American Institute of CPAs
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July 9, 2013

Mr. Andrew Keyso, Jr.
Associate Chief Counsel
(Income Tax & Accounting)
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Comments on Modifications to Rev. Proc. 97-27 and 2011-14

Dear Mr. Keyso:

The American Institute of Certified Public Accountants (AICPA) appreciates the opportunity to provide comments on modifications to the procedural rules governing automatic and non-automatic method changes currently prescribed under Rev. Procs. 97-27 and 2011-14, respectively. These comments were developed by the Rev. Proc. 97-27 Revision Task Force of the AICPA's Tax Methods and Periods Technical Resource Panel, and approved by the Tax Executive Committee.

The AICPA is the world's largest member association representing the accounting profession, with nearly 386,000 members in 128 countries and a 125-year heritage of serving the public interest. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

Our attached comments cover a variety of key issues that we have identified in the application of Rev. Procs. 97-27 and 2011-14 and provide suggestions as to how the revenue procedure could be modified to address these issues to prevent further controversy in this area. Unless section references are noted as being from the Internal Revenue Code (IRC or "Code"), the section references are to various Revenue Procedures stated below.

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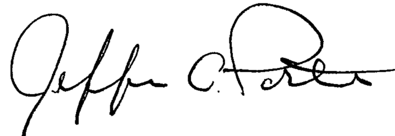
We appreciate your consideration of our recommendations and we welcome further discussion. If you have any questions, please contact Christine Turgeon, Chair, AICPA Rev. Proc. 97-27

Revision Task Force, at (646) 471-1660, or christine.turgeon@us.pwc.com; Carol Conjura, Chair, AICPA Tax Methods and Periods Technical Resource Panel, at (202) 533-3040, or cconjura@kpmg.com; or Jason Cha, AICPA Technical Manager, at (202) 434-9231, or jcha@aicpa.org.

Respectfully submitted,



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AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

COMMENTS ON MODIFICATION TO REVENUE PROCEDURES 97-27 AND 2011-14

Developed by the

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BACKGROUND

Internal Revenue Code (IRC) section 446(e) and the regulations thereunder require that a taxpayer who changes the method of accounting on the basis of which he regularly computes his income in keeping his books must, before computing his taxable income under the new method, secure the consent of the Commissioner. A taxpayer generally must file a Form 3115, Application for Change in Accounting Method, to secure the Commissioner's consent to change a method of accounting.[1]

To obtain the consent of the Commissioner for "non-automatic" method changes, a taxpayer must follow the rules outlined in Rev. Proc. 97-27, 1997-1 C.B. 680; as amplified and modified by Rev. Proc. 2002-19, 2002-1 C.B. 696; as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432; as modified by Rev. Proc. 2007-67, 2007-2 C.B. 1072; as clarified and modified by Rev. Proc. 2009-39, 2009-2C.B. 371; as clarified and modified by Rev. Proc. 2011-14, 2011-4 I.R.B. 330; and as clarified and modified by Rev. Proc. 2012-39, 2012-2 C.B. 470.

To obtain the consent of the Commissioner for "automatic" method changes, a taxpayer must follow the rules outlined in Rev. Proc. 2011-14, 2011-1 C.B. 330; as amplified and modified by Rev. Proc. 2011-22, 2011-1 C.B. 737; as modified by Rev. Proc. 2011-27, 2011-1 C.B. 740; as modified by Rev. Proc. 2011-28, 2011-1 C.B. 743; as modified by Rev. Proc. 2011-43, 2011-2 C.B. 326; as clarified and modified by Rev. Proc. 2012-19, 2012-14 C.B. 696; as clarified and modified by Rev. Proc. 2012-20, 2012-14 C.B. 700; as clarified and modified by Rev. Proc. 2012-39, 2012-2 C.B. 470; and as modified by Rev. Proc. 2013-20, 2013-14 I.R.B. 744.

The AICPA previously provided comments on the method change consent procedures to the Internal Revenue Service (IRS or "Service") and Department of Treasury (Treasury) in letters dated March 30, 2007,[2] January 31, 2008,[3] February 15, 2008,[4] and July 30, 2012.[5] In those letters, we suggested modifications to the procedural rules applicable both to automatic and non-

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[1] Treas. Reg. § 1.446-1(e)(3)(i). The Commissioner may prescribe administrative procedures for a taxpayer to change its method not withstanding paragraph (e)(3)(i) of this provision.

[2] See http://www.aicpa.org/InterestAreas/Tax/Resources/TaxMethodsPeriods/Advocacy/DownloadableDocuments/AICPA_Comments_on_Processing_Accounting_Method_Change_Requests.doc.

[3] See http://www.aicpa.org/InterestAreas/Tax/Resources/TaxMethodsPeriods/Advocacy/DownloadableDocuments/FINAL_COMMENTS.doc.

[4] See http://www.aicpa.org/interestareas/tax/resources/irspracticeprocedure/advocacy/downloadabledocuments/revenue_proceedure_9727_20029_comments.pdf.

