

Tax Department Update

January 2010

IRS to Require Taxpayers to “Self-Identify” Potential Tax Issues

The IRS announced a plan yesterday (January 26, 2010) designed to give its auditors a road map for identifying uncertain tax positions reported on the tax returns of certain business taxpayers. In Announcement 2010-9, the agency stated that it intends to require corporations and some partnerships with assets in excess of \$10 million to file a schedule to their income tax returns providing specific information about their uncertain tax positions. The schedule will require (i) a concise description of each uncertain tax position for which the taxpayer has recorded a reserve in its financial statement (including a concise general statement of the reasons for determining that the position is an uncertain tax position) and (ii) the maximum amount of federal tax liability exposure attributable to each uncertain position. Taxpayers will not be required to disclose reserve amounts or their assessment of the likelihood of prevailing on the merits. The IRS has requested public comments on this plan by March 29, 2010, and intends to release the new schedule "as quickly as possible." The new schedule would be required for returns filed by covered taxpayers after the release of the schedule.

In a speech to the New York State Bar Association on Tuesday, IRS Commissioner Doug Shulman explained that this announcement is part of a broad IRS initiative to help it deal with the increasing complexity of the tax code through “transparency” by requiring covered taxpayers to self-identify tax issues in any return for which a financial statement reserve has been taken. This Announcement builds upon earlier IRS steps to require the disclosure of potentially questionable return positions, including the disclosure of reportable transactions and the detailed disclosure of book-tax differences on schedule M-3. The Announcement also states that the IRS "policy of restraint" for requesting tax accrual workpapers will otherwise continue, but may be further modified "as appropriate or necessary" to provide the IRS with timely, complete and accurate information regarding a taxpayer's uncertain tax positions.

Although much of the information that the Announcement requires is generally available in a corporation's financial statements, the inclusion of this information as part of the tax return likely portends future demands by the IRS for additional supporting documentation and explanation. In this regard, the Announcement extends the initiative that the IRS Commissioner commenced with his October 2009 speech to the National Association of Corporate Directors in which he stated that the audit process needs to be more efficient and transparent as the IRS is tasked with numerous challenges in terms of cross-border issues, offshore tax evasion, tax return preparer regulation, compliance issues and potential implementation of additional social policy objectives through the tax laws. The disclosures mandated by this Announcement also set the scene for potential expansion of the IRS's audit information-gathering once the confidentiality issues raised in the *Textron* decision are resolved with greater finality. In short, this Announcement should not be considered so much as a new boundary for the IRS, as it is the next step in the IRS's pursuit of transparency and currency in the audit process.

The Latham & Watkins Tax Department is working closely with clients to assist with the IRS requirement. Please contact [David Raab](#) at +1.212.906.1344, [Samuel Weiner](#) at +1.213.891.8298, [Gerald Kafka](#) at +1.202.637.2198, [Nicholas J. DeNovio](#) at +1.202.637.1034, [Julian Kim](#) at +1.202.637.1005 or any member of the Latham & Watkins Tax Department listed below if you would like additional information.

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