2010 Instructions for Schedule UTP

Department of the Treasury
Internal Revenue Service

Uncertain Tax Position Statement

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 U. S. federal income tax liabilities of certain corporations that issue or are included in audited financial statements and have assets that equal or exceed $100 million.

Reporting Uncertain Tax Positions on Schedule UTP

Tax positions to be reported. Schedule UTP requires the reporting of each U.S. federal income tax position taken by an applicable corporation on its U.S. federal income tax return for which two conditions are satisfied.

1. The corporation has taken a tax position on its U.S. federal income tax return for the current tax year or for a prior tax year.
2. Either the corporation or a related party has recorded a reserve with respect to that tax position for U.S. federal income tax in audited financial statements, or the corporation or related party did not record a reserve for that tax position because the corporation expects to litigate the position.

A tax position for which a reserve was recorded (or for which no reserve was recorded because of an expectation to litigate) must be reported regardless of whether the audited financial statements are prepared based on U. S. 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).

A tax position is based on the unit of account used to prepare the audited financial statements in which the reserve is recorded (or in which no reserve was recorded because of an expectation to litigate). A tax position taken on a tax return is a tax position that would result in an adjustment to a line item on that tax return if the position is not sustained. If multiple tax positions affect a single line item on a tax return, report each tax position separately on Schedule UTP. See *Tax position taken on a tax return* on page 2.

Reporting current year and prior year tax positions. Tax positions taken by the corporation on the current year's tax return are reported in Part I. Tax positions taken by the corporation on a prior year's 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 on more than one tax return, the tax positions must be reported in Part I of the Schedule UTP attached to each tax return in which a tax position 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 and Example 7. Do not report a tax position on Schedule UTP before the tax year in which the tax position is taken on a tax return by the corporation.

Note. Part II will not be completed for Schedule UTP for the 2010 tax year, because tax positions taken before the 2010 tax year are not reported. See *Transition rule* below.

Concise description of tax position. A corporation that reports a tax position in Part I (or Part II after the 2010 tax year) is required to provide a concise description of each tax position in Part III. See Examples 10 through 12.

Consistency with financial statement reporting. The analysis of whether a reserve has been recorded for the purpose of completing Schedule UTP is determined by reference to those reserve decisions made by the corporation or a related party for audited financial statement purposes. If the corporation or a related party determined that, under applicable accounting standards, either no reserve was required for a tax position taken on a tax return because the amount was immaterial for audited financial statement purposes, or that a tax position was sufficiently certain so that no reserve was required, then the corporation need not report the tax position on Schedule UTP.

Transition rule. A corporation is not required to report on Schedule UTP a tax position taken in a tax year beginning before January 1, 2010, even if a reserve is recorded with respect to that tax position in audited financial statements issued in 2010 or later. See Example 8.

Periods covered. File a 2010 Schedule UTP with the 2010 income tax return for the calendar year 2010 and for a fiscal year that begins in 2010 and ends in 2011. A corporation is not required to file a Schedule UTP for a short tax year that ends in 2010.

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 that equal or exceed $100 million;
3. The corporation or a related party issued audited financial statements reporting 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.

Attach Schedule UTP to the corporation's income tax return. Do not file it separately. A taxpayer that files a protective Form 1120, 1120-F, 1120-L, or 1120-PC must also file Schedule UTP if it satisfies the four requirements set forth above.

A corporation required to file Schedule UTP also must check "Yes" to

Form 1120, Schedule K, Question 14; Form 1120-F, Additional Information, Question AA; Form 1120-L, Schedule M, Question 15; or Form 1120-PC, Schedule I, Question 13.

Computation of assets that equal or exceed $100 million.

Forms 1120, 1120–L, and 1120-PC. A corporation's assets equal or exceed $100 million if the amount reported on page 1, item D of Form 1120, or the higher of the beginning or end of year total assets reported on Schedule L of Form 1120-L or Form 1120-PC, is at least $100 million.

Form 1120-F. The assets of a corporation filing a Form 1120-F equal or exceed $100 million if the higher of the beginning or end of year total worldwide assets of the corporation reported on Form 1120-F, Schedule L, Line 17, would be at least $100 million if the corporation were to prepare a Schedule L on a worldwide basis.

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 its U.S. federal income tax return separately and satisfies the requirements set forth above must file a Schedule UTP with its return setting forth its own tax positions.

