



Treasury and IRS release final regulations under section 6011 on partnership related-party “basis-shifting” transactions

Tax Alert

Overview

Earlier this year, Treasury and the IRS released final regulations ([T.D. 10028](#)) (the “Final Regulations”) that identify certain partnership related-party “basis shifting” transactions and substantially similar transactions as transactions of interest (“TOI”s), a type of reportable transaction. The Final Regulations are effective on January 14, 2025, the date of publication in the Federal Register.

The Final Regulations largely adopt the proposed regulations published in the Federal Register on June 18, 2024 (the “Proposed Regulations”) ([REG-124593-23](#)) with modifications in response to public comments on the Proposed Regulations.

Issue

Transactions of Interest

Like the Proposed Regulations, the Final Regulations identify certain related-party “basis shifting” transactions by partnerships and their partners as reportable TOIs.

Specifically, TOIs generally include the following types of transactions (and [Substantially Similar Transactions](#) as described below) that meet the Applicable Threshold Amount:

Section 734(b) Transaction: A partnership distribution (current or liquidating) to a partner that is related to one or more other partners, and the partnership increases the basis of remaining partnership property under [section 734\(b\)](#).

Section 732(b) Transaction: A liquidating distribution from a partnership to a partner that is related to one or more other partners, and the basis of the distributed property is increased under [section 732\(b\)](#).

Section 732(d) Transaction: A partnership distribution to a partner that is related to one or more other partners and section 732(d) applies.

Section 743(b) Transaction: A partner transfers a partnership interest in a nonrecognition transaction to a related person and the basis of one or more partnership properties is increased under [section 743\(b\)](#) as a result of the transfer. The Final Regulations include several modifications to limit the scope of transactions reportable as TOIs.

In response to comments, Treasury and the IRS noted that a positive section 743(b) basis adjustment acquired through an arm's-length transaction to which a related transferee succeeds should not be a reportable transaction, except to the extent of any additional positive basis adjustment resulting from the nonrecognition transfer. Thus, the Final Regulations provide that if a partner receives an interest in a partnership from a person in a recognition transaction and the basis of one or more partnership properties is increased under section 743(b)(1) and (c), and subsequently the partner ("transferor") transfers the partnership interest to a person related to the transferor ("transferee") in a nonrecognition transaction ("subsequent transfer"), the subsequent transfer is a TOI only if the transferee's basis adjustment under section 743(b)(1) and (c) resulting from the subsequent transfer exceeds the amount of the transferor's remaining basis adjustment that is attributable to the transferred partnership interest ("excess amount"), and the Applicable Threshold Amount (discussed further [below](#)) is met. The Final Regulations further provide that only the excess amount is counted towards the Applicable Threshold Amount and that a transferor's remaining basis adjustment is equal to the amount of the transferor's basis adjustment under section 743(b)(1) and (c) resulting from the first transfer as adjusted under section 1016(a)(2) to reflect any recovery of the basis adjustment or as otherwise adjusted prior to the subsequent transfer. Importantly, as drafted, the Final Regulations only exempt the first such subsequent transfer of a partnership interest in a nonrecognition transaction.

The Final Regulations also exclude from the transactions identified as TOIs transfers on the death of a partner, defined as transfer of a partnership interest from a partner to the partner's estate or a deemed transfer from a grantor trust owned by the partner to a trust that becomes a separate entity for federal income tax purposes by reason of the partner's death. In the preamble to the Final Regulations, Treasury and the IRS note, however, if a [section 754](#) election is not made for the taxable year that includes the death of the partner, subsequent transactions that generate positive basis adjustments, such as distributions of partnership property to the estate or transfers of partnership interests to beneficiaries that may resolve an inside-outside basis disparity created by a step-up to the basis of the decedent's partnership interest upon death, will be included as TOIs, provided that the Applicable Threshold Amount is met.

The Final Regulations also exclude certain basis adjustments involving a transfer of or a distribution with respect to partnership interests in a publicly traded partnership (PTP). In the case of a PTP, a participating partner means a partner of the PTP but only to the extent that the partner engages in a private transfer, redemption and repurchase agreement, or private placement of a partnership interest with a related partner and the transaction is not otherwise excluded as a TOI described in the Final Regulations.

Substantially Similar Transactions

Similar to the Proposed Regulations, the Final Regulations provide that a TOI includes a transaction that is "substantially similar" to the transactions described above and specifically includes transactions (1) involving a tax-indifferent partner instead of related party partners to facilitate an increase in

basis of property, and (2) transferring an interest in a partnership to a related partner in a recognition transaction if the Applicable Threshold Amount is met.

The Final Regulations modify the scope of TOIs involving tax-indifferent parties. First, the Final Regulations include a knowledge element in the definition of a tax-indifferent party. The definition specifies that a tax-indifferent party's status as such is known or should be known to any other person that participates in the transaction or to a partner in a partnership that participates in such a transaction.

Second, Final Regulations provide that partnerships or S corporations are not tax-indifferent parties except in cases in which a principal purpose of the use of the partnership or S corporation is to avoid tax-indifferent party status. Finally, the Final Regulations limit the scope of a substantially similar transaction with a tax-indifferent party by limiting the calculation of the Applicable Threshold Amount to basis increases that correspond to a basis decrease to the tax-indifferent party for Section 734(b) Transactions and Section 732(b) Transactions.

Relatedness

In general, under the Final Regulations, partners and other persons would be considered related if they have a relationship described in [section 267\(b\)](#) (without regard to section 267(c)(3)) or [section 707\(b\)\(1\)](#).

