

Revenue Procedure 2022-39 Continues Qualified Amended Return Treatment for Audit Disclosures, Adds Large Partnerships

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Executive Summary

On November 16, 2022, the IRS released a long-awaited update to the procedure for large corporate taxpayers and large partnerships under continuous audit to obtain Qualified Amended Return (QAR) treatment for items disclosed at the beginning of an audit. Revenue Procedure 2022-39 replaces Revenue Procedure 94-69, which for 26 years provided eligible large corporate taxpayers the penalty protection afforded to positions disclosed on a QAR without the administrative burden of filing an amended return as each position requiring disclosure was discovered. Rev. Proc. 2022-39 generally maintains the same core approach as Rev. Proc. 94-69 did in providing this QAR treatment, with the notable expansion to now include large partnerships, and thus taxpayers effectively under continuous audit will welcome the continued certainty the new procedure provides. A few unresolved questions, however, remain.

Background

A replacement to Rev. Proc. 94-69 was necessary because the taxpayers eligible for the procedure were defined as those subject to audit by the IRS' Coordinated Industry Case Program (CIC), which ended in 2019, when the IRS implemented the Large Corporate Compliance Program (LCC) effective for taxable year 2017 forward. Taxpayers subject to the former CIC Program (and the Coordinated Examination Program (CEP) that preceded it) were under a continuous audit in which each year's return would be examined. From a practical perspective, taxpayers in the CIC program thus could not generally file a QAR because a QAR must be filed prior to being contacted by the IRS about an audit for a tax year. Because these CIC taxpayers were under continuous audit, determining when a taxpayer subject to annual audits was first "contacted" by the IRS about the audit for a year was difficult, and Rev. Proc. 94-69 thus provided CIC taxpayers the ability to obtain QAR treatment by disclosing tax positions at the outset of the audit. By contrast, the LCC program uses risk-based scoring to select taxpayers for audit on a year-by-year basis. Thus, there is no longer a clearly defined pool of taxpayers that are formally under continuous audit, notwithstanding that many former CIC taxpayers will be selected for examination every year under the risk-based scoring approach.

In August 2019, as a result of the move to the LCC program, the IRS proposed obsoleting Rev. Proc. 94-69 without providing a replacement. Taxpayers and tax representatives alike met this announcement with concern, and key organizations such as the American Bar Association Section of Taxation¹ and the Tax Executives Institute² asked the IRS to reconsider discontinuing a pathway for taxpayers effectively under continuous audit to make disclosures that would receive QAR treatment. The IRS was receptive to these concerns and added a new revenue procedure project to its 2021-2022 priority guidance plan. Rev. Proc. 2022-39 is the result of these efforts.

Rev. Proc. 2022-39

Eligibility

Rev. Proc. 2022-39 is effective for examinations that begin on or after November 16, 2022. It defines "eligible taxpayers" as taxpayers notified of an LCC or Large Partnership Compliance Program (LPC) audit that have had their income tax or partnership returns subject to an examination under the LCC or LPC program (or any successor

¹ See [Comments on Revenue Procedure 94-69](#).

² See [Final Comments on Proposed Elimination of Revenue Procedure 94-69](#).

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program) for four of the prior five years.³ The IRS exam team will affirmatively inform taxpayers in writing if they meet the eligibility requirements to invoke the special procedures of Rev. Proc. 2022-39. Taxpayers who do not meet this requirement must use existing disclosure pathways to avoid the imposition of penalties, such as filing a QAR or adequately disclosing on a Form 8275, 8275-R or Schedule UTP.⁴

LCC taxpayers who were previously eligible to continue to rely on Rev. Proc. 94-69 beginning in 2017 under the transition relief provided by the IRS in May 2019 may continue to do so for the 2017 to 2020 tax years.⁵ However, the new requirements of Rev. Proc. 2022-39 apply to all taxpayers beginning with the 2021 tax year.

Disclosure Procedures

Unlike disclosures pursuant to Rev. Proc. 94-69, which companies were not required to make on a specific form, disclosures under new Rev. Proc. 2022-39 must be provided on a properly completed Form 15307 — “Post-Filing Disclosure for Specified Large Business Taxpayers.”⁶ Companies must submit this form to the exam team within 30 days of the taxpayer receiving notice that the company is eligible under Rev. Proc. 2022-39. The taxpayer and exam team can agree to a later date on a case-by-case basis.⁷

The taxpayer must separately state and describe “all items” that would result in adjustments if the taxpayer were to include the item on an amended return or a request for a partnership administrative adjustment under I.R.C. section 6227.⁸ A description is considered “adequate” only if it “consists of information that reasonably may be expected to apprise the IRS of the identity of the item, its amount, and the nature of the controversy or potential controversy.”⁹ Form 15307 provides examples of adequate, inadequate and incomplete disclosures, as well as guidance about netting of items, which is generally not permitted.¹⁰

Taxpayers must include a computation of the increase or decrease in taxable income with respect to each disclosed item. If the disclosure relates to tax credits, a computation of the increase or decrease

in tax credits is required. As with Rev. Proc. 94-69, taxpayers are not required to provide a computation of an item affected by a disclosed item or a recomputation of total tax liability.¹¹

Notably, disclosures under Rev. Proc. 2022-39 are available only for errors and omissions that were not known at the time of filing a return.¹² For items known at the time the return was filed, a taxpayer would need to disclose them through the normal procedures, such as by attaching a properly completed Form 8275 to the return.

