

# Assurance Comments

December 8, 2006  
2006-131

All Professional Personnel

## Audit Client Implementation of FIN 48

### Background

FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* (FIN 48), represents a significant change from applicable existing GAAP (primarily FASB Statement No. 5, *Accounting for Contingencies*) in the recording and disclosure of uncertain tax positions. The most immediate impact of FIN 48 is its requirement for companies to record a cumulative effect adjustment to opening retained earnings to reflect the application of the provisions of FIN 48 as of the beginning of the fiscal year, if the application of FIN 48 results in an adjustment. The effective date of FIN 48 is for fiscal years beginning after December 15, 2006; therefore, our calendar year clients will need to reflect any impact of FIN 48 in the January 1, 2007 balance of retained earnings. **Public company clients with calendar year ends will need to implement FIN 48 in the Form 10-Q for the first quarter of 2007.** In view of the significant effort that may be required for many clients to determine the proper amount of any adjustment, **it is important that assurance engagement team members, in close conjunction with tax members of the team, initiate a communication with clients—particularly public clients—regarding the effective date. Such communication should address an implementation timetable and the appropriate assignment of individual responsibilities.** Public company clients need to assess the impact, if any, of the adoption of FIN 48 prior to the filing of their first quarter 10-Q to avoid any potential restatement should they determine later in the year that a cumulative effect adjustment (or an adjustment different from the one they recorded) was required. A public company client that does not commence its consideration of the effect of adoption until March or April 2007 may not have sufficient time to properly compute any adjustment. We believe that many public company clients may request BDO to audit the company's analysis and documentation of the effect of adoption during the review of the results of the first quarter in order to be assured that there will not be a restatement of prior quarters should an audit adjustment arise. In addition, accelerated filer public company clients who put in place processes and controls early in the year to monitor and accurately report tax positions in accordance with FIN 48 are less likely to have adverse findings from an audit of Internal Control over Financial Reporting (ICFR) under Sarbanes-Oxley Section 404.

The need for timely assessment and related aspects of FIN 48 implementation discussed in this Assurance Comments for public company clients also applies to nonpublic company clients with quarterly reporting requirements (e.g., requirements imposed by lenders).

A client may determine its cumulative effect adjustment to be zero, but even a zero cumulative effect adjustment represents an assertion that engagement teams must audit, as discussed later under "Audit Considerations."

### What to Do Now

In conjunction with the communication described above, **a joint effort between the assurance and tax members of the engagement team should take place during the audit planning phase (or as soon as possible if the audit planning phase has already been completed) in order to ensure that (1) the client's FIN 48 implementation plan will create an auditable (i.e., well documented), timely, and accurate cumulative effect adjustment at time of adoption and (2) BDO has a coordinated plan to audit the assertions related to the company's compliance with FIN 48—for public company clients, this may be at the time of the first quarter review (or earlier), if requested by the client.**

---

*For public company audit clients*, the independence rules prohibit BDO from preparing the calculations and schedules used to determine any adjustment, but we should ensure that our clients understand their responsibilities and we should clearly explain to them what information will be needed to audit the effect of adoption, including a zero effect. It may also be appropriate to review and comment on their implementation plans as they are developed.

It is permitted, under the SEC independence rules on tax services, for the BDO tax department to perform “tax only” services for public company audit clients. These include, for example, transfer pricing studies, nexus studies, research regarding domestic or international tax authority regulations and court rulings, and identification of uncertain tax positions, even if the client uses these analyses in forming a basis for its determination of whether tax positions should be recognized under FIN 48. As part of tax services we may also provide tax advice (for example, “should-level,” “more likely than not,” “reasonable possibility,” “reasonable basis,” or “substantial authority”) for the client related to specific tax positions based on our analysis of the technical merits of the positions and administrative practices and precedents. However, we cannot make determinations for the client in reaching its independent decisions regarding FIN 48 recognition and measurement; that is, the client must make all such decisions on its own. BDO should obtain audit committee pre-approval of such services.