[5] See http://www.aicpa.org/Advocacy/Tax/TaxMethodsPeriods/DownloadableDocuments/AICPA-07.30.2012-Foreign-Corp-3115-Issue-Consideration-Comments.pdf.

automatic method changes, including suggested changes to clarify the definition of "under examination" and modify the "window periods" applicable for taxpayers under exam. This letter further expands on previous comments not yet addressed by the IRS and Treasury, as well as suggests new changes to both the automatic and non-automatic revenue procedures. We believe that these proposed modifications will assist the IRS and Treasury in achieving their goals of encouraging prompt voluntary compliance and promoting the public interest.

MODIFICATIONS TO THE PROCEDURAL RULES FOR BOTH AUTOMATIC AND NON-AUTOMATIC METHOD CHANGES

A. Clarify the Definition of "under examination."

1. Under the general rules of Rev. Proc. 97-27 and Rev. Proc. 2011-14, an examination of a taxpayer with respect to a federal income tax return begins on the date the taxpayer is contacted in any manner by a representative of the Service for the purpose of scheduling any type of examination of the return.[6]

   Section 3.07(3) of Rev. Proc. 97-27, as modified by Rev. Proc. 2011-14, and section 3.08(4) of Rev. Proc. 2011-14 provide in relevant part that, if a taxpayer is under examination (including an examination that begins on the date a taxpayer is contacted in any manner for additional information as a result of a Joint Committee on Taxation (JCT) inquiry pursuant to IRC section 6405) then, notwithstanding the performance of an act described in section 3.07(1) or 3.07(2) of Rev. Proc. 97-27 and section 3.08 (1), (2), or (3) of Rev. Proc. 2011-14, for purposes of these revenue procedures, the taxpayer continues to be under examination while the taxpayer has a refund or credit under review by the JCT.

   The review of a taxpayer's return by the JCT may be accomplished through a survey. When the JCT surveys a federal income tax return, there is no contact with the taxpayer before or after the survey of the return. It is our understanding that the IRS does not consider a survey to be an exam.

   The AICPA recommends that the revised revenue procedure clarify that a taxpayer is not under exam if its returns are subject to a survey by the JCT.

2. Section 3.07(1)(a) of Rev. Proc. 97-27 and section 3.08(1)(a) of Rev. Proc. 2011-14 provide in part that, an exam ends in an unagreed or a partially agreed case, on the earliest of the date the taxpayer (or its representative) is notified by Appeals that the case has been referred to Appeals from Examination. Section 3.07(1)(c) of Rev. Proc. 97-27, as modified by Rev. Proc. 2011-14, and section 3.08(1)(c) of Rev. Proc. 2011-14 provide that an exam resumes on the date the taxpayer (or its representative) is notified by Appeals (or otherwise) that the

[6] In addition, section 3.07(2) of Rev. Proc. 97-27 and section 3.08(2) of Rev. Proc. 2011-14 provide in relevant part that, "for an entity (including a limited liability company), treated as a partnership or an S corporation for federal income tax purposes, that is subject to the TEFRA unified audit and litigation provisions for partnerships and S corporations, an examination begins on the date of the notice of the beginning of an administrative proceeding sent to the Tax Matters Partner/Tax Matters Person (TMP)." Section 3.07(4) of Rev. Proc. 97-27 and section 3.08(5) of Rev. Proc. 2011-14 provide that a taxpayer participating in the Compliance Assurance Process (CAP) is considered to be under exam as of the date the taxpayer executes the Memorandum of Understanding for the CAP.

case has been referred to Examination for reconsideration. If the taxpayer is within the 120-day window period, that 120-day window period ends as of the date the taxpayer is notified by Appeals (or otherwise) that the case has been referred to the examining agent(s) for reconsideration. The 120-day window period will be available to the taxpayer in its entirety when the resumed exam ends.

The AICPA recommends that the IRS clarify whether an exam resumes when proposed adjustments have been forwarded from Appeals to the JCT for review rather than being referred to Examination for reconsideration. Section 3.07(3) of Rev. Proc. 97-27, as modified by Rev. Proc. 2011-14, and section 3.08(4) of Rev. Proc. 2011-14 provide in part that, if a taxpayer is under exam, then the taxpayer continues to be under exam while the taxpayer has a refund or credit under review by the JCT. However, the revenue procedures do not provide guidance regarding the exam status of taxpayers in situations when proposed adjustments have been forwarded from Appeals to the JCT for review. The AICPA recommends that the IRS clarify whether an exam resumes on the date the taxpayer (or its representative) is notified by Appeals (or otherwise) that the case has been submitted to the JCT for review. Further, if the taxpayer is within the 120-day window period, the AICPA recommends that the IRS clarify whether the 120-day window period ends as of the date the taxpayer is notified by Appeals (or otherwise) that the case has been referred to the JCT for review.

B. Clarify the Definition of "issue under consideration."

1. The AICPA recommends that the IRS clarify section 3.08(1) of Rev. Proc. 97-27 and section 3.09(1) of Rev. Proc. 2011-14, which provide that a taxpayer's method of accounting for an item is an issue under consideration for the tax years under exam if the taxpayer receives written notification (for example, by examination plan, information document request (IDR), or notification of proposed adjustments or income tax examination changes) from the examining agent(s) specifically citing the treatment of the item as an issue under consideration. These provisions imply that the written notification must be provided to the taxpayer for the current tax years under exam. However, the examples of written notification include documents that could relate to a current exam or a prior exam (i.e., an exam of prior years that has closed). Furthermore, as currently written, these provisions do not require an examining agent to indicate to which tax years the notification applies. Therefore, some examining agents have improperly argued that an issue is under consideration in a current exam based on written notification provided to the taxpayer in a prior exam.

