Announcement 2010-30, Internal Revenue Service, (Apr. 19, 2010)

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Announcement 2010-30, I.R.B. 2010-19, April 19, 2010.

[Code Sec. 6011]

Tax-avoidance transactions: Uncertain tax positions: FIN 48: Reporting requirements: Schedule UTP: Draft schedule: Draft instructions.–
The IRS has released a draft of Schedule UTP, Uncertain Tax Positions Statement, with accompanying draft instructions, that it proposes to be used by certain taxpayers required to report uncertain tax positions. FIN 48 requires that taxpayers with uncertain tax positions account for and report those positions that affect their income tax liability. The draft Schedule UTP and instructions provide that certain taxpayers will be required to file Schedule UTP beginning with the 2010 tax year. The requirement only applies to taxpayers required to file Forms 1120, 1120 L, 1120 PC and 1120 F, if they have uncertain tax positions and assets equal to or in excess of $10 million and if they or a related party issued audited financial statements. The draft instructions provide that a taxpayer filing a Schedule UTP will be treated as filing a Form 8275 and Form 8275-R due to the fact that those two forms duplicate information reported on Schedule UTP. Back reference: ¶35,141.78.

In Announcement 2010-9, 2010-7 I.R.B. 408, and Announcement 2010-17, 2010-13 I.R.B. 515, the Internal Revenue Service announced it is developing a schedule requiring certain taxpayers to report uncertain tax positions on their tax returns. The Service is now releasing the draft schedule, Schedule UTP, accompanied by draft instructions that provide a further explanation of the Service's proposal. The Service invites public comment on the draft schedule and instructions. The schedule and instructions will be finalized after the Service has received and considered all of the comments regarding the overall proposal and the draft schedule and instructions.

The draft schedule and instructions provide that, beginning with the 2010 tax year, the following taxpayers with both uncertain tax positions and assets equal to or exceeding $10 million will be required to file Schedule UTP if they or a related party issued audited financial statements:

- Corporations who are required to file a Form 1120, U.S. Corporation Income Tax Return;
- Insurance companies who are required to file a Form 1120 L, U.S. Life Insurance Company Income Tax Return or Form 1120 PC, U.S. Property and Casualty Insurance Company Income Tax Return; and
- Foreign corporations who are required to file Form 1120 F, U.S. Income Tax Return of a Foreign Corporation.

The draft schedule and instructions also provide that, for 2010 tax years, the Service will not require a Schedule UTP from Form 1120 series filers other than those identified above (such as real estate investment trusts or regulated investment companies), pass-through entities, or tax-exempt organizations. The Service will determine the timing of the requirement to file Schedule UTP for these entities after comments have been received and considered.

The Service is reviewing the extent to which the proposed Schedule UTP duplicates other reporting requirements, such as Form 8275, Disclosure Statement; Form 8275-R, Regulation Disclosure Statement; Form 8886, Reportable Transaction Disclosure Statement; and the Schedule M-3, Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More. The draft instructions provide that a taxpayer will be treated as having filed a Form 8275 or Form 8275-R for tax positions that are properly reported on Schedule UTP. The Service is considering other circumstances under which a tax position reported on Schedule UTP need not be separately reported elsewhere on the tax return or another disclosure statement.

Comments on Announcement 2010-9, Announcement 2010-17, the draft schedule, and the draft instructions should be submitted by June 1, 2010.

Comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Announcement 2010-9), Room 5203, P.O. Box 7604, Ben Franklin Station, N.W., Washington, D.C. 20044. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, to CC:PA:LPD:PR (Announcement 2010-9), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. Comments may also be transmitted electronically via the following e-mail address: Announcement.Comments@irscounsel.treas.gov. Please include “ Announcement 2010-9” in the subject line of any electronic communications. All comments will be available for public inspection and copying.

The principal author of this announcement is Kathryn A. Zuba of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this announcement contact Kathryn A. Zuba at (202) 622-7583 (not a toll-free call).

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Draft: 4/20/2010

Department of the Treasury

Internal Revenue Service

2010

Instructions for Schedule UTP

Uncertain Tax Positions Statement

Use for Forms 1120, 1120-F, 1120-L, and 1120-PC

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Purpose of Schedule

Schedule UTP asks for information about tax positions that affect the United States federal income tax liabilities of certain corporations that issue or are included in an audited financial statement and have assets equal to or exceeding $10 million.

