

IRS finalizes guidance on the determination of a partner's share of recourse liabilities in certain contexts

December 10, 2024

In brief

What happened?

On December 2, 2024, the IRS issued final regulations ([TD 10014](#)) under section 752, providing guidance on the determination of a partner's share of recourse liabilities for: (1) situations in which multiple partners share economic risk on a single liability; (2) tiered partnerships; and (3) related parties.

Why is it relevant?

The final regulations resolve some longstanding ambiguities with respect to partnership debt allocations, including the allocation of economic risk of loss among related parties. The final regulations apply to any liability incurred or assumed by a partnership on or after December 2, 2024, other than liabilities incurred or assumed pursuant to a written binding contract in effect prior to December 2, 2024. A partnership may apply the final regulations to all of its liabilities for any return filed on or after December 2, 2024, provided the partnership consistently applies all of the rules in the final regulations to all of its liabilities. The final regulations also contain a grandfather rule for refinanced debts to the extent of the amount and duration of the pre-modified liability.

Actions to consider

Partnerships should consider whether to apply the final regulations to all partnership liabilities or to only those liabilities incurred or assumed by the partnership on or after December 2, 2024.

In detail

Background

A partner's basis in its partnership interest includes the partner's share of the partnership's liabilities. To the extent that a partner's share of a partnership's liabilities is increased, such increase is considered as a contribution of money by the partner to the partnership. Conversely, any decrease in a partner's share of a partnership's liabilities is treated as a distribution of money to the partner by the partnership.

A partnership liability is a recourse liability for allocation purposes to the extent that any partner or related person bears the economic risk of loss for the liability. Prior law was unclear as to how partners should share a partnership recourse liability when multiple partners bear the economic risk of loss. The prior regulations contained an exception (the Related Partner Exception) under which persons owning interests directly or indirectly in a partnership were not treated as related for purposes of determining economic risk of loss. In *IPO II v. Commissioner*, the Tax Court considered the application of the Related Partner Exception to corporate partners under common control, concluding that the exception turned off the relationship between partners such that the entirety of a liability was allocated to the partner that directly bore the economic risk of loss for such liability even though a non-partner related party shared that risk. Proposed regulations issued in 2013 implemented this result but clarified that IPO II should be read narrowly such that the Related Partner Exception would apply only when a partner bears the economic risk of loss for such liability.

Final regulations

The final regulations adopt the proposed regulations, with certain changes in response to comments.

Overlapping economic risk of loss

The final regulations provide that the amount of a partnership liability is taken into account only once in determining a partner's share of a recourse partnership liability. If more than one partner (or related person) bears the economic risk of loss for the same liability, the final regulations provide a proportionality rule under which the economic risk of loss borne by a partner is the amount of the partnership liability multiplied by the quotient of the amount of economic risk of loss borne by the partner by the sum of the economic risk of loss borne by all partners with respect to that liability. The final regulations include an example illustrating this proportionality rule. In Example 9, unrelated partners A and B both guarantee the partnership's \$1000 liability (A guarantees the full \$1000 while B only guarantees \$500). Because the total amount of economic risk of loss (\$1500) exceeds the liability amount, the partnership will allocate \$667 of the liability to A ($\$1000 * \$1000 / \$1500$) and \$333 of the liability to B ($\$1000 * \$500 / \$1500$).

Treatment of recourse liabilities in tiered partnerships

In the case of a tiered partnership, the final regulations provide that a lower-tier partnership must allocate liabilities for which an upper-tier partnership bears the economic risk of loss with respect to a liability of the lower-tier partnership directly to that upper-tier partnership. In an example illustrating this rule, unrelated A and B form UTP. UTP and A are partners in LTP. LTP borrows funds from a bank. Both A and B guarantee 100% of LTP's liability. The example illustrates that A and B both have economic risk of loss for LTP's liability. Applying the proportionality rule, A and B are each allocated 50% of LTP's liability. Because A is a direct partner in LTP, LTP allocates A's share directly to A. LTP allocates the remaining 50% to UTP. UTP then performs its own analysis and allocates the entire amount of its share of LTP's liability to B, because UTP's liability allocation only includes the liability for which B bears the economic risk of loss.

Special rules for related persons

The final regulations exclude additional constructive ownership rules applicable to partnership subsidiaries in determining relatedness for purposes of allocating recourse liabilities. Specifically, the final regulations exclude attributing corporate stock owned by a partnership to its partners when the subsidiary corporation bears the economic risk of loss for a partnership liability and attributing lower-tier partnership interests owned by an upper-tier partnership to the partners of the upper-tier partnership when the lower-tier partnership bears the economic risk of loss for an upper-tier partnership liability.

The final regulations also implement the decision in *IPO II v. Commissioner*, clarifying that the related partner exception operates to turn off relatedness between partners when one partner directly bears the economic risk of loss for a partnership liability. Thus, the partner that directly bears the economic risk of loss for a partnership liability is treated as unrelated to all other persons who own a direct or indirect interest in the partnership. If more than one related partner bears the economic risk of loss for a recourse liability, the final regulations provide a special rule (the “multiple partner rule”) under which the liability is allocated to those partners that share the economic risk of loss in proportion to their interest in the profits of the partnership.

Observation: In certain circumstances, the multiple partner rule may result in shifting allocations of debt away from a partner who is economically responsible for a liability in favor of allocations to related partners who guarantee the same liability.

Applicability dates

Provision	Applicability Date
Treas. Reg. § 1.752-2(a)(2) and (3), (f)(9) and (i)	December 2, 2024
Treas. Reg. § 1.752-4((b)(1)(iv) and (v), (b)(2) and (3), (b)(5)(i) through (iv), (e) and (f)	December 2, 2024

See also

- [IRS issues guidance on the determination of a partner's share of recourse liabilities in certain contexts](#), December 19, 2013

Let's talk

For a deeper discussion of how these final regulations might affect your business, please contact:

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