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LIST OF SUBSTANTIVE CHANGES AND ADDITIONS

PPC's Guide to Limited Liability Companies

Twenty-seventh Edition (October 2021)

Highlights of this Edition

The following are some of the important new features of the 2021 Edition of *PPC's Guide to Limited Liability Companies*:

- **Final Regulations on TCJA Small Taxpayer Exemptions.** The Tax Cut and Jobs Act (TCJA) created a uniform small business exemption from (a) the requirement to use the accrual method of accounting, (b) applying the UNICAP rules, (c) the Section 163(j) limit, (c) the required use of the percentage of completion method (PCM) or certain long-term contracts and (d) the requirement to maintain inventory under the Section 471 rules. The exemption is available to taxpayers that meet the Section 448(c) gross receipts test, provided they are not a tax shelter, which includes a syndicate. Final regulations provide a favorable new annual election to use prior year loss allocations to determine syndicate status, which may help taxpayers avoid, or at least defer, syndicate status.
- **Schedule K-1 Tax Basis Capital Account Reporting Requirement.** The IRS continues to issue changing guidance on this new requirement for LLCs classified as partnerships. This edition explains latest developments and practitioner's options for complying with the requirement.
- **New Schedules K-2 and K-3.** Starting with the 2021 tax year, LLCs classified as partnerships or S corporations that have *items of international tax relevance* must include Schedule K-2 in their tax return and distribute Schedule K-3 to the entity owners. Although these new Schedules are designed to report information about foreign transactions that were reported on Schedule K-1 in the past, to properly complete the new Schedules K-2 and K-3, LLCs may have to collect additional information and have systems in place to generate information in a format different than in previous years.
- **Inflation-adjusted amounts.** Each year many amounts are adjusted for inflation. The text and examples, as well as the interactive practice aids, have been updated to include the 2022 amounts.

In addition to these featured items, your *Guide* includes the following update items detailed below.

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
CHAPTER 4 Classification Issues	1. Expanded the discussion of LLCs owned by married couples as community property to explain planning opportunities provided by Rev. Proc. 2002-69 with an example.	Section 402 Example 402-2
	2. Added a planning tip explaining that, unlike partnerships, most LLCs cannot elect out of the rules of Subchapter K.	Section 402
CHAPTER 7 Capitalizing an LLC	1. Updated the discussion of carried interests (i.e., certain profits interests received in exchange for services performed by the partner) for final regulations.	Section 707

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
CHAPTER 8 Tax Year, Accounting Methods, Elections	1. The Tax Cuts and Jobs Act of 2018 (TCJA) created a uniform small-taxpayer exception for the requirements to (1) use the accrual method of accounting, (2) apply the Section 263A Uniform Capitalization rules, (3) account for inventories under the Section 471 rules, (4) use the percentage of completion method for long-term contracts, and (5) apply the Section 163(j) business interest expense limit. Updated and expanded the discussion of the Section 448(c) gross receipts test, which is one of the criteria for the small-taxpayer exception, for final regulations issued in December 2020.	Section 804
	2. A small taxpayer exemption allows eligible taxpayers to use the cash method and avoid several requirements, such as applying the UNICAP rules and the Section 163(j) limit on business interest expense. A syndicate does not qualify for the exemptions. Final regulations provide a new annual election to determine syndicate status based on prior year allocations, which may help avoid or at least defer syndicate status.	Section 804
CHAPTER 10 Monitoring Basis	1. Added an example of how a member's outside basis is affected when the LLC enters into a deferred like-kind exchange that straddles two tax years when encumbered property is involved.	Example 1002-1
	2. Added a new discussion about how a forgiven Paycheck Protection Program (PPP) loan affects the members' outside basis.	Section 1009
	3. Added a new discussion of how Economic Injury disaster loan advances and restaurant revitalization grants affect members' outside basis.	Section 1009
	4. Explained a revenue procedure that allows taxpayers to take a 2021 deduction for expenses paid or accrued in 2020, if they failed to deduct the expense in 2020 because they believed it was nondeductible because it was paid with the proceeds of a forgiven PPP loan. Absent this revenue procedure, the only way to deduct those expenses would be to file an amended return or an administrative adjustment request (AAR).	Section 1009
	5. Discussed the status of the Schedule K-1 tax basis capital account reporting rules for 2020, including rules for reporting the opening tax-based capital account for the 2020 tax year and relief for reporting incorrect information regarding the 2020 opening capital account balance in certain cases.	Section 1011
CHAPTER 11 Current Distributions	1. Expanded the discussion of debt-financed distributions to address interest expense on debt incurred to liquidate a member's interest.	Section 1104
	2. Noted proposed regulations that, if finalized, would supersede existing guidance on allocating interest expense to a debt-financed distribution under the interest-tracing rules.	Section 1104

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
CHAPTER 12 Transactions with Members	1. Added discussion of recent legislative changes affecting the deductibility of business meals and entertainment expenses paid by LLC members. Includes discussion of the general rules for deducting business meals and the temporary exception to the 50% meals limitation for food and beverage provided by a restaurant in 2021 and 2022.	Section 1106
CHAPTER 13 Loss Limitations	1. Updated the discussion of the excess business loss limit for the American Rescue Plan Act's extension of the effective date.	Section 1310
CHAPTER 14 Special Problems of LLCs	1. Explained the new Schedule K-2 and K-3 reporting requirements for LLCs with items of <i>international tax relevance</i> as well as the penalty waiver available for failures to fully comply in the 2021 tax year if the taxpayer made a good faith effort to comply. 2. Added a discussion of the <i>Provitola</i> case on when a business's start-up period (for capitalizing start-up costs) ends. 3. Electing real property trades or businesses are not subject to the Section 163(j) limit on business interest, but they must depreciate certain real estate using the ADS method. The ADS method for residential rental property was changed from 40 to 30 year for property placed in service after 2017. The discussion has been expanded to address that rule's effect on electing real property trades or businesses and IRS guidance on amending returns if the taxpayer used an incorrect recovery period its residential rental property placed in service before 2018.	Section 1401 Section 1405 Section 1405
CHAPTER 15 Sale or Exchange of Interest	1. Added a planning point discussing the risk (and mitigation strategies) that arises when a selling member accepts a buyer's note.	Section 1502
CHAPTER 18 Bankruptcy and Insolvency	1. Added a discussion of the <i>Hohl</i> case on the allocation of cancellation of debt (COD) income to the partners when a partner loan is discharged upon termination of the partnership.	Section 1803
CHAPTER 19 IRS Audits	1. Noted two IRS Internal Legal Memorandums finding that the premiums paid on tax risk insurance are nondeductible. 2. Updated the discussion of the centralized partnership audit regime for proposed regulations that would make LLCs classified as partnerships ineligible to elect out of the regime if they have a qualified Subchapter S subsidiary as a member. 3. Discussed a Chief Counsel Advice memorandum explaining the items that are included when computing the imputed underpayment amount.	Section 1901 Section 1901 Section 1901