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January 24, 2003

Internal Revenue Service
Room 5226
Post Office Box 7604
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Washington, D.C. 20044
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Re: New Temporary and Proposed Regulations Relating to Disclosure and Listing of Tax Shelter Transactions (REG-103735-00, REG-154117-02, REG-154116-02, REG-154115-02, REG-154429-02, REG-154423-02, REG-154426-02, REG-110311-98, REG-103736-00)

Ladies and Gentlemen:

We are writing to supplement our prior comments (submitted on December 17, 2002) in regard to the temporary and proposed regulations issued on October 17, 2002 with respect to the disclosure and listing of "tax shelter" transactions (herein, the "Disclosure Regulations" and the "Listing Regulations"). Our additional comments focus on the application of the regulations to transactions entered into with certain foreign corporations.[1]

Specifically, we suggest that the Disclosure and Listing Regulations be clarified with regard to the circumstances in which reporting and list maintenance are required for reportable transactions entered into by controlled foreign corporations (CFCs), qualified electing funds (QEFs), passive foreign investment companies (PFICs) and foreign personal holding companies (FPHCs). First, we suggest that disclosure be

[1] The Securities Industry Association brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. Collectively they employ more than 495,000 individuals, representing 97 percent of total employment in securities brokers and dealers. The U.S. securities industry manages the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2001, the industry generated $280 billion in U.S. revenue and $383 billion in global revenues.

required by a “reporting shareholder” only to the extent that an otherwise reportable transaction is reasonably expected to reduce the shareholder’s U.S. federal tax liability, on an aggregate, net basis, by more than a de minimis amount. In addition, we recommend that listing be required in the year in which a reportable transaction is executed, unless the material advisor reasonably expects at that time that the transaction will not reduce a reporting shareholder’s federal tax liability – whether in that year or in a subsequent year.

1. Effect on Federal Tax Liability. Under the Disclosure Regulations, a taxpayer that is a “reporting shareholder” with respect to a CFC, QEF or FPHC generally is required to disclose an otherwise reportable transaction entered into by the foreign corporation only if it affects the shareholder’s federal tax liability.[2] Where the objective of the transaction is to reduce the *foreign* tax liability of the foreign corporation, the effect on the reporting shareholder’s *U.S.* tax liability may be incidental. Under the regulations, however, *any* effect -- even if de minimis -- on the shareholder’s U.S. tax liability would appear to trigger a disclosure requirement. In fact, disclosure would apparently be required even if the transaction *increased* the reporting shareholder’s federal tax liability.

We suggest, therefore, that the Treasury Department and Internal Revenue Service consider adopting a provision under which disclosure would be required only to the extent that the reporting shareholder’s federal tax liability was reasonably expected to be reduced on an aggregate net basis, taking into account both expected increases and expected reductions in tax liability in all relevant years. Further, we suggest that Treasury and IRS consider requiring disclosure only to the extent that the aggregate net expected reduction in federal tax liability from the transaction exceeds some minimum amount (and the transaction does not increase federal tax liability on an aggregate net basis by any amount), in order to reduce the number of instances in which reporting is required for transactions that are not designed to reduce U.S. tax.[3]

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[2] In the case of a transaction with a book/tax difference, the transaction is reportable by the reporting shareholder only if it reduces or eliminates an income inclusion that would otherwise be required under Code Section 551, 951 or 1293. In that event, all items from the transaction that otherwise are considered items of the foreign corporation for book or tax purposes are treated as items of the shareholder (to the extent of the shareholder’s allocable share) for purposes of determining whether the transaction results in a significant book/tax difference.

[3] We note also that the Disclosure Regulations, as currently drafted, can be expected to result in repetitive disclosure of the same reportable transaction, in cases where a transaction affects a reporting shareholder’s federal tax liability in more than one year. For example, where a transaction affects a foreign corporation’s earnings and profits, the transaction may be reportable each time the foreign corporation pays a dividend (or generates a subpart F inclusion), if the corporation does not distribute all of its earnings and profits with each dividend. In our December 17, 2002 comments, we recommended that the Disclosure Regulations be clarified to require disclosure of a reportable transaction only once, even where the transaction has a reportable characteristic that recurs over a period of years. Our recommendation in this (continued ...)

2. Timing. In many cases, an otherwise reportable transaction entered into by a foreign corporation may have no immediate effect on a reporting shareholder's federal tax liability -- e.g., where the transaction may affect the availability of foreign tax credits under Code Section 902 with respect to a subsequent dividend payment, or the earnings and profits limitation on subsequent years' subpart F inclusions. In this situation, it appears (although the Disclosure Regulations are not entirely clear) that the reporting shareholder may wait to disclose the transaction until the year in which it affects the shareholder's federal tax liability.

Under the Listing Regulations, a material advisor is required to maintain a list of participants where the advisor knows, or has reason to know, that the transaction is a reportable transaction. However, in the case of a transaction entered into by a CFC, QEF, PFIC or FPHC, it is not clear whether a material advisor is required to list the transaction at the time the transaction is entered into (at which point the actual effect on a reporting shareholder may not yet be known), or whether the transaction is to be listed only if and when it affects a reporting shareholder's federal tax liability.

We believe that a "wait-and-see" approach would be impractical, because it would effectively require material advisors to seek information annually from reporting shareholders regarding the federal tax effects of the transaction. However, advisors would not be able to compel reporting shareholders to provide the necessary information, and thus in many instances would be unable to comply with the listing requirement.

Another alternative would be to require that a material advisor create an information list pursuant to Section 6112 in the year the transaction is entered into, to the extent that the transaction is reasonably expected to have an effect on a reporting shareholder's federal tax liability in the current year or a future year. This would eliminate the need to seek further information from transaction participants in future years. Therefore, we recommend that the Listing Regulations be revised to require listing of an otherwise reportable transaction in the year of execution. However, a material advisor would be relieved of the requirement to list a transaction if the material advisor reasonably expects, at the time the transaction is executed, that the transaction will not reduce a reporting shareholder's federal tax liability -- either in the current year or in a future year by the specified minimum amount provided in the Disclosure Regulations, revised as recommended above.

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(... continued)
regard applies equally to disclosure of reportable transactions by reporting shareholders of foreign corporations.

We would be pleased to discuss the foregoing comments with members of the IRS and Treasury Department staff. Please contact Patricia McClanahan of SIA (202-326-5324) with any questions or if we can provide you with any further information.

Sincerely,

Saul M. Rosen
Chief Tax Officer, Citigroup
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