Definitions and Special Rules

Note. All examples in these instructions assume the calendar year is the reporting year both for U.S. federal income tax and financial statement purposes and the independent auditor's opinion on the audited financial statements is issued before the filing of the tax return.

Audited financial statements. Audited financial statements mean financial statements on which an independent auditor has expressed an opinion, whether qualified, unqualified, disclaimed, or adverse, under GAAP, IFRS, or another country-specific accounting standard, including a modified version of any of the above (for example, modified GAAP). Compiled or reviewed financial statements are not audited financial statements.

Record a reserve. A corporation or a related party records a reserve for a U.S. federal income tax position when a reserve for U.S. federal income tax, interest, or penalties with respect to that position is recorded in audited financial statements of the corporation or a related party.

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

If a corporation is included in multiple audited financial statements, the corporation must report a tax position on Schedule UTP if a reserve for that position was recorded in any of those audited financial statements.

Example 1. General rule regarding recording a reserve. A corporation records a reserve in its 2010 audited financial statements relating to a tax position taken on its tax return for the 2010 tax year. The corporation files its 2010 tax return on September 15, 2011. The corporation must report the 2010 tax position on Part I of Schedule UTP and file Schedule UTP with its 2010 tax return. If the corporation increases its reserve with respect to the tax position taken on its 2010 tax return in its 2012 audited financial statements, the corporation 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 has a relationship to the corporation that is described in sections 267(b), 318(a), or 707(b), or any entity that is included in consolidated audited financial statements in which the corporation is also included.

Example 2. Related party general rule. Corporation A is a corporation filing Form 1120 that has $160 million of assets. Corporation B is a foreign corporation not doing business in the United States and is a related party to Corporation A. Corporations A and B issue their own audited financial statements. Corporation A takes a tax position on its tax return. If Corporation B records a reserve with respect to that tax position in its own audited financial statements, even though Corporation A does not, then that tax position must be reported by Corporation A on its Schedule UTP.

Example 3. Reserve recorded in consolidated financial statements. Corporation C files a tax return and has assets of $160 million. Corporations C and D issue consolidated audited financial statements, but they do not file a consolidated tax return. Corporation C takes 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 consolidated financial statements in which Corporation C was included.

Reserve not recorded based on expectation to litigate. A corporation must report on Schedule UTP a tax position taken on its return for which no reserve for income tax was recorded if the tax position is one which the corporation or a related party determines the probability of settling with the IRS to be less than 50% and, under applicable accounting standards, no reserve was recorded in the audited financial statements because the corporation intends to litigate the tax position and has determined that it is more likely than not to prevail on the merits in the litigation.

Tax position taken on a tax return. A tax position taken on 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. If multiple tax positions affect a single line item on a tax return, each tax position is a separate tax position taken on a tax return.

A single decision about how to report an item of income, gain, loss, deduction, or credit may affect line items in multiple years' returns. If so, that decision can result in a tax position taken on each affected year's return. For example, a decision to amortize an expense rather than currently deduct that expense, or a decision to currently deduct rather than amortize an expense, affects line items on each year's return in which the tax position is taken during the period of amortization. Whether these tax positions taken on a return are reported on Schedule UTP for a particular tax year, and when they are reported, depends on whether and when a reserve is recorded. See Example 6 and Example 7.

Example 4. 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 on each of its 2010 and 2011 tax returns because on each return there would be an adjustment to a line item on that return if the position taken in that year is not sustained.

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 prepares and supports 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 accounting standards other than GAAP or modified GAAP, a corporation that issues audited financial statements with a unit of account that is based upon the entire tax year may not use that unit of account for Schedule UTP. The corporation must instead identify a unit of account based on similar principles applicable to GAAP or modified GAAP taxpayers, or use any other level of detail that is consistently applied if that identification is reasonably expected to apprise the IRS of the identity and nature of the issue underlying the tax position taken on the tax return.

