Published on *The National Law Review* https://natlawreview.com

Electing Out of the New Partnership Rules

Article By:

Jill E. Darrow

Valentina Famparska

Robert Loewy

Glenn S. Miller

Saul E. Rudo

Beginning in 2018, partnerships (meaning an entity treated as a partnership for tax purposes) generally are subject to the new partnership audit rules.[1] Partnerships may elect out of the new partnership audit rules if they (1) have no more than 100 partners; and (2) each partner is either an individual, a domestic C corporation, a foreign entity that would be C corporation if it were a domestic entity or an estate of a deceased. A partnership that has an S corporation as a partner also can qualify if it satisfies the 100-partner limitation treating each of the S corporation shareholders as partners.

The election out must be made annually on the partnership's tax return, and does not need to be made on the request for extension. If a partnership elects out of the new partnership audit rules, the partnership audit will be conducted at the partner level (as opposed to the partnership level).

Partnerships and their partners should consider whether or not to make the election, as there are "pros" and "cons" for making the election, and the decision may turn on the partnership's particular circumstances.

---

1 For more information, please see Katten's August 7, 2017 advisory, "New Partnership Audit Regime Set to Take Effect in 2018, Proactive Planning Recommended," and July 12, 2018 advisory, "Are You Ready for the New Partnership Audit Regime?," discussing the new partnership audit rules.

National Law Review, Volume IX, Number 72