

# IRS Audits of Private Equity and Investment Funds

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## Overview

- Overview of BBA
- Partnership and Related Agreement Drafting Considerations
- Pre-Audit Considerations
  - Election Out
  - AARs
- Status of IRS Partnership Audits
- Audit Considerations
  - Statute of Limitations
  - Imputed Underpayments
  - Modifications
  - Penalties
  - Push-Out Elections

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## BBA Overview

- Audit
  - Centralized audit of partnership at partnership level
- Assessment and Collection
  - Default rule is partnership pays tax on imputed underpayment (IU)
  - Tax is calculated at highest tax rate in effect for individuals, estates, trusts, or corporations for reviewed year
  - Current partners bear tax for former partners' underpayment
  - Alternatives for pushing out and pulling in the adjustments to the reviewed year partners.
- Partnership Representative (PR)
  - PR has sole authority to make decisions on behalf of partnership (extending statute, submitting modification requests, settlement, etc.)
  - BBA changed who may be the PR (vs. the TMP) and how the PR is selected and terminated

## BBA Overview

- Options to Address Imputed Underpayment
  - Submit Modification Request
    - Amended Returns or Pull-in Procedure
    - Rate Modifications (corporate or individual partners)
    - Tax-exempt partners
    - Multiple imputed underpayments
    - Passive losses of publicly traded partnerships
    - Partnerships with qualified-investment-entity partners
    - Closing agreement
    - Tax treaty modifications
  - Push-Out Election – reviewed year partners pay the tax on their current year return

## Partnership and Related Agreement Drafting Considerations

## Partnership Representative

- Relevant Agreements for Partnership Representative
  - Partnership Agreement
  - Services Agreement with Third-Party Provider
- Scope of Authority
  - Are actions subject to prior approval of the General Partner?
  - Any notice obligations or duty to keep partners informed?
  - Are provisions regarding termination or replacement of Partnership Representative and designated individual consistent with Code/regulatory requirements?

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