Reporting Uncertain Tax Positions on Schedule UTP

Tax positions to be reported. Schedule UTP requires the reporting of a corporation's federal income tax positions for which the corporation or a related party has recorded a reserve in an audited financial statement. Schedule UTP also requires the reporting of tax positions taken by the corporation in a tax return for which a reserve has not been recorded by the corporation or a related party based on an expectation to litigate or an IRS administrative practice.

A tax position is required to be reported on a Schedule UTP attached to a particular tax year's return if (a) at least 60 days before filing the tax return a reserve has been recorded with respect to that tax position, or at least 60 days before filing the tax return a decision was made not to record a reserve based on an expectation to litigate or an IRS administrative practice, and (b) the tax position has been taken by the corporation in a tax return for the current tax year or a prior tax year.

A tax position must be reported regardless of whether the audited financial statement is prepared based on United States generally accepted accounting principles (GAAP), International Financial Reporting Standards (IFRS), or other country-specific accounting standards, including a modified version of any of the above (for example, modified GAAP) that requires a taxpayer to record a reserve for federal income tax positions.

A tax position is based on the unit of account in the audited financial statements in which the reserve is recorded. A tax position taken in a tax return means a tax position that would result in an adjustment to a line item on that tax return if the position is not sustained. A line item on a tax return may be affected by multiple units of account, in which case each unit of account must be reported separately on Schedule UTP.

Reporting current year and prior year tax positions. Tax positions taken by the corporation in the current year's tax return for which the decision whether to record the reserve was made at least 60 days before filing the tax return are reported on Part I. Tax positions taken by the corporation in a prior year's tax return for which the decision whether to record the reserve was made at least 60 days before filing the tax return are reported on Part II. A corporation is not required to report a tax position it has taken in a prior tax year if the corporation reported that tax position on a Schedule UTP filed with a prior year tax return. If a transaction results in tax positions taken in more than one tax return (and a decision whether to reserve has been made), the tax positions arising from the transaction must be reported on Part I of the Schedule UTP attached to each tax return in which a tax position resulting from the transaction is taken regardless of whether the transaction or a tax position resulting from the transaction was disclosed in a Schedule UTP filed with a prior year's tax return. See Example 6. Do not report a tax position on Schedule UTP before the tax year in which the tax position is taken in a tax return by the corporation.

Determinations made within 60 days prior to filing the tax return. Tax positions for which a reserve was recorded within 60 days before filing a tax return, or a decision not to record a reserve was made during that same period based on an expectation to litigate or an IRS administrative practice, must be reported either on Part I of the Schedule UTP for the current year or on Part II of the Schedule UTP for the next tax year.

Concise description of tax position. A corporation that reports a tax position in either Part I or Part II is required to provide a concise description of each tax position on Part III. See Examples 14, 15, and 16.

Transition rules. A corporation is not required to report on Schedule UTP a tax position taken in (a) a tax year beginning before December 15, 2009, or (b) a tax year beginning on or after December 15, 2009, and ending before January 1, 2010, regardless of whether or when a reserve was recorded with respect to that tax position.

Electronic Filing. [RESERVED]

Who Must File

A corporation must file Schedule UTP with its income tax return if:

.1. The corporation files Form 1120, U.S. Corporation Income Tax Return; Form 1120 F, U.S. Income Tax Return of a Foreign Corporation; Form 1120 L, U.S. Life Insurance Company Income Tax Return; or Form 1120 PC, U.S. Property and Casualty Insurance Company Income Tax Return;
.2. The corporation has assets equal to or exceeding $10 million;
.3. The corporation or a related party issued an audited financial statement and the audited financial statement covers all or a portion of the corporation's operations for all or a portion of the corporation's tax year; and
.4. The corporation has one or more tax positions that must be reported on Schedule UTP.

A corporation's assets equal or exceed $10 million if the amount reported on Part I, Box D of Form 1120, or the higher of the beginning or end of year total assets amounts reported on Schedule L of Form 1120-F, Form 1120-L, or Form 1120-PC, is at least $10 million.