Example 5. Unit of account. Corporation A and Corporation B each have two individual research projects and each anticipates claiming a research and development credit arising out of their projects. Corporation A chooses each individual research project as the unit of account for GAAP financial reporting purposes, since the corporation accumulates information for the tax return about the projects at the project level and expects the IRS to address the issues during an examination of each project separately. Corporation B determines that the appropriate unit of account for GAAP financial reporting purposes is the functional expenditures, based on the amount of its expenditures, the anticipated credits to be claimed, its previous experience, and the advice of its tax advisors. Based on the unit of account used for financial reporting purposes, Corporation A must use each project as its unit of account for Schedule UTP reporting, and Corporation B must use functional expenditures as its unit of account for Schedule UTP reporting, regarding the research and development credit.

Ranking Tax Positions by Size

The corporation must rank by size each tax position listed in Part I. The size of a tax position, however, need not be reported anywhere on Schedule UTP. See the instructions for Part I, column (f), regarding coding to be used to rank the corporation's tax positions.

Size. The size of each tax position is determined on an annual basis and is the amount of U.S. federal income tax reserve recorded for that position. If a reserve is recorded for multiple tax positions, then a reasonable allocation of that reserve among the tax positions to which it relates must be made in determining the size of each tax position.

Expectation to litigate. Do not determine a size for positions listed because of an expectation to litigate. See the instructions for Parts I and II, column (f), regarding ranking of these positions.

Affiliated groups. The determination of the size of a tax position taken in a tax return by an affiliated group filing a consolidated return is to be determined at the affiliated group level for all members of the affiliated group.

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 certain accuracy-related penalties with respect to that tax position.

Comprehensive Examples

Example 6. Multiple year positions. A corporation incurs an expenditure in 2010 and claims the entire amount as a deduction on its 2010 return. During the course of reviewing its tax positions for purposes of establishing reserves for U.S. federal income taxes for its 2010 audited financial statements, 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, on each year's tax return, there would be an adjustment to a line item on that return if the position taken in that year's return 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. 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 7. Multiple year positions. A corporation incurs an expenditure in 2010 and takes the position that the expenditure may be amortized over 5 years beginning on its 2010 tax return. During the course of reviewing its tax positions for purposes of establishing reserves for U.S. federal income taxes for its 2010 audited financial statements, the corporation determines it is uncertain whether any deduction or amortization of this expenditure is allowable. In the 2010 audited financial statements, the corporation records a reserve with respect to the amortization deduction to be claimed in each tax year. The corporation has taken a tax position in each of the 5 tax years because on 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 corporation must report the 2010 tax position on Part I of Schedule UTP for the 2010 tax year. In addition, the tax position to be taken in each of the 2011 to 2014 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. The result would be the same if, instead of recording the reserve in 2010 for all of the tax positions taken in each of the five years, the corporation records a reserve in each year that specifically relates to the tax position taken on the return for that year.

Example 8. Transition rule. The facts are the same as in Example 7, 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 on 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 January 1, 2010. The tax position taken in each of the 2010 to 2013 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.

Example 9. Creation and use of net operating loss (NOL). 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 NOL carryforward from $100 to $150. The corporation uses the entire $150 NOL carryforward on 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 NOL carried forward from 2010 is a tax position taken on the 2011 tax return, 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 in its 2011 audited financial statements 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 a reserve for the 2011 tax position in its 2011 audited financial statements, the 2011 tax position must be reported in Part I of Schedule UTP filed with its tax return for the 2011 tax year.

Specific Instructions

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 on its 2010 tax return.

Information from Related Parties

Check the box at the top of Part I 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 on its current year's tax return is required to be reported in Part I of this schedule.

Column (a). UTP No.

Enter a number in column (a) for each tax position reported. A corresponding number will be used in 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). Major Tax Position

Check this box if the relative size of the tax position is greater than or equal to 0.10 (10%). The relative size of a tax position is the amount computed by dividing the size of that position by the sum of all of the sizes for all of the tax positions listed on Parts I and II. Disregard expectation to litigate positions for column (e) purposes. Round amounts using rules similar to those on page 5 of the Instructions for Form 1120 for rounding dollar amounts.

Column (f). Ranking of Tax Position

Enter a letter and a ranking number for each tax position. Use the letter T for transfer pricing positions and the letter G for all other tax positions.

Rank all tax positions in Parts I and II together, regardless of type. Starting with the largest size, assign the number 1 to the largest, the number 2 to the next largest, and so on, in order. This number is the ranking number for the tax position. Expectation to litigate positions may be assigned any ranking number.