In response to comments requesting that the standard of relatedness be narrowed, in the case of a Section 734(b) Transaction, Section 732(b) Transaction or Section 732(d) Transaction, the Final Regulations provide that only directly related partners (and not also indirectly related partners) are considered in determining whether partners are related within the meaning of [Treas. Reg. § 1.6011-18\(b\)\(8\)](#).

Additionally, the definition of "related partner" in Treas. Reg. § 1.6011-18(b)(9) provides that in the case of a Section 743(b) Transaction, a related partner means a transferor and transferee of a partnership interest that are related to each other immediately before or immediately after a Section 743(b) Transaction. The definition does not include a transferee that is unrelated to a transferor but is related to one or more of the partners in the partnership.

Applicable Threshold Amount

Under the Final Regulations, TOIs are reportable if the sum of all gross basis increases resulting from all such transactions of a partnership or partner during the taxable year (without netting for any basis decreases in the same transaction or another transaction) exceed the gain recognized from such transactions, if any, on which tax imposed under subtitle A is required to be paid by any of the related partners or tax-indifferent party who were a party to such transactions by a threshold amount (the "Applicable Threshold Amount").

In the case of related-party basis adjustment transactions occurring within the six-year lookback period (defined above as the seventy-two months immediately preceding the first month of the taxpayer's most recent taxable year that began before January 14, 2025), the Applicable Threshold Amount is \$25 million. For related-party basis adjustment transactions occurring after the six-year lookback period, the Final Regulations provide an Applicable Threshold Amount of \$10 million.

The Final Regulations also modify how certain calculations of the Applicable Threshold Amount are performed. The calculation of the Applicable Threshold Amount for purposes of Section 734(b) Transactions includes only related partners' shares of basis increases and not the shares of unrelated parties (except where a tax-indifferent party has received a distribution of property). The calculation of the Applicable Threshold Amount for purposes of Section

732(b) Transactions excludes basis increases that correspond to basis decreases borne by unrelated partners (other than tax-indifferent parties).

Reporting Requirements for Participating Parties

The disclosure for a TOI must be attached to the taxpayer's tax return for each taxable year in which a taxpayer "participates" in a TOI. A copy of the disclosure statement must also be sent to the IRS's Office of Tax Shelter Analysis (OTSA) when the disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

Taxpayers are considered to have "participated" in a TOI (a) in any taxable year in which they engage in the transaction that gives rise to the basis adjustment (that is, the relevant distribution or transfer), (b) any taxable year in which their tax return reflected the tax consequences of a basis increase resulting from a transaction (that is, depreciation or recovery of the basis adjustment upon disposition of the adjusted asset), as well as (c) any taxable year in which the taxpayer received a transfer of property that was subject to a basis increase from a previous TOI or substantially similar transaction in a nonrecognition transaction. Thus, taxpayers may have filing requirements for multiple years with respect to a single basis adjustment.

Reportable TOIs include both prospective transactions and certain past year transactions. With respect to TOIs that occurred in past years (including on an amended return or administrative adjustment request), participating partnerships, partners, and related subsequent transferees have 180 days from the effective date of the Final Regulations to report to the OTSA on Form 8886 if the participating party previously filed a tax return reflecting the taxpayer's participation in a TOI and the period of limitations for assessment with respect to that return has not expired. Thus, for such TOIs, taxpayers will be treated as having met their requirements to disclose timely under [Treas. Reg. § 1.6011-4\(e\)\(2\)\(i\)](#) if they file their disclosure with the OTSA by July 14, 2025. If the taxpayer participated in a TOI that occurred in a year for which the participating party has not yet filed a tax return reflecting the taxpayer's participation in a TOI, taxpayers will be treated as having met their requirements to disclose timely under [Treas. Reg. § 1.6011-4\(e\)\(2\)\(i\)](#) if they file their disclosure with the return and also send a copy to OTSA by the due date for that return, including extensions. NOTE: It is unclear if a fiscal year taxpayer with a return due date before July 14, 2025 will be protected from penalties if it merely files a Form 8886 with OTSA before July 14, 2025 rather than with a return due before that date. Such taxpayers may consider including Form 8886 with a return and sending a copy to OTSA to mitigate any potential penalties. For example, a taxpayer with a June 30, 2024 fiscal year end may file Form 8886 with its return due March 15, 2025 and send a copy to OTSA.

For a TOI occurring before January 14, 2025, the Final Regulations adopt a six-year lookback period for required disclosures. A participant must provide the information described in the Final Regulations only if the TOI occurred within the six-year lookback period, defined as the seventy-two months immediately preceding the first month of the taxpayer's most recent taxable year that began before January 14, 2025.

Reporting Requirements for Material Advisors

Material advisors of affected partnerships or partners must disclose transactions on Form 8918. Under the current material advisor rules, a person may become a material advisor with respect to a transaction that is later identified as a TOI. Specifically, material advisors are required to disclose transactions that occurred in prior years only if they have made a tax statement on or after January 14, 2019. The Final Regulations provide an extension of 90 additional calendar days after the date specified in [Treas. Reg. § 301.6111-3\(e\)](#) for material advisors to meet their disclosure obligations for

TOIs that occurred before January 14, 2025 and on or after the beginning of the seventy-two month lookback period. For material advisors who became a material advisor on or after January 14, 2025, the material advisor disclosure is due by the last day of the month that follows the end of the quarter in which they became a material advisor.



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