Schedule UTP must accompany a tax return and should not be filed separately. A taxpayer that files a protective Form 1120, 1120 F, 1120 L, or 1120 PC must file Schedule UTP if it satisfies the requirements set forth above.

Affiliated groups. An affiliated group of corporations filing a consolidated return will file a Schedule UTP for the affiliated group. The affiliated group need not identify the member of the group to which the tax position relates or which member recorded the reserve for the tax position. Any affiliate that files separately and satisfies the requirements set forth above must file a Schedule UTP with its return setting forth its own tax positions.

Definitions

Audited financial statement. An audited financial statement means a financial statement that an independent third party expresses an opinion on under GAAP, IFRS, or another country-specific accounting standard, including a modified version of any of the above (for example, modified GAAP) that requires a taxpayer to record a reserve for federal income tax positions.

Record a reserve. In general, a corporation or a related party records a reserve with respect to a tax position taken by the corporation when any of the following occurs in an audited financial statement of the corporation or a related party:

.1. An increase in a liability for income taxes payable or a reduction of an income tax refund receivable with respect to the tax position,
.2. A reduction in a deferred tax asset or an increase in a deferred tax liability with respect to the tax position, or
.3. Both (1) and (2) above.

The initial recording of a reserve will trigger reporting of a tax position, but subsequent reserve increases or decreases with respect to a tax position taken in a tax return will not.

Examples - All examples assume the corporation is a calendar year taxpayer

Example 1 (general rule regarding recording a reserve). A corporation has an investment in a partnership and receives a Form 1065 Schedule K-1 from the partnership stating the corporation's share of ordinary income is $100. The partnership took a tax position in its 2010 tax return that resulted in the exclusion of $20 of income reported on the corporation's Schedule K-1. The corporation excluded the $20 of income from its 2010 tax return, and on September 30, 2010, the corporation recorded a reserve with respect to this tax position taken in the 2010 tax return. Because the corporation recorded a reserve for the tax position taken in the 2010 tax year more than 60 days before filing its tax return for the 2010 tax year, the corporation must report the tax position on the Schedule UTP filed with its 2010 tax return.

Example 2 (reserve increase). A corporation took a tax position in its 2010 tax return and recorded a reserve for the tax position on September 30, 2010. On December 31, 2012, the corporation increased its reserve with respect to the tax position taken in its 2010 tax return. Because the corporation recorded a reserve with respect to its 2010 tax position more than 60 days before filing its 2010 tax return, the corporation must report the 2010 tax position on the Schedule UTP filed with its 2010 tax return. The taxpayer is not required to report the 2010 tax position again on its 2012 tax return as a result of the reserve increase in 2012.

Related party. A related party is any entity that is related to the corporation under sections 267(b), 318(a), or 707(b), or any entity that is included in a consolidated audited financial statement in which the corporation is also included.

Examples - All examples assume the corporation is a calendar year taxpayer.

Example 3 (related party general rule). Corporation A is a corporation filing Form 1120 with $20 million of assets. Corporation B is a foreign corporation not doing business in the United States and is related party to Corporation A. Corporations A and B issue their own audited financial statements. If Corporation A has taken a tax position in a tax return, but does not record a reserve with respect to that tax position in its own audited financial statements, that tax position must be reported by Corporation A on its Schedule UTP if the audited financial statements of Corporation B include a reserve with respect to that tax position.

Example 4 (reserve recorded in consolidated financial statement). Corporation C files a Form 1120 and has assets of $20 million. Corporations C and D issue a consolidated audited financial statement, but they do not file a consolidated tax return. Corporation C has taken a tax position for which a reserve was recorded in the consolidated financial statements of Corporations C and D. The tax position taken by Corporation C on its tax return must be reported on its Schedule UTP because a reserve was recorded for its tax position in a consolidated financial statement in which Corporation C was included.

Reserve not recorded based on administrative practice. A tax position required to be reported on Schedule UTP includes a tax position for which a reserve would have been recorded in the audited financial statement but for a determination that, based upon past administrative practices and precedents of the IRS in dealing with the tax position of the taxpayer or similar taxpayers, the IRS has a practice of not challenging the tax position during an examination.

