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Federal Tax Bulletin: Prompt Action Urged for LLC and Partnership Agreements that Do Not Yet Address New Partnership Audit Rules

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New rules effective for partnership taxable years beginning after December 31, 2017 dramatically alter the rights and obligations of partnerships (including LLCs treated as partnerships for tax purposes) and partners, in connection with IRS partnership audits and resulting tax assessments. For example, partners no longer have the right to participate in federal partnership audits, and the IRS now has the ability to impose tax liability directly on a partnership for partnership underreporting in prior years. Designated partnership representatives essentially have the unfettered right to represent the partnership in federal audits. (For additional discussion of the new federal partnership audit rules, see our prior *Client Alerts*, “[New Partnership Audit Rules Impose Federal Income Tax Liability Directly on Partnerships/LLCs](#)” and “[Proposed Regulations Confirm Broad Scope of New Partnership Audit Rules, Affecting Partnerships and LLCs Treated as Partnerships—Is Your Operating Agreement Ready?](#)”).

As a result of the new federal partnership audit rules, it is critical for partnerships to consider and to document the rights and obligations of the partners with respect to federal tax audits and assessments. For example, partnerships should consider whether to require consent of some or all of the impacted partners before the partnership representative can enter into a settlement with the IRS. In addition, in the event that a liability is assessed directly on a partnership for underreporting in a prior year, partnerships should consider requiring persons who were partners during the prior year (including those who are no longer partners in the year of the assessment) to indemnify the partnership for their appropriate share of the liability.

If your partnership or LLC agreement has not yet been modified to take into account the new partnership audit rules, we strongly encourage you to contact your Vorys attorney promptly to discuss possible changes, and to implement any desired changes before the end of the current taxable year.