

# ATAT - Emerging Issues Phone Forum

**Beware of Abusive Tax Avoidance  
Transactions (ATAT) and Emerging EP  
Compliance Issues that can threaten  
your retirement**

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## Retirement Plan Universe

- Approximately **one million** private retirement plans covering over **99 million** participants
- Only about 50% of American workers have a retirement plan
  - Of those, only 66% join their 401(k)
  - Only 10% contribute the maximum
  - About 60% cash out when they change jobs

## **FY 2010 Strategies ATAT Operating Priority**

- Continue to address and deter abusive transactions involving retirement plans
- Use Promoter Investigations as an enforcement strategy
- Increase cross-functional collaboration to identify complex international transactions
- Develop strategies to identify and address new abusive schemes
- Consider civil or criminal fraud
- Utilize the EPCU
- Share new emerging issues with the general public as concerns are identified

# Promoter Investigations

- An effective enforcement tool to deter and stop abusive schemes
- EP is working promoter investigations in coordination with SBSE
- EP agents are leading or supporting investigations of promoters whose schemes involve EP entities
- Agents are also successfully conducting supporting participant examinations

# ATATs Under EP Scrutiny

## Deductions for Excess Life Insurance in IRC 412(i) Plans

Arrangements where employers deduct  
amounts contributed to buy excess life  
insurance

# ATATs Under EP Scrutiny

## Deductions for Excess Life Insurance in an IRC 412(i) Plan

- Rev. Rul. 2004-20: insurance exceeds plan amount. Listed Transaction if excess insurance >\$100K
- Rev. Rul. 2004-21: insurance availability must be a nondiscriminatory
- Rev. Proc. 2005-25: valuation rules for insurance in a plan
- IRC 402 Regulations: valuation of life insurance in a plan

# Gulf Coast Preparer Project (GCPP)

- About 500 project cases examined since 2006
- Fiscal year 2009: started 232 cases and closed 110 of those cases
  - Remaining cases should be completed this fiscal year
- No planned new cases under this project
- Issues were found in more than **83%** of the cases

## **ROBS - Rollover as Business Start-ups**

ROBS arrangements were created to secure available funds held in tax-deferred savings (usually under a prior employer's plan) for an aspiring entrepreneur without incurring resultant tax liabilities that would ordinarily apply to a distribution.



## ROBS - Rollover as Business Start-ups

While the form of ROBS transactions is not prohibited per se the IRS is concerned with these transactions for several reasons:

- The ROBS transaction is accomplished without any imposition of the taxes that ordinarily attach to distributions from retirement plan savings accounts
- Distributions would normally be subject to treatment as ordinary income, taxable at the individual's personal tax rates, with possible additions to tax in the form of early distribution penalties
- ROBS transactions effectively avoid all these tax concerns

## ROBS - Rollover as Business Start-ups

When analyzing ROBS transactions on plans that were examined, the Service found several technical violations of the law applicable to employee benefit plans. For example:

- The exchange of stock results in all shares contributed to the plan being allocated to the account of the entrepreneur only
- No other current or future employees will ever receive their required right to invest in employer stock, in possible violation of nondiscrimination requirements
- Stock is exchanged without any real attempt to determine its value. The stock is said to be equal in value to whatever happens to be available to exchange for it which creates a prohibited transaction

# Invalid Collectively Bargained Plans

- Issue was identified in Exam
- Determined need for guidance & training
- Developed Audit Tools – Interview Checksheet and RAR
- Developed and held specialized training session via CENTRA

## **ESOP adopted by an LLC**

We received a lead from a Determination Specialist about a potential issue involving an ESOP adopted by an LLC. We have only identified two cases for the practitioner who submitted the Determination request. We selected one of the cases for EP examination in order to learn more about the transaction.

## **One Person Defined Benefit Plan where there is little or no income on the related sponsor's income tax return –**

- We utilized RICS to research this issue and determined that there were not a significant number of cases that fell into this category
- However, we plan to conduct several sample examinations from the cases identified to learn more about this issue in order to improve our internal search for these types of cases

## Plan for Insurance Salesmen

- Insurance Salesman participating in the insurance company corporate pension plan and a second pension plan based on Schedule C income that used the same compensation that was used for the Corporate pension plan
- We have used RICS to identify plans that have similar characteristics and are examining a small sample to see if this issue is widespread

## Management Company with Defined Benefit Plan

- Operating Company is an ongoing business
- Owner of Operating Company establishes a Management Company
- Operating company pays a large management fee to the management company
- Operating Company has minimal taxable income and pays minimal taxes
- Management Company adopts a defined benefit plan that benefits only the owner

## How Can I Find Out More?

[www.irs.gov/ep](http://www.irs.gov/ep)



The screenshot shows the IRS website's Retirement Plans Community page. At the top, there is a navigation bar with links for Home, Contact IRS, About IRS, Site Map, Español, and Help. Below this is the Internal Revenue Service logo and the United States Department of the Treasury. A search bar is located on the right side. The main navigation menu includes links for Individuals, Businesses, Charities & Non-Profits, Government Entities, Tax Professionals, Retirement Plans Community, and Tax Exempt Bond Community. The Retirement Plans Community section is highlighted, and it includes links for Benefits Practitioner, Plan Participant/Employee, and Plan Sponsor/Employer. Below the navigation, there is a section titled "Tax Information for Retirement Plans Community" with a sub-section "Retirement Plans Community Topics". This section lists several topics: Newsletters, Published Guidance, EP Forms/Pubs/Products, Correcting Plan Errors, Examinations/Enforcement, EP FAQs, and Types of Plans. To the right of the list is a small image of three people in a meeting and a link to "New 401(k) Tips Available" with a brief description of the tips.

newsletters



The image shows the cover of the "Employee Plans News" newsletter. The cover features a collage of diverse people in professional settings. The title "employee plans news" is prominently displayed in the center. Above the title, it says "Promotional Copy Volume 2". Below the title, there is a small logo for the Internal Revenue Service and the text "A Publication of the Department of the Treasury". At the bottom, the newsletter's focus is described: "Employee Plans News - The Who, What, When, Why and Where of Retirement Plans". A short paragraph at the very bottom states: "Each quarter, the Employee Plans News brings you the latest and greatest retirement plan information. Our articles are".



# Questions?

