

The IRS's pursuit of Corporate Tax Shelter Arrangements and Amnesty Offers

November 25, 2002,

In July 2002, the IRS announced the filing of a lawsuit against KPMG. The suit was associated with disagreements that the IRS had about certain tax-shelter arrangements that the firm had marketed to clients. Presumably, several of the other larger firms have similar exposures. According to the press release,

The tax code requires promoters of tax shelters to register each tax shelter with the IRS before offering it for sale. It also requires promoters and sellers of certain tax shelters to keep lists of all the investors in each shelter, and to make that list available to the IRS on ten days' notice. Promoters and sellers that do not register the tax shelter or maintain or produce to the IRS the list of investors may be liable for penalties. The tax code also imposes penalties for promoting abusive tax shelters.

Apparently the IRS has been vigorously trying to enforce its interpretation of this aspect of the tax code by auditing the activities of KPMG. This auditing function has resulted in the IRS seemingly getting access to less of the documents than what they would like. The action above resulted from their efforts to gain more information from KPMG.

According to at least one non-IRS expert in this field, the potential exposure to KPMG relating to this lawsuit and any resultant suits that would occur from an adverse conclusion of this case is dramatic. While few details are currently available about the claims being brought by the government, the IRS's action may prompt some practitioners to review their past involvements with tax shelters. Below is a summary page prepared by the IRS that summarizes the state of affairs for tax shelters, including further links about their status. We recommend that practitioners who have been involved in marketing these kinds of tax shelters take another look at their legitimacy and the requirements attached to them. The potential exposure to members is high.

From the IRS – Corporations and Tax Shelters

Abusive Tax Shelters

Abusive Tax Shelter Resolution Initiatives

Taxpayers engaged in certain abusive transactions have [limited time settlement options](#) to

resolve those issues. The abusive transactions covered under this settlement initiative involve basis shifting, contingent liability and corporate owned life insurance transactions. Guidance on these resolution options:

- [Revenue Procedure 2002-67 – §351 Contingent Liability](#)
 - [Participation and Selection Agreement](#)
 - [Arbitration Agreement](#)
 - [Fast Track Resolution Process](#)
- [Announcement 2002-97](#) – §302 / 318 Basis Shifting
 - [FAQs on 302/318 Resolution Initiative](#)
 - [Additional FAQs on 302/308 Resolution Initiative](#)
- [Announcement 2002-96](#) - Corporate Owned Life Insurance (COLI)

A prior [Tax Shelter Disclosure Initiative](#) conducted from December 21, 2001 to April 23, 2002 resulted in 1,664 transaction disclosures from 1,206 taxpayers. The transactions disclosed involved \$30 billion in claimed losses and deductions.

Listed Abusive Tax Shelters

Tax shelters that are determined to be abusive are identified as "listed transactions." Listed transactions require disclosure by participating corporations, individuals, partnerships and trusts, in accordance with Treasury Regulation § 1.6011.4T. Listed transactions, with citations of published guidance, regulations or court cases are accessible from the following list.

- [Notice 2002-70](#) – Certain Reinsurance Arrangements
- [Notice 2002-65](#) – Pass through Entity Straddle Tax Shelter
- [Notice 2002-50](#) – Partnership Straddle Tax Shelter
- [Revenue Ruling 2002-46](#) – §401k Accelerators
- [Notice 2002-35](#) – Notional Principal Contracts
- [Notice 2002-21](#) – Inflated Basis "CARDS" Transactions
- [Notice 2001-45](#) – §302 Basis-Shifting Transactions
- [Notice 2001-17](#) – Contingent Liability Transactions
- [Notice 2001-16](#) – Intermediary Transactions
- [Notice 2000-61](#) – Guam Trust
- [Notice 2000-60](#) – Stock Compensation Transactions
- [Notice 2000-44](#) – Inflated Partnership Basis Transactions
- [Revenue Ruling 2000-12](#) – Debt Straddles
- [Treasury Regulation § 1.7701\(l\)-3](#) – Fast Pay or Step-Down Preferred Transactions
- [Notice 99-59](#) – BOSS Transactions
- [Revenue Ruling 99-14](#) – Lease-In / Lease-Out or LILO Transactions
- [Treasury Regulation § 1.643\(a\)-8](#) – Certain Distributions from Charitable Remainder Trusts
- [ASA Investing Partnership v. Commissioner](#) -Transactions similar to that described in the ASA Investing litigation and in ACM Partnership v. Commissioner, 157 F.3d 231 (3rd Cir. 1998)
- [Notice 98-5, part II](#) – Foreign Tax Credit Transactions
- [Notice 95-53](#) – Lease Strips
- [Notice 95-34](#) – Certain Trusts Purported to be Multiple Employer Welfare Funds Exempted from the Lists of §§ 419 and 419A
- [Revenue Ruling 90-105](#) – Certain Accelerated Deductions for Contributions to a Qualified Cash or Deferred Arrangement or Matching Contributions to a Defined Contribution Plan

[Contact List for Technical Tax Shelter Help](#)

Information Document Requests (IDR)

An information document request is required in all LMSB corporate examinations started after April 23, 2002, or in process on April 24, 2002. The purpose of the IDR is to assist agents in identifying and developing tax shelter issues relating to listed transactions.

- [IDR page 1](#)
- [IDR page 2](#)
- [IDR page 3](#)
- [IDR page 4](#)
- [IDR FAQs](#)

Tax Accrual Work-papers

IRS policy is to request tax accrual and other financial audit work-papers relating to the tax reserve for deferred tax liabilities, and to footnotes disclosing contingent tax liabilities appearing in audited financial statements.

- [LMSB/SBSE Memorandum](#)
- [Announcement 2002-63](#)
- [Tax Accrual Work-paper FAQs](#)

Penalty Policy Relating to Abusive Transactions

An [LMSB Commissioner Memorandum](#) issued to LMSB executives, managers, and examiners provides guidance on consideration and application of penalties in an impartial, consistent and fair manner.

Office of Tax Shelter Analysis

The Office of Tax Shelter Analysis (OTSA) in the LMSB Division collects and analyzes information about abusive tax shelters and transactions, and coordinates LMSB's tax shelter planning and operations.

IRS maintains a hotline that people can use to share information (anonymously if preferred) about abusive tax shelters.

- Toll free (866) 775-7474
- Fax (202) 283-8354
- Email irs.tax.shelter.hotline@irs.gov
- mail Internal Revenue Service

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