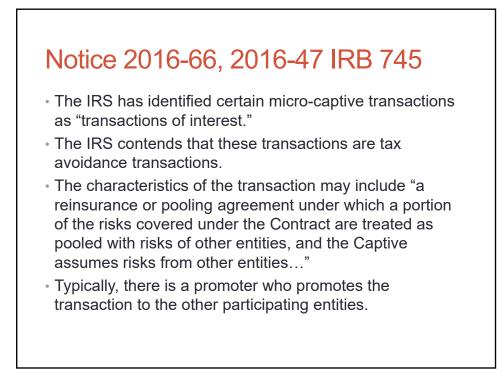


CAPTIVE AUDITS AND LITIGATION Presented by

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Notice 2016-66 Cont.

- Other factors that may indicate a tax avoidance transaction include:
- 1. Insurance coverage that involves implausible risks (such as a zombie apocalypse).
- 2. Coverage that duplicates commercial insurance coverage.
- 3. Premiums determined without underwriting or actuarial analysis.
- 4. Payments that significantly exceed the cost of prevailing commercial coverage.

Notice 2016-66 Cont.

- 5. The Captive fails to comply with the laws were chartered.
- 6. The absence of defined claims procedures.
- 7. Inadequate reserves.

Notice 2016-66 Cont.

- Persons who enter these transactions on or after November 2, 2006, must disclose the transactions as described in Reg. Section 1.6011-4.
- Material advisors who make a tax statement with respect to the transaction have disclosure and list maintenance obligations under IRC Sections 6111 and 6112.

The Captive Audit

- The IRS has taken an aggressive approach to the audit of micro-captives considered to be abusive avoidance strategies.
- The audit approach includes broad and detailed document and information requests. The audit may take more than one year and involve hundreds of separate questions and the production of virtually thousands of documents.
- Judge Holmes has described the IRS approach as an "omphaloskeptical review." Avrahami, *infra*, at page 44.

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