   The AICPA recommends that section 3.08(1) of Rev. Proc. 97-27 and section 3.09(1) of Rev. Proc. 2011-14 be revised to make it clear that the written notification must be provided to the taxpayer for the tax year(s) currently under exam. That is, these provisions should be revised to clearly indicate that the taxpayer's method of accounting for an item is not an issue under consideration for the tax year(s) under exam if written notification was provided to the taxpayer for a previous tax year that is no longer under exam. Thus, written notification citing the treatment of an item as an issue under consideration for a prior exam that has ended does not result in the item being an issue under consideration in a current

exam. Separate written notification citing the item as an issue under consideration must be provided to the taxpayer during the current exam in order for the item to be an issue under consideration for the current exam.

The AICPA believes that this clarification to Rev. Proc. 97-27 and Rev. Proc. 2011-14 will further encourage taxpayers to voluntarily comply with proper tax accounting principles, and will provide taxpayers and examining agents with clearer guidance.

2. The AICPA recommends that section 3.08(1) of Rev. Proc. 97-27 and section 3.09(1) of Rev. Proc. 2011-14 be revised to make it clear that the taxpayer's method of accounting for an item is not an issue under consideration for the tax year(s) under exam if written notification is provided to the taxpayer that the issue is no longer being reviewed.

   Currently, the revenue procedure does not provide procedures for an examining agent to withdraw or discontinue the examination of an issue so that it is no longer an issue under consideration during an exam. As a result, an issue raised during an exam arguably is an issue under consideration until the exam ends. However, there are numerous instances in which the IRS raises an issue, and then decides to no longer pursue the issue. Uncertainty most often arises when the IRS indicates its intent to audit a general area (e.g., inventory valuation, uniform capitalization, accrued liabilities) in an IDR and asks a few questions, but then moves on to other issues. A taxpayer that wants to make a change from an impermissible method that relates to one of these audited areas usually waits until the exam ends to make the change to avoid the risk that the IRS exam team will argue that the issue is under consideration due to the broad IDR. Other situations arise where the IRS audits the specific issue that the taxpayer wants to change, but does not propose an adjustment. In many circumstances, the IRS exam team orally tells the taxpayer it has closed the issue, but in some circumstances the taxpayer does not know whether the IRS is continuing to examine the issue. Even when the taxpayer knows the IRS does not intend to propose an adjustment with respect to the issue under consideration, the taxpayer currently is precluded from filing a method change until the exam ends. Moreover, in some cases, taxpayers have overlapping exam cycles with IDRs that all cite the same issue as under consideration, precluding the taxpayer from filing a method change even when the exam cycle ends.

   The lack of a procedure to designate an issue as no longer under consideration other than when an exam ends frustrates voluntary compliance, and in some cases forces taxpayers to remain on impermissible methods. Accordingly, the AICPA recommends that the IRS provide that an issue is no longer under consideration if the taxpayer receives written notification from the examining agent that the issue is no longer under consideration. To accommodate this rule, the IRS could provide procedures for an examining agent to provide written notification that an issue is no longer an issue under consideration during an exam.

3. The AICPA recommends that the IRS clarify the definition of "issue under consideration" for certain foreign corporations. The current definition contained in Rev. Proc. 97-27, as modified by Rev. Proc. 2009-39, and Rev. Proc. 2011-14 effectively precludes many United States (U.S.) multinational corporations from voluntarily complying with proper tax accounting principles by filing applications for

accounting method changes on behalf of their controlled foreign corporations or 10/50 corporations (collectively "foreign corporations").[7]

For a domestic corporation, the term "issue under consideration" is narrowly defined in section 3.08(1) of Rev. Proc. 97-27 and section 3.09(1) of Rev. Proc. 2011-14. Under these sections, a taxpayer's method of accounting for an item is an issue under consideration for the taxable years under exam if the taxpayer receives written notification (for example, by examination plan, IDR, or notification of proposed adjustments or income tax examination changes) from the examining agent(s) "*specifically citing the treatment of the item as an issue under consideration*" [Emphasis added.]

Notwithstanding the narrow definition of an issue under consideration, section 3.08(4) of Rev. Proc. 97-27, as modified by Rev. Proc. 2009-39, and section 3.09(4) of Rev. Proc. 2011-14 provide a special rule for foreign corporations. Under the special rule, a foreign corporation's method of accounting for an item is an issue under consideration if any of the corporation's controlling domestic shareholders receives notification (i.e., by examination plan, IDR, notice of proposed adjustment or income tax examination changes) that "*the treatment of a distribution or deemed distribution from the foreign corporation, or the amount of its earnings and profits, or foreign taxes deemed paid, is an issue under consideration*" [Emphasis added.] Thus, for example, under this broad definition, *all* of the methods of accounting used to compute earnings and profits (E&P) would be under consideration if the controlling domestic shareholder(s) has received notice that the earnings and profits of the foreign corporation is an issue under consideration, which is the equivalent to treating all the methods of a domestic corporation as being under consideration if the taxpayer receives notification that the IRS is auditing taxable income.

