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Intelligent Tax Advice

2010 Schedule UTP

Presented by: Louis Gomes

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Uncertain Tax Positions

- a decision to not file a tax return (PE, nexus);
- a shift of income/deductions between jurisdictions (buy in royalty, cost plus, return on sale, expense allocation, cost sharing, valuation of sales price...);
- the characterization of income/deduction or a decision to exclude/include reporting taxable income/deductions in a tax return (Section 199 deduction, transaction costs...);
- a decision related to credits (R&D credits...)
- a decision to classify a transaction, entity, or other position in a tax return as tax exempt; or
- an entity's status, including its status as a pass-through entity or a tax-exempt not-for-profit entity.

Schedule UTP Example

- Schedule UTP Example Facts: Co. A (U.S. Parent) has total assets of \$500 million with the following UTPs in 2010
 - UTP #1 Royalty from Co. B CFC \$10 million (80%)
 - UTP #2 R&D Credit \$1.2 million (9.6%)
 - UTP #3 Transaction Costs \$800K (6.4%)
 - UTP #4 Cost + 1% on expenses \$500K UTP #1 R&D Credit \$1.2 million (4%)
 - Total reserves for company A = \$12.5 million (100%)
- Co. B CFC Total Assets \$120 million files Form 1120F protective filing claim
 - UTP #5 Effectively Connected Income \$0
- Co. C CFC does not file a US tax return and has assets of \$130 million
 - UTP #6 PE Exposure in China \$2.0 million

Form UTP Part 1

- Identify IRC Section
- Timing Codes (Permanent and Timing)
- Major Tax Position (> or = 10%)
 - Disregard “expectation to litigate” positions
- Ranking of Tax Position (Use “T” for transfer pricing and “G” for other
 - Relative size of reserve
 - Interest and penalties

Schedule UTP Part I

SCHEDULE UTP
(Form 1120)

Department of the Treasury
Internal Revenue Service

Uncertain Tax Position Statement

► File with Form 1120, 1120-F, 1120-L, or 1120-PC.
► See separate instructions.

OMB No. 1545-0123

2010

Name of entity as shown on page 1 of tax return

Company A

EIN of entity

95-1111111

This Part I, Schedule UTP (Form 1120) is page 1 of 1 Part I pages.

Part I **Uncertain Tax Positions for the Current Tax Year.** See instructions for how to complete columns (a) through (f). Enter, in Part III, a description for each uncertain tax position (UTP).

Check this box if the corporation was unable to obtain information from related parties sufficient to determine whether a tax position is a UTP (see instructions) ►

(a) UTP No.	(b) Primary IRC Section (e.g., *61*, *108*, etc.)			(c) Timing Codes (check if Permanent, Temporary, or both)		(d) Pass-Through Entity EIN	(e) Major Tax Position	(f) Ranking of Tax Position
				<input checked="" type="checkbox"/>	<input type="checkbox"/>			
1	482			<input checked="" type="checkbox"/>	<input type="checkbox"/>	-	<input checked="" type="checkbox"/>	T1
2	41			<input checked="" type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>	G2
3	263			<input checked="" type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>	G3
4	482			<input checked="" type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>	T4
				<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>	
				<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>	

Form UTP Part III – Concise Descriptions

- “description of the relevant facts”
- “identity of the tax position”
- “nature of the issue”
- Refer to Examples 10-12 on page 5 of “2010 Instructions for Schedule UTP”
- NOT REQUIRED – assessment of hazards or support for tax position

Schedule UTP Part III

Schedule UTP (Form 1120) 2010

Page **3**

Name of entity as shown on page 1 of tax return Company A	EIN of entity 95-1111111
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This Part III, Schedule UTP (Form 1120) is page 1 of 1 Part III pages.

Part III **Concise Descriptions of UTPs.** Indicate the corresponding UTP number from Part I, column (a). Use as many Part III pages as necessary (see instructions).

UTP No.	Concise Description of Uncertain Tax Position
1	The corporation received royalty payments from its foreign subsidiary for the right to use its intellectual property. The issue is whether the amount of the royalty received is sufficient.
2	The corporation incurred research expenditures for which it claims a research credit. The corporation established a reserve for financial accounting purposes in recognition of the possibility that the amount of qualified research costs was excessive.
3	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.
4	The corporation incurred general and administrative services on behalf of its foreign subsidiary. It was reimbursed for the services provided to its foreign subsidiary at cost plus a markup. The issue is whether the amount of the markup is appropriate.

Schedule UTP Example

- UTP No. 5: A disclosure is not required .
 - (However if the \$0 reserve is based on the Corporation's intention to litigate and its determination on more likely than not basis to prevail on the merits in the litigation, then it must report its position.)

- UTP No. 6: A disclosure is not required.
 - Please note if Co. C, recorded a reserve with respect to a U.S. tax position in its own audited financial statement, even though its U.S. parent does not, that the CFC's tax position must be reported by the U.S. parent on its Schedule UTP. (Example 2 of the Schedule UTP instructions)



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