Reserve not recorded based on expectation to litigate. A tax position required to be reported on Schedule UTP includes a tax position for which a reserve was not recorded in the audited financial statement after the taxpayer or a related party determines that, if the IRS had full knowledge of the tax position it is unlikely a settlement could be reached. For this purpose, a settlement is unlikely if the probability of settlement is less than 50%.

Example 5 (expectation to litigate). A corporation takes a position that it can exclude certain income from its 2010 tax return. On September 30, 2010, the corporation determines that, if the IRS had full knowledge of the tax position, there is less than a 50% probability of settling the issue with the IRS. The corporation also determines that, if the tax position were litigated, it has a 60% probability of prevailing in the litigation. Based upon these determinations, the corporation did not record a reserve for the tax position. Because the corporation made a decision not to record a reserve with respect to its 2010 tax position based on a determination, consistent with applicable accounting standards, that it will litigate, rather than settle, the issue with the IRS and that the corporation will prevail in the litigation, and because that decision was made more than 60 days before filing its 2010 tax return, the corporation must report this tax position on the Schedule UTP filed with its 2010 tax return.

Tax position taken in a tax return. A tax position taken in a tax return means a tax position that would result in an adjustment to a line item on that tax return (or would be included in a section 481(a) adjustment) if the position is not sustained.

Examples - All examples assume the corporation is a calendar year taxpayer

Example 6 (permanent differences). A corporation incurs an expenditure in its 2010 tax year and takes the position that the expenditure may be amortized over 5 years beginning in its 2010 tax return. The corporation determines it is uncertain whether any current deduction or amortization of this expenditure is allowable. The corporation has taken a tax position in each of the 5 tax years because in each year's tax return there would be an adjustment to a line item on that return if the position taken in that year is not sustained.

Example 7 (temporary difference). A corporation incurs an expenditure in its 2010 tax year and claims a deduction for the entire amount on its 2010 tax return. The corporation determines it is uncertain whether the deduction is allowable in the 2010 tax year or the amount instead is amortizable over 5 years. The corporation has taken a tax position in each of the 5 years, even though it claimed a deduction in a single year, because in each year's tax return there would be an adjustment to a line item on that return if the position taken in that year is not sustained.

Example 8 (use of expiring net operating loss carryforward). A corporation has a $100 net operating loss carryforward that will expire unless it is used in the 2010 tax year. The corporation reports $100 of income in 2010 but is uncertain whether the income should be reported in 2010 or 2011. The corporation has taken a tax position in each of its 2010 and 2011 tax returns because in each return there would be an adjustment to a line item on that return if the position taken in that year is not sustained.

Whether any of the tax positions taken in Examples 6, 7, or 8 must be reported on Schedule UTP in a particular tax year depends upon whether a reserve is recorded in an audited financial statement or is not recorded because of an expectation to litigate or an IRS administrative practice.

Unit of account. A unit of account is the level of detail used in analyzing a tax position, taking into account both the level at which the taxpayer accumulates the information to support the tax return and the level at which the taxpayer anticipates addressing the issue with the IRS. The unit of account used by a GAAP or modified GAAP taxpayer for reporting a tax position on Schedule UTP must be the same unit of account used by the taxpayer for GAAP or modified GAAP. In the case of audited financial statements prepared under other accounting standards, a unit of account based on an entire tax year or entire income tax return for a tax year may not be used as the basis for determining a tax position to be reported on Schedule UTP, even if that is the level of detail used for other applicable accounting standards, such as IFRS. In such cases, a unit of account that may be used as the basis for determining a tax position to be reported on Schedule UTP is any level of detail that is consistently applied and reasonably based on the items of income, gain, loss, deduction or credit.

How to Calculate Maximum Tax Adjustment (MTA)

General. The MTA for a tax position taken in a tax return is an estimate of the maximum amount of potential United States federal income tax liability associated with the tax year for which the tax position was taken. The MTA is determined on an annual basis. For tax positions that relate to items of income, gain, loss, and deduction, estimate the total amount in dollars and multiply by 0.35 (35%). For items of credit, estimate the total amount of credit in dollars. Combine the dollar estimates related to all applicable items of income, gain, loss, deduction, and credit to determine the MTA of that tax position. For example, the MTA for a tax position taken in a tax return claiming a $100 deduction is $100 x 0.35 or $35. The MTA for a tax position taken in a tax return claiming a $50 credit is $50.