As indicated above, the AICPA believes that the revenue procedures' broad definition of an issue under consideration for foreign corporations is inappropriate and effectively precludes many U.S. multinational corporations from voluntarily complying with proper tax accounting principles. As explained in more detail in our letter dated July 30, 2012, the AICPA believes that the broad definition of an issue under consideration (1) forces many multinational corporations to either remain on impermissible methods or make unauthorized method changes; (2) is contrary to the general tax policy underlying Rev. Proc. 97-27 and Rev. Proc. 2011-14 – namely, to encourage taxpayers to voluntarily comply with proper tax accounting principles; and (3) draws distinctions between domestic and foreign corporations in situations where Congress has consistently indicated that they should be treated similarly.

As a result, the AICPA recommends that section 3.08(4) of Rev. Proc. 97-27 and section 3.09(4) of Rev. Proc. 2011-14 be deleted. Instead, we recommend that the issue under consideration applicable to domestic corporations in section 3.08(1) of Rev. Proc. 97-27 and section 3.09(1) of Rev. Proc. 2011-14 apply to *all* taxpayers, including foreign corporations.

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[7] For this purpose, a controlled foreign corporation is defined in IRC sections 953(c)(1)(B) or 957 and a non-controlled corporation is defined in IRC section 904(d)(2)(E).

We understand that the rationale for the broad definition of "issue under consideration" for foreign corporations resulted from the examination practice of issuing general IDRs to audit the earnings and profits ("E&P") of a foreign corporation as opposed to specific IDRs citing specific methods to be examined. We are skeptical that an IDR citing a specific method issue would not be issued if the IRS chooses to audit an accounting method of a foreign corporation even though the IRS may have initially indicated its intent to review E&P. It is unclear how else the IRS would obtain the information necessary to audit a specific method issue of a foreign corporation. The AICPA believes that its proposed alignment of exam practices and the "issue under consideration" definition for foreign corporations with domestic corporations would increase voluntary compliance with proper tax accounting principles and achieve a more efficient administration of the tax law.

C. Modify the Spread Period of the IRC Section 481(a) Adjustment.

Rev. Proc. 97-27 and Rev. Proc. 2011-14 explicitly state that one of their purposes is to encourage prompt voluntary compliance with proper tax accounting principles by providing more favorable terms and conditions than if the taxpayer is required to change its method of accounting as part of an IRS exam. Generally, when a taxpayer changes an accounting method, it must compute an IRC section 481(a) adjustment to prevent an omission or duplication of income or expense and to mitigate "distortions of income that result from accounting method changes." The IRC section 481(a) adjustment is computed as of the beginning of the year of change and equals the difference between taxable income under the taxpayer's present method and taxable income under the taxpayer's proposed method.

Pursuant to Rev. Proc. 2002-19, a taxpayer filing a method change under Rev. Proc. 97-27 or Rev. Proc. 2011-14 may deduct the entire amount of a net negative IRC section 481(a) adjustment (i.e., an adjustment that reduces taxable income) in one tax year, whereas previously a taxpayer generally had to spread a net negative IRC section 481(a) adjustment over four tax years. Positive IRC section 481(a) adjustments (i.e., adjustments that increase taxable income), on the other hand, generally must be spread ratably over four tax years. Allowing a taxpayer that is changing to a less favorable method to spread the increase in taxable income generally over four tax years is an example of one of the provisions of Rev. Proc. 97-27 and Rev. Proc. 2011-14 intended to encourage voluntary compliance by taxpayers.

1. Currently, taxpayers may take the entire positive adjustment into account in one year only if the IRC section 481(a) adjustment is less than $25,000. However, IRC section 481(a) adjustments much larger than $25,000 are not material to many taxpayers. Therefore, the AICPA recommends that the IRS give taxpayers the option of taking the entire amount of a positive IRC section 481(a) adjustment into account in one tax year regardless of the size of the adjustment. As previously stated, a significant purpose of spreading a positive IRC section 481(a) over four tax years is to create an incentive for voluntary compliance. However, some taxpayers actually would prefer to take the entire amount of a positive IRC section 481(a) into account in the year of change. Thus, in the interest of providing an incentive for these taxpayers to comply with proper tax accounting methods, the AICPA

believes taxpayers should have the option to take the entire IRC section 481(a) adjustment into account in the year of change, which arguably is the treatment contemplated by the statute.

Alternatively, the AICPA recommends that the IRS modify section 7.03(1) of Rev. Proc. 97-27 and section 5.04(1) of Rev. Proc. 2011-14 to allow a taxpayer to elect to use a one-year adjustment period in lieu of the IRC section 481(a) adjustment period otherwise provided by such revenue procedure if the positive IRC section 481(a) adjustment is $1 million or less. The AICPA believes that this change will alleviate the administrative burden of keeping track of immaterial IRC section 481(a) adjustments.

