

Captive insurance: state reporting obligations for transactions of interest

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On November 1 2016 the Internal Revenue Service (IRS) issued Notice 2016-66, which identifies certain transactions relating to micro-captive insurers as 'transactions of interest'. This designation brings covered captive insurers into a federal reporting regime that requires participants in such transactions, as well as their advisers, to meet certain one-off and annual filing obligations. Participants and advisers should also be aware that several states have similar reporting obligations, and failure to comply with the state reporting regimes can lead to significant penalties.

Under the federal reporting regime, participants in micro-captive transactions must make a one-off filing of Form 8886 with the IRS Office of Tax Shelter Analysis (OTSA) and file Form 8886 annually with their federal tax returns. Material advisers must make a one-off filing of Form 8918 with OTSA and file Form 8918 if they meet certain reporting thresholds with respect to additional transactions.

The one-off filings were originally required to be filed with OTSA by January 30 2017. However, Notice 2017-08, issued on December 29 2016, extended the filing deadline to May 1 2017. The deadline extension is good news for the captive insurance industry, as it gives participants and material advisers more time to prepare the required federal disclosures. Participants and material advisers should also use the additional time to ensure compliance with state reporting regimes.

Approximately a dozen states – including California and New York – have reporting regimes that largely mirror the federal regime. Under state legislation, if a transaction is designated a 'transaction of interest' for federal reporting purposes, then that transaction is also a transaction of interest for state reporting purposes. In general, if a transaction has a 'nexus' with one of these states (eg, a participant is a resident of a state that requires reporting), then the participants and material advisers may be required to meet certain reporting obligations in that state.

The content, form and deadline for reporting vary from state to state. However, each state imposes penalties on taxpayers that fail to file timely or adequately with the state. Participants and material advisers should therefore give due consideration to the state reporting requirements and use the next few months to ensure compliance with all applicable reporting regimes.

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