

WASHINGTON — The Internal Revenue Service announced today the mailing of a time-limited settlement offer for certain taxpayers under audit who participated in abusive micro-captive insurance transactions.

Taxpayers eligible for this offer will be notified by letter with the applicable terms. Taxpayers who do not receive such a letter are not eligible for this resolution.

Abusive micro-captives have been a concern to the IRS for several years. The transactions have appeared on the IRS "Dirty Dozen" list of tax scams since 2014. In 2016, the Department of Treasury and IRS issued Notice 2016-66 (PDF), which identified certain micro-captive transactions as having the potential for tax avoidance and evasion.

Following wins in three recent U.S. Tax Court cases, the IRS has decided to offer settlements to taxpayers currently under exam. In recent days, the IRS started sending notices to up to 200 taxpayers.

Tax law generally allows businesses to create "captive" insurance companies to protect against certain risks. Under section 831(b) of the Internal Revenue Code, certain small insurance companies can choose to pay tax only on their investment income. 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 has consistently disallowed the tax benefits claimed by taxpayers in abusive micro-captive structures. Although some taxpayers have challenged the IRS position in court, none have been successful. To the contrary, the Tax Court has now sustained the IRS' disallowance of the claimed tax benefits in three different cases.

The IRS will continue to disallow the tax benefits claimed in these abusive transactions and will continue to defend its position in court. The IRS has decided, however, to offer to resolve certain of these cases on the terms outlined below.

"The IRS is taking this step in the interests of sound tax administration," IRS Commissioner Chuck Rettig said. "We encourage taxpayers under exam and their advisors to take a realistic look at their matter and carefully review the settlement offer, which we believe is the best option for them given recent court cases. We will continue to vigorously pursue these and other similar abusive transactions going forward."

The settlement brings finality to taxpayers with respect to the micro-captive insurance issues. The settlement requires substantial concession of the income tax benefits claimed by the taxpayer together with appropriate penalties (unless the taxpayer can demonstrate good faith, reasonable reliance). Taxpayers eligible for the settlement will be notified of the terms by letter from IRS. The initiative is currently limited to taxpayers with at least one open year under exam. Taxpayers who also have unresolved years under the jurisdiction of the IRS Appeals may also be eligible, but those with pending docketed years under Counsel's jurisdiction are not eligible. The IRS is continuing to assess whether the settlement offer should be expanded to others.

Taxpayers who receive letters under this settlement offer, but who opt not to participate, will continue to be audited by the IRS under its normal procedures. Potential outcomes may include full disallowance of captive insurance deductions, inclusion of income by the captive, and imposition of all applicable penalties.

Although taxpayers who decline to participate will have full Appeals rights, the IRS Independent Office of Appeals is aware of this resolution initiative. Given the current state of the law, it is the view of the IRS Independent Office of Appeals that these terms generally reflect the hazards of litigation faced by taxpayers, and taxpayers should not expect to receive better terms in Appeals than those offered under this initiative.

Taxpayers who are offered this private resolution and decline to participate will not be eligible for any potential future settlement initiatives. The IRS also plans to continue to open additional exams in this area as part of ongoing work to combat these abusive transactions.