempting to address these issues while substantial uncertainty remains on how the new Regime will work at the federal level further complicates and delays the task.

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The AICPA is the world's largest member association representing the accounting profession, with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. Please feel free to contact Jonathan Horn, AICPA Senior Manager of Tax Policy & Advocacy, at (202) 434-9204 or jonathan.horn@aicpa-cima.com; Lakecia Foster, AICPA Director of Congressional & Political Affairs, at (202) 434-9208, or lakecia.foster@aicpa-cima.com; or me at (408) 924-3508 or Annette.Nellen@sjsu.edu.

Respectfully submitted,



Annette Nellen, CPA, CGMA, Esq.
Chair, AICPA Tax Executive Committee

cc: Members of the Senate Committee on Finance
Members of the House Committee on Ways and Means
The Honorable David Kautter, Acting Commissioner, Internal Revenue Service
Mr. William M. Paul, Acting Chief Counsel, Internal Revenue Service