IRS

Abusive Tax Shelters and Transactions

Office of Tax Shelter Analysis

The Office of Tax Shelter Analysis (OTSA) in the Large Business & International (LB&I) Division collects and analyzes information about abusive tax shelters and transactions, and coordinates LB&I's tax shelter planning and operation. We are taking steps to combat abusive tax shelters and transactions. A comprehensive strategy is in place to:

- Identify and deter participation and promotion of abusive tax transactions through audits, summons enforcement, litigation and alternative methods.
- Publish taxpayer guidance on abusive transactions and tax shelters
- Promote reportable transaction disclosure filings by those who participate or promote abusive transactions.

Abusive Tax Shelter Hotline

The IRS maintains an abusive tax shelter hotline that people can use to provide information (anonymously, if preferred) about abusive tax shelter transactions. The Office of Tax Shelter Analysis is primarily interested in in potentially abusive transactions that may be employed by many taxpayers and could pose a significant compliance risk to the IRS.

- **Fax:** 844-201-5535
- **Email Address:** IRS Tax Shelter Hotline
- **Mailing Address:**
  Internal Revenue Service
  1973 North Rulon White Blvd
  LB&I:OTSA - M/S 4916
  Ogden, UT, 84201

Don't use this hotline if you want to report an individual or company that you suspect or know isn't complying with the tax laws or has failed to pay the tax that they owe. Please refer to Reporting Suspected Tax Fraud and Whistleblower Informant Awards for more information on reporting these individuals or companies.

Reportable Transactions

Regulations on Abusive Tax Shelters and Transactions

Treasury regulations require that certain tax shelters and transactions be registered and that lists of investors be maintained by parties who organize or sell interests in the shelter(s). Investors in certain shelters and transactions are required to disclose their participation on their tax returns.

Types of Reportable Transactions:

- **Listed Transactions** - A transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.
- **Confidential** – Transactions that are offered to a taxpayer under conditions of confidentiality and the taxpayer has paid a minimum advisor fee.
- **Contractual Protection** – Transactions that are offered with the right to full or partial refund of fees if the IRS does not allow the tax benefit of the transaction.
- **Loss Transactions** – Certain loses under IRC §165.
- **Transactions of Interest (TOI)** - Transactions that the IRS and the Treasury Department believe to have the potential for tax avoidance or evasion, but lack sufficient information to determine whether the transaction should be identified specifically as a tax avoidance transaction. The TOI category of reportable transactions applies to transactions entered on or after November 2, 2006.

Reportable Transaction Disclosure Statement

If you're a business or individual who has participated in one or more of the above transactions, you may be required to file a Form 8886.

Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction

If you are a Tax-Exempt entity who has participated in a prohibited Tax Shelter Transaction defined below, you may be required to file a Form 8886-T.

- Listed Transactions
- Confidential Transactions
- Contractual Protection Transactions

Material Advisors

A Material Advisor is defined as:

- Anyone who provides material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and
- Directly or indirectly derives gross income in excess of the threshold amount (or such other amount as may be prescribed by the secretary) for such aid, assistance, or advice.
  - Threshold amounts:
    - Listed Transactions: $10,000 for a natural person and $25,000 for all other entities.
    - Non-Listed Transactions: $50,000 for a natural person and $250,000 for all other entities.

If you're a Material Advisor, you may be required to file the Form 8918, Material Advisor Disclosure Statement.

- Generally, a Material Advisor must maintain a list identifying each entity or individual with respect to whom the advisor acted as a Material Advisor with respect to a reportable transaction.
- A Material Advisor is not required to keep a list if the entity or individual entered into a listed transaction or Transaction of Interest more than 6 years before the transaction was identified in published guidance as a listed transaction or Transaction of Interest.
- A separate list must be prepared and maintained for each transaction or group of substantially similar transactions. This list must be maintained for 7 years following the earlier of the date on which the Material Advisor last made a tax statement relating to the transaction, or the date the transaction was last entered into.
- Form 13976, Itemized Statement Component of Advisee List (April 2008) PDF, may be used by Material Advisors for the purpose of preparing and maintaining lists with respect to reportable transactions under § 6112 of the Internal Revenue Code. This form isn't required to be used under § 301.6112-1 of the Procedure and Administration Regulations, but is offered as an option for maintaining the transaction participants list.may be used by Material Advisors for the purpose of preparing and maintaining lists with respect to reportable transactions under § 6112 of the Internal Revenue Code. This form is not required to be used under § 301.6112-1 of the Procedure and Administration Regulations, but is offered as an option for maintaining the transaction participants list.
- Revenue Procedure 2008-20 provides guidance relating to the obligation of Material Advisors to prepare and maintain lists with respect to reportable transactions under § 6112 and provides that Material Advisors may use the Form 13976, “Itemized Statement Component of Advisee List” (or successor form) to maintain the itemized statement component of the list.
- You are not required to submit this list with the filing of the Form 8918; however, the IRS may make a written request for this information. If you receive this request you are required to fulfill the request within 20 business days or be subject to a penalty of $10,000 for each day you are late in your response.

