



TaxNewsFlash

United States

No. 2024-113
March 22, 2024

Proposed regulations: Certain charitable remainder annuity trust transactions identified as listed transactions

The U.S. Treasury Department and IRS today released for publication in the Federal Register [proposed regulations](#) (REG-108761-22) identifying certain charitable remainder annuity trust (CRAT) transactions and substantially similar transactions as listed transactions, a type of reportable transaction.

Taxpayers use Form 8886, *Reportable Transaction Disclosure Statement*, to disclose information for each reportable transaction in which they participate. Material advisors must file Form 8918, *Material Advisor Disclosure Statement*, to disclose information about reportable transactions. Penalties apply to taxpayers and material advisors who fail to properly disclose their participation in reportable transactions.

The proposed regulations provide that a CRAT transaction is a listed transaction if:

- The grantor creates a trust purporting to qualify as a charitable remainder annuity trust under section 664(d)(1)
- The grantor funds the trust with property having a fair market value in excess of its basis (contributed property)
- The trustee sells the contributed property
- The trustee uses some or all of the proceeds from the sale of the contributed property to purchase an annuity
- On a federal income tax return, the beneficiary of the trust treats the annuity amount payable from the trust as if it were, in whole or in part, an annuity payment subject to section 72, instead of as carrying out to the beneficiary amounts in the ordinary income and capital gain tiers of the trust in accordance with section 664(b)

The preamble to the proposed regulations states that Treasury and the IRS are aware of transactions in which taxpayers attempt to use a CRAT and a single premium immediate annuity (SPIA) to permanently avoid recognition of ordinary income and/or capital gain. Taxpayers engaging in these transactions claim that distributions from the trust are not taxable to the beneficiaries as ordinary income or capital gain under section 664(b) because the distributions constitute the trust's unrecovered investment in the SPIA, thus claiming that a significant portion of the distributions is excluded from gross income under section 72(b)(2). Taxpayers also

claim that the trust qualifies as a CRAT and thus is not subject to tax on the trust's realized ordinary income or capital gain under section 664(c)(1), even though the trust may not meet all of the requirements of section 664(d)(1).

The proposed regulations are proposed to apply as of the date the proposed regulations are finalized.

Comments on the proposed regulations, as well as requests to speak and outlines for topics to be discussed at the public hearing (scheduled for July 11, 2024, at 10:00 AM ET) are due by May 24, 2024. If no outlines are received by that date, the public hearing will be cancelled.

Rules relating to charitable remaindermen

The proposed regulations provide that certain organizations whose only role or interest in the transaction is as a charitable remainderman will not be treated as participants in the transaction or as parties to a prohibited tax shelter transaction subject to excise taxes under section 4965 and disclosure requirements.

However, the preamble to the proposed regulations notes that under section 6111(b)(1)(A), any person (including a charitable remainderman) may be treated as a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount for the material aid, assistance, or advice. Treasury and the IRS request comments on whether a charitable remainderman may ever be considered to be providing material aid, assistance, or advice with respect to a CRAT transaction, and in such case, the nature of the services generally provided, and the fees generally received.

KPMG observation

Only the specific CRAT transaction that Treasury and the IRS consider to be abusive with the characteristics described in the proposed regulations (and substantially similar transactions) would be considered listed transaction(s). CRAT transactions without those specific characteristics would not be considered listed transactions under the proposed regulations.

kpmg.com/socialmedia



The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at +1 202.533.3712, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)