The MTA does not include interest or penalties. The effects of a tax position on state, local, or foreign taxes are disregarded when computing the MTA.

Each item of income, gain, loss, deduction or credit relating to a tax position taken in a tax return is determined separately and may only be offset by other such items relating to that tax position. For example, if a $100 deduction is associated with a tax position taken in a tax return, enter $35 on Schedule UTP, even if that deduction is used to offset $100 of income generated by general operations of the business. Likewise, if $200 of income is associated with a tax position taken in a tax return, enter $70 [($200 x 0.35)] on Schedule UTP, even if the $200 of income was offset by $200 of net operating losses **.** Items of income, gain, loss, deduction, or credit associated with a tax position may offset each other in determining the MTA for that tax position. For example, if income of $100 is associated with a tax position taken in a tax return and a deduction of $300 is associated with that same tax position, then the MTA is $70 [($300 - $100) x 0.35].

Affiliated groups. The determination of the MTA for a tax position taken in a tax return by an affiliated group is to be determined at the affiliated group level and must take into account all items of income, gain, loss, deduction, or credit with respect to that tax position for all members of the affiliated group.

Determination of MTA for valuation and transfer pricing tax positions. A determination of a maximum tax adjustment amount is not required for valuation or transfer pricing tax positions. Instead, the MTA reporting requirement is satisfied by indicating whether the tax position is a valuation or a transfer pricing tax position and by providing a ranking of these tax positions based on either the amount recorded as a reserve for United States federal income tax for that tax position taken in the tax return, or the estimated adjustment to United States federal income tax that would result if the tax position taken in the tax return is not sustained. For tax positions that relate to items of income, gain, loss, and deduction, estimate the total amount in dollars and multiply by 0.35 (35%). The corporation may choose either method and is not required to describe the method chosen or report the reserve or adjustment amounts for the reported positions. The method selected must be consistently applied to all valuation tax positions and transfer pricing tax positions reported on this schedule. The rankings should be done separately for the valuation tax positions and the transfer pricing tax positions. See Specific Instructions to Parts I and II, Column F.

Coordination with Other Reporting Requirements

A complete and accurate disclosure of a tax position on the appropriate year's Schedule UTP will be treated as if the corporation filed a Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement, regarding the tax position. A separate Form 8275 or Form 8275-R need not be filed to avoid penalties with respect to that tax position.

Other disclosures and penalties. [RESERVED]

Comprehensive Examples

All examples assume the corporation is a calendar year taxpayer

Example 9 (temporary difference). A corporation incurs an expenditure in 2010 and claims the entire amount as a deduction on its 2010 return. On September 30, 2010, the corporation determines it is uncertain whether the expenditure should instead be amortized over 5 years and records a reserve with respect to the position taken in 2010. The corporation did not record a reserve for any of the positions taken in tax years 2011 through 2014. The corporation has taken a tax position in each of the 5 tax years because in each year's tax return there would be an adjustment to a line item on that return if the position taken in that year is not sustained. The tax position taken in the 2010 tax year must be reported on Part I of Schedule UTP filed with the 2010 tax return because a reserve was recorded with respect to the tax position more than 60 days before filing that return. None of the 2011 to 2014 tax positions must be reported on Schedule UTP because the corporation did not record a reserve with respect to any of those tax positions.

Example 10 (permanent differences). A corporation incurs an expenditure in 2010 and takes the position that the expenditure may be amortized over 5 years beginning in its 2010 tax return. The corporation determines it is uncertain whether any deduction or amortization of this expenditure is allowable. On September 30 of each year beginning in 2010, the corporation records a reserve with respect to the amortization deduction claimed in each tax year. The corporation has taken a tax position in each of the 5 tax years because in each year's tax return there would be an adjustment to a line item on that return if the position taken in that year is not sustained. Because the corporation recorded a reserve for the 2010 tax position more than 60 days before filing the 2010 tax return, the corporation must report the 2010 tax position on Part I of Schedule UTP for the 2010 tax year. In addition, because the corporation recorded a reserve more than 60 days before filing its tax returns for tax years 2011 through 2014, the tax position taken in each of those tax years must be reported on Part I of the Schedule UTP filed with the tax return for the respective tax year in which the tax position was taken.

