

Reporting on Schedule UTP		
#	Question	Answer
1.	The instructions state that corporations need not report tax positions for which no reserve is recorded because it was "sufficiently certain so that no reserve was required." For a corporation subject to FIN 48, is a tax position that is "highly certain" within the meaning of FIN 48 the same as a tax position that is "sufficiently certain so that no reserve was required" under the instructions?	The instructions explain that the schedule seeks the reporting of tax positions consistent with the reserve decisions made by the corporation for audited financial statement purposes under applicable accounting standards. For a corporation subject to FIN 48, a tax position is considered "sufficiently certain so that no reserve was required," and therefore need not be reported on Schedule UTP, if the position is "highly certain" within the meaning of FIN 48.
2.	A corporation records a reserve in an audited financial statement for a tax position it expects to take in its 2010 tax return but later eliminates the reserve in a subsequent interim financial statement issued before the filing of the 2010 return. Must the tax position be reported on Schedule UTP?	Yes, if the interim financial statement is unaudited. If the corporation reconsiders whether a reserve is required for a tax position and eliminates the reserve in an interim audited financial statement issued before the tax position is taken in a return, the corporation need not report the tax position to which the reserve relates on the Schedule UTP.
3.	If a corporation uses in a 2010 or later year return a net operating loss (NOL) or credit carryforward and the NOL or credit carryforward that is used includes a pre-2010 tax position for which a reserve has been recorded, must the corporation report that tax position?	No. The use of an NOL or credit carryover in a post-2009 return is a tax position that should not be reported if the portion of the NOL or the credit carryforward that is used includes a tax position taken in a pre-2010 return for which a reserve has been recorded. This FAQ does not otherwise affect the requirement to report a tax position claimed on a post-2009 return for which a reserve has been recorded that is included in an NOL or credit carryover for potential use in a later year. Additional guidance will be forthcoming regarding reporting requirements for the use of NOLs and credit carryovers.
4.	Must interest and penalties be included in determining the size and ranking of a tax position in column (f) on Schedule UTP?	The size of a tax position is the amount of the reserve recorded for that position. If an amount of interest or penalties relating to a tax position is not separately identified in the books and records as associated with that position, then that amount of interest and penalties is not included in the size of a tax position used to rank that position.
Policy of Restraint		
5.	Do the changes to the policy of restraint announced in Announcement 2010-76 apply to documents requested by Appeals?	Yes. It would be very unusual for Appeals to conduct any substantive fact-finding during its case consideration. Nevertheless, the changes to the policy of restraint apply to any request for documents during the administrative process of determining the correct tax liability, which includes Appeals' consideration of proposed audit adjustments.
6.	Do the changes to the policy of restraint announced in Announcement 2010-76 apply to documents requested by Counsel after the filing of a Tax Court petition?	In general, Counsel attorneys will not issue discovery requests for documents or information that the IRS would not seek under its policy of restraint. The application of the policy of restraint to actions taken by Counsel in Tax Court litigation will be addressed in a revision to the Chief Counsel Directives Manual.
7.	What is the effective date of the changes to the policy of restraint announced in Announcement 2010-76?	The changes announced in Announcement 2010-76 apply to any request for documents outstanding on or made after September 24, 2010, in any open examination.