In the course of the performance of tax-only services as referred to above, we may identify significant deficiencies or material weaknesses in the client’s income tax accounting area. If we determine that such deficiencies or weaknesses exist, the engagement team should consider the implications under Sarbanes-Oxley Section 404.

*For nonpublic company audit clients* (whose situation is less urgent if they do not issue quarterly or other interim reports but which should still be addressed via initiation of the above-mentioned communication), we are permitted to assist in the preparation of the information and schedules supporting the adjustment—provided that after reviewing our work, client management accepts responsibility for the work in its entirety and the other requirements of AICPA Interpretation 101-3, *Performance of Nonattest Services*, are complied with.<sup>1</sup> The requirements of Interpretation 101-3 are reflected in our engagement letters for performance of non-attest tax services (these letters appear under the Business Services, Tax Consulting section of the Infonet).

See Attachment 2 to this Assurance Comments for a tabular presentation of common types of services we may provide to audit clients as they adopt FIN 48, and whether those services are or are not compatible with our independence for public and nonpublic company audit clients.

The BDO tax department has developed a sample of a detailed process/workplan, titled “FIN 48 Client Workplan Example” and accessible in the Tax Consulting section of the Infonet (via Business Services, Tax Consulting, Documents, Tax Accounting Documents) at:

<https://infonet.bdo.com/business/tax/documents/index.asp>

that both public and nonpublic company clients may use in developing their own FIN 48 implementation plans. This sample detailed implementation process/workplan consists of a phased approach that includes assessing, documenting, and quantifying an entity’s uncertain tax positions. It can be summarized in terms of the following four steps:

---

<sup>1</sup> Under AICPA Interpretation 101-3, the (nonpublic) client “must agree to perform the following functions in connection with the engagement to perform nonattest services: (a) make all management decisions and perform all management functions; (b) designate an individual who possesses suitable skill, knowledge, and/or experience, preferably within senior management, to oversee the services; (c) evaluate the adequacy and results of the services performed; (d) accept responsibility for the results of the services; and (e) establish and maintain internal controls, including monitoring ongoing activities.” In addition, we “should be satisfied that the client will be able to meet all of these criteria and make an informed judgment on the results” of our nonattest services. “In assessing whether the designated individual possesses suitable skill, knowledge, and/or experience,” we should “be satisfied that the individual understands the services to be performed sufficiently to oversee them. However, the individual is not required to possess the expertise to perform or re-perform the services.”

---

*Assessment* – Define the scope of the project—tax jurisdictions, open tax years, and audit status. Assess the people, processes, and technology needed for the project. Develop the implementation plan, including a timeline and identified responsibilities.

*Documentation and Disclosures* – Conduct a detailed analysis of the open tax years identified in the assessment stage to identify uncertain tax positions. Document the analysis and conclusions, compute any cumulative effect adjustment, and prepare disclosures.

This detailed analysis should incorporate both a “top-down” analysis and “bottom-up” analysis. The top-down analysis consists of considering all open years (and the audit status of those years) for all jurisdictions and identifying significant transactions that could potentially give rise to uncertain tax positions. This identification process includes, for example, reviewing tax provision and tax reserve workpapers and reviewing tax audit activity. The bottom-up analysis focuses on a review of the company’s basic business model and activities and some of the more complex tax issues (e.g., transfer pricing issues, intercompany licensing of intangible assets) that have arisen or could arise based on the business model and activities. Such analysis includes, for example, vetting the tax implications of where the company does business and the kinds of transactions it enters into, reviewing tax returns for the company’s significant entities for open years in order to identify more complex tax issues, and identifying whether the company is exposed to filing in jurisdictions in which it did not file (e.g., nexus issues).

In performing its detailed analysis, a company may look at all tax positions for all open years for all jurisdictions. Or it may assess that the effect on the financial statements of certain jurisdictions is likely immaterial and therefore decide to omit such jurisdictions from its analysis or to look at only what the company considers to be unusual or potentially material tax positions for those jurisdictions. If a company chooses to apply one or more materiality screens to its detailed analysis of tax positions, it should assess immateriality on an aggregate basis; otherwise, positions or jurisdictions individually considered immaterial could aggregate to a material amount and thereby potentially result in a material misstatement.

