




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 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 losses 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 \(April 2008\)](#) , 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.
- [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:

[88 Fed. Reg. 21547](#)  – Listed Transactions and Transactions of Interest - Section 831(b) Micro-Captive Transactions. The proposed regulations identify transactions that are the same as, or substantially similar to, certain micro-captive transaction as listed transaction, and certain other micro-captive transactions as transactions of interest. Tax law generally allows businesses to create "captive" insurance companies to protect against insurance risks and provides that certain small non-life insurance companies can choose to pay tax only on their investment income under Internal Revenue Code section 831(b) ("micro-captives"). In abusive micro-captive structures, promoters, accountants or wealth planners persuade owners of closely held entities to participate in schemes that lack many of the attributes of genuine insurance. The IRS previously identified certain micro-captive transactions as transactions of interest in [Notice 2016-66](#). Recent court decisions in the

Sixth Circuit and the U.S. Tax Court ruled that the IRS lacks authority to identify listed transactions and transactions of interest by notices, such as Notice 2016-66, and must instead identify such transactions by following the notice and public comment procedures that apply to regulations. [Treasury and the IRS disagree with these decisions](#) [PDF](#) that the IRS lacks authority to identify listed transactions by notice and continue to defend listing notices in litigation except in the Sixth Circuit. Treasury and the IRS will, however, no longer take the position that transactions of interest can be identified without complying with notice and public comment procedures. Treasury and the IRS issued the proposed regulations to ensure that these decisions do not disrupt the IRS' ongoing efforts to combat abusive tax shelters throughout the nation. This notice was published in the Internal Revenue Bulletin on April 24, 2023. Treasury and the IRS intend to finalize these proposed regulations after due consideration of public comments.

[87 Fed. Reg. 75185](#) [↗](#) – Listed Transactions - Syndicated Conservation Easements. The proposed regulations identify certain syndicated conservation easement transactions and substantially similar transactions as listed transactions. In these transactions, investors typically acquire an interest in a partnership that owns land and then claim an inflated charitable contribution deduction based on a grossly overvalued appraisal when the partnership donates a conservation easement on the land. The IRS previously identified certain SCE transactions as listed transactions in [Notice 2017-10](#). Recent court decisions in the Sixth Circuit and the U.S. Tax Court ruled that the IRS lacks the authority to identify listed transactions by notices, such as Notice 2017-10, and must instead identify such transactions by following the notice and public comment procedures that apply to regulations. [Treasury and the IRS disagree with these decisions](#) [PDF](#) and continue to defend Notice 2017-10 and similar notices in litigation except in the Sixth Circuit. At the same time, however, Treasury and IRS issued the proposed regulations to eliminate any confusion regarding the need to report these transactions and to ensure that these decisions do not disrupt the IRS's ongoing efforts to combat abusive tax shelters throughout the nation. This notice was published in the Internal Revenue Bulletin on December 27, 2022. Treasury and the IRS intend to finalize these proposed regulations, after due consideration of public comments.

[88 Fed. Reg. 37186](#) [↗](#) – Listed Transactions - Malta Personal Retirement Scheme. The proposed regulations identify transactions that involved a US citizen or US resident alien with no presence or connection with the country of Malta who participates in a Malta personal retirement scheme without taking into account the arrangement's income on a current basis, that, in contrast to US tax-favored individual savings arrangements, contains no requirement that contributions be limited by reference to income earned from employment or self-employment activities, no limitation on contribution amounts, and no restriction on the types of assets (such as securities) that may be contributed. This notice was published in the Internal Revenue Bulletin on June 26, 2023. Treasury and the IRS intend to finalize these proposed regulations after due consideration of public comments.

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](#)

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