What's New:

Notice 2015-73 PDF - Listing Notice - Basket Option Contracts. This notice describes certain transactions involving a contract that is denominated as an option referencing a basket of actively traded personal property. The Basket Option Contract attempts to defer income recognition and convert short-term capital gain and ordinary income to long-term capital gain using a contract denominated as an option contract. This notice was published in the Internal Revenue Bulletin on November 16, 2015. Previously listed under Notice 2015-47 which was revoked.

Notice 2015-74 PDF – Transaction of Interest - Basket Contracts. This notice describes certain transactions denominated as an option, notional principal contract, forward contract, or other derivative contract to receive a return based on the performance of a basket of referenced assets (the “reference basket”). The assets that comprise the reference basket may include (1) interests in entities that trade securities, commodities, foreign currency, or similar property (“hedge fund interests”), (2) securities, (3) commodities, (4) foreign currency, or (5) similar property (or positions in such property). The Basket Contracts attempt to defer income recognition and may attempt to convert short-term capital gain and ordinary income to long-term capital gain. This notice was published in the Internal Revenue Bulletin on November 16, 2015. Previously released in Notice 2015-48 which was revoked.

Notice 2016-66 – Section 831(b) Micro-Captive Transactions. Micro-captive arrangements described in the Notice became a reportable transaction on November 1, 2016. This Notice identifies as a transaction of interest the micro-captive transaction where a taxpayer enters into a purported insurance contract with a captive insurance company (“Captive”), or a purported reinsurance contract with a Captive through an intermediary insurance company, and where a Captive is at least 20 percent owned by the taxpayer or/and related parties. In addition, the micro-captive transaction has one or both of the following characteristics: 1) the amount of Captive's liabilities for insured losses and claim administration expenses is less than 70 percent of the Captive's earned premiums less paid policyholder dividends, or 2) Captive made available through a guarantee, a loan, or other transfer of Captive's capital, any portion of payments received under contracts to the taxpayer or its owners. The taxpayer, an "insured" entity under the contract, claims ordinary deductions for purported insurance or reinsurance premiums while a Captive elects under § 831(b) of the Internal Revenue Code to be taxed only on investment income. Captive excludes the payments directly or indirectly received under the contracts from its taxable income.

Notice 2017-8 PDF – Section 831(b) Micro-Captive Transactions, amends the due date for filing of a disclosure with the Office of Tax Shelter Analysis for Notice 2016-66 transactions.

Notice 2017-10 PDF – Syndicated Conservation Easement Transactions - This notice describes certain transactions in which some promoters are syndicating conservation easement transactions that purport to give investors the opportunity to obtain charitable contribution deductions in amounts that significantly exceed the amount invested. The promoters identify a pass-through entity that owns real property, or form a pass-through entity to acquire real property. Additional tiers of pass-through entities may be formed. The promoters then syndicate ownership interests in the pass-through entity or tiered entities that owns the real property, suggesting to prospective investors that they may be entitled to a share of a charitable contribution deduction that equals or exceeds two and one-half times the amount of the investor's investment. The promoters obtain an inflated appraisal of the conservation easement based on unreasonable conclusions about the development potential of the real property. The entity then donates a conservation easement encumbering the property to a tax-exempt entity. Investors then claim a charitable contribution relying upon the pass-through entity's holding period.

Other Abusive Transactions

In addition to the reportable transactions covered above, IRS is combating other types of abusive tax schemes, such as offshore tax avoidance schemes. Click here for information on steps IRS is taking to combat these other schemes:

- Abusive Tax Avoidance Schemes
- Employee Plans Abusive Tax Transactions

Page Last Reviewed or Updated: 04-Aug-2021