Example 11 (transition rule). The facts are the same as in Example 10, except that the corporation incurred the expenditure and recorded the reserve in 2009. The corporation has taken a tax position in each of the 5 tax years (2009 through 2013) because in each year's tax return there would be an adjustment to a line item on that return if the position taken in that year is not sustained. However, the corporation should not report the tax position taken in the 2009 tax year because it was taken in a tax year beginning before December 15, 2009. Because the corporation recorded a reserve more than 60 days before filing its tax returns for tax years 2010 through 2013, the tax position taken in each of those tax years must be reported on Part I of the Schedule UTP filed with the tax return for the respective tax year in which the position was taken.

The following chart illustrates when and how to report tax positions on Schedule UTP.

Tax year position is taken	Date of determination whether to take reserve	Date next tax return is filed after determination whether to take reserve	Tax return to which Schedule UTP is attached	Part of Schedule UTP on which tax position is reported
2011	12/1/2011	9/15/2012	2011	I
2011	5/1/2012	9/15/2012	2011	I
2011	8/6/2012	9/15/2012	2011 or 2012	I (if 2011) or II (if 2012)
2011	5/1/2013	9/15/2013	2012	II

Specific Instructions for Part I

Part I Uncertain Tax Positions For the Current Tax Year

When to Complete Part I

Part I is used to report tax positions taken by the corporation in the current year's tax return.

All examples assume the corporation is a calendar year taxpayer

Example 12. On February 15, 2011, a corporation records a reserve relating to a tax position taken in its tax return for the 2010 tax year. The corporation files its 2010 tax return on September 15, 2011. Because the reserve for the 2010 tax position was recorded at least 60 days before filing the 2010 return, the corporation must report the 2010 tax position on Part I of Schedule UTP filed with its 2010 tax return.

Example 13. A corporation incurs a $50 expenditure in 2010 and claims the entire amount as a deduction on its 2010 tax return. The deduction increases the corporation's net operating loss carryforward from $100 to $150. The corporation uses the entire $150 net operating loss carryforward in its 2011 tax return. Claiming the $50 deduction in 2010 is a tax position taken in the 2010 tax year because the position would result in an adjustment to a line item on the 2010 tax return if the position is not sustained. The deduction in 2011 of the net operating loss carried forward from 2010 is a 2011 tax position, because the position would result in an adjustment to a line item on the 2011 tax return if the position is not sustained. The corporation did not record a reserve with respect to its 2010 tax position, but did record a reserve on September 30, 2011, with respect to its 2011 tax position. Because the corporation did not record a reserve with respect to the tax position taken in 2010, the 2010 tax position is not required to be reported on Schedule UTP. However, because the corporation recorded the reserve for the 2011 tax position more than 60 days before filing its 2011 tax return, the 2011 tax position must be reported on Part I of Schedule UTP filed with the tax return for the 2011 tax year.

Information From Related Parties

Check the box if the corporation was unable to obtain sufficient information from one or more related parties and was therefore unable to determine whether a tax position taken in the current year's tax return is required to be reported on Part I of this schedule.

Column A. UTP Number

Enter a number in column A for each tax position listed in this Part. This number will be used on Part III for reporting the concise description of the tax position. Begin with the number 1 and do not skip any whole numbers.

Column B. Primary IRC Sections

Provide the primary IRC sections (up to three) relating to the tax position.

Column C. Timing Codes

Check T for temporary differences, P for permanent differences, or check both T and P for a tax position that creates both a temporary and permanent difference. Categorization as a temporary difference, permanent difference, or both must be consistent with the accounting standards used to prepare the audited financial statements.

Column D. Pass-Through Entity EIN

If the tax position taken by the corporation relates to a tax position of a pass-through entity, enter the EIN of the pass-through entity to which the tax position relates. For example, if the corporation is a partner in a partnership and the tax position involves the partner's distributive share of an item of income, gain, loss, deduction, or credit of the partnership, enter the EIN of the partnership. A pass-through entity is any entity listed in section 1(h)(10). If the tax position is not related to a tax position of a pass-through entity, leave this blank. Enter F if the pass-through entity is a foreign entity that does not have an EIN.

