Part IV - Items of General Interest

Disclosure Requirements for Corporate Tax Shelters

Announcement 2000-12

The Treasury Department and Internal Revenue Service today issued three sets of temporary and proposed regulations requiring promoters to register confidential corporate tax shelters and to maintain lists of investors and requiring corporate taxpayers to disclose large transactions that have characteristics common to tax shelters. In addition, the Service has created an Office of Tax Shelter Analysis to serve as the focal point for efforts to gather and analyze information relating to tax shelter activity and to coordinate appropriate responses. Together, these actions will enable the Service to more quickly and effectively address transactions used to claim tax benefits that are not properly allowable under the Internal Revenue Code.

General Scope and Effect of New Disclosure Requirements

In general, the three regulations are designed to provide the Service with better information about tax shelters and other tax-motivated transactions through a combination of registration and information disclosure by promoters and tax return disclosure by corporate taxpayers. The regulations are intended to require disclosure of transactions that should be subject to careful scrutiny by the Service. The regulations are designed not to require disclosure of customary business transactions or transactions with tax benefits that the Service has no reasonable basis to challenge. The regulations do not alter substantive tax rules, and thus disclosure under the regulations does not affect the legal determination whether tax benefits claimed by taxpayers are allowable.

Registration of Tax Shelters by Promoters

The first set of regulations is issued under § 6111(d) of the Code as enacted by the Taxpayer Relief Act of 1997. These regulations require tax shelter promoters to register with the Service transactions (1) that have been structured for a significant purpose of tax avoidance or evasion, (2) that are offered to corporate participants under conditions of confidentiality, and (3) for which the tax shelter promoters may receive fees in excess of $100,000.

The promoter registration requirements apply to confidential corporate tax shelters offered for sale after today. In general, registration of a confidential corporate tax shelter is required not later than the day that the first offering for sale of interests in such shelter occurs. However, as a transition matter, no registration is required to be filed until 180 days after today.

List Maintenance Requirements for Promoters

The second set of regulations, issued pursuant to § 6112 of the Code, requires promoters of corporate tax shelters to maintain lists of investors and copies of all offering materials and to make this information available for inspection by the Service upon request. These requirements apply to transactions that have been structured for a significant purpose of tax avoidance or evasion (as defined under § 6111(d)), whether or not offered under conditions of confidentiality and whether or not the promoter fees may exceed $100,000.

These new list maintenance requirements apply to interests in corporate tax shelters acquired by investors after today. However, as a transition matter, the Service will not ask to inspect the lists or offer materials until 180 days after today.

Reporting Requirements for Corporate Taxpayers

The third set of regulations is issued pursuant to § 6011 of the Code and requires corporate taxpayers to disclose their participation in “reportable transactions” by attaching a short information statement to their income tax returns. In general, a separate statement will be required for each reportable transaction for each taxable year in which a corporation’s federal income tax liability is affected by its participation in such a transaction. For the first taxable year in which a statement is attached to a taxpayer’s return, a copy of the statement must be filed with the Service in Washington, D.C. All of the information required to complete the statement should be readily available to taxpayers at the time their returns are filed.

Disclosure is generally required only for transactions that are expected to reduce a taxpayer’s income tax liability by more than $5 million in a single taxable year or more than $10 million in multiple years and that have characteristics common to corporate tax shelters. However, these thresholds are lowered to $1 million and $2 million for certain transactions identified through published guidance as “listed transactions” (discussed below). Reporting generally is not required for customary business transactions or transactions with tax benefits that the Service has no reasonable basis to challenge.

In general, disclosure is required only for reportable transactions entered into after today. However, disclosure is required for a listed transaction entered into on or before today if the tax benefits of the transaction are first claimed on a return filed after today.

Notice 2000-15: Listed Transactions

Promoter registration and taxpayer disclosure generally are required for certain listed transactions. The specific transactions currently designated as listed transactions are identified in Notice 2000-15, which has been issued concurrently with the temporary and proposed regulations. The Treasury and the Service have determined that each of those listed transactions involves a significant tax avoidance purpose and that the intended tax benefits are subject to disallowance under existing law. The list set forth in Notice 2000-15 may be supplemented from time to time, when other such tax avoidance transactions are identified.

Office of Tax Shelter Analysis

The newly established Office of Tax Shelter Analysis is part of the Large and Mid-Size Business Division and is located in Washington, D.C. The office is expected to serve as a clearinghouse for all information relating to tax shelter activity that comes to the attention of the Service, including information relating to tax shelters affecting taxpayers other than those served by the Large and Mid-Size Business Division.

The Office of Tax Shelter Analysis will, among other things, review all disclosures by promoters and taxpayers under the new disclosure regulations for the purposes of identifying potentially improper tax shelter transactions, identifying taxpayers that have participated in such transactions, and better assessing the overall extent of tax shelter activity by corporate taxpayers. Where it is determined to be warranted, the Office of Tax Shelter Analysis will also coordinate the Service's follow-up efforts relating to such disclosed transactions.

The Office of Tax Shelter Analysis, acting with the Office of Chief Counsel and Treasury's Office of Tax Policy, will evaluate the tax treatment of new forms of tax-structured transactions at the earliest possible time. This review process is necessary not only to identify improper tax shelters, but also to protect taxpayers that engage in legitimate business transactions. The Service wants to ensure that transactions are not labeled as improper tax shelters merely because they are novel or complex.

In addition to analyzing transactions that are reported to the Service under the new disclosure rules, the Office of Tax Shelter Analysis will provide a centralized point for the review of tax shelter transactions that come to the attention of the Service in other ways, including transactions examined by field personnel and those that are disclosed to the Service by taxpayers, practitioners, and other members of the public.

Persons who wish to submit information relating to particular forms of tax shelters to the Service by mail should send such information to: Internal Revenue Service LM:PF, Office of Tax Shelter Analysis, 1111 Constitution Ave., N.W., Washington, D.C. 20224. A telephone number and e-mail address for the Office of Tax Shelter Analysis will be announced in the near future.

Public Comments

In the notices of proposed rulemaking, the Treasury and the Service have invited interested persons to submit comments on the terms of the temporary and proposed regulations. Comments are also invited on the other matters discussed in this announcement.