With respect to *measurement* of uncertain tax positions identified that are deemed to qualify for recognition under FIN 48’s more-likely-than-not threshold, there are various approaches a client may employ. Generally the approach selected would depend upon the nature and complexity of the tax position and the perceived degree of judgment and subjectivity required to determine the probabilities used in the calculation. For more routine tax positions, a company-prepared probability analysis may suffice, whereas for listed transactions, highly structured transactions, or unusual or uncommon tax positions, an outside opinion from a tax professional may be appropriate.

However the client measures its recognized tax positions, it is important from both a financial statement audit perspective and, if applicable, Section 404 perspective that the client documents thoroughly the measurement and its supporting basis. Written narratives from the client’s in-house tax professional or an external tax professional may be helpful in this regard for non-routine tax positions. Because it may be challenging for clients to support numerical probabilities used in measurement calculations, a pragmatic approach has been suggested that may be appropriate in some circumstances in which there is little information available on numerical probabilities. For example, a client may estimate the probability levels of the ultimate estimated outcomes of a tax position using a relatively small number (e.g., three) of descriptive terms (such as “low”, “medium,” and “high,”) and then assign reasonable numerical probabilities to each level (e.g., 33%, 50%, 66%, or 25%, 50%, 75%). These numerical probabilities and estimated outcomes would then be used to measure the tax position as illustrated in paragraphs A21 through A24 of FIN 48. In some instances, a client may be highly certain of the technical merits of a tax position but may also have knowledge of the taxing jurisdiction’s settlement practices based on either the client’s actual audit experience or industry practice. In such situations, if the client would settle the issue at an amount lower than the most likely outcome, rather than incurring the cost and disruption of litigation, then the settlement amount would be the amount used for measurement.

*Internal Controls Evaluation* – Develop and/or modify as necessary any internal control procedures related to the identification of and proper accounting for uncertain tax positions.

---

*Maintenance* – Maintain and monitor data, and evaluate responsibilities and resources, as necessary, for compliance with FIN 48 on an ongoing basis.

Our audit procedures should be tailored to the client's work plan and should involve a joint effort, to be worked out on a client-by-client basis, between the assurance and tax members of the engagement team. Our work will be more efficient if the client has a clear understanding of the analysis that it needs to do and the evidence that we will need for audit purposes. The engagement team should identify early on whether tax subject matter specialists, such as specialists on transfer pricing, state and local taxes (SALT), and research and development credits, are needed to assist with evaluating the client's judgments about recognition and measurement of uncertain tax positions, and the team should make timely arrangements for their involvement.

## **Additional FIN 48 Issues for Public Companies**

*Quarterly financial statement disclosures in the year of adoption* – For each of the disclosures required under paragraphs 20 and 21 of FIN 48 (assuming adoption as of 1/1/2007 for illustration purposes), the AICPA's SEC Regulations Committee made recommendations for (a) disclosures as of 1/1/2007 that must be made in each of the 2007 Form 10-Qs and (b) updates of the 1/1/2007 disclosures that must be made in the respective 2007 Form 10-Qs. The SEC staff agreed that the Committee's recommended approach to disclosures is reasonable. A pdf file of the full discussion and results (AICPA Center for Public Company Audit Firms (CPCAF) Alert #138, dated November 21, 2006) is accessible on the AICPA web site at:

[http://www.aicpa.org/cpcaf/download/FIN48\\_CPCAFAlert138.pdf](http://www.aicpa.org/cpcaf/download/FIN48_CPCAFAlert138.pdf)

*Preferability letter for change in classification of interest and/or penalties* – Under FIN 48, a company must make an accounting policy decision whether to classify interest as interest expense or income tax expense and whether to classify penalties as other expense or income tax expense. The SEC staff advised that no preferability letter is required for a registrant changing its income statement classification of interest and/or penalties in connection with the adoption of FIN 48, but that a preferability letter would be required if such a change is made after the adoption of FIN 48.

