

Clients & Friends Alert

IRS Proposes Reporting Requirements for Uncertain Tax Positions Under FIN 48

January 28, 2010

On Tuesday, the IRS announced a proposal that would require any corporate or partnership business taxpayer with total assets in excess of \$10 million to disclose to the IRS their "uncertain tax positions" for which reserves are maintained under FIN 48 by the taxpayer or a related entity. (FIN 48 is short for FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109, available at <http://www.fasb.org/pdf/fin%2048.pdf>; FIN 48 generally requires that an entity maintain accounting reserves for the portion of any tax position for which there is no more than a 50% likelihood of success on the merits.)

Under the IRS's proposal, taxpayers would be required to concisely describe on a new schedule attached to their tax return each uncertain tax position and indicate the maximum amount of U.S. federal income tax that would be due if the position were disallowed in its entirety on audit. Thus, if a taxpayer believes that there is a 50% likelihood that it will have no liability with respect to a specific position, a 49% likelihood of a \$1,000 liability (and the taxpayer reserves \$1,000), but a one-in-one-million chance of a \$10 million liability, under the proposal, the taxpayer would be required to disclose the \$10 million potential tax liability.

We believe that the proposal, if adopted in its current form, will dramatically increase the tax burden of the companies to which it applies. Moreover, although the proposal was designed to conserve IRS resources by focusing IRS attention on uncertain tax positions of sufficient magnitude, we fear that the requirement that taxpayers disclose their maximum potential liability will present a distorted view of taxpayers' realistic potential liability. We are afraid that IRS agents may aggressively challenge positions based primarily on a high maximum potential liability (rather than on the merits).

The proposal is proposed to apply to returns filed after the date the new disclosure schedule is finalized. Comments on the proposal are requested by March 29, 2010. The full text of the proposal is available at <http://www.irs.gov/pub/irs-drop/a-10-09.pdf>.

* * * *

If you have any questions about the foregoing, please contact any member of the [Cadwalader Tax Department](#).