



Disclosure Obligations under Section 6011 (Part B) Listed transactions

Listed or Substantially Similar Transactions

Summary of Transaction (IRS/Treasury)	Authorities
<p>Lease Strips: Notice 2003-55 describes lease strips effected through a transferred basis transaction, through a transfer of an interest in a partnership, and by a single participant as "listed transactions." The Notice also applies to lease strips involving licenses of intangible property, service contracts, leaseholds or other non-fee interests in property, and the prepayment, front-loading, or retention (rather than assignment) of rights to receive future payments.</p> <p><i>Identified as a listed transaction on July 22, 2003. Superseded Notice 95-53 (October 30, 1995), the transactions in which were identified as a listed transaction on February 28, 2000.</i></p>	<p>Notice 2003-55, IRB 2003-34, superseding Notice 95-53, 1995-2 C.B. 334</p> <p>Rev. Rul. 2003-96 (reallocation of income and deductions among unrelated parties to a lease strip)</p>
<p>Common Trust Fund Straddle: This transaction involves the use of a common trust fund investing in economically offsetting gain and loss positions in foreign currencies and allocating the gains to one or more tax indifferent parties and the losses to another taxpayer. The use of this transaction allows taxpayers to claim a noneconomic loss.</p> <p><i>Identified on July 16, 2003 as substantially similar to the listed transactions described in Notice 2002-50 and Notice 2002-65.</i></p>	<p>Notice 2003-54, IRB 2003-33</p>
<p>Transfer of Compensatory Stock Options to Related Persons: The arrangement involves an executive transferring stock options to a related party, such as a family member or a family limited partnership in which the executive or the executive's family has a substantial interest. In exchange, the executive receives a long-term unsecured note. The related party exercises the option and claims that it does not recognize gain until the stock is sold, and then only if the sale price exceeds the amount paid for the option plus the exercise price. Promoters of this transaction claim that the executive does not have to pay tax until payments are made on the note, even though the executive retains control over the exercise of the options through the family member or family limited partnership.</p> <p><i>Identified as a listed transaction on July 1, 2003.</i></p>	<p>Notice 2003-47, IRB 2003-30</p> <p>T.D. 9067; REG 116914-03 (proposed and temporary regulations under IRC Section 83)</p>
<p>Collectively Bargained Welfare Benefit Fund: Certain arrangements that purport to qualify as collectively-bargained welfare benefit funds excepted from account limits under the IRC (sections 419 and 419A). Under Notice 2003-24, an arrangement is identified if it involves a purported collectively bargained welfare benefit fund with respect to an employer if: (i) in any year, the employer's contributions with respect to any owner or owners, considered in the aggregate, are more than one-half of the employer's total contributions, but only if there is at least one owner with respect to whom the employer's contributions exceed \$20,000; and (ii) it provides more favorable coverage for an owner of the employer than for employees who are not owners.</p> <p><i>Identified as a listed transaction on April 11, 2003.</i></p>	<p>Notice 2003-24, 2003-18 IRB 853</p>

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<p>Offshore Deferred Compensation Arrangements: Under this arrangement, an individual taxpayer supposedly resigns from the current employer and signs an employment contract with an offshore employee leasing company. The offshore company indirectly leases the individual's services back to the original employer using one or more intermediaries. The individual performs the same services before and after entering into the leasing arrangement.</p> <p><i>Identified as a listed transaction on April 4, 2003.</i></p>	<p>Notice 2003-22, 2003-18 IRB 851</p>
<p>Subchapter S ESOP Allocations: Rev. Rul. 2003-6 alerts taxpayers that certain arrangements involving employee stock ownership plans (ESOPs) that hold employer securities in an S corporation may not be used to claim eligibility for the delayed effective date of Section 409(p) under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Under the ruling, an ESOP adopted by an S corporation under the described facts will not be treated as having been established on or before March 14, 2001, and is not entitled to the delayed 2005 effective date for purposes of the non-allocation rules of Section 409(p). Any taxpayer who is a disqualified person with respect to the S corporation ESOP is treated as receiving a deemed distribution to the extent of any allocation to the taxpayer's account, and excise taxes under IRC Section 4979A apply to any non-allocation year.</p> <p><i>Identified as a listed transaction on December 17, 2002.</i></p>	<p>Rev. Rul. 2003-6, 2003-3 IRB 286</p> <p>T.D. 9081 (prohibited allocations of securities in an S corporation).</p>
<p>Reinsurance Arrangements: This transaction involves income shifted from taxpayers to related companies that are said to be insurance companies subject to little or no U.S. tax. In Notice 2002-70, the IRS said the intention of the transaction is "to use a reinsurance arrangement to divert income."</p> <p><i>Identified as a listed transaction on October 15, 2002.</i></p>	<p>Notice 2002-70, 2002-44 IRB 765</p>
<p>Pass-Through Entity Straddle Transactions: This transaction has been designed to use a straddle, one or more transitory shareholders, and the rules of subchapter S to allow a taxpayer to claim an immediate loss while deferring an offsetting gain in taxpayer's investment in the S corporation. The IRS may challenge the transaction by: (1) asserting that the loss was not incurred in a transaction undertaken for profit; (2) disregarding the transitory ownership of the shareholders other than taxpayer; or (3) asserting that taxpayer acquired control of the S corporation with the principal purpose of avoiding or evading federal income tax.</p> <p><i>Identified on September 25, 2003 as substantially similar to the listed transaction described in Notice 2002-50.</i></p>	<p>Notice 2002-65, 2002-41 IRB 690</p>



