

IRS Proposal to Require Disclosure of Uncertain Tax Positions

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A recent IRS proposal would require certain corporate taxpayers to notify the IRS of uncertain tax positions (UTP) in their returns. Under the proposal, corporate taxpayers with assets of at least \$10 million would be required to disclose such positions on new Schedule UTP if they issue audited financial statements (or are included in a related party's audited financial statements) and determine their U.S. federal income tax reserves under FIN 48 or other accounting standards relating to uncertain tax positions. Schedule UTP would be required beginning with the 2010 tax year and, at least initially, only for taxpayers that file Forms 1120, 1120 F, 1120 PC, and 1120 L.¹

Positions requiring disclosure would be those for which a tax reserve must be established under FIN 48 or other accounting standards, as well as those for which no reserve has been recorded because the taxpayer either expects to litigate the position or has concluded that the IRS has a general administrative practice not to examine the issue.

The schedule would require a concise description of each uncertain tax position in sufficient detail so that the IRS can determine the nature of the issue. This would require inclusion of information that can reasonably be expected to apprise the IRS of the identity of the tax position and the nature of the uncertainty. To be sufficient, the descriptions would need to include a statement whether the position involves a determination of an item of income, gain, loss, deduction, or credit; a statement whether the position involves a determination of value or a computation of basis; and the rationale for the position and reasons for determining the position is uncertain.

In addition, taxpayers would generally need to specify for each uncertain position the entire amount of U.S. federal income tax that would be due if the position were disallowed in its entirety. Taxpayers would not need to disclose the amount of any reserve or the taxpayer's risk calculation (except for transfer pricing and valuation issues, which would need to be ranked). The IRS has said it will continue its longstanding policy of restraint with regard to requesting or demanding tax accrual workpapers but will continue to review that policy and consider additional modifications as appropriate to ensure it obtains complete and accurate information on a timely basis. According to an IRS spokesperson, proposed Schedule UTP is "trying to get at the magnitude of issues, without intruding on risk

calculation."²

The IRS is soliciting comments on proposed Schedule UTP until June 1, 2010. In addition to various technical issues, comments so far have raised concerns that Schedule UTP would be used as a "roadmap" for audit. IRS spokespersons have responded that the proposed schedule is not intended to be used as a starting point for examinations and that not all issues disclosed will be challenged. All issues, however, will be evaluated.³

A senior adviser to the IRS commissioner has said the IRS would not decide whether to adopt the proposed schedule until all comments are considered.⁴ Additional alerts will be issued as appropriate.

1. See IRS Announcements 2010-9, 2010-17 IRB 408; 2010-17, 2010-13 IRB 515; and 2010-30, 2010-19 IRB 668.

2. See Allison Bennett, "IRS Not Planning to Use Uncertain Tax Position as Exam Starting Point," Daily Tax Report (Apr. 23, 2010) (quoting Heather Malloy, IRS Large and Mid-Size Business Commissioner).

3. See Lee A. Sheppard and Amy S. Elliot, "Officials Try to Assuage Fears About Proposed UTP Reporting Requirement," 2010 TNT 78-1 (Apr. 23, 2010).

4. See *id.* (referencing comments of J. Richard "Dick" Harvey Jr. at an April 22, 2010, conference).

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