*SAB 74 disclosures* – (Assume FIN 48 adoption as of 1/1/2007 for illustration purposes) Public clients must determine and record any cumulative effect adjustment to 1/1/2007 retained earnings by the time they file their first quarter Form 10-Q. Some clients may be able to determine the amount of the adjustment in time for it to be disclosed in the 2006 Form 10-K under SEC Staff Accounting Bulletin (SAB) 74. However, because the 10-K is filed about 10 weeks before the first quarter 10-Q for accelerated filers and about 6 weeks before that 10-Q for non-accelerated filers, it is reasonable that a client may not yet have determined the precise amount of the adjustment as of the 10-K filing date, and therefore it is acceptable for the SAB 74 disclosures to indicate the client has not yet determined the precise effect of FIN 48 adoption if that is indeed the case. On the other hand, it is our understanding that the SEC staff expects to see greater SAB 74 disclosure in the 10-K than in the prior year 10-Qs and thus it may not be acceptable for the 10-K to indicate only that the client is still evaluating the effect of FIN 48 adoption. It is therefore recommended that the 10-K at least disclose an indication of the range of any cumulative effect adjustment.

Whether or not the cumulative effect adjustment (including a zero adjustment) is disclosed as a SAB 74 estimate in the 2006 10-K, some clients may request that we perform our audit procedures on the adjustment as soon as the client determines it rather than waiting until later in 2007. For example, some clients may believe it is important to obtain assurance on what may be a significant 2006 10-K disclosure, and they may not want to wait until the engagement team performs its normal first quarter 10-Q review (sometime in the second quarter) to obtain that assurance. In the event the engagement team disagrees with the client's approach or results, the client would likely not want this to be an issue near the 10-Q filing date. It is important, in order to be able to plan accordingly, for the engagement team to clarify as early as possible the client's expectations on this matter and to keep apprised of any changes in such expectations.

---

*Interaction with SAB 108* – Engagement teams should ensure that any cumulative effect adjustment is not duplicative of any adjustments recorded under SEC Staff Accounting Bulletin (SAB) 108. SAB 108 requires the cumulative effect of unrecorded adjustments to be recorded as an adjustment to retained earnings for fiscal years ending after November 15, 2006. Therefore, any income tax adjustments recorded pursuant to SAB 108 should be appropriately considered in determining the effect of adopting FIN 48.

## **Audit Considerations**

**Audit assertions** – In auditing uncertain tax positions for compliance with FIN 48—in particular the cumulative effect adjustment upon adoption (including a zero cumulative effect adjustment)—as with any other financial statement area, it is important for engagement teams to consider the risk of material misstatement related to each of the four assertions of completeness, existence, accuracy, and valuation, as well as financial statement presentation and disclosure:

**Completeness** – Consider whether all uncertain tax positions have been identified and properly analyzed by the company (see discussion of top-down and bottom-up analyses under “Documentation and Disclosures” above and discussion of completeness under “Audit approach for cumulative effect adjustment” below). This risk and the risks identified below under Existence may differ in the initial year of adoption as compared with subsequent years. In the initial year of adoption, due to the cumulative effect accounting, there may be an incentive for companies to overaccrue liabilities in order to provide “cushions” for future transactions. In years subsequent to initial adoption, the more likely risk may be that companies do not appropriately identify and report all uncertain tax positions in order to minimize the effect on the current year earnings or balance sheet. In both instances, the risk of fraud should be carefully considered in designing our audit procedures.

**Existence** – Consider whether all uncertain tax positions for which the company accrued a liability (or reduced a receivable, increased deferred tax liabilities, or reduced deferred tax assets) represent actual positions taken, and that the accrual includes no unallocated or “general” reserves or cushions.

