

June 1, 2010

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
3000 IR
Washington, D.C. 20224

RE: Comments on Announcements 2010-9, 2010-17, and 2010-30 with Regard to Uncertain Tax Positions

Dear Commissioner Shulman:

The AICPA appreciates the opportunity to provide the attached comments on Announcements 2010-9, 2010-17, and 2010-30 with regard to uncertain tax positions. In general, the IRS has proposed that certain business taxpayers (with total assets in excess of \$10 million) will be required to file the new Schedule UTP, Uncertain Tax Position Statement, if they have one or more uncertain tax positions (UTPs). The draft Schedule UTP and accompanying draft instructions, released under Announcement 2010-30, indicate that initially only taxpayers filing Forms 1120, 1120-F, 1120-L, or 1120-PC will be required to disclose uncertain tax positions.

As the national, professional association of certified public accountants comprised of 360,000 members, the AICPA is uniquely positioned to comment on the IRS proposal concerning increased reporting of UTPs. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans and businesses. They provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses. It is from this broad perspective that we offer our comments on the IRS proposal regarding UTPs.

The AICPA understands and supports the IRS objective of increasing the certainty, consistency and efficiency of the tax compliance process. We believe, however, that the procedures as outlined in Announcements 2010-9, 2010-17 and 2010-30 could significantly impede rather than enhance the goals articulated by the IRS. Our most significant concerns with the IRS proposal are that the proposed UTP disclosure regime:

- Potentially undercuts the integrity of the financial statement process;
- Imposes increased burden and cost on taxpayers which will be substantially disproportionate to any actual benefit to the IRS;
- Creates new tension among and between taxpayers, tax advisors, and the IRS, and alters the current self-assessment system;
- Produces complexity and results in distortions that will impede the stated IRS goals;

- Disproportionately impacts small businesses; and
- Calls for taxpayer reporting at a higher level than mandated by Congress.

We understand that the UTP proposal does not change the underlying rules for financial reporting, but believe overlaying a tax disclosure construct on the financial reporting system introduces a dynamic which could work at cross purposes with the original and fundamental purpose of the financial reporting rules. The importance of reliable, transparent financial reporting should not be compromised as part of this IRS tax disclosure initiative.

Based on the foregoing concerns, rather than mandating a new disclosure regime – with all the problems inherent in the current design – we strongly urge the IRS to focus its immediate attention and resources on dramatically improving its use and management of the significant amount of disclosed information it already possesses. Before being required to provide a substantial amount of new information, taxpayers should be confident that the IRS will be at least as diligent in analyzing and utilizing the disclosed data as taxpayers are in developing and reporting it. We therefore suggest that the UTP proposal be withdrawn or substantially revised.

Nevertheless, given the recent comments by IRS officials regarding the Service's apparent commitment to implementing the UTP initiative, our attached comments provide constructive responses to the questions raised by Announcements 2010-9 and 2010-17 in the spirit of striving to help the Service achieve a reduction in taxpayer burden and craft a workable UTP program.

From that perspective, the AICPA recommends that the IRS pilot the proposed UTP program and reserve judgment about its expansion until it has the opportunity to thoroughly evaluate both the intended and unintended consequences of the new process on the larger taxpayer community. Further, because the disclosure regime will have a disproportionate impact on small businesses, we believe the \$10 million asset threshold should be significantly elevated. We recommend that a conjunctive test, under which only taxpayers that have total assets in excess of \$50 million and annual gross receipts in excess of \$100 million, be subject to the UTP reporting requirement.

With respect to a very significant issue that we discuss in both the policy section of our comments and under question 2 of Announcement 2010-17, we recommend (as a broad principle) that pass-through entities and tax-exempt entities should not be subject to any uncertain tax position disclosure regime, as such entities are generally not subject to federal income taxation. In this context, we note with approval the general exclusion of pass-through and tax-exempt entities from the requirement to file a Schedule UTP for 2010 tax years. We believe the associated compliance burdens on these entities would outweigh the relative benefits of such potential disclosure and thus, we urge the permanent exclusion of pass-through and tax-exempt entities from any future UTP filing requirement.

In summary, we clearly support the overarching goals of certainty, consistency and efficiency, but believe the proposed disclosure regime has the very distinct potential of injecting a quotient of burden, complexity and uncertainty which will outweigh the projected benefits. These

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proposed new disclosure requirements will fall heavily on a universe of taxpayers already challenged to timely meet the far-reaching demands of both the financial statement and tax return processes. To that end, we respectfully encourage the IRS to, at the very least, recast its proposal to affect fewer taxpayers while fundamentally re-thinking the most burdensome and onerous aspects of the current proposal.

If you would like to discuss this matter in more depth or have any questions, please contact me at aeinhorn@deloitte.com, or (202) 879-4966; Michael P. Dolan, Chair of the AICPA Tax Position Disclosure Task Force, at mpdolan@kpmg.com, or (202) 533-6150; or Benson S. Goldstein, AICPA Senior Technical Manager, at bgoldstein@aicpa.org, or (202) 434-9279.

Sincerely,

A handwritten signature in cursive script that reads "Alan Einhorn".

Alan R. Einhorn
Chair, Tax Executive Committee