

AN ALERT FROM THE BDO FEDERAL TAX PRACTICE

# BDO KNOWS:

## FEDERAL TAX



### SUBJECT

## IRS ANNOUNCES TWO CAPITAL GAINS TRANSACTIONS DEEMED POTENTIAL AVOIDANCE DEALS

### SUMMARY

On July 8, 2015, the Internal Revenue Service released two notices announcing its planned treatment of two types of structured financial transactions the Service believes are tax avoidance transactions.

### DETAILS

On July 8, 2015, the Internal Revenue Service released two notices announcing its planned treatment of two types of structured financial transactions the Service believes are tax avoidance transactions.

The first, Notice 2015-47, addresses transactions IRS refers to as “basket option contracts,” in which a taxpayer attempts to defer income recognition and convert short-term capital gain and ordinary income to long-term capital gain using a contract denominated as an option contract. The IRS now considers these transactions a “listed transaction.”

The second, Notice 2015-48, concerns a transaction where a taxpayer attempts to defer income recognition and may attempt to convert short-term capital gain and ordinary income to long-term capital gain through a contract denominated as an option, notional principal contract, forward contract, or other derivative contract. IRS refers to this transaction as “basket contracts.” The IRS has now designated such transactions as a “transaction of interest.”

A listed transaction is a transaction that is the same as, or substantially similar to, one that the IRS has determined to be a tax avoidance transaction and identified by the IRS notice or other form of published guidance. Taxpayers who participate in listed transactions are required to disclose the transaction

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as required by the regulations. Tax practitioners who advise taxpayers regarding listed transactions are required to register the transaction with the IRS and maintain lists of investors in the transactions and provide the list to the IRS on request.

A transaction of interest is defined as a transaction that the IRS and the Treasury Department believe is a transaction that has the potential for tax avoidance or evasion, but lack sufficient information to determine whether the transaction should be identified specifically as a listed transaction.

## BDO INSIGHTS

- ▶ Taxpayers should be aware of the severe penalties associated with the nondisclosure of listed transactions and transactions of interest, as well as heightened accuracy-related penalties for understatements attributable to such transactions.
- ▶ The new IRS Notices are expected to be available online in the near future. In the interim, more information on the transactions that the IRS has determined are tax avoidance transactions can be found at: <http://www.irs.gov/Businesses/Corporations/Listed-Transactions>.

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