

March 2010

IRS Plans to Require Disclosure of Uncertain Tax Positions

On January 26, 2010, in his speech to the New York State Bar Association Taxation Section, Internal Revenue Service (IRS) Commissioner Douglas Shulman revealed the issuance of Announcement 2010-9 to improve transparency regarding business tax issues. He said in his prepared remarks that requiring corporate taxpayers to disclose their uncertain tax positions would make corporate audits more efficient. "Today, we spend up to 25% of our time in a large corporate audit searching for issues rather than having a straightforward discussion with the taxpayer about the issues."

Shulman characterized the plan as a reasonable approach to the problem. "We believe we have crafted a proposal that gives us the information we need to do our job without trying to get in the heads of taxpayers as to the strengths or weaknesses of their positions," he said.

The Announcement's two objectives are as follows: First, time-of-filing reporting requirements are imposed to improve transparency; and, secondly, special areas are highlighted in which the IRS is requesting public comment regarding the Announcement and methods to improve tax administration and business compliance.

The IRS intends that the new disclosure schedule created by this Announcement will be required for business taxpayers with total assets in excess of \$10 million.

According to the announcement, the schedule would require disclosure of:

- a) Each uncertain tax position, defined as a position for which the taxpayer or a related entity has recorded a reserve in its financial statements under FASB Interpretation no. 48 (FIN 48), *Accounting for Uncertainty in Income Taxes*, or other accounting standards. (The provisions of FIN 48 are now contained in FASB Accounting Standards Codification Topic 740.) In addition, the announcement said uncertain tax positions would include positions for which the taxpayer has not established a reserve because the taxpayer expects to litigate the position or the taxpayer has determined the IRS has a general practice not to examine the position.
- b) The maximum amount of potential federal tax liability attributable to each uncertain tax position (determined without regard to the taxpayer's risk analysis regarding its likelihood of prevailing on the merits).

Each uncertain tax position will require a concise description with sufficient detail so that the IRS can determine the nature of the issue, including the rationale for the position and the taxpayer's reasons for determining that it is an uncertain position. According to the announcement, the description would have to contain:

- a) The Code sections potentially implicated by the position;

- b) A description of the taxable year or years to which the position relates;
- c) A statement that the position involves an item of income, gain, loss, deduction, or credit against tax;
- d) A statement that the position involves a permanent inclusion or exclusion of any item, the timing of that item, or both;
- e) A statement whether the position involves a determination of the value of any property or right; and
- f) A statement whether the position involves a computation of basis.

The announcement says that the schedule would not require the disclosure of the taxpayer's risk assessment or tax reserve amounts (although the IRS reminds taxpayers that it "can compel the production of this information through a summons").

The IRS anticipates issuing proposed regulations on this topic and says it is evaluating what penalties or sanctions should be imposed for failure to disclose.

The announcement also says that the IRS will continue its policy of restraint regarding requests for tax accrual work papers during examinations.

The disclosures described in this Announcement go well beyond any existing declaration requirements and raise a variety of issues and concerns. To possibly accommodate anticipated objections, the IRS has invited public comment to these disclosure requirements by March 29, 2010.

The effective date for compliance with these disclosure requirements is unclear, but Commissioner Shulman indicated that such requirements would not be effective for this filing season.

Source: Team KNAV

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