

## General Terms and Conditions

Below are the terms of the 2020 Micro-Captive Insurance Resolution. The IRS will not entertain counteroffers to these terms. If the Taxpayers do not agree with the terms, the Taxpayers' examination will continue under normal IRS Procedures.

### Section 1: General Terms and Conditions:

- a. Taxpayers must notify the IRS, in writing, of their election to participate in the 2020 Resolution within 30 days of the date of this letter.
- b. Taxpayers may request a one-time 30-day extension to elect to participate in the 2020 Resolution. No additional extension will be permitted.
- c. Each partner, member, and shareholder of each insured entity and the captive must agree to participate in the 2020 Resolution.
- d. To finalize the 2020 Resolution, taxpayers will be required to execute a Form 906, *Closing Agreement on Final Determination Covering Specific Matters* (Closing Agreement), consistent with terms and conditions outlined in this document.
- e. Taxpayers will also be required to execute Form 8821, *Tax Information Authorization*, to facilitate the 2020 Resolution.
- f. Taxpayers must pay the full balance of the deficiency, any applicable penalties and interest upon signing the Closing Agreement. Taxpayers participating in the 2020 Resolution are not entitled to interest suspension under I.R.C. § 6404(g).
- g. Any taxpayer unable to make full payment of the liabilities described in Section 2 must submit complete financial statements and agree to financial arrangements acceptable to the IRS before the IRS will execute a Closing Agreement. The IRS will not execute a Closing Agreement under this 2020 Resolution with taxpayers unable to reach acceptable financial arrangements.
- h. Taxpayers with less than one year remaining on their assessment statute of limitation must sign a Form 872, *Consent to Extend the Time to Assess Tax*, and agree to extend the statute of limitation by at least one year.
- i. To facilitate the 2020 Resolution, taxpayers with years in Appeals must agree that Appeals may relinquish jurisdiction of such years to the appropriate IRS Examination Division and to ex parte waiver allowing Appeals and other IRS function employees to communicate without taxpayers or taxpayers' representative present.
- j. Taxpayers agree to fully cooperate with the IRS during the 2020 Resolution, which includes, but is not limited to, providing additional information if requested by the IRS. If taxpayers take steps inconsistent with facilitating the 2020 Resolution, the Service reserves the right to remove the taxpayers from the 2020 Resolution.
- k. Taxpayers agree that acceptance of this 2020 Resolution indicates they are not entitled to claim or receive tax benefits arising from the captive insurance transaction, except as described in this Attachment 1. For returns filed after a taxpayer opts into this settlement, taxpayers agree to file the returns in a manner consistent with the terms of this 2020 Resolution.
- l. If the captive is owned by a C Corporation, special procedures may apply.

## Section 2: Financial Terms

- a. One hundred percent (100%) of any deductions claimed for captive insurance premiums will be disallowed for all open tax years.
- b. Any captive-related expenses claimed on the insured's or the captive's returns, including, but not limited to, fees paid to captive managers for formation or maintenance of a captive, will be disallowed in full.
- c. The captive will not be required to recognized taxable income for received premiums, and taxpayers will be treated as satisfying any withholding obligations under sections 1442 and 1461 arising from purported premiums paid to, or for the benefit of, the captive.
- d. An accuracy-related penalty under I.R.C. § 6662(a) on all tax due in the 2020 Resolution will be asserted at a reduced rate of 15%, including but not limited to taxes owed under the deemed transactions or liquidating distributions described in the Appendix.
  - i. The penalty will be reduced by 5% for taxpayers that have not previously participated in any other reportable transaction. Taxpayers must sign the declaration provided.
  - ii. The penalty will be reduced by 5% for taxpayers that relied on advice from an independent tax professional. The independent tax professional must sign the declaration provided.
  - iii. Taxpayers that submit valid reportable transaction and independent advisor. declarations will have the accuracy-related penalty under I.R.C. § 6662(a) reduced to 5%.
- e. Taxpayers must file gift tax returns and pay gift tax, absorb credit, or both for any transfer of value to the shareholders of the captive, before the IRS will execute a Closing Agreement.
- f. If none of the parties to the micro-captive transaction disclosed the transaction as required by Notice 2016-66, as modified by Notice 2017-08, one penalty under I.R.C. § 6707A, Penalty for Failure to Include Reportable Transaction Information with Return at the rate applicable to natural personas under I.R.C § 6707A(b)(3) (i.e., \$5,000). Taxpayers will not seek rescission of the penalty under I.R.C § 6707A(d).
- g. Additions to tax for failure to file or pay tax under I.R.C. § 6651 and failure to pay estimated income tax under I.R.C. §§ 6654 and 6655 may apply. No other penalty will be imposed.
- h. Taxpayers agree that they are responsible for their own costs and fees in participating in this 2020 Resolution; I.R.C. § 7430 does not apply to this 2020 Resolution.
- i. The captive (1) must have already liquidated, (2) will be required to liquidate within 90 days of electing to participate in this 2020 Resolution, or (3) will be deemed to distribute qualified dividends to, and receive capital contributions from, its shareholders, as described in the Appendix. Foreign captives not liquidating or already liquidated must also decide whether to conduct an F Reorganization as described in the Appendix. Please fill in the box(es) below.