2. The AICPA also recommends that the IRS provide an exception to the short tax year rule that requires one quarter of the positive IRC section 481(a) adjustment to be taken into taxable income in each short tax year in the case of short taxable years resulting from IRC section 381 transactions within the same consolidated group. Sections 7.03(3)(d) and 7.03(3)(e) of Rev. Proc. 97-27 and sections 5.04(3)(c)(iv) and 5.04(3)(c)(v) of Rev. Proc. 2011-14 provide exceptions related to the acceleration rule when a taxpayer transfers substantially all the assets of the trade or business that gave rise to the IRC section 481(a) adjustment to another taxpayer in a transfer to which IRC section 381(a) (or IRC section 351 within a consolidated group) applies and the accounting method change which gave rise to the IRC section 481(a) adjustment is a tax attribute that is carried over and used by the acquiring corporation immediately after the transfer. Under these exceptions, the IRC section 481(a) adjustment spread period continues and no additional amount is required to be recognized by the consolidated group. However, there is no exception to the short tax year rule, with the result that one quarter of the IRC section 481(a) adjustment is taken into taxable income in each short tax year. Thus, for example, if a tax year closes under IRC section 381(b) as a result of an IRC section 381(a) transaction (such as an IRC section 332 liquidation of a wholly-owned subsidiary), the short tax year is respected for purposes of recognizing the IRC section 481(a) adjustment, resulting in the recognition of two years of the IRC section 481(a) adjustment in a single consolidated group tax return.

   The AICPA recommends that the revised accounting method procedural guidance provide an exception to the short tax year rule for transactions within a consolidated group that result in short tax years that are reflected on the same consolidated tax return. The AICPA believes that such an exception is more consistent with the consolidated return principles embodied in the IRC section 1502 regulations.

D. Revision and Clarification of Window Periods for Taxpayers under Exam.

Rev. Proc. 97-27 and Rev. Proc. 2011-14 provide window periods in which taxpayers that are under exam may file for a change in method of accounting. The 90-day window period allows a taxpayer under exam to file a Form 3115 within 90 days from the beginning of its tax year, if the taxpayer has been under exam for at least 12 consecutive months as of the first day of the tax year. Therefore, a taxpayer that has been under exam for at least 12 consecutive months as of the first day of a tax year may file a Form 3115 within 90 days from the beginning of the tax year to request a change in accounting method. The 90-day window is not available if the method of

accounting the taxpayer is requesting to change is an issue the examining agent has placed in suspense or is an issue under consideration at the time the Form 3115 is filed. The requesting taxpayer must provide a copy of the Form 3115 to the examining agent at the time it files the Form 3115 with the IRS National Office.

The 120-day window period allows a taxpayer under exam to file a Form 3115 during the first 120-day period following the date an exam ends, regardless of whether a subsequent exam has commenced. This 120-day window is not available if the method of accounting the taxpayer is requesting to change is an issue the examining agent has placed in suspense or is an issue under consideration at the time the Form 3115 is filed. The requesting taxpayer must provide a copy of the Form 3115 to the examining agent for any exam that is in process at the time the Form 3115 is filed with the IRS National Office.

In recognition that voluntary compliance is the most efficient way to administer the tax law, the window periods were designed by the IRS to allow an opportunity for taxpayers under continuous IRS exam that discovered they were using an erroneous method of accounting to voluntarily change to proper accounting methods. However, the AICPA is concerned that the current window periods actually frustrate voluntary compliance in many instances. Currently, many taxpayers under exam that identify erroneous methods are being put into an untenable position of choosing to either violate the consent requirements of IRC section 446(e) by changing without the Commissioner's consent or file a tax return using an erroneous method of accounting because they are not in a window period and are unable to change their method. This inability to file method changes also creates Financial Accounting Standard Board (FASB) Accounting Standards Codification (ASC) Topic 740-10 (formerly FASB Interpretation No. 48 (FIN 48)) compliance issues for taxpayers and IRC section 6694 concerns for practitioners. Therefore, the AICPA recommends that the revised accounting method change procedures provide taxpayers greater flexibility to correct erroneous methods of accounting when the taxpayer is under exam.

Accordingly, the AICPA recommends the following changes be made to the window periods provided in Rev. Proc. 97-27 and Rev. Proc. 2011-14.

1. The AICPA recommends that the IRS consider replacing the window periods with an "issue under consideration" standard under which taxpayers will not be precluded from filing a method change after being under continuous exam for 12 months unless the issue is under consideration by exam, Appeals, or a federal court.

   Under the current method change procedures, a taxpayer that is under exam generally is precluded from filing a voluntary method change request unless it is in a window period (or requests the consent of the director). As described in more detail below, some taxpayers will not be in a window period until up to 23 months after they are contacted for exam. Other taxpayers that identify an erroneous method during the preparation of the tax return may be unable to change that method until months later when their next window period opens. As a result, taxpayers under exam that identify erroneous methods currently are being put into an untenable position of choosing to either violate the consent requirements of IRC section 446(e) by changing without the Commissioner's consent or file a tax return

using an erroneous method of accounting. The AICPA believes that instead of modifying or adding additional window periods to address these concerns, the IRS will encourage more timely compliance with permissible tax accounting methods by simply providing an "issue under consideration" standard under which taxpayers under exam may change a method of accounting at any time during the year as long as the method of accounting is not an issue under consideration.

