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Contacts

David S. Lowman, Jr.

1900 K Street, NW
Washington, DC 20006-1109
(202) 419-2070
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
(804) 788-8789
dlowman@hunton.com

David B. Weisblat

1900 K Street, NW
Washington, DC 20006-1109
(202) 955-1980
dweisblat@hunton.com

Timothy L. Jacobs

1900 K Street, NW
Washington, DC 20006-1109
(202) 955-1669
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
(804) 788-8362
tjacobs@hunton.com

IRS Announces New Policy on Uncertain Tax Positions

On January 26, 2010, the Internal Revenue Service (the “IRS”) released [Announcement 2010-9](#), announcing its new policy relating to “uncertain tax positions” that will require large corporate taxpayers to identify significant tax issues on a special schedule filed with their tax returns. The new policy represents the latest in a series of developments regarding tax accrual workpapers and tax position disclosure. The new policy tracks in many aspects companies’ financial reporting requirements under FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes, i.e., “FIN 48,” but for the first time requires identification of uncertain tax positions as part of the corporate income tax return.

Announcement 2010-9 states that the IRS is in the process of preparing a schedule that taxpayers subject to the new policy (in general, large corporate taxpayers with over \$10 million in assets) will be required to file with their corporate tax returns. The schedule will require a concise description of the taxpayer’s uncertain tax positions, including (i) the applicable Code sections; (ii) tax years to which the position relates; (iii) whether the position involves an item of income, gain, loss, deduction or credit; (iv) whether the position involves a permanent inclusion or exclusion of any item, the timing of that item, or both; (v) whether the position involves

a determination of the value of any property or right; and (vi) whether the position involves a computation of basis. In addition, the schedule will require a taxpayer to 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 on audit. 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. However, taxpayers will not be required to disclose their assessment of the risk or tax reserve amounts with respect to the reported tax positions.

The IRS is on a fast track to implement this new policy and to release the new schedule. Public comments on a number of specific questions have been requested by March 29, 2010.

Additional background and details relating to Announcement 2010-9 and the IRS’s audit process are provided in our [article](#). Our tax team works routinely with clients on IRS tax audits, appeals, litigation and other tax controversies. We are available to consult with clients regarding uncertain tax positions, to identify issues and to guide clients through the new IRS reporting regime.