Anchin Alert

Anchin, Block & Anchin LLP
Accountants and Advisors

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Repeal of Partnership Technical Termination Rules – 2017 Tax Cuts and Jobs Act

The 2017 Tax Cuts and Jobs Act introduced sweeping changes to the tax law. One of the changes is the repeal of the partnership technical termination rules. Here's how the changes might impact your business.

Prior Law

A partnership has a "technical termination" if there is a sale or exchange of 50% or more of the total interest in partnership capital or profits within a twelve month period. Under a technical termination, the assets and liabilities of the old partnership are deemed contributed into a new partnership in exchange for an interest which is subsequently distributed to the purchasing partners and other remaining partners.

A technical termination generally gave rise to two short year periods. The old partnership's tax year would close on the date of sale or exchange (or other triggering event), but would still exist as a legal entity with the same employer identification number ("EIN"). One tax return would be due on the 15th day of the 3rd month after the termination period. The new partnership tax period began the day after the transaction and ended December 31st (for a calendar-year taxpayer).

The new partnership would need to make new entity-level elections, would not be required to use the accounting method of the old partnership, and would need to depreciate any assets contributed from the old partnership as "new" assets.

New Law

For partnership tax years beginning after December 31, 2017, the technical termination rules are repealed. Please note, no changes were made to the actual termination rules. As of January 1, 2018, a partnership is terminated only if no part of any business, financial operation or venture of the partnership continues to be carried on by any of its partners in a partnership.

Repeal of the technical termination rule is generally a favorable development, as it will eliminate the need to restart depreciation upon the sale or exchange of more than 50% capital or profits interest in a partnership. Furthermore, the repeal should alleviate the common issue of not identifying transactions giving rise to technical terminations, which generally leads to late filings of tax returns, failure to make appropriate elections, and penalty assessments.

Technical terminations were sometimes utilized to eliminate unfavorable elections. The creation of a "new" partnership was sometimes necessary, or required, in connection with international investments in onshore vehicles or joint ventures. While it may still be possible to continue structuring transactions to achieve these same objectives, the ease of triggering a technical termination has been eliminated.

Impact

How will this impact your business? This is generally a positive development, but as always, planning is essential to any business interest transfer. Speak with your Anchin Relationship Partner about how this specifically impacts you and your business.

If you have questions, contact your Anchin Relationship Partner or Clarence Kehoe, Leader of Anchin's Tax Department for more insight around these changes.

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