Note that an issue under consideration standard theoretically should not be any more difficult to apply or administer than the existing window periods because a request to change a method of accounting currently can be filed in a window period only if the method is not an issue under consideration at exam or Appeals or before a federal court. As a result, taxpayers that are under exam still are required to determine whether the applicable method is an issue under consideration. In fact, an issue under consideration standard would be much easier to apply than considering multiple window periods combined with an issue under consideration standard.

Further, since the issue under consideration standard would apply to taxpayers after they have been under exam for 12 consecutive months, the examination division would be able to identify specific items to be examined such that those items are issues under consideration and are not eligible to be changed. Under this proposal, the proposed 12-month period still would protect the IRS examination division's interest in identifying any issues that it wishes to pursue because the taxpayer still would be precluded from changing its method of accounting for an issue that is under consideration in the exam.

Accordingly, the AICPA believes providing an issue under consideration standard as the scope restriction for taxpayers under exam in Rev. Proc. 97-27 and Rev. Proc. 2011-14 will further encourage taxpayers to voluntarily comply with proper tax accounting methods in a timelier manner, provide taxpayers with more clear and consistent guidance, and assist taxpayers in complying with ASC 740-10 (formerly FIN 48) and practitioners in complying with IRC section 6694.

2. Alternatively, if the IRS and Treasury do not adopt an issue under consideration standard, the AICPA recommends the following modifications to the window periods.

   a. The AICPA recommends that the IRS change the time period for which the taxpayer must be under exam in order to be eligible for the current 90-day window period in section 6.01(2) of Rev. Proc. 97-27 and section 6.03(2) of Rev. Proc. 2011-14 from at least 12 consecutive months to at least six consecutive months. Accordingly, a taxpayer which has been under exam for at least six consecutive months as of the first day of its tax year, would be permitted to change a method of accounting that is not an issue under consideration during the first 90 days of its tax year.

      The 12-month restriction period adversely impacts smaller taxpayers that are not under continuous exam. Furthermore, the 12-month restriction period can actually result in up to a 23-month restriction period when a taxpayer is contacted for exam in the first month of its tax year. Under such a scenario, the taxpayer would not be eligible for the 90-day

window period in the next succeeding tax year because the taxpayer would not have been under continuous exam for 12 complete consecutive months. Accordingly, such a taxpayer only would become eligible for the current 90-day window period in the second succeeding tax year, or after a period of 23 months from when the taxpayer was initially contacted for exam. This seemingly unintended result appears to be overly harsh and acts as a disincentive for prompt voluntary compliance by smaller taxpayers.

This revision also is supported by the fact that the examination division has changed how it approaches an exam of a taxpayer since the 90-day window period was developed. Now, the examination division often arrives on the first day of the scheduled exam with a detailed listing of items to be reviewed, rather than developing the issues over the 12-month period such that those items are issues under consideration and are not eligible to be changed, even in a window period. Under this proposal, the proposed six-month period still would protect the IRS examination division's interest in identifying any issues that it wishes to pursue because the taxpayer still would be precluded from changing its method of accounting for an issue that is under consideration in the exam.

Therefore, the AICPA recommends that the IRS change the number of months that a taxpayer is required to be under IRS exam to be eligible for the 90-day window period of section 6.01(2) of Rev. Proc. 97-27 and section 6.03(2) of Rev. Proc. 2011-14 to at least six consecutive months.

b. Similar to the suggestion in our prior letter dated February 15, 2008, the AICPA recommends that the IRS add an additional 90-day window period consisting of 60 days before the due date (including extensions) of a tax return and 30 days after the due date (including extensions) of a tax return. In order to qualify for this window period, the taxpayer must be under exam for at least six consecutive months as of 60 days prior to the due date (including extensions) of the tax return and the method of accounting the taxpayer is requesting to change must not be an issue the examining agent has placed in suspense or an issue under consideration.

   Taxpayers typically identify erroneous methods during the preparation of their tax returns, but, due to the restrictions for taxpayers under exam, are precluded from changing the erroneous method until months later during the next 90-day or 120-day window period. As a result, taxpayers under exam that identify erroneous methods currently are being put into an untenable position of choosing to either violate the consent requirements of IRC section 446(e) by changing without the Commissioner's consent or filing a tax return using an erroneous method of accounting. The AICPA believes that providing an additional window period for the 60-day period before a tax return is due and the 30-day period after a tax return is due will further encourage taxpayers to voluntarily comply with proper tax accounting methods, as well as assist taxpayers in complying with ASC 740-10 (formerly FIN 48) and practitioners in complying with IRC section 6694.

3. The AICPA requests that the IRS clarify the application of the window periods to domestic and foreign corporations.

   a. With respect to domestic corporations, the AICPA believes that clarification is needed on the application of the window periods in instances where the Applicant was a former member of a consolidated group that has a different taxable year than the Applicant's present consolidated group. Specifically, if the Applicant's present consolidated group and the former consolidated group have different tax years; it is not clear whether the 90-day window of the Applicant is based on the tax year of the former consolidated group or the tax year of the current consolidated group. This determination becomes even more unclear when both former and current consolidated groups are under exam for a year in which the Applicant was a member of the group. To provide certainty, the AICPA recommends that the 90-day window period be based on the current consolidated group's tax year.

