

WNTS Insight

A Washington National Tax Services (WNTS)
Publication

September 23, 2011

LB&I memo provides insights into IRS thinking on use of Schedule UTP during exams

A memorandum issued August 31 by Heather Maloy, Commissioner of the IRS's Large Business & International Division (LB&I), to LB&I examination teams assigned to the Compliance Assurance Process (CAP) Program addresses CAP Program examiners' use of Schedule UTP, *Uncertain Tax Position Statement*. The guidance is significant in that it provides the first specific indication of how the IRS will use the Schedule UTP during the course of an examination. The August 31 memorandum supplements a May 11 memorandum that provides general guidance on LB&I's centralized management of Schedules UTP filed with taxpayers' income tax returns.

Background

The IRS initiated the CAP Program in 2005 as a pilot program for large corporate taxpayers. Under CAP, taxpayers and the IRS engage in a contemporaneous exchange of information about completed events and transactions that affect tax liability before the tax return is filed. The IRS announced on March 31, 2011, that it was expanding the CAP Program and making it permanent. Most of the changes to the CAP Program will become effective January 1, 2012. See WNTS Insight, "[IRS makes CAP program permanent, available to more taxpayers](#)," April 1, 2011.

In September 2010, the IRS released Schedule UTP to be filed by certain corporate taxpayers with their Form 1120 series tax returns for tax years beginning on or after January 1, 2010. Taxpayers required to file Schedule UTP for the 2010 tax year generally are corporations that have recorded a reserve related to an uncertain tax position in an audited financial statement and have total assets greater than \$100 million. When the IRS released Schedule UTP, it stated that taxpayers in the CAP Program would be required to comply with the new Schedule UTP reporting.



Under the August 31 memorandum, taxpayers in CAP for 2010 will be the first taxpayers to have Schedule UTP scrutinized during the course of an examination. The August 31 memorandum explains how the IRS will use Schedules UTP filed by CAP taxpayers beginning with their 2010 tax years.

May 11 memorandum

The May 11 memorandum outlines the IRS's initial plans for effectively using Schedule UTP as a tool during examination of a taxpayer's income tax return. As explained in the memorandum, LB&I will maintain a centralized repository of all Schedules UTP filed with income tax returns for tax year 2010. This centralization will give the IRS a broad view of the schedules and assist in identifying common issues.

In addition, and in order to better use the schedules, LB&I has identified specific procedures that it is developing with respect to Schedule UTP. As identified in the May 11 memorandum, these include procedures to:

- screen and assess the value of corporate UTP information;
- use UTP data to inform selection and exam processes;
- use UTP data to identify areas of legal uncertainty requiring guidance;
- provide guidance and deliver training on how UTP information can be used as part of the audit process; and
- collect feedback about how the UTP information has been used in planning LB&I workloads, the examination risk analysis process, and other examination processes.

While implementing these procedures, LB&I examination agents will not have access to taxpayers' Schedules UTP. To the contrary, agents and managers have been directed not to bypass the centralization procedures, and not to request or accept copies of Schedule UTP from taxpayers.

August 31 memorandum

With issuance of the August 31 memorandum, the IRS has provided the first specific guidance on the use of Schedules UTP during the course of an examination. The memorandum addresses their use in conjunction with the CAP Program and is limited to CAP taxpayers' returns for tax year 2010. These returns will be released from the centralized repository established to process all Schedules UTP to the CAP examination teams shortly after filing of the returns. Alternatively, CAP Account Coordinators may request copies from the CAP taxpayer to expedite review.

In either case, once the examination teams have received the returns, they are required to follow the guidance regarding the use of Schedule UTP set forth in the August 31 memorandum. They will be required to compare the issues identified on Schedule UTP with the issues the taxpayer disclosed during participation in the CAP Program. The guidance provides seven courses of action for examiners to take, depending on the results of this comparison. These generally provide that the examiners will consult with the taxpayer to confirm the taxpayer's intent, but also provide that certain scenarios will require consultation with the Director, Field Operations. At no time, however, may the examiner ask the taxpayer about the

make-up of reserves.

Observations

The May 11 and August 31 memoranda set out an initial course of action for the IRS's use of the newly implemented Schedule UTP filings in the context of examinations, both in general and with respect to CAP Program participants. The memoranda demonstrate that the IRS will be engaging in a broad review of the forms to identify systemic issues that might then be addressed through guidance or changes to the IRS's administrative procedures.

Despite public comments suggesting that CAP taxpayers be exempted from the UTP reporting requirements, it is perhaps not surprising that CAP examiners would be the first to be given access to taxpayers' Schedules UTP. As with the CAP Program in general, the guidance concerning the use of Schedules UTP filed by CAP Program participants envisions an open dialogue between the IRS and the taxpayer. The IRS contemplates that the candor and transparency essential to the CAP Program generally should present relatively few cases in which the taxpayer will not have already disclosed a position reported on Schedule UTP or that the schedule will be used to raise new issues during post-filing review.

The actions CAP examiners are directed to take in each of the seven scenarios described in the August 31 memorandum are consistent with the overall CAP Program approach of candor and transparency designed to resolve issues up-front and expeditiously. The directed approaches generally envision the examining agent consulting with the taxpayer to confirm the taxpayer's intent, and elevating the issue only if it was not disclosed, or if it is a new issue or involves new facts.

While additional guidance concerning the review of Schedules UTP will be needed, the guidance to date reflects that the IRS will be carefully reviewing and considering the effects of the UTP filing requirement on both taxpayers and the IRS. As noted in each memorandum, the UTP filing requirement is a "significant milestone," and the IRS can be expected to carefully monitor implementation to ensure it achieves its stated goals.

For more information, please do not hesitate to contact:

<i>Kevin M. Brown</i>	<i>(202) 346-5051</i>	<i>kevin.m.brown@us.pwc.com</i>
<i>Linda Stiff</i>	<i>(202) 312-7587</i>	<i>linda.stiff@us.pwc.com</i>
<i>Ron Schultz</i>	<i>(202) 346-5096</i>	<i>ronald.j.schultz@us.pwc.com</i>
<i>Andrew Stroot</i>	<i>(202) 312-7615</i>	<i>andrew.m.stroot@us.pwc.com</i>

Link to WNTS Insight archive: <http://www.pwc.com/us/en/washington-national-tax/newsletters/washington-national-tax-services-insight-archives.jhtml>

This document is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

SOLICITATION

© 2011 PricewaterhouseCoopers LLP. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers LLP, a Delaware limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.