

involving a brief asset holding period if the statement concerns an item that gives rise to a tax credit described in § 1.6011-4(b)(7) of this chapter.

(iv) *Exceptions*—(A) *Post-filing advice*. A person will not be considered to be a material advisor with respect to a transaction if that person does not make or provide a tax statement regarding the transaction until after the first tax return reflecting tax benefit(s) of the transaction is filed with the IRS.

(B) *Publicly-filed statements*. A tax statement with respect to a transaction that includes only information about the transaction contained in publicly-available documents filed with the Securities and Exchange Commission no later than the close of the transaction will not be considered a tax statement to or for the benefit of a person described in paragraph (c)(2)(i)(A) through (E) of this section.

(3) *Minimum fee*—(i) *In general*. The minimum fee is \$250,000 for a transaction if every person to whom or for whose benefit the potential material advisor makes or provides a tax statement with respect to the transaction is a corporation. The minimum fee is \$50,000 for a transaction if any person to whom or for whose benefit a potential material advisor makes or provides a tax statement with respect to the transaction is a partnership or trust, unless all owners or beneficiaries are corporations (looking through any partners or beneficiaries that are themselves partnerships or trusts), in which case the minimum fee is \$250,000. For all other transactions, the minimum fee is \$50,000. For purposes of this paragraph (c)(3)(i) a corporation means a corporation other than an S corporation.

(ii) *Listed transactions*. For listed transactions described in §§ 1.6011-4(b)(2), 20.6011-4(a), 25.6011-4(a), 31.6011-4(a), 53.6011-4(a), 54.6011-4(a), or 56.6011-4(a) of this chapter, the minimum fees in paragraph (c)(3)(i) of this section are reduced from \$250,000 to \$25,000 and from \$50,000 to \$10,000.

(iii) *Determination of fees*. In determining whether the minimum fee threshold is satisfied, all fees for services for advice (whether or not tax advice) or for the implementation of a transaction that is a potentially abusive tax shelter are taken into account. For purposes of this section, the minimum fee threshold must be met independently for each transaction that is a potentially abusive tax shelter and aggregation of fees among transactions is not required. Fees for advice or implementation include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to

the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent return preparation fees are unreasonable in light of all of the facts and circumstances. The IRS will scrutinize carefully all of the facts and circumstances in determining whether consideration received in connection with a transaction that is a potentially abusive tax shelter constitutes fees for purposes of this section.

(d) *Definitions*. For purposes of this section, the following terms are defined as follows:

(1) *Interest*. The term *interest* includes, but is not limited to, any right to participate in a transaction by reason of a partnership interest, a shareholder interest, or a beneficial interest in a trust; any interest in property (including a leasehold interest); the entry into a leasing arrangement or a consulting, management or other agreement for the performance of services; or any interest in any other investment, entity, plan, or arrangement. The term *interest* includes any interest that purportedly entitles the direct or indirect holder of the *interest* to any tax consequence (including, but not limited to, a deduction, loss, or adjustment to tax basis in an asset) arising from the transaction. An *interest* also includes information or services regarding the organization or structure of the transaction if the information or services are relevant to the potential tax consequences of the transaction.

(2) *Substantially similar*. The term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of list maintenance.

(3) *Person*. The term *person* means any person described in section 7701(a)(1), including an affiliated group of corporations that join in the filing of a consolidated return under section 1501.

(4) *Related party*. A person is a related party with respect to another person if such person bears a relationship to such other person described in section 267 or 707.

(5) *Tax*. For purposes of this section, the term *tax* means Federal tax.

(6) *Tax benefit*. A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(7) *Tax return*. For purposes of this section, the term *tax return* means a Federal tax return and a Federal information return.

(8) *Tax treatment*. The tax treatment of a transaction is the purported or claimed Federal tax treatment of the transaction.

(9) *Tax structure*. The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal tax treatment of the transaction.

(e) *Preparation and maintenance of lists*—(1) *In general*. A separate list of persons must be prepared and maintained for each transaction that is a potentially abusive tax shelter. However, one list must be maintained for substantially similar transactions that are potentially abusive tax shelters. A list may be maintained on paper, card file, magnetic media, or in any other form, provided the method of maintaining the list enables the IRS to determine without undue delay or difficulty the information required in paragraph (e)(3) of this section.

(2) *Persons required to be included on lists*—(i) *In general*. A material advisor is required to list each person described in paragraphs (c)(2)(i)(A) through (D) of this section to whom (or for whose benefit) the material advisor makes or provides a tax statement with respect to a transaction that is a potentially abusive tax shelter. However, a material advisor is not required to list a person described in paragraph (c)(2)(i)(A) of this section if that person entered into, or acquired an interest in, a listed transaction more than 6 years before the transaction was listed.

(ii) *Subsequent participant*. A material advisor must list any subsequent participant if the material advisor knows the identity of that subsequent participant, and the material advisor knows that the subsequent participant either entered into a transaction that must be disclosed under § 1.6011-4(b) of this chapter or sold or transferred to another subsequent participant an interest in that type of transaction.

(iii) *Section 6111 registrant*. A material advisor required to register a