      Correspondingly, clarification is needed on the application of the 120-day window period because the Applicant could be under exam as a result of an exam for the tax year(s) that the Applicant was a member of the present and/or former consolidated groups. As such, the AICPA recommends that the Applicant be treated as having a 120-day window period if any exam closes for a year in which the Applicant was a member of either consolidated group (and the issue is not under consideration in other exams).

   b. According to Treas. Reg. § 1.964-1(c), the controlling domestic shareholder(s) of a foreign corporation generally must follow all the applicable procedural rules under IRC section 446, including the applicable administrative procedures, to obtain the consent of the Commissioner to change the method of accounting of the foreign corporation. To determine whether a foreign corporation is eligible to file a method change under Rev. Proc. 97-27 and Rev. Proc. 2011-14, a foreign corporation is under exam if any of its controlling domestic shareholder(s) are under exam for a tax year in which it was the domestic shareholder of the foreign corporation.

      The AICPA recommends that the IRS clarify how the window period rules apply to foreign corporations. Specifically, the AICPA believes that a foreign corporation should be eligible to use the window periods available to its controlling domestic shareholders. In addition, if the foreign corporation and its controlling domestic shareholder(s) have different tax years, clarification is needed as to whether the 90-day window is based on the tax year of the foreign corporation or the tax year of the controlling domestic shareholder(s). Note that, if the foreign corporation has more than one controlling domestic shareholder and each of those shareholders has a different tax year, computing the 90-day window period based on the shareholders' tax years would result in more than one 90-day window period or in different 90-day window periods for each shareholder. Consequently, the AICPA recommends that the 90-day window period be based on the foreign corporation's tax year.

      Similarly, clarification is needed on the application of the 120-day window period to foreign corporations because a foreign corporation could be under exam as a result of an

exam of one or more of its controlling domestic shareholders. As such, the AICPA recommends that the foreign corporation be treated as having a 120-day window period if any one of its controlling domestic shareholders closes an exam (and the issue is not under consideration in other exams).

E. Eliminate the Requirement for Separate Disclosure Statements.

1. Sections 6.01(2) and 6.01(3) of Rev. Proc. 97-27 require a separate statement signed by a taxpayer disclosing whether the method to be changed is an issue under consideration or has been placed in suspense if the taxpayer files a Form 3115 during the 90-day window or the 120-day window. The AICPA recommends that the IRS eliminate this requirement because the statement is no longer necessary as the current version of Form 3115 adequately addresses this issue. As clarified in the instructions to Form 3115, the taxpayer should simply check the appropriate box on page 1, Part II, Line 4b of the Form 3115 to indicate this fact.

2. The Form 3115 filing instructions for page 3, Part II, Line 12 require a separate statement disclosing whether the proposed change in method of accounting for federal income tax purposes is related to the adoption of the International Financial Reporting Standards (IFRS) for financial statement purposes. The AICPA recommends that the IRS eliminate this requirement because it is generally not applicable and many taxpayers are not aware of this requirement. Alternatively, the AICPA recommends that either (1) the Form 3115 filing instructions be modified to require this statement only if the proposed change in method of accounting is indeed related to the adoption of IFRS for financial statement purposes or (2) the Form 3115 be updated to ask if the proposed change in method of accounting is related to the adoption of IFRS with a check-the-box response for taxpayers to respond to this question.

F. Modify the Director Consent Requirement.

1. Consistent with section 6.03(4) of Rev. Proc. 2011-14, the AICPA recommends that the IRS specifically indicate that the director consent does not imply that the director is approving the requested change in method of accounting. It is the experience of members of the AICPA that the provision of section 6.01(4) of Rev. Proc. 97-27 is not sufficiently clear to many examining agents, team leaders, and other individuals engaged in IRS exams of taxpayers. A common misconception is that the director's consent somehow implies the director is agreeing or approving such method change. Therefore, the AICPA recommends modifying the term from "director consent" to "director's waiver," or another term that does not imply the director is consenting to the change but is merely waiving its right to audit the issue.

2. In addition, the AICPA recommends that Rev. Proc. 97-27 and Rev. Proc. 2011-14 be modified to provide specific examples of when it is proper to give consent and when it is proper to withhold consent. For example, the AICPA recommends that the IRS more clearly state that the director should consent to the filing of an application for a method change that has a net negative IRC section 481(a) adjustment, unless the director can demonstrate unusual or compelling reasons that consent should not be granted (e.g., the same change in

an earlier open year results in a positive IRC section 481(a) adjustment). This revision is appropriate based on our understanding that it was intended that director consent be routinely granted when the method change involves a negative IRC section 481(a) adjustment. We suggest the following example be inserted:

For example, a change in method of accounting from a permissible or an impermissible method of accounting to a permissible method that results in a net negative IRC section 481(a) adjustment (i.e., decrease in taxable income) would not ordinarily be included as an item of adjustment in the year(s) for which the taxpayer is under examination. As such, the director should consent to the filing of an application for change in accounting method when the change results in a net negative IRC section 481(a) adjustment unless the director can demonstrate unusual or compelling reasons that consent should not be granted.

3. The AICPA also recommends that the IRS provide a specific rule indicating that, to the extent a director withholds consent, the taxpayer's proposed method change should be implemented as part of the IRS exam. The AICPA believes that this requirement would encourage examining agents and team leaders to consent to a taxpayer's request to file a Form 3115, unless the IRS intends to include the method change as an item of adjustment in the year(s) for which the taxpayer is under exam.

