Enclosure

Question 1: The number of different syndication transactions identified by the Forms 8886 and 8918 disclosure statements (i.e., how many different syndication transactions covered by the Notice have been identified in the disclosures since January 1, 2010);

For calendar year 2017, IRS received 39,619 syndicated conservation easement (SCE) Form 8886 disclosures and 6,501 SCE Form 8918 Material Advisor disclosures. The specific number of different syndication transactions identified is difficult to determine and still under review. We have identified 552 unique entities where we believe the SCE transaction occurred (top tier partnerships that pass through the deductions to investors).

Question 1a: Of these identified transactions, how many were subject to IRS exam, audit, or other review prior to the issuance of Notice 2017-10;

As of December 23, 2016, the release date of Notice 2017-10, 88 of the 552 entities were either in an exam status or were previously examined for a tax year ending after January 1, 2010. We cannot confirm that the identified transactions were examined for these entities. A manual review would be required to determine the specific issue that was the subject of the examination.

Question 2: The total number of investors involved in transactions described by the Notice;

The total number of investors involved in transactions in response to the Notice is 15,238. The number of investors was determined by the number of unique identification numbers (i.e., each investor is only counted once) from a total of 39,619 Forms 8886 that IRS received.

Question 3: The number and percentage of investors covered by the Notice who had an interest in the property contributed for:

a. less than six months;
b. less than one year;
c. less than three years;
d. three years or more;

This information is not captured from the disclosures or from IRS databases. The duration of an investor’s interest in a contributed property would require individual disclosure analysis or taxpayer examination.

Question 4: The amount and nature of the expected aggregate tax benefits generated by the syndication transactions covered by the Notice:
The number of Form 8886 disclosures reporting a contribution deduction amount is 30,101 (out of the total 39,619). The aggregate contribution deduction reported by taxpayers on the Form 8886 disclosures is approximately $230B. As noted above, this figure represents the aggregate amount disclosed to the IRS and has not been validated for accuracy or to eliminate duplicate reporting.

Question 5: The number and type of different material advisors involved in developing and promoting transactions covered by the Notice (i.e., law firms, accounting firms, wealth management professionals, etc.);

There were 1,532 distinct Material Advisors filing Form 8918 disclosures in response to Notice 2017-10 (identified by unique identification numbers). NAICS (North American Industry Classification System) codes associated with these advisors’ tax returns identified the following professions:

<table>
<thead>
<tr>
<th>Filings</th>
<th>%</th>
<th>Profession</th>
</tr>
</thead>
<tbody>
<tr>
<td>78</td>
<td>5%</td>
<td>Law/Attorney</td>
</tr>
<tr>
<td>100</td>
<td>7%</td>
<td>Accounting/CPAs</td>
</tr>
<tr>
<td>121</td>
<td>8%</td>
<td>Finance, Insurance, Wealth Management</td>
</tr>
<tr>
<td>21</td>
<td>1%</td>
<td>Appraisers</td>
</tr>
<tr>
<td>721</td>
<td>47%</td>
<td>Real Estate Field</td>
</tr>
<tr>
<td>367</td>
<td>24%</td>
<td>Other Industries</td>
</tr>
<tr>
<td>124</td>
<td>8%</td>
<td>Unidentified</td>
</tr>
<tr>
<td>1532</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

Question 6: The number of different appraisers and/or appraisal firms identified in the disclosures;

In addition to the 21 appraisers found above from searching the Material Advisor entity NAICS codes, IRS searched disclosures for the key word “appraise” which identified an additional 17, for a combined total of 38 appraisers involved with these disclosed transactions. As previously discussed, this information is based on the responses as provided in the disclosures and has not been verified.

Question 7: Regarding Forms 8886 and 8918:

Question 7a: To what extent were the forms complete and accurate (i.e., did the forms contain all the required information, including a complete description of the transaction and the expected tax benefits generated by the transaction);

The IRS reviewed each Form 8886 when received for completeness as defined in Treas. Reg. 1.6011-4. This review is a manual, subjective process completed by several different employees. Form 8918 was determined incomplete if no data was
included on Line 13 (Transaction Description). Per IRS' initial analysis, the extent of disclosure completeness is as follows:

<table>
<thead>
<tr>
<th>Form 8886</th>
<th>Form 8918</th>
</tr>
</thead>
<tbody>
<tr>
<td>91% (36,247/39,619)</td>
<td>97% (6,279/6,501)</td>
</tr>
</tbody>
</table>

Note that while the IRS has validated the completeness of these forms, we have not validated the accuracy of the information disclosed. Determination of the accuracy of these forms requires an audit.

**Question 7b**: How many and what percentage of disclosure forms filed indicated they were filed as a protective disclosure;

The Forms 8918 and 8886 each have a check box that is marked by the taxpayer when filing as a protective disclosure. The number and percentage of protective disclosures are as follows:

<table>
<thead>
<tr>
<th>Form 8886</th>
<th>Form 8918</th>
</tr>
</thead>
<tbody>
<tr>
<td>8% (3,250/39,619)</td>
<td>43% (2,781/6,501)</td>
</tr>
</tbody>
</table>

**Question 7c**: To what extent did the forms identify all the parties involved in the transaction;

The IRS has not validated the accuracy of the disclosed information so cannot confirm whether the forms identified all parties involved in the transaction. The following indicates those disclosures which identified related or involved parties on Form 8886.

