

WNTS Insight

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IRS releases 2011 Schedule UTP

The IRS released this week the 2011 Schedule UTP and instructions. While the form itself has not changed significantly from the 2010 Schedule UTP, the instructions have been updated and now include guidance previously discussed in FAQs posted on the IRS website.

The FAQs on Schedule UTP and 2011 Schedule UTP form and instructions are posted on the IRS website and can be viewed via the attached links:

<http://www.irs.gov/businesses/article/o..id=237538.00.html>,
<http://www.irs.gov/pub/irs-pdf/f112outp.pdf>, <http://www.irs.gov/pub/irs-pdf/i112outp.pdf>.

For prior discussion, see WNTS Insights, "[IRS updated Schedule UTP FAQs](#)," July 21, 2011, "[IRS releases guidance on Schedule UTP and policy of restraint](#)," March 31, 2011, and "[IRS modified final Schedule UTP and instructions for reporting uncertain tax positions \(UTPs\): expands policy of restraint](#)" September 24, 2010.

Background

After announcing plans to develop uncertain tax position reporting in January 2009, the IRS released the final 2010 tax year Schedule UTP form and instructions in September 2010. In response to taxpayer and practitioner requests for additional clarification, the IRS released guidance in the form of a series of FAQs in March and July 2011.

Assuming all other filing requirements are met, the general requirements for disclosure on Schedule UTP are:

- (1) The corporation has taken a position on its US federal tax return for the current or prior year, and
- (2) Either the corporation, or a related party, has recorded a reserve with respect to that position for US federal income tax in audited financial



statements or did not record a reserve for the position because the corporation expects to litigate the position.

Updated Schedule UTP

The 2011 Schedule UTP generally is consistent with the prior year's version, with two notable exceptions:

- For 2011, taxpayers must consider whether disclosure is required on Part II, Uncertain Tax Positions for Prior Tax Years. Since the transition rules for Schedule UTP do not require disclosure of uncertain tax positions originating in tax years prior to 2010, taxpayers had nothing to report on Part II of the 2010 schedule. For 2011, taxpayers must consider whether there are positions taken on the 2010 US federal tax return for which a reserve was recorded in audited financial statements issued after the filing of the 2010 tax return. If so, such positions should be reported on Part II of the 2011 schedule.
- The IRS has added a new column (g) to both Part I and Part II of Schedule UTP, which is reserved for future use. The IRS has not publically commented on, nor do the instructions provide any insight into, plans for this new column.

Updated instructions

The IRS has revised the language and examples in the 2011 Schedule UTP instructions to incorporate the guidance provided in the 12 FAQs related to reporting on Schedule UTP.

As part of incorporating the FAQs into the instructions, the IRS further clarified its prior guidance that it will take an expansive view of what is considered a tax position that impacts a line item on a tax return. Specifically, the 2011 Schedule UTP instructions provide a new example of a tax position that would impact a line item on Form 5471. The guidance concludes that if a reserve for such tax position was recorded, it must be disclosed because it impacts a line item on the return.

Uncertain tax positions for prior tax years

For financial accounting purposes, taxpayers annually must reassess reserve decisions on prior tax positions based on all available information. If a taxpayer determines that a reserve is required for a tax position taken in a prior year for which a reserve was not previously recorded, absent transition rule relief that position must be included on Part II of the form. The 2011 instructions provide examples of two specific fact patterns.

Expectation to litigate-- The guidance in the 2011 instructions explains, in newly added Example 5, situations in which a reserve was not recorded in a prior year for a tax position determined to be highly certain but for which the taxpayer now believes the position is no longer highly certain and there is an expectation to litigate (e.g., the probability of settling is less than 50 percent); that position must be disclosed on Schedule UTP Part II.

Divestiture of an entity-- The 2011 instructions added guidance for taxpayers regarding disclosure of a newly recorded reserve for uncertain tax positions related to a tax year when the entity was part of a former consolidated group. To the extent a reserve is recorded for a position taken in a prior year, absent transition rule relief

the position must be disclosed on Part II of Schedule UTP even though the position in question relates to a different tax return (e.g. the prior consolidated group).

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

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