To participate in this 2020 Resolution, please initial page 1 and sign and date page 2 of this Attachment 1, and mail this Attachment 1 to the IRS listed contact referenced in the cover letter. Your signature will be considered a non-binding consent to participate in this 2020 Resolution; formal agreement to be memorialized subsequently with a Closing Agreement, as described above. By signing this Attachment 1, the person named below certifies that he/she has legal authority to execute this election on behalf of the insured. In addition, by signing this form, taxpayer(s) waive their right to participate in discussions between IRS Appeals and personnel from other IRS functions, such as Examination or Counsel, that may take place in connection with the 2020 Micro-Captive Insurance Resolution.

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Print Name and Title

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Insured Name

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Signature

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Date

Please mark the box(es) next to the election(s) you believe you are most likely to make in the 2020 Resolution. This is for information purposes only; you will not be bound by the box you mark.

I plan for the captive's shareholders to recognize income for a deemed qualified dividend and adjust basis for deemed capital contribution(s) as described in the Appendix.

My captive is foreign and will conduct an F Reorganization as described in the Appendix.

I plan to liquidate my captive within 90 days of electing to participate in this 2020 Resolution.

My captive has already liquidated as of \_\_\_\_\_.  
Date

## Appendix

- a. Liquidation: In computing the gain (or loss) of the captive shareholders upon liquidation of the captive, each shareholder's basis is increased by the shareholder's proportional share of the amount of the captive insurance premiums disallowed as deductions (that is 100% of the insurance premium deductions for open tax years) of an insured entity that is not taxed as a C Corporation for Federal income tax purposes. Gains (or losses) for the liquidation will be recognized in the "last filed income tax return" as defined below.
- b. Deemed Transactions: The captive's shareholders will each be required to recognize income for a deemed qualified dividend and adjust basis for deemed capital contributions in the year of the captive's "last filed income tax return" as defined below. Each deemed qualified dividend and deemed capital contribution will be pro rata with respect to all shares of the captive's stock.
  - i. In accordance with its ownership interest in the captive, each captive shareholder will include in income a deemed qualified equal to its proportional share of:
    - a. All captive insurance premium deductions allowed to the insureds (that is, all of the insurance premium deductions for closed tax years);
    - b. Less, expenses paid by the captive to parties other than the captive manager or any affiliate of the captive manager that were not previously deducted (such as premium taxes, bank fees, return preparation fees);
    - c. Less, insurance claims paid by the captive; and
    - d. Less, taxable distributions previously made to the captive's shareholders;
  - ii. Provided, however, that no adjustment to any captive shareholder's income will be made if the amount determined under subparagraph i. is less than zero.
  - iii. At the time of the deemed qualified dividends, the captive's earnings and profits will be deemed to be at least equal to the amount of the total deemed qualified dividends for all the shareholders.
  - iv. Immediately following the deemed qualified dividends, the captive's shareholders will each be deemed to make a capital contribution to the captive in the amount of the deemed dividend described above.
  - v. Immediately following the deemed capital contributions described in subparagraph iv., each of the insured entities that are not taxed as a C corporation for federal income tax purposes is deemed to make a distribution to insured's owners, equal to its proportionate share of the amount of the captive insurance premiums disallowed as deductions for all years subject to the 2020 Resolution, and the captive's shareholders, in accordance with their ownership interest in the captive, will be deemed to make another capital contribution to the captive equal to its proportional share of the amount of the captive insurance premiums disallowed as deductions in all years subject to the 2020 Resolution.
- c. The captive's § 831(b) elections will be terminated.

- d. If the captive made an election under § 953(d), after the deemed capital contribution in subparagraph (v), the § 953(d) election will be terminated and the principles of § 953(d)(5) and the regulations thereunder will apply such that all property held by the captive will be deemed transferred to a foreign corporation in an exchange to which § 367 applies in the year of the captive’s “last filed income tax return” as defined below.
  - i. However, if the captive engages in an “inbound F reorganization” to become a U.S. corporation (including a domestic eligible entity that elects to be taxed as a corporation), the step transaction doctrine will apply to treat the combination of the deemed exchange pursuant to § 953(d)(5) and the inbound F reorganization as an F reorganization where a U.S. corporation converts into another U.S. corporation.
- e. If Captive has more than one class of stock or has recently participated in a reorganization, special provisions may apply.
- f. For purposes of the 2020 Resolution, the “last filed income tax return” means the last year in which all parties to the transaction have filed returns as required, as of the date of taxpayers opting into this settlement.

## For More Information

**Ben J. Peeler**, J.D., CPA, LL.M

Partner-in-Charge of IRS Tax Controversy Services

[bpeeler@eidebailly.com](mailto:bpeeler@eidebailly.com) | 801.456.5476