

**MEMO# 24106**

January 27, 2010

# **IRS Proposes to Require Disclosure of Uncertain Tax Positions**

[24106]

January 27, 2010

TO: TAX MEMBERS No. 2-10  
ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 2-10  
ACCOUNTING/TREASURERS MEMBERS No. 7-10 RE: IRS PROPOSES TO REQUIRE  
DISCLOSURE OF UNCERTAIN TAX POSITIONS

The Internal Revenue Service has announced (in Announcement 2010-9) that it is developing a schedule, to be filed with the tax returns of corporations and other business taxpayers with assets of more than \$10 million, on which these taxpayers will disclose their uncertain tax positions. The positions for which the IRS proposes to require tax disclosure, as discussed below, go beyond positions that must be disclosed under the existing accounting standard of FASB Interpretation No. 48 (FIN 48). [\[1\]](#)

Under FIN 48, a taxpayer must disclose certain details regarding a tax position unless the taxpayer has a more-likely-than-not probability that the position will be sustained upon an IRS examination based upon the position's technical merits. In making this determination, the taxpayer may take into account those past administrative practices and precedents of the taxing authority that are widely understood. [\[2\]](#)

Under the IRS proposal, a taxpayer would be required to (1) provide a concise description of each uncertain tax position for which the taxpayer is required by accounting standards to record a reserve in its financial statements and (2) disclose the maximum amount of potential federal tax liability attributable to each such position. This liability amount would be the entire amount of federal income tax that would be due "if the position were

disallowed in its entirety on audit.” The taxpayer’s risk analysis of its likelihood of prevailing on the merits would not be taken into account in determining this amount.

Importantly, taxpayers also would be required to disclose any position for which a tax reserve has not been recorded because (1) the taxpayer expects to litigate the position or (2) the taxpayer has determined that the IRS “has a general administrative practice not to examine the position.” Thus, the tax disclosures go beyond the disclosures required by FIN 48.

The announcement states that the IRS anticipates publishing a notice of proposed rulemaking requiring disclosures on this schedule and is evaluating additional options for penalties or sanctions for failures to make adequate disclosures. The IRS also notes that, except as described in the Announcement, the IRS intends to retain (subject to further consideration) its existing policy of restraint for requesting tax accrual work papers during its examinations.

Finally, the announcement states that the IRS intends to publish the new schedule as quickly as possible and invites public comments on the proposal by March 29, 2010. One of the questions on which comment is requested is “whether the scope of the Announcement should be modified regarding the uncertain tax positions for which information is required to be reported (e.g., positions for which no tax reserve has been established because the taxpayer determined the Service has a general administrative practice not to examine the position).”

The IRS intends to mandate that the new schedule be included with returns filed after the schedule is released.

Keith Lawson  
Senior Counsel - Tax Law

[Attachment \(in .pdf format\)](#)

#### **endnotes**

[1] See Institute [Memorandum](#) (20183) to Accounting/Treasurers Members No. 14-06, Tax Members No. 24-06, and Adviser Distributor Tax Issues Task Force No. 8-06, dated July 14, 2006.

[2] See Institute [Memorandum](#) (20728) to Board of Governors No. 35-06, Investment Company Directors No. 32-06, Primary Contacts – Member Complex No. 24-06, Accounting/Treasurers Members No. 32-06, Tax Members No. 50-06, and SEC Rules

Members No. 113-06, dated December 26, 2006.

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.