



## MEMORANDUM FOR CLIENTS PARTICIPATING IN RELATED PARTY INSURANCE CONTRACTS

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GPW is providing this brief Memorandum on the IRS Proposed Regulations 1.6011-10 and 1.6011-11 (“Proposed Regs”) issued in April 2023 as a summary for its clients that insure and reinsure related party insurance risks.<sup>1</sup> Comments are due to the IRS by June 12<sup>th</sup>, and a public hearing on the Proposed Regs is scheduled for July 19<sup>th</sup>.

Similar to Notice 2016-66, the Proposed Regs provide additional reporting requirements for certain captive insurance transactions electing to be taxed under Internal Revenue Code Section 831(b). GPW supports the IRS’s goal of ridding the industry of abusive captive insurance structures. However, GPW feels strongly that the Proposed Regs unnecessarily capture hundreds or thousands of proper captive structures. GPW is actively coordinating with several industry groups to provide its recommendations to the IRS on the Proposed Regs.

### The Good News

The Proposed Regs clearly obsolete any reporting requirements which may have existed under Notice 2016-66. Also, the reporting requirements in the Proposed Regs for participants are limited to the captive and the insured business(es); shareholders are no longer required to report as an attachment to their personal return.

### The Bad News

There is new language not present in Notice 2016-66 elevating certain captive insurance structures to a Listed Transaction. A captive insurance transaction elevates to a Listed Transaction if either (1) there were loans in the past five years exceeding after-tax net investment earnings or (2) the captive has a cumulative incurred loss ratio below 65%<sup>2</sup> for the previous ten years. If the captive has a cumulative incurred loss ratio below 65% without ten years of experience and does not meet (1), it would be classified as a Transaction of Interest.

### Next Steps

Should the Proposed Regs become final, GPW will be prepared to assist its clients in complying. GPW will keep you apprised of any significant updates; please contact either of the undersigned below if you have any questions or would like to discuss this further.

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<sup>1</sup> Announcement 2023-11. See also, Proposed Regs. 1.6011-10 and 1.6011-11. [RIN 1545-BO44](#).

<sup>2</sup> Prop. Reg. 1.6011-10(c) define the ratio as incurred loss and claim administration expenses divided by the sum of earned premium less policyholder dividends.