For example, the corporation has 1 transfer pricing tax position and 2 other tax positions. The transfer pricing position is the largest and one of the other tax positions is the expectation to litigate position. The expectation to litigate position is assigned a rank of 2. Enter T1 for the transfer pricing position, G2 for the expectation to litigate position, and G3 for the second other tax position.

[Part II will not be completed in 2010]

Part II Uncertain Tax Positions For Prior Tax Years

When to Complete Part II

Part II will be used in tax years after 2010 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. It will not be completed in 2010, because corporations are not required to report a tax position taken in a tax year beginning before January 1, 2010. See *Transition rule* on page 1.

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 No.

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.

Column (b). Primary IRC Sections

See the instructions for Part I, column (b).

Column (c). Timing Codes

See the instructions for Part I, column (c).

Column (d). Pass-Through Entity EIN

See the instructions for Part I, column (d).

Column (e). Major Tax Position

See the instructions for Part I, column (e).

Column (f). Ranking of Tax Position

See 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.

Part III Concise Description of UTPs

When to Complete Part III

Part III must be completed for every tax position listed in Part I (or Part II in tax years after 2010). Enter the corresponding UTP number from Part I, column (a), related to the description.

Concise description. Provide a concise description of the tax position, including a description of the relevant facts affecting the tax treatment of the position and information that reasonably can be expected to apprise the IRS of the identity of the tax position and the nature of the issue. In most cases, the description should not exceed a few sentences. Stating that a concise description is “Available upon Request” is not an adequate description.

A concise description should not include an assessment of the hazards of a tax position or an analysis of the support for or against the tax position.

Examples of Concise Descriptions for Hypothetical Fact Patterns

The following examples set out a description of hypothetical facts and the uncertainties about a tax position that would be reportable on Schedule UTP. Following each set of hypothetical facts, which would not be disclosed on the schedule, is an example of a sufficient concise description that would be reported in Part III to disclose that hypothetical case.

Example 10.

Facts. 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 corporation established a reserve for financial accounting purposes in recognition of the possibility that the amount of costs allocated to the uncompleted acquisition attempts was excessive.

Sample concise description. The corporation incurred costs of completing one business acquisition and also incurred costs investigating and partially negotiating potential business acquisitions that were not completed. The costs were allocated between the completed and uncompleted acquisitions. The issue is whether the allocation of costs between uncompleted acquisitions and the completed acquisition is appropriate.

Example 11.

Facts. The corporation is a member of Venture LLC, which is treated as a U.S. partnership for tax purposes. During the taxable year, Venture LLC raised funds through (i) admitting a new member for a cash contribution and (ii) borrowing funds from a financial institution, using a loan partially guaranteed by the corporation. Also during the tax year, Venture LLC made a cash distribution to the corporation that caused its membership interest in Venture LLC to be reduced from 25% to 2%. The corporation has taken the position that the cash distribution is properly characterized as a nontaxable distribution that does not exceed its basis in its Venture LLC interest, but has established a reserve for financial accounting purposes, recognizing that the transaction might be recharacterized as a taxable sale of a portion of its Venture LLC interest under section 707(a)(2).

Sample concise description. The corporation is a member of Venture LLC, which is treated as a U.S. partnership for tax purposes. The corporation received a cash distribution during the year from Venture LLC. The issue is the potential application of section 707(a)(2) to recharacterize the distribution as a sale of a portion of the corporation’s Venture LLC interest.

Example 12.

Facts. The corporation incurred costs during the tax year to clean up environmental contamination caused in prior years by its operations at Site A. Site A contains both the corporation’s manufacturing plant and its corporate headquarters. Based on its analysis that the cleanup activities equally benefited both the manufacturing plant and its corporate headquarters, the corporation allocated the environmental cleanup costs equally between them. It capitalized the portion of environmental cleanup costs allocated to its manufacturing plant to inventory produced during the taxable year and deducted the portion of environmental cleanup costs allocated to its corporate headquarters. The corporation established a reserve for financial accounting purposes in recognition of the possibility that a portion of the current year deduction of costs allocated to the corporate headquarters might be reallocated to the manufacturing plant.

Sample concise description. The corporation incurred costs during the tax year to clean up environmental contamination that was caused by its activities in prior years at site A, which contains both its manufacturing facility and its corporate headquarters. The issue is the allocation of the cleanup costs between X’s production and non-production activities under section 263A.