**Accuracy** – Consider whether computations are conceptually and mathematically correct.

**Valuation** – Consider whether values used in computing uncertain tax positions (e.g., “fair market values” used in computing capital gains/losses, and probability values for measuring uncertain tax positions under the FIN 48 measurement guidance) are properly determined and reflect the use of, if applicable, appropriate valuation techniques.

**Presentation and disclosure** – Consider whether the financial statement presentation and disclosures are complete and accurate.

Engagement teams should assess the risk of material misstatement related to each of the above audit assertions and design audit procedures as appropriate to address the risk in each case. Risks will differ from client to client, and the related audit assertions should be properly tailored in each situation to properly reflect each client’s facts and circumstances.

*Clients with NOL carryforward positions.* It is important to keep in mind that FIN 48 (par. 11) does not allow the use of a valuation allowance as a substitute for derecognition of a tax position when a tax position does not meet the more-likely-than-not threshold for recognition. Many companies (e.g., those in a net loss position) may have valuation allowances against their net deferred tax assets as of the FIN 48 adoption date. The deferred tax assets must be reassessed by the company upon adoption of FIN 48 and as part of the determination of the cumulative effect adjustment. If some of the tax positions that gave rise to the NOL or tax credit carryforward don’t meet the more-likely-than-not threshold for recognition, the related gross deferred tax assets would be reduced or eliminated. Therefore, clients with NOL or tax credit carryforward positions need implementation plans just like taxpaying clients.

**Audit approach for initial application of FIN 48, including the cumulative effect adjustment** – Ideally, the initial client identification of tax positions for purposes of the cumulative effect adjustment would include, on a jurisdiction-by-jurisdiction basis, identification of *all* open tax positions—uncertain and certain, material and immaterial. Although significant up-front work might be required by the client to prepare the analysis, it would facilitate the client’s ensuring that all its uncertain tax positions have been identified and

---

facilitate our auditing of the completeness assertion. However, as discussed above under “Documentation and Disclosures,” the client may apply materiality screens to its detailed analysis of tax positions and thus the analysis may omit what the client considers immaterial jurisdictions or immaterial tax positions. Additionally, if the client omits listing from its analysis those tax positions it does not consider uncertain, the client should be able to explain why tax positions not identified in the analysis are considered to not be uncertain.

In auditing the client’s initial application of FIN 48, we should start with a risk assessment that includes a consideration of the client’s detailed analysis of tax positions—including any materiality screens applied by the client—and the client’s process for determining uncertain tax positions. By reviewing the analysis, the engagement team should be able to (1) obtain an overall sense of the kinds of uncertain tax positions the client has identified, (2) determine whether the client’s classification of particular tax positions as certain versus uncertain, and immaterial versus material is appropriate based on the supporting information, and (3) assess whether immaterial tax positions that have not been included in the cumulative effect adjustment either because they are deemed certain, or deemed uncertain but immaterial, are likely to aggregate to a material misstatement, and if so, the audit implications. On a going forward basis, much of the analysis of certain or immaterial uncertain tax positions performed for purposes of the cumulative effect adjustment will likely carry over to future periods and would not ordinarily need to be reassessed each year, unless the client undergoes changes affecting its tax positions.

It is our understanding and experience that at least some of the other major firms are requiring a complete identification approach akin to that described above and are further requiring that, at a minimum, supporting tax code sections be identified for *all* tax positions. It is the Firm’s position that identifying the supporting code sections for all positions is not required. Sometimes, a client’s identification of the position as “certain” based on the nature of the position and (for deductions) a conclusion that it is an ordinary and necessary business expense may be sufficient for audit purposes. We should appropriately tailor our requirement for what the client provides us for audit purposes; for example, the level of detail we require may be less for clients with simple tax structures and issues, or for clients who are more sophisticated and have a documented process that we have satisfactorily tested that ensures that all material uncertain tax positions are identified. In any case, we need to be clear with clients as to our expectation of what we need to see for audit purposes in order to be able to conclude on the relevant assertions.

