



Frequently Asked Questions on Schedule UTP

Beginning January 1, 2010, certain corporate taxpayers are required to file Schedule UTP with the Form 1120. Instructions for completing the schedule and other information related to the filing of Schedule UTP can be found at the [UTP web page](#).

These frequently asked questions supplement the information contained in the 2010 instructions and in the other guidance issued on Schedule UTP, and previously issued frequently asked questions can be found at the web address set out above. The 2011 Schedule UTP instructions will incorporate the guidance in these questions and answers.

(July 19, 2011: Question 4 and its answer have been revised, and questions 5 - 12 are new.)

| Reporting on Schedule UTP | | |
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| # | Question | Answer |
| 1. | The instructions state that corporations need not report tax positions for which no reserve is recorded because it was "sufficiently certain so that no reserve was required." For a corporation subject to FIN 48, is a tax position that is "highly certain" within the meaning of FIN 48 the same as a tax position that is "sufficiently certain so that no reserve was required" under the instructions? | The instructions explain that the schedule seeks the reporting of tax positions consistent with the reserve decisions made by the corporation for audited financial statement purposes under applicable accounting standards. For a corporation subject to FIN 48, a tax position is considered "sufficiently certain so that no reserve was required," and therefore need not be reported on Schedule UTP, if the position is "highly certain" within the meaning of FIN 48. |
| 2. | A corporation records a reserve in an audited financial statement for a tax position it expects to take in its 2010 tax return but later eliminates the reserve in a subsequent interim financial statement issued before the filing of the 2010 return. Must the tax position be reported on Schedule UTP? | Yes, if the interim financial statement is unaudited. If the corporation reconsiders whether a reserve is required for a tax position and eliminates the reserve in an interim audited financial statement issued before the tax position is taken in a return, the corporation need not report the tax position to which the reserve relates on the Schedule UTP. |
| 3. | If a corporation uses in a 2010 or later year return a net operating loss (NOL) or credit carryforward and the NOL or credit carryforward that is used includes a pre-2010 tax position for which a reserve has been recorded, must the corporation report that tax position? | No. The use of an NOL or credit carryover in a post-2009 return is a tax position that should not be reported if the portion of the NOL or the credit carryforward that is used includes a tax position taken in a pre-2010 return for which a reserve has been recorded. This FAQ does not otherwise affect the requirement to report a tax position claimed on a post-2009 return for which a reserve has been recorded that is included in an NOL or credit carryover for potential use in a later year. Additional guidance will be forthcoming regarding reporting requirements for the use of NOLs and credit carryovers. |
| 4. | Must interest and penalties be included in determining the size and ranking of a tax position in column (f) on Schedule UTP, as well as the computation of major tax position in column (e)? | The size of a tax position is the amount of the reserve recorded for that position. If an amount of interest or penalties relating to a tax position is not separately identified in the books and records as associated with that position, then that amount of interest and penalties is not included in the size of a tax position used to rank that position or compute whether the position is a major tax position. |
| 5. | If a taxpayer has no 2010 tax positions for which reserves have been recorded, should the taxpayer file a blank Schedule UTP with its 2010 tax return? | No. The Schedule UTP Instructions require taxpayers to file a Schedule UTP only if all of the four conditions set forth in the instructions under <i>Who Must File</i> are satisfied. One of these conditions is that the corporation has one or more tax positions that must be reported on Schedule UTP. If, under the Schedule UTP Instructions, a taxpayer has no tax positions that must be reported on the current year Schedule UTP, the taxpayer should not file a blank Schedule UTP for that year. |
| 6. | The term reserve is not a defined accounting term. When is a reserve recorded in an audited financial statement? | A reserve is recorded when an uncertain tax position or a FIN 48 liability is stated anywhere in a corporation's or related party's financial statements, including footnotes and any other disclosures, and may be indicated by any of several types of accounting journal entries. Some of the types of entries that, entered alone or in tandem, indicate the recording of a reserve are: (1) an increase in a current or non-current liability for income taxes, interest or penalties payable, or a reduction of a current or non-current receivable for income taxes and/or interest with respect to the tax position, or (2) a reduction in a deferred tax asset or an increase in a deferred tax liability with respect to the tax position. |
| 7. | A corporation claims a deduction in 2011 and determines under applicable accounting standards that it can recognize the full benefit of the position. In 2013 the IRS begins an examination of the 2011 tax return and decides to examine whether the deduction is proper. The corporation subsequently reevaluates the tax position and records a reserve for that position in 2013. Must the corporation report the tax position on Schedule UTP filed with its 2013 tax return even though the IRS is aware of the tax position? | Yes. The corporation has taken a tax position in its 2011 tax return and recorded a reserve with respect to that tax position. The corporation must report that position on Part II of the Schedule UTP filed with its 2013 tax return. The requirement to report the tax position exists even if the IRS identifies the tax position for examination prior to the recording of the reserve. |
| 8. | A corporation takes a tax position on its 2011 tax return for which no reserve is recorded because the corporation determines the tax position is correct. Circumstances change, and in 2013 the | Yes. The corporation must report that position either if it records a reserve or if it does not record a reserve because it expects to litigate, even if that decision to record or not record occurs because of a change in circumstances in a later year. Therefore, assuming the other requirements of the |