Disclosure Obligations under Section 6011 (Part B) Listed transactions

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<p>Partnership Tax Straddle: This transaction involves partnerships manipulated through a series of steps carried out in the following order. No IRC Section 754 election is in effect at any relevant time. Step 1: Corporation acquires a majority interest in an upper tier partnership (UTP) at fair market value. Step 2: UTP acquires a majority interest in a lower tier partnership (LTP) at fair market value. Step 3: LTP enters into straddles on foreign currencies and may acquire other assets. Step 4: LTP terminates the gain leg of a foreign currency straddle. LTP allocates a pro rata share of the gain to UTP, which in turn allocates a pro rata share of the gain to Corporation. This gain increases the basis of each partnership interest. Step 5: Corporation sells its interest in UTP to Taxpayer at fair market value. This results in a loss to Corporation sufficient to offset the gain that was allocated to Corporation. Step 6: Taxpayer purchases UTP's interest in LTP at fair market value. UTP realizes a loss on this sale, but the loss is disallowed under §707(b)(1)(A) because Taxpayer owns more than 50% of UTP. Step 7: LTP engages in a transaction that is intended to increase Taxpayer's basis in the LTP interest. For example, LTP may incur a liability that Taxpayer guarantees. LTP then terminates the loss leg of the foreign currency straddle and allocates a pro rata share of the loss to Taxpayer. Step 8: Taxpayer sells the interest in LTP at its fair market value and realizes gain (for example, from the relief of liability). Taxpayer then claims that this gain is offset under IRC Section 267(d) by the amount of the loss that was disallowed to UTP under IRC Section 707(b)(1)(A).</p> <p><i>Identified as a listed transaction on June 25, 2002.</i></p>	<p>Notice 2000-50, 2002-28 IRB 98</p>
<p>Son of Section 401(k) Accelerator: These are transactions in which taxpayers claim deductions for contributions to a qualified cash or deferred arrangement or matching contributions to a defined contribution plan where the contributions are attributable to compensation earned by the plan participants after the end of the taxable year. Rev. Rul. 2002-46 concludes that grace period contributions to a qualified cash or deferred arrangement within the meaning of IRC Section 401(k) or to a defined contribution plan as matching contributions within the meaning of IRC Section 401(m) are not deductible by the employer for a taxable year, if the contributions are attributable to compensation earned by plan participants after the end of that taxable year. The holding applies regardless of whether the employer's liability to make a minimum contribution is fixed before the close of that tax year.</p> <p><i>Identified on June 27, 2003 as substantially similar to the listed transaction in Rev. Rul. 90-105.</i></p>	<p>Rev. Rul. 2002-46, 2002-29 IRB 117</p> <p>Rev. Rul. 2002-73, 2002-45 IRB 805 (modifying Rev. Rul. 2002-46 for taxpayers electing to change their method of accounting)</p>