Where appropriate, based on the judgment of the engagement team (including the tax professionals on the team), we should request clients to prepare documentation similar to the spreadsheet that is provided as Attachment 1 to this Assurance Comments and that will also be issued as an Excel spreadsheet initially accompanying the Assurance Comments on the Infonet and later included in the next release of FormsDoc in the Workpaper Analyses folder. The spreadsheet represents a summary template for purposes of clients’ documenting their analysis of the uncertain tax positions, and the completion of this template would assist us primarily in our audit of the client’s initial application of FIN 48. The template should be accompanied by appropriate supporting documentation, based on the materiality and the degree of uncertainty associated with the tax positions included therein. Although the portion of the template for uncertain tax positions includes separate columns for material and immaterial tax positions, the client’s filling out of the column for immaterial tax positions may be affected by any materiality screens it has elected to apply as discussed above under “Documentation and Disclosures.” Such screens may also affect whether a template is filled out for each jurisdiction—for example, there may be no templates filled out for jurisdictions the client deems as immaterial. Our discussion with a client when requesting the desired documentation should encompass, at a minimum, the points covered in this paragraph.

***Illustration of client preparation approach*** – Although the assessment by the assurance and tax members of the engagement team of the circumstances related to each client will be different, the following example illustrates the approach and general thought process for purposes of the audit of the initial application of FIN 48.

Assume Company XYZ, a public company audit client, has several relevant taxing jurisdictions—Federal, state, and foreign. XYZ prepares an analysis of all open tax positions for each such jurisdiction. Focusing for illustration purposes on the analysis for the Federal tax return, assume XYZ has six open years.

---

As a first step, XYZ identifies its recurring tax positions that are considered certain—for example, deductions for compensation for non-executive employees, rent, depreciation, and cost of goods sold. XYZ documents why it believes each position is certain and may choose to include specific evidence (e.g., an appropriate tax code reference). XYZ performs a similar analysis for its nonrecurring tax positions that are considered certain, and because the positions are nonrecurring XYZ believes it is important to include specific evidence (e.g., an appropriate tax code reference).

As a second step, XYZ identifies its recurring uncertain tax positions, which include transfer pricing issues and executive compensation, deciding which ones meet the FIN 48 recognition threshold of more likely than not and, for those positions, the largest amount of benefit that is more than 50% likely of being realized. The positions for each year are separately analyzed regarding recognition and measurement, but the analyses for XYZ are similar from year to year. XYZ includes a tax memo or tax opinion as support for the analysis of each such position. To support the transfer pricing tax memo or opinion, XYZ includes a transfer pricing study.

As a third step, XYZ identifies its nonrecurring uncertain tax positions in a specific year or years, and considers the recognition and measurement principles of FIN 48. Again XYZ includes a tax memo or tax opinion as support for each such position.

For the more material of the uncertain tax positions identified, and for those considered complex, XYZ provides a tax opinion as support.

Upon receipt of the above information from XYZ, the assurance and tax engagement team members test XYZ's analysis for completeness, existence, accuracy, valuation, and financial statement presentation and disclosure, bearing in mind the risk of material misstatement related to each assertion.

**Local office best practice** – It is recommended that each office consider designating one or more local office FIN 48 implementation coordinator(s) as point person(s) for FIN 48 implementation issues. In view of the impact and urgency of BDO providing an effective and efficient audit of FIN 48 implementation, designation of such person(s) may facilitate resolution of such issues in a more timely and consistent fashion, as experiences on some clients may benefit engagement teams on other clients. In some offices, it may be desirable to appoint an assurance and a tax professional to act jointly as local office coordinators. While these coordinators would not be responsible for performing the work on other than the clients they directly serve, they may answer questions, advise engagement teams, coordinate additional FIN 48 training, and prioritize resources to service clients.

**Budgetary and Audit Committee pre-approval considerations** – Engagement teams should alert clients that implementation of FIN 48 will require additional audit hours, particularly with respect to the first quarter reviews of financial statements that include an audit of the implementation of FIN 48. It may be difficult to estimate the amount of additional time until the engagement team goes through the "Assessment" phase described above under "What to Do Now."

