

IRS Issues Notice Delaying Certain Aspects of Partnership Reporting Requirements

December 12, 2019

With Notice 2019-66 (“Notice”), issued on December 9, the IRS reversed course and is delaying some partnership reporting requirements that were outlined earlier after many practitioners contended that they would not be able to comply under such a tight timeframe.

The Notice provides that the requirement to report partners’ shares of partnership capital on the tax basis method will not be effective for 2019 (for partnership taxable years beginning in calendar 2019) but will be effective starting in 2020 (for partnership taxable years that start on or after Jan. 1, 2020). Instead, for 2019, partnerships and other persons must report partner capital accounts consistent with the reporting requirements in the 2018 forms and instructions, including the requirement to report negative tax basis capital accounts on a partner-by-partner basis. These partnerships and other persons must include a statement identifying the method upon which a partner’s capital account is reported. The final instructions for the 2019 forms are expected to include additional details on how such reporting should be done.

The Notice also clarifies the 2019 requirement for partnerships and other persons to report a partner’s share of net unrecognized gain or loss under Section 704(c) of the Internal Revenue Code (“IRC”) by defining this term for purposes of the reporting requirement. When this requirement was added to the draft form earlier this year, comments were sent to the IRS by various practitioners requesting partnership guidance on the method by which Section 704(c) gain or loss would be computed. Additionally, it was pointed out that publicly traded partnerships (PTPs) would not be able to separately specify Section 704(c) gain or loss for their partners since PTPs are unable to match individual buyers and sellers of these exchange-traded units. The IRS responded in the Notice that for 2019 tax reporting purposes, a partner’s share of the net unrecognized Section 704(c) gain or loss is the partner’s share of

the net (meaning aggregate or sum) of all unrecognized gains or losses under Section 704(c) and advised partnerships and other persons to generally resolve any issues in regards to this in a reasonable manner, consistent with prior years' practice for purposes of applying Section 704(c) to partners. Per the Notice, net unrecognized Section 704(c) gain or loss reporting will not apply to PTPs and their partners for 2019, and thereafter, until further guidance is issued.

At-risk activity reporting, not covered in our earlier alert referenced above, was another reporting requirement that caught many off guard. The draft of the 2019 form required partnerships to indicate if they had aggregated activities for purposes of the at-risk limitation under section 465 of the IRC and, if so, to report certain additional information separately for each activity on an attachment to a partner's Schedule K-1. The additional information would require the partnership or other person to identify the at-risk activity, the items of income, loss or deduction for the activity, other items of income, loss or deduction, partnership liabilities and any other information that relates to the activity, such as distributions and partner loans. This requirement was in addition to the longstanding at-risk reporting requirements included in the instructions to Form 1065 (e.g., detailing a partner's share of liabilities by activity). Based on comments received, the IRS became aware that certain partnerships or other persons would not be able to timely comply with this recently added requirement for 2019. As a result, the IRS is not requiring separate at-risk activity reporting for 2019 that was not previously required to be reported in 2018. However, partnerships must still indicate in Item K of Form 1065 Schedule K-1 whether they have aggregated activities for section 465 at-risk purposes for 2019. The Notice does not relieve partnerships and partners from complying with the requirements of Form 6198, At-Risk Limitations, for 2019 and of requiring partnerships to furnish to their partners separate statements of income, expenses and deductions for each at-risk and not-at-risk activity.

While the Notice is welcome relief for the 2019 tax filing season, it merely is delaying the inevitable. Many, if not all, aspects of the draft 2019 form are indicative of where the IRS is heading, sooner or later. You may want to consider keeping partnerships records on tax basis even if you are not currently required and, if you have not already done so, begin collecting the data to comply with what will likely be a 2020 reporting requirement.

Please contact your Anchin Relationship Partner or any member of [Anchin's Financial Services Practice](#) at your earliest convenience. We stand ready to help you plan effectively and to navigate through these new rules and reporting requirements. In the meantime, we will continue to update you as more information becomes available.