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| | <p>corporation determines that the tax position is uncertain, but does not record a reserve because of its expectation to litigate the position. That is, 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 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. Must the corporation report the tax position on the Schedule UTP filed with its 2013 tax return?</p> | <p>Instructions for Schedule UTP are satisfied, a corporation must report a tax position for which it initially decides not to record a reserve if circumstances change such that in a later year the corporation expects to litigate that position. Under these facts, the tax position will be required to be reported on Part II of the Schedule UTP filed with the 2013 tax return.</p> |
| 9. | <p>Corporation A merges into Corporation B in 2011, and Corporation B survives. Corporation B records a reserve with respect to a tax position taken on the final return of Corporation A. Should the tax position be reported on the Schedule UTP filed with Corporation A's final 2011 tax return?</p> | <p>The answer depends on when Corporation B records its reserve. As a result of the merger, Corporation B is liable under applicable law for all of Corporation A's federal income taxes. In addition, Corporation B is the surviving corporation and, as the surviving corporation, should be treated as a continuation of the merged corporation. Because it recorded a reserve and is the successor in interest to Corporation A, Corporation B is the appropriate party to report a tax position on the Schedule UTP filed with the final tax return for Corporation A. If Corporation B records a reserve with respect to Corporation A's tax position before the final return is filed, the tax position should be reported on the Schedule UTP filed with Corporation A's final tax return even though the return was filed by Corporation B and the reserve was recorded by Corporation B. Corporation B should not report the tax position on the Schedule UTP filed with its 2011 tax return because Corporation A's final return is a prior year tax return on which the tax position was reported.</p> <p>If Corporation B records the reserve for the tax position after filing Corporation A's final tax return, Corporation B must report the tax position on the Schedule UTP filed with its 2011 tax return.</p> |
| 10. | <p>A corporation claims an item of deduction, loss, or credit on its 2010 tax return and that tax return contains an NOL or a credit. The NOL or credit cannot be used in 2010 and is carried forward. The corporation records a reserve with respect to the tax position that is reflected on an audited financial statement in 2010. The NOL carryforward or credit carryforward is used to reduce the tax liability reported on the 2012 tax return. The corporation records a reserve with respect to the tax position that is reflected on an audited financial statement in 2012. How should that item be reported on Schedule UTP?</p> | <p>A corporation must report a tax position taken on its 2010 tax return on Schedule UTP if a reserve is recorded in an audited financial statement with respect to the tax position. As stated in example 9 of the Schedule UTP Instructions, claiming an item of deduction, loss, or credit is a tax position. Since the corporation recorded a reserve for that tax position in 2010, the corporation should report that tax position on the Schedule UTP filed with its 2010 tax return.</p> <p>This reporting in 2010 is the only reporting required. We recognize that example 9 caused confusion with respect to this issue. Even though the future use of the NOL or credit carryforward is a tax position for which the corporation recorded a reserve, the IRS will not require reporting with respect to the future use of NOLs or credit carryforwards. The corporation therefore should not report the use of the NOL or credit carryforward on the Schedule UTP filed with its 2012 tax return.</p> |
| 11. | <p>Under the transition rule in the Instructions for Schedule UTP a corporation is not required to report on Schedule UTP a tax position taken on a pre-2010 tax return. Must the corporation report accruals of interest on that tax position that are part of the reserve recorded for that tax position?</p> | <p>No. The corporation is not required to report accruals of interest on a tax reserve recorded with respect to a tax position taken on a pre-2010 tax return.</p> |
| 12. | <p>A corporation records a reserve for a tax position that would result in an adjustment to a line item on a schedule or form attached to the corporation's 2010 Form 1120 (for example, the tax position would result in an adjustment to a balance sheet item on the corporation's Schedule L that is filed with the corporation's 2010 Form 1120), if that position was not sustained. Must the tax position be reported on Schedule UTP filed with the 2010 return?</p> | <p>Yes. Assuming all other requirements in the Schedule UTP Instructions are satisfied, a corporation must report a tax position for which it has recorded a reserve or did not record a reserve because it expected to litigate the position that would result in an adjustment to a line item on any schedule or form attached to the corporation's filed Form 1120.</p> |
| Policy of Restraint | | |
| 1. | <p>Do the changes to the policy of restraint announced in Announcement 2010-76 apply to documents requested by Appeals?</p> | <p>Yes. It would be very unusual for Appeals to conduct any substantive fact-finding during its case consideration. Nevertheless, the changes to the policy of restraint apply to any request for documents during the administrative process of determining the correct tax liability, which includes Appeals' consideration of proposed audit adjustments.</p> |
| 2. | <p>Do the changes to the policy of restraint announced in Announcement 2010-76 apply to documents requested by Counsel after the filing of a Tax Court petition?</p> | <p>In general, Counsel attorneys will not issue discovery requests for documents or information that the IRS would not seek under its policy of restraint. The application of the policy of restraint to actions taken by Counsel in Tax Court litigation will be addressed in a revision to the Chief Counsel Directives Manual.</p> |
| 3. | <p>What is the effective date of the changes to the policy of restraint announced in Announcement 2010-76?</p> | <p>The changes announced in Announcement 2010-76 apply to any request for documents outstanding on or made after September 24, 2010, in any open examination.</p> |