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Almost One-Third of 2011 Schedules UTP Failed Concise  
Description Requirements  
by **Amy S. Elliott**

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Summary by **taxanalysts**<sup>®</sup>


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Thirty-one percent of tax year 2011 Schedule UTP filers submitted incomplete concise descriptions of their uncertain tax positions, threatening the protection from the imposition of some penalties that the schedules offer, an IRS official said July 17.

"The primary shortcoming of the concise descriptions that were deemed incomplete was that they did not sufficiently describe the nature of the issue or the relevant facts affecting the tax treatment of the position," Thomas Brandt, director (planning, analysis, inventory, and research), IRS Large Business and International Division, said on a webcast sponsored by McGladrey LLP.


Brandt said that for tax year 2011, 1,862 taxpayers filed Schedules UTP -- a 21 percent decrease from the 2,356 taxpayers who filed for tax year 2010 -- and that about 25 percent of those were first-time Schedule UTP filers. The IRS sent 578 taxpayers education and outreach letters identifying 982 concise descriptions on 2011 Schedules UTP that were considered incomplete, he said. (Schedule UTP filing statistics for 2011 . Prior coverage .)

Only 3 percent of 2010 filers got similar education and outreach letters for their incomplete concise descriptions. Brandt explained that the IRS expanded its review of the concise descriptions for 2011 to take into account additional guidance, including specific examples , issued by the IRS since 2010.

Bob Adams of McGladrey warned taxpayers that if they are using the Schedule UTP to disclose something instead of using a Form 8275 disclosure statement, and the description is not sufficient for Schedule UTP purposes, they may not be protected from some accuracy-related and preparer penalties. "It's a very important point as a lot of people would file on Schedule UTP and not include a [Form] 8275," he said.

Adams asked what the IRS plans to do if its guidance, education, and outreach efforts fail to reduce the number of inadequate concise descriptions provided on the Schedules UTP. "We'll have to wait and see," Brandt said. "We're hopeful that the education and outreach, the additional guidance will help improve the overall quality."


The population of taxpayers required to file Schedules UTP expanded in tax year 2012 when the asset threshold went from assets that equal or exceed \$100 million to assets that equal or exceed \$50 million. That threshold is scheduled to go down to assets that equal or exceed \$10 million for tax year 2014.

Adams, a member of the American Institute of Certified Public Accountants' IRS Practice and Procedures Committee, noted that the AICPA in a 2010 letter  requested that the Service permanently set the Schedule UTP filer asset threshold at \$50 million or more and never impose a reporting requirement on taxpayers with assets

below that threshold.

"At the moment, the plans are to proceed with the implementation of the additional filing requirements according to the current schedule," Brandt said. "There are no plans at the moment to revise that implementation schedule."

### Schedule M-3

The IRS in May announced  that beginning in tax year 2015, corporations and partnerships with \$10 million to \$50 million in total assets at the end of the tax year may file Schedule M-1 instead of Schedule M-3, parts II and III. But Schedule M-3, part I, lines 1 through 12 will continue to be required of the affected taxpayers.

Brandt said that while businesses in the \$10 million to \$50 million asset class make up the majority of Schedule M-3 filers, they "comprise only 1 percent of the total assets and 2 percent of the total taxable income reported by" corporate Schedule M-3 filers. "These changes are being made to substantially reduce the burden for these taxpayers while preserving the most key information for the IRS," he said.

LB&I had been studying the overlap between the Schedule UTP and the Schedule M-3 to see if there was an opportunity to reduce disclosure redundancies, and Adams asked if the IRS might ultimately decide to get rid of some line items on the Schedule M-3.

"Schedule UTP does not include entity definition or dollar amounts and [Schedule] M-3 does not disclose uncertain tax positions," Brandt said. "LB&I does not view the information that's provided by these schedules as duplicative." He added that the IRS will continue to review and consider both internal and external feedback regarding the usefulness of the information on the Schedule M-3.

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#### Tax Analysts Information

**Code Sections:** Section 6012 -- Filing Requirements  
Section 6662 -- Accuracy-Related Penalty

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**Author:** Elliott, Amy S.

**Institutional Author:** Tax Analysts

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