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## IRS Developing Schedule That Will Require Taxpayers to Disclose Uncertain Tax Positions

On January 26, 2010, the IRS released IRS Announcement 2010-9, which proposes a new tax return schedule requiring certain business taxpayers to disclose uncertain tax positions. The full text of the announcement is available [here](#).

### Affected Taxpayers

The filing requirement is expected to apply to any taxpayer with total assets in excess of \$10 million if the taxpayer or a related entity has established a tax reserve for uncertain tax positions under FASB Interpretation No. 48 (commonly referred to as “FIN 48”) or a similar financial accounting standard.

### Required Disclosures

The schedule contemplated by Announcement 2010-9 will require a concise description of each uncertain tax position for which the taxpayer or a related entity has recorded a reserve in its financial statements. The description must contain:

- The Internal Revenue Code sections potentially implicated by the position;
- A description of the taxable year or years to which the position relates;
- A statement that the position involves an item of income, gain, loss, deduction, or credit against tax;
- A statement that the position involves a permanent inclusion or exclusion of any item, the timing of that item, or both;
- A statement whether the position involves a determination of the value of any property or right; and
- A statement whether the position involves a computation of basis.

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The taxpayer must specify for each uncertain tax position the entire amount of U.S. federal income tax that would be due if the position were disallowed in its entirety. This amount is the maximum tax adjustment for the position reflecting all changes to items of income, gain, loss, deduction, or credit if the position is not sustained. The taxpayer also must disclose any position for which the taxpayer or a related entity has not recorded a tax reserve if the taxpayer's reason for not recording a reserve is that it either expects to litigate the position or has determined that the IRS has an administrative practice not to examine the position. This schedule must be filed annually as an attachment to the taxpayer's Form 1120 (in the case of a corporation) or other business tax return.

### Effective Date

Announcement 2010-9 provides that the IRS intends to "publish the new schedule as quickly as possible" and seeks public comments in anticipation of publishing it by March 29, 2010. The IRS intends that the new schedule will be required to be attached to returns filed after the schedule is released. However, IRS Commissioner Doug Shulman said that the schedule will likely not be released "in time for this filing season."

It may be that the IRS issued Announcement 2010-9 in light of the possibility that the U.S. Supreme Court will review the decision of the U.S. Court of Appeals for the First Circuit in *United States v. Textron*, which held that tax accrual work papers are not privileged from IRS disclosure. By requiring the disclosure contemplated by Announcement 2010-9, the IRS may be able to obtain the information it seeks even if it is denied access to a taxpayer's tax accrual work papers.

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