



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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DIRECTIVE FOR ALL LARGE BUSINESS AND INTERNATIONAL DIVISION (LB&I)  
PERSONNEL

FROM: Steven T. Miller  
Deputy Commissioner for Services and Enforcement

SUBJECT: Reporting of Uncertain Tax Positions

**Background**

Starting with the 2010 tax year certain corporate taxpayers under the jurisdiction of the Large Business and International Division (LB&I) of the Internal Revenue Service (IRS) will be required to file a Schedule UTP with their Form 1120. The Schedule UTP requires the disclosure of a taxpayer's uncertain tax positions (UTPs) as described in the Schedule UTP instructions. The Schedule UTP is intended to reduce the time it takes to find issues; ensure that the IRS and taxpayers spend more time discussing the law as it applies to their facts, rather than looking for information; identify areas of uncertainty requiring guidance; and help prioritize selection of issues and taxpayers for examination. This directive sets forth the IRS's planned treatment of these UTPs by LB&I examiners and other personnel.

**Policy on Use**

**Research & Workload Identification (RWI) Processing**

A centralized process will be established within LB&I to review and analyze UTPs. This centralized process will enable LB&I to determine whether the disclosures are in compliance with the schedule instructions and to select issues and returns for audit, identify trends, identify and understand gaps in guidance, and determine the proper treatment of the UTPs. The proper treatment may include publishing guidance necessary to eliminate uncertainty wherever possible, as well as identifying areas for possible legislative changes. In addition, possible treatment may include referral to appropriate personnel to determine the correct legal analysis or to assure fair and consistent treatment across examinations.

**Audit Techniques**

Our responsibility with respect to all of our compliance activities is to administer an equitable and balanced examination program. Key to achieving that goal is for us to

approach each examination with impartiality. LB&I examiners should approach UTPs on audit keeping in mind their responsibility to apply the law as it currently exists, not how we would like it to be. We must do this without bias in favor of the government or the taxpayer. This is the key to meeting our mission of fair and balanced tax administration.

In addition, essential to LB&I's success with UTPs is ensuring that examiners conduct examinations consistent with the understanding that UTPs are uncertain for a number of reasons, including ambiguity in the law and a lack of published guidance on issues. This means that items disclosed on a Schedule UTP may or may not require an examination or an audit adjustment by the examiner. Although the Schedule UTP is intended to expedite the return selection and issue identification processes, it does not serve as a substitute for other examination tools or for the independent judgment of the examiner, and it should not be used to shortcut other parts of the audit process or the careful and considered examination of issues and an objective application of the law to the facts.

The Schedule UTP is intended to advance to earlier in the process discussions with the taxpayer regarding its important issues. As a result, examiners need to engage with taxpayers early in the process to eliminate uncertainty as quickly as possible, whenever possible. Examiners should continue to use tools available to them to accomplish this early engagement including the Quality Examination Planning process introduced in June 2010. Further, as part of the Quality Examination Planning process, LB&I examiners should discuss the issues disclosed on the Schedule UTP in advance of issuing the initial information document requests (IDRs). The current quality review standards will also be adjusted to ensure that LB&I examiners follow these processes. In addition, guidance will be given to examiners regarding how the policy of restraint will apply to Schedule UTP reporting. For example, Announcement 2010-76.

Over the next year, LB&I examiners will receive training specific to the handling of UTPs.

With the principles described above along with the outlined actions to be taken over the next year, I am certain that the implementation of the Schedule UTP will be successful.