In addition, if a public company audit client requests an audit of the initial application of FIN 48 in the first quarter of 2007, care should be taken to ensure that the proper audit committee pre-approvals are in place (many audit committees do not approve annual audit services until later in the year).

## Resources

This Assurance Comments assumes engagement teams are familiar with the basic requirements of FIN 48 (accessible through Accounting Research Manager) based on our prior issuance of FASB Flash Report No. 2006-04, "Accounting for Uncertainty in Tax Positions," and the October 2006 PDM, "Income Tax Accounting Issues." Those two resources are accessible, respectively, at:

<https://inonet.bdo.com/business/assurance/accounting/otherFASB/flashreports/2006/2006-4.doc>

and

---

[https://university.learnlivetech.com/CourseDesc.aspx?course\\_id=869](https://university.learnlivetech.com/CourseDesc.aspx?course_id=869)

Another useful resource is a WebEx webcast presented by the BDO tax team and that is accessible as follows:

RECORDING:

[https://bdo.webex.com/bdo/onstage/playback.php?AT=Show&Type=Playback&ClientName=webex&ConfID=125860819&FileName=http://bdo.webex.com/seminar/3922/play/125860819/BDO\\_30AUG06\\_FIN.wrf&Rnd=2125146355](https://bdo.webex.com/bdo/onstage/playback.php?AT=Show&Type=Playback&ClientName=webex&ConfID=125860819&FileName=http://bdo.webex.com/seminar/3922/play/125860819/BDO_30AUG06_FIN.wrf&Rnd=2125146355)

The following link will also open a file download screen allowing you the option of saving the recording to a location of your choice:

[http://bdo.webex.com/seminar/3922/play/125860819/BDO\\_30AUG06\\_FIN.wrf](http://bdo.webex.com/seminar/3922/play/125860819/BDO_30AUG06_FIN.wrf)

PowerPoint:

[http://www.bdo.com/about/publications/tax/BDO\\_FIN%2048%20WebEx\\_Final.pdf](http://www.bdo.com/about/publications/tax/BDO_FIN%2048%20WebEx_Final.pdf)

Finally, the AICPA has issued a practice guide, *Practice Guide on Accounting for Uncertain Tax Positions Under FIN 48*, which is accessible on the AICPA web site at:

<http://tax.aicpa.org/Resources/Professional+Standards+and+Ethics/Practice+Guide+on+Accounting+for+Uncertain+Tax+Positions+Under+FIN+48.htm>

Please direct questions about the above to Marc Simon (212-885-8161), Rosemary Schlank (914-939-9273), Sue Lister (212-885-8375), or Ben Neuhausen (312-616-4661).

Attachment 1 – Summary Assessment of Client Tax Positions as of [      period-end date      ]

Client name: \_\_\_\_\_

Taxing jurisdiction: \_\_\_\_\_

Tax year: \_\_\_\_\_ Tax year audit status: \_\_\_\_\_

<u>Description of tax position</u>	<u>\$ Amount</u>	
	<b>Uncertain Tax Positions</b>	
	<b>Material</b>	<b>Immaterial</b>
<b><i>Position in filed return</i></b>		
<b>Revenue, income, and gains</b>		
Tax position 1		
Tax position 2		
<b>Deductions</b>		
Tax position 3		
Tax position 4		
<b>Taxable income</b>		
<b>Tax credits</b>		
Tax position 5		
Tax position 6		
<b><i>Position expected to be taken in future return that's reflected in measuring current and/or deferred income tax assets or liabilities</i></b>		
Tax position 7		
Tax position 8		
<b><i>Decision not to file a return</i></b>		
Tax position 9		
Tax position 10		
<b><i>Shift of income between jurisdictions</i></b>		
Tax position 11		
Tax position 12		
<b><i>Characterization of income (e.g., capital gains vs. ordinary income)</i></b>		
Tax position 13		
Tax position 14		
<b><i>Decision to exclude reporting taxable income in a tax return</i></b>		
Tax position 15		
Tax position 16		
<b><i>Decision to classify transaction, entity, or other position in tax return as tax exempt</i></b>		
Tax position 17		
Tax position 18		