Finally, a taxpayer may disclose information for purposes of establishing that the company had a reasonable basis for a position even though the information or item disclosed does not result in any adjustment.¹³

The IRS will deem any disclosure that does not meet the requirements of Rev. Proc. 2022-39 or Form 15307 to be “inadequate” and inform the taxpayer of this determination in writing. No automatic penalty protection will result from an inadequate disclosure.¹⁴

QAR Qualification

If the exam team agrees with the additional tax liability attributable to properly disclosed items, it will be treated as shown on a QAR and included when determining whether an underpayment of tax is subject to negligence or disregard of rules or regulations and to substantial understatement penalty. If the exam team does not agree to the additional tax liability attributable to a properly disclosed item, it will be subject to the normal deficiency procedures or BBA partnership audit procedures, will not reduce any negligence penalty and will only reduce the substantial underpayment penalty if the taxpayer has a reasonable basis for the position.¹⁵

Unanswered Questions

Although the language and implementation of Rev. Proc. 2022-39 adheres closely to the approach of its predecessor Rev. Proc. 94-69, some key questions remain.

First, will disclosures pursuant to Rev. Proc. 2022-39 qualify under Treas. Reg. § 1.6662-6(a)(2) as a controlled transaction reported on a return for purposes of determining whether there is a substantial valuation misstatement subject to a 20% penalty

³ Rev. Proc. 2022-39, section 3.01.

⁴ Rev. Proc. 2022-39, section 3.02.

⁵ See Interim Guidance Memo: LB&I-04-0419-004 (May 21, 2019); Interim Guidance on Implementation of the Large Corporate Compliance (LCC) Program.

⁶ Rev. Proc. 2022-39, section 4.01. See [Form 15307](#).

⁷ Rev. Proc. 2022-39, section 4.01.

⁸ Rev. Proc. 2022-39, section 4.02.

⁹ Rev. Proc. 2022-39, section 4.02.

¹⁰ See Form 15307 and instructions.

¹¹ Rev. Proc. 2022-39, section 4.03.

¹² Rev. Proc. 2022-39, section 2.18.

¹³ Rev. Proc. 2022-39, section 4.04.

¹⁴ Rev. Proc. 2022-39, section 4.06. Presumably a taxpayer could still argue to IRS Appeals or a court that its disclosure was satisfactory, and that its efforts to comply with Rev. Proc. 2022-39 constitute “good faith” for purposes of section 6664.

¹⁵ Rev. Proc. 2022-39, section 4.05.

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or a gross valuation misstatement subject to a 40% penalty? Although Rev. Proc. 94-69 did not expressly address the application of the revenue procedure to penalties under sections 6662(b) (3) and (e), the IRS has consistently treated disclosures under Rev. Proc. 94-69 as “reported results” for purposes of Treas. Reg. § 1.6662-6(a)(2) and has treated Rev. Proc. 94-69 as a revenue procedure referenced in that section. See, *e.g.*, FSA 200031025 (expressly replacing the regulatory language in Temp. Treas. Reg. § 1.6662-6T(a)(2) with a reference to Rev. Proc. 94-69). Further, the Treasury regulations allow the IRS to prescribe by revenue procedure the manner in which qualified amended returns apply to particular classes of taxpayers,¹⁶ which is precisely what Rev. Proc. 94-69 did.

¹⁶ See Treas. Reg. § 1.6664-2(c)(4)(ii).

Second, will “survey” audits or other limited scope examinations of a taxpayer’s tax return qualify as an “examination under the LCC, the CIC, or a successor program?” Rev. Proc. 2022-39 does not qualify the type of examination that is required for eligibility to occur; however, because a QAR must be filed before “[t]he date the taxpayer is first contacted by the Internal Revenue Service (IRS) concerning any examination ...” (emphasis added),¹⁷ survey audits and less-than-full examinations should satisfy this eligibility requirement. The revenue procedure states that the IRS will notify taxpayers eligible for QAR treatment under Rev. Proc. 2022-39, but taxpayers should make their own assessments with their advisers regardless of whether the IRS affirmatively reaches out.

¹⁷ Treas. Reg. § 1.6664-2(c)(3).