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Listed transactions**

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<p>Certain Contingent Deferred Swap Transactions: In general, the transaction involves the use of a Notional Principal Contract (NPC) to claim current deductions for periodic payments made by a taxpayer while disregarding the accrual of a right to receive offsetting payments in the future. The NPC has a term of more than one year, and the taxpayer is required to make periodic payments to the counter party (CP) at regular intervals of one year or less based on a fixed or floating rate index. In return, the CP is required to make a single payment at the end of the term of the NPC that consists of a noncontingent component and a contingent component. The noncontingent component may be based on a fixed or floating interest rate. The contingent component may reflect changes in the value of a stock index or currency.</p> <p><i>Identified as a listed transaction on May 6, 2002.</i></p>	<p>Notice 2002-35, 2002-21 IRB 992</p> <p>Rev. Rul. 2002-30, 2002-21 IRB 971 (appropriate method for inclusion of income or deduction of a non-periodic payment made pursuant to a notional principal contract where the payment is comprised of contingent and non-contingent components)</p>
<p>Inflated Basis CARDS: In general, the transaction involves the use of a loan assumption agreement to claim an inflated basis in assets acquired from another party. This inflated basis is claimed as a result of a transfer of assets in which a U.S. taxpayer (Taxpayer) becomes jointly and severally liable on indebtedness of the transferor of the assets (Transferor), with the indebtedness having a stated principal amount substantially in excess of the fair market value of the assets transferred. Transferor may not be subject to U.S. tax or otherwise may be indifferent to the federal income tax consequences of the transaction.</p> <p><i>Identified as a listed transaction on April 8, 2002.</i></p>	<p>Notice 2002-21, 2002-14 IRB 730</p>



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Listed transactions**

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<p>IRC Sec. 302/318 Basis Shift: The transaction involves the use of the attribution rules of IRC Section 318 and Reg. Sec. 1.302-2(c) of the Income Tax Regulations to increase the basis of stock owned by a taxpayer (the Taxpayer) that claims a loss upon disposition of that stock. In the transaction, there is a redemption of stock that is owned by a person (other than the Taxpayer) that is not subject to U.S. tax or is otherwise indifferent to the Federal income tax consequences of the redemption. Purportedly as a result of the application of the attribution rules of IRC Section 318, the redemption of stock is claimed to be a dividend under IRC Section 301 rather than a payment in exchange for stock under IRC Section 302(a). A variety of devices, often including options, are employed to treat the redeemed shareholder as owning stock in the redeeming corporation owned or treated as owned by the Taxpayer under the attribution rules of IRC Section 318. The attribution of ownership of such shares purportedly prevents the redemption of stock from reducing the redeemed shareholder's ownership interest in the redeeming corporation, thereby causing the redemption to be treated as a dividend. As a result of the redemption, the Taxpayer takes the position that under Reg. Sec. 1.301-2(c) all or a portion of the basis of the redeemed stock is added to the basis of stock in the redeeming corporation that the Taxpayer owns. The Taxpayer then sells the stock and claims a loss. Variations on the transaction include (1) the use of the transaction to reduce income or gain (rather than generate loss) and (2) the transfer of the stock (the basis of which was purportedly increased by reason of the redemption) to an entity in a carryover basis exchange, followed by either a sale of the entity interest or a sale of the stock by the entity.</p> <p><i>Identified as a listed transaction on July 26, 2001.</i></p>	<p>Notice 2001-45, 2001-33 IRB 129</p> <p>Prop. Reg. 1.302-5, 1.304-2 (basis of redeemed stock)</p> <p>Merrill Lynch Co. v Comm'r, 120 T.C. No. 3 (Jan 15, 2003)</p>
<p>Contingent Liability/Section 351 Transactions: Transactions involving a loss on the sale of stock acquired in a purported IRC Section 351 transfer of a high basis asset to a corporation and the corporation's assumption of a liability that the transferor has not yet taken into account for federal income tax purposes.</p> <p><i>Identified as a listed transaction on January 18, 2001.</i></p>	<p>Notice 2001-17, 2001-9 IRB 730</p>