**Note – Based on the client’s process for identifying tax positions, the client should be able to explain why tax positions not identified on the above schedule are considered to not be uncertain. Alternatively, a client may wish to add a column to the schedule and list all its tax positions, certain and uncertain, in the schedule.**

## Attachment 2 – Independence Guidelines on Tax and Related Services for Audit Clients

The following table indicates some common types of services that BDO may provide to audit clients as they adopt FIN 48, along with independence guidelines on whether or not those services are permitted for public company and nonpublic company audit clients.<sup>2</sup>

Type of Service	Public Company Clients <sup>3 4</sup>	Nonpublic Company Clients <sup>3 5 6</sup>
Provide training or internal communications on FIN 48	BDO could provide such training and could draft or review such communications	BDO could provide such training and could draft or review such communications
Use tax professionals to assist in the initial adoption of FIN 48 (e.g., prepare any cumulative effect adjustment)	Not permitted, but we may refer clients to tax professionals other than BDO (for example, Alliance Firms having the requisite tax expertise). However, see table row below for permitted services, which may be relevant to initial adoption	BDO Tax could provide tax professionals to assist the client in adopting FIN 48, including assistance on determining which tax positions are recognized and measurement of recognized tax positions for purposes of any cumulative effect adjustment
Perform tax-only services that will better <i>allow the client to make the decisions and determinations</i> required under FIN 48. Examples include research of domestic or international tax authority regulations and court rulings, review of open years to identify possible uncertain tax positions, transfer pricing studies, nexus studies, and providing tax advice (e.g., “should-level,” “more likely than not,” “reasonable possibility,” “reasonable basis,” or “substantial authority”) for specific tax positions	Permitted, provided we do not provide conclusions as to whether or not particular tax positions should be recognized under FIN 48 and we are not involved in the measurement of recognized tax positions under FIN 48	BDO Tax could provide tax professionals to provide these services as well as assist client in making its related FAS 48 determinations and decisions
Prepare disclosures required under FIN 48 (paragraphs 20 and 21)	Not permitted, but we may refer clients to professionals other than BDO (for example, Alliance Firms having the requisite expertise)	BDO could provide professionals to draft these disclosures
Prepare disclosures (under SAB 74) of impact of adopting FIN 48	Not permitted, but we may refer clients to professionals other than BDO (for example, Alliance Firms having the requisite expertise)	N/A for nonpublic companies; however, BDO could provide professionals to draft these disclosures if elected by the client (item 201.25.1 on Pentana disclosure checklist)
Recommend, draft, or assess internal controls related to FIN 48	For accelerated filers, BDO would review and assess documentation of internal controls as part of compliance with Sarbanes-Oxley Section 404. For all filers, BDO could make internal control recommendations.	For nonpublic clients seeking such services, BDO could recommend, draft, or assess internal controls related to FIN 48

<sup>2</sup> If a nonpublic company contemplates a public offering, BDO must be independent for all years presented in the registration statement. Therefore, for purposes of the guidelines, such nonpublic company should be treated as if it were public.

<sup>3</sup> In the providing of tax services, PCAOB Rule 3522, *Tax Transactions*, must be complied with for all public company audit clients. That rule states that an accounting firm is not independent if it provides a non-audit service related to marketing, planning, or opining in favor of a “confidential” or “aggressive” tax position. It is BDO policy to similarly follow Rule 3522 for all nonpublic company audit clients.

<sup>4</sup> Reminder: engagement teams should obtain audit committee pre-approval of such services.

<sup>5</sup> AICPA Interpretation 101-3 must be complied with for all (nonattest) tax services provided to nonpublic company audit clients. See footnote 1.

<sup>6</sup> In the providing of tax services, paragraphs 10.35-10.37 of IRS Circular 230 must be complied with. Those paragraphs provide requirements for providing written tax advice—in particular, “covered opinions.”