Column E. Administrative Practice

Check this box if the tax position must be reported because it was determined the IRS would not challenge the position upon examination based on IRS administrative practice.

Column F. Maximum Tax Adjustment

Enter the maximum tax adjustment amount for each tax position that is not a valuation tax position or a transfer pricing tax position. If the tax position is a valuation tax position, enter V for valuation followed by a number representing the ranking of the tax position within all reported valuation tax positions (e.g., V1). If the tax position is a transfer pricing tax position, enter TP for transfer pricing followed by a number representing the ranking of the tax position within all reported transfer pricing tax positions (e.g., TP1). Begin with the number 1 for the tax position with the largest estimated potential tax adjustment or, if applicable, the largest reserve, and do not skip any whole numbers.

Specific Instructions for Part II [This section will not be completed in 2010]

Part II Uncertain Tax Positions For Prior Tax Years

When to Complete Part II

Part II is used to report tax positions taken by the corporation in a prior tax year that have not been reported on a Schedule UTP filed with a prior year's tax return.

Information From Related Parties

Check this box if the corporation was unable to obtain sufficient information from one or more related parties and was therefore unable to determine whether a tax position taken in a prior year's tax return is required to be reported on Part II of this schedule.

Column A. UTP Number

Continue the numeric sequence based on the last UTP number entered on Part I. For example, if the last UTP listed on Part I is 10, enter 11 for the first UTP listed on Part II. Assign a new number to each tax position that is listed in Column G.

Column B. Primary IRC Sections

Refer to the instructions for Part I Column B.

Column C. Timing Codes

Refer to the instructions for Part I Column C.

Column D. Pass-Through Entity EIN

Refer to the instructions for Part I Column D.

Column E. Administrative Practice

Refer to the instructions for Part I Column E.

Column F. Maximum Tax Adjustment

Refer to the instructions for Part I Column F.

Column G. Year of Tax Position

List the prior tax year in which the tax position was taken and the last month of that tax year, using a six-digit number. For example, enter 201012 for tax years ending December 31, 2010, and 201108 for tax years ending August 2011.

Specific Instructions for Part III

Part III Concise Description of Uncertain Tax Positions

When to Complete Part III

Part III must be completed for every tax position listed in either Part I or II. Enter the corresponding UTP number from Part I or Part II related to the description.

Provide a concise description of the tax position, including information that reasonably can be expected to apprise the IRS of the identity of the tax position and the nature of the uncertainty. The description must include a statement that the position involves an item of income, gain, loss, deduction, or credit against tax; a statement whether the position involves a determination of the value of any property or right or a computation of basis; and the rationale for the position and the reasons for determining the position is uncertain. In most cases, the description should not exceed a few sentences.

Examples of concise descriptions

Example 14. The corporation investigated and negotiated several potential business acquisitions during the tax year. One of the transactions was completed during the tax year, but all other negotiations failed and the other potential transactions were abandoned during the tax year. The corporation deducted costs of investigating and partially negotiating potential business acquisitions that were not completed, and capitalized costs allocable to one business acquisition that was completed. The issue is the allocation of costs between failed acquisitions and the successful acquisition.

Example 15. The corporation entered into a loan transaction in which it made a general pledge of its assets to its lender. The corporation's assets include stock of FSub, a wholly-owned foreign subsidiary. FSub reports no earnings and profits for U.S. federal income tax purposes based on its treatment of an item of income that defers income recognition to a later year. The corporation has taken the position that the pledge of FSub stock did not result in an investment in U.S. property under section 956. The issue is whether there was an investment in U.S. property causing a deemed distribution of FSub earnings to the corporation as a result of the treatment of an item of FSub's income that defers its recognition.

Example 16. The corporation received a cash distribution from Venture LLC (Venture LLC is treated as a U.S. partnership for tax purposes). The corporation claims the distribution is not taxable because it did not exceed the corporation's basis in its interest in Venture LLC. The issue concerns (1) the computation of basis in the Venture LLC interest, and (2) the application of the disguised sale and partnership anti-abuse rules of Subchapter K and regulations thereunder to recharacterize the transaction as other than a distribution.