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<p>“Mid-Co”/Tax-Exempt Intermediary Transactions: These transactions generally involve four parties: seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and buyer (Y) who desires to purchase the assets (and not the stock) of T. Pursuant to a plan, the parties undertake the following steps. X purports to sell the stock of T to M. T then purports to sell some or all of its assets to Y. Y claims a basis in the T assets equal to Y’s purchase price. Under one version of this transaction, T is included as a member of the affiliated group that includes M, which files a consolidated return, and the group reports losses (or credits) to offset the gain (or tax) resulting from T’s sale of assets. In another form of the transaction, M may be an entity that is not subject to tax, and M liquidates T (in a transaction that is not covered by IRC Section 337(b)(2) or Reg. Sec. 1.337(d)-4) of the Income Tax Regulations), resulting in no reported gain on M’s sale of T’s assets.</p> <p><i>Identified as a listed transaction on January 18, 2001.</i></p>	<p>Notice 2001-16, 2001-9 IRB 730</p> <p>Coordinated Issue Paper (All Industries), Intermediary Transaction Tax Shelters (December 19, 2002)</p>
<p>Guam Trust: Transaction purporting to apply IRC Section 935 to Guamanian trusts. The promoters of these transactions claim that IRC Section 935 applies to a trust as part of a scheme in which the trust seeks effectively to avoid both U.S. and Guamanian tax liability.</p> <p><i>Identified as a listed transaction on November 21, 2000.</i></p>	<p>Notice 2000-61, 2000-49 IRB 569</p>
<p>Certain Affirmative Uses of Reg. Section 1.83-6(d) to Generate Capital Losses: Transactions involving the purchase of a parent corporation’s stock by a subsidiary, a subsequent transfer of the purchased parent stock from the subsidiary to the parent’s employees, and the eventual liquidation or sale of the subsidiary.</p> <p><i>Identified as a listed transaction on November 16, 2000.</i></p>	<p>Notice 2000-60, 2000-49 IRB 568</p>
<p>Inflated Partnership Basis Transaction (Son of BOSS): The Son of Boss transaction involves the contribution of a purchased option to a partnership and the assumption by the partnership of a separate written option, which the taxpayer incurred. A taxpayer engaged in a Son of Boss transaction claims that the basis in the taxpayer’s partnership interest is increased by the cost of the purchased call option but is not reduced under IRC Section 752 for the assumption of the obligation under the written call option. Subsequently, taxpayer claims a loss on the disposition of the partnership interest even though taxpayer has incurred no corresponding economic loss.</p> <p><i>Identified as a listed transaction on August 11, 2000.</i></p>	<p>Notice 2000-44, 2000-36 IRB 255</p> <p>T.D. 9062; Reg. 106736-00 (assumption of partner liabilities)</p> <p>Chief Counsel Notice 2003-20</p>
<p>Debt Straddles: Certain transactions involving the acquisition of two debt instruments the values of which are expected to change significantly at about the same time in opposite directions.</p> <p><i>Identified as a listed transaction on February 28, 2000.</i></p>	<p>Rev. Rul. 2000-12, 2000-11 I.R.B. 744</p>



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<p>Fast Pay/Step Down Preferred: A fast-pay arrangement is any arrangement in which a corporation has fast-pay stock outstanding for any part of its taxable year. Stock is fast-pay stock if it is structured so that dividends (as defined in IRC section 316) paid by the corporation with respect to the stock are economically (in whole or in part) a return of the holder's investment (as opposed to only a return on the holder's investment). Unless clearly demonstrated otherwise, stock is presumed to be fast-pay stock.</p> <p><i>Identified as a listed transaction on February 28, 2000.</i></p>	<p>Treas. Reg. Sec. 1.7701(l)-3</p>
<p>BOSS: The transactions are cast in a variety of forms. In one typical arrangement, taxpayers act through a partnership to contribute cash to a foreign corporation, which has been formed for the purpose of carrying out the transaction, in exchange for the common stock of that corporation. Another party contributes additional capital to the corporation in exchange for the preferred stock of that corporation. The foreign corporation then acquires additional capital by borrowing from a bank and grants the bank a security interest in securities acquired by the foreign corporation that have a value equal to the amount of the borrowing. Thereafter, the foreign corporation makes a distribution of the encumbered securities to the partnership that holds its common stock. The effect of the distribution, combined with fees and other transaction costs incurred at the corporate level, is to reduce the remaining value of the foreign corporation's common stock to zero or a minimal amount. Although the distributed securities are encumbered by the bank debt (and the taxpayers or their partnership may be secondarily liable for the debt as guarantors), the foreign corporation has sufficient other assets to repay the debt, and it is the understanding of all parties that the foreign corporation will repay the debt with such other assets.</p> <p><i>Identified as a listed transaction on February 28, 2000.</i></p>	<p>Notice 99-59, 1999-2 C.B. 761</p>
<p>"Lease-In Lease-Out": Transactions in which a taxpayer purports to lease property and then purports to immediately sublease it back to the lessor.</p> <p><i>Identified as a listed transaction on February 28, 2000.</i></p>	<p>Rev. Rul. 99-14, 1999-1 C.B. 835</p> <p>Rev. Rul. 2002-69, IRB 2002-44 (modifies previous application of the law to LIFO transactions)</p>