<table>
<thead>
<tr>
<th>Form 8886</th>
<th>Form 8918</th>
</tr>
</thead>
<tbody>
<tr>
<td>97% identified additional parties</td>
<td>94% identified additional parties</td>
</tr>
</tbody>
</table>

**Question 7d**: How many and what percentage of forms contained a statement saying, "information will be provided on request";

A search was completed on Form 8886 and Form 8918 for key words to identify disclosures that contained the above statement. No such statements were found in the query results and the reviewers do not recall seeing any with this statement.

**Question 7e**: How many and what percentage of disclosure forms filed were incomplete and potentially subject to disclosure penalties?

Per IRS' initial analysis, the extent of incomplete disclosures is as follows (see Question 7a):

<table>
<thead>
<tr>
<th>Form 8886</th>
<th>Form 8918</th>
</tr>
</thead>
<tbody>
<tr>
<td>9% (3,347/39,619)</td>
<td>3% (223/6,501)</td>
</tr>
</tbody>
</table>
Additional work is necessary to determine the extent to which penalties are appropriate. See response to Question 10.

**Question 8:** The Notice covers syndicated transactions where the share of a charitable contribution deduction equals or exceeds 2 1/2 times the amount of the investor's investment. From the disclosures filed:

**Question 8a - What was the average return ratio?**

Of the 39,619 Forms 8886 filed with the IRS for Notice 2017-10, 22,621 provided both the contribution deduction and investment amounts. Of these, the average deduction to investment ratio was reported as 4.07 times the investment. IRS identified 387 outliers with ratios <1 or >25 times investment, which may contain invalid investment or deduction amounts.

**Question 8b: What was the average return ratio for the top ten percent of syndicated transactions based on return ratio?**

The reported data showed that for the top 10% of ratios, the average return to investment ratio was 7.48 times the investment (total deductions of $8,927,360,528 with investments of $1,193,698,723). To account for outliers, a median return to investment ratio for the top 10% of ratios was computed. The median (per reported data) is 5.58 times the investment.

**Question 9:** Please explain for the Committee what the IRS intends to do with the information received from the Forms 8886 and 8819. What is IRS' current and planned enforcement strategy regarding conservation easement deduction abuses?

As noted previously, the full set of data disclosed became available for further analysis in February. IRS established a Strategy and Data Analytics team to develop an IRS-wide enforcement strategy. The team includes experts from the compliance divisions, as well as IRS research staff. Future enforcement will focus on examining taxpayers with the highest compliance risk and developing compliance treatments to address other portions of the population. The IRS is currently focused on the analysis required to (1) validate disclosure information; (2) identify unique syndications, promoters, disclosure non-filers, and missing disclosure data; and (3) determine the metrics required to finalize our enforcement strategy.

**Question 10:** What is the process and what actions will the IRS take with respect to incomplete disclosures in response to the Notice?

As described in question 7a, IRS reviewed each Form 8886 when received for completeness as defined in Treas. Reg.1.6011-4. This was a manual, subjective process completed by several employees. To ensure fair treatment of impacted taxpayers, as well as address intentional non-compliance, disclosures potentially subject to the Internal Revenue Code Section 6707A penalty must receive a thorough
evaluation review – more than what is currently performed during the disclosure intake process. The Strategy and Data Analytics team will be evaluating the penalty assessment process and how to best to use our limited resources for the maximum compliance impact.

Question 11: What is the process for identifying those who failed to make the required disclosure? What are the list maintenance requirements for material advisers?

The IRS will utilize taxpayer identification (TIN) and employee identification numbers (EIN) on the Forms 8886, in concert with Schedule K-1 and tax return information, to preliminarily identify missing disclosures. The Strategy and Data Analytics team will be determining additional approaches as the data analysis progresses, including determining whether lists required to be maintained under section 6112 should be requested from material advisors.

Internal Revenue Code Section 6112 requires material advisors to maintain lists of taxpayers with respect to whom they were a material advisor (Section 6112(a)(1)). This list is not required to be filed with the Form 8918 material advisor disclosure, but must be made available to the IRS upon written request. The list maintenance requirements set forth in Treas. Reg. 301.6112 (partially excerpted below) describe what must be maintained as part of the list:

An itemized statement containing the following information—
(A) The name of each reportable transaction, the citation to the published guidance number identifying the transaction if the transaction is a listed transaction or a transaction of interest, and the reportable transaction number obtained under section 6111;
(B) The name, address, and TIN of each person required to be included on the list;
(C) The date on which each person required to be included on the list entered into each reportable transaction, if known by the material advisor;
(D) The amount invested in each reportable transaction by each person required to be included on the list, if known by the material advisor;
(E) A summary or schedule of the tax treatment that each person is intended or expected to derive from participation in each reportable transaction; and
(F) The name of each other material advisor to the transaction, if known by the material advisor.

Question 12: Is there any indication that some taxpayers involved in these listed transactions took appropriate corrective action and filed amended tax returns?

The IRS cannot provide a response to this question without physically reviewing each amended return to determine if there was a
reduction/removal of the SCE charitable deduction. This information is not available electronically.

Question 13: Does the IRS have any information indicating whether the Notice has prevented the promotion or marketing of syndicated conservation easement transactions going forward?

There has not been adequate time from the release of Notice 2017-10 to provide this specific answer. IRS will have more information on the impact of this Notice by the end of 2018.

Question 14: The use of the disclosure requirements to identify and curb certain abusive tax avoidance transactions has been employed on many occasions. Is there anything to learn from Notice 2017-10 in terms of strengthening its effectiveness?

IRS continually works to improve our process and have done so with Notice 2017-10, including two extensions of the Form 8886 filing dates. IRS is evaluating the current Notice to determine if additional taxpayer information is needed to more effectively utilize the form information, including the addition of basis and deduction amounts. We are also pursuing opportunities to improve the data-capture process.