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<p>Charitable Remainder Trusts: Transactions involving distributions described in Reg. Sec. 1.643(a) 8 from charitable remainder trusts. The proposed regulations provide that, to the extent that a distribution of the annuity or unitrust amount from a charitable remainder trust is not characterized in the hands of the recipient as income from the categories described in IRC Section 664(b)(1), (2), or (3) (determined without regard to the rules in these proposed regulations) and was made from an amount received by the trust that was neither a return of basis in any asset sold by the trust (determined without regard to the rules in these proposed regulations) nor attributable to a contribution of cash to the trust with respect to which a deduction was allowable under IRC Sections 170, 2055, 2106, or 2522, the trust shall be treated as having sold, in the year for which the distribution is due, a pro rata portion of the trust assets. Any transaction that has the purpose or effect of circumventing this rule will be disregarded.</p> <p><i>Identified as a listed transaction on February 28, 2000.</i></p>	<p>Reg. Sec. 1.643(a)-8</p>
<p>Transactions Substantially Similar to Those at Issue in ASA Investerings Partnership and ACM: Transactions involving contingent installment sales of securities by partnerships in order to accelerate and allocate income to a tax-indifferent partner, such as a tax-exempt entity or foreign person, and to allocate later losses to another partner.</p> <p><i>Identified as a listed transaction on February 28, 2000.</i></p>	<p>ASA Investerings</p> <p>Partnership v. Commissioner, 201 F.3d 505 (D.C. Cir. 2000); ACM</p> <p>Partnership v. Commissioner, 157 F.3d 231 (3d Cir. 1998)</p>



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<p>ADR and Other Types: The Treasury and the Service have identified two classes of transactions that create potential for foreign tax credit abuse. The first class consists of transactions involving transfers of tax liability through the acquisition of an asset that generates an income stream subject to foreign gross basis taxes such as withholding taxes. Transactions described in this class may include acquisitions of income streams through securities loans and similar arrangements and acquisitions in combination with total return swaps. In abusive arrangements involving such transactions, foreign tax credits are effectively purchased by a U.S. taxpayer in an arrangement where the expected economic profit from the arrangement is insubstantial compared to the foreign tax credits generated. The second class of transactions consists of cross-border tax arbitrage transactions that permit effective duplication of tax benefits. Duplicate benefits result when the U.S. grants benefits and, in addition, a foreign country grants benefits (including benefits from a full or partial imputation or exemption system, or a preferential rate for certain income) to separate persons with respect to the same taxes or income. These duplicate benefits generally can result where the U.S. and a foreign country treat all or part of a transaction or amount differently under their respective tax systems. In abusive arrangements involving such transactions, the U.S. taxpayer exploits these inconsistencies where the expected economic profit is insubstantial compared to the foreign tax credits generated.</p> <p><i>Identified as a listed transaction on February 28, 2000.</i></p>	<p>Part II of Notice 98-5, 1998-1 C.B. 334</p>
<p>Certain Trusts Purported to be Exempt Multiple Employer Welfare Funds: This generally involves trust arrangements which purportedly satisfied the requirements for the 10-or-more-employer plan exemption and that are used to provide benefits such as life insurance, disability, and severance pay benefits.</p> <p>Identified as a listed transaction on February 28, 2000.</p>	<p>Notice 95-34, 1995-1 C.B. 309</p>
<p>Section 401(k) Accelerator. The issue related to this transaction is whether contributions to a qualified cash or deferred arrangement within the meaning of IRC Section 401(k) or to a defined contribution plan as matching contributions within the meaning of IRC Section 401(m) are deductible by an employer for a taxable year, if the contributions are attributable to compensation earned by plan participants after the end of that taxable year. In the ruling, the IRS concludes that such contributions are not deductible by the employer for a taxable year, regardless of whether IRC Section 404(a)(6) deems the contributions to have been paid on the last day of that taxable year, and regardless of whether the employer uses the cash or an accrual method of accounting.</p> <p><i>Identified as a listed transaction on February 28, 2000.</i></p>	<p>Rev. Rul. 90-105, 1990-2 C.B. 69</p> <p>Notice 2002-48 (IRS addresses two variations of the fact pattern in Rev. Rul. 90-105 which it does not consider to be a reportable transaction)</p>