   IRS exam teams sometime withhold their consent only to leave the taxpayer on the "old" method of accounting. The administration of the tax law for accounting methods is not best served when taxpayers are deprived of the administrative procedures to change their methods of accounting. The AICPA believes that this revision to Rev. Proc. 97-27 and Rev. Proc. 2011-14 will further encourage compliance with proper tax accounting principles in a timelier manner, and facilitate the IRS's examination process, as well as assist taxpayers in complying with ASC 740-10 (formerly FIN 48) and practitioners in complying with IRC section 6694.

4. Furthermore, the AICPA recommends that the IRS clarify when the director consent must be attached to the Form 3115. While section 6.01(4) of Rev. Proc. 97-27 provides that the director consent must be attached to the Form 3115, section 6.03(4) of Rev. Proc. 2011-14 provides that the taxpayer must attach a statement certifying that it has obtained written director consent to file the Form 3115 and that the taxpayer will maintain a copy of such consent available for inspection. The Form 3115 Instructions (revised March 2012) provide that the director consent must be attached to the Form 3115 filed with the IRS National Office and, for a Form 3115 filed with the filer's income tax return under the automatic change procedures, the taxpayer must submit a written statement certifying that (a) the written consent was obtained from the director and (2) the applicant will retain a copy of the consent for inspection by the IRS.

   These inconsistent instructions cause much confusion regarding when or whether the director consent must be attached to the Form 3115. Therefore, the AICPA recommends that section 6.01(4) of Rev. Proc. 97-27, section 6.03(4) of Rev. Proc. 2011-14 and the Form 3115 Instructions be revised to give taxpayers the option to (a) attach the director consent to

the Form 3115 that is filed with the IRS National Office, or (b) submit the director consent to the IRS National Office after the Form 3115 is filed with the IRS National Office.

G. Clarify the Incomplete Form 3115 Rule.

Section 8.09 of Rev. Proc. 97-27 and section 10.02 of Rev. Proc. 2011-14 provide procedures for the IRS National Office to obtain supplemental information from the taxpayer that has filed a Form 3115. Notwithstanding these procedures regarding an incomplete Form 3115, it is possible that this provision could be misinterpreted because the provisions in section 9.03 of Rev. Proc. 2013-1 provide, in part, that a taxpayer must provide all information requested on the Form 3115 and in its instructions to be eligible for approval of the requested accounting method change.

1. The AICPA recommends that the IRS specifically state in section 8.09 of Rev. Proc. 97-27 and section 10.02 of Rev. Proc. 2011-14 that a Form 3115 may be submitted without a IRC section 481(a) adjustment.

   A taxpayer is required to file the Form 3115 by a certain date, (e.g., the end of its tax year, the extended due date of its return, or the end of a window period). A taxpayer is often unable to precisely calculate the IRC section 481(a) adjustment, or to even determine a reasonable estimate, at the time the Form 3115 must be filed. As such, some taxpayers must file a Form 3115 without an IRC section 481(a) adjustment. The IRS National Office's informal ruling position is to allow taxpayers to submit the IRC section 481(a) adjustment at a later date. However, because the procedures in Rev. Proc. 97-27 and Rev. Proc. 2011-14 do not specifically state what type of missing information is subject to the incomplete Form 3115 rule, it is possible that a taxpayer's Form 3115 might be considered to be invalid, rather than simply unperfected, given the language in section 9.03 of Rev. Proc. 2013-1.

   Accordingly, the AICPA recommends that the IRS specifically state in section 8.09 of Rev. Proc. 97-27 and section 10.02 of Rev. Proc. 2011-14 that a Form 3115 may be submitted without an IRC section 481(a) adjustment and that such omission does not result in the Form 3115 being deemed invalid. The AICPA believes that this revision will further encourage compliance with proper tax accounting principles and provide for more certainty to the processing of Forms 3115, as well as assist taxpayers in complying with ASC 740-10 (formerly FIN 48) and practitioners in complying with IRC section 6694.

2. The AICPA also recommends that the IRS specifically state in section 6.01(4) of Rev. Proc. 97-27 and section 6.03(4) of Rev. Proc. 2011-14 that a Form 3115 may be submitted without the director consent statement.

   A taxpayer is often unable to obtain the director consent statement prior to the due date of the Form 3115 (e.g., the end of its tax year, the end of a window period, or the extended due date of its return, as applicable). As such, some taxpayers must file a Form 3115 without the director consent statement. The IRS National Office's informal ruling position is to allow taxpayers to later submit the director consent statement. However, because the procedures contained in Rev. Proc. 97-27 and Rev. Proc. 2011-14 do not specifically state what type of missing information is subject to the incomplete Form 3115 rule, it is possible that such a

taxpayer's Form 3115 might be considered to be invalid, rather than simply unperfected, given the language in section 9.03 of Rev. Proc. 2013-1.

Accordingly, the AICPA recommends that the IRS specifically state in section 6.01(4) of Rev. Proc. 97-27 and section 6.03(4) of Rev. Proc. 2011-14 that a Form 3115 may be submitted without the director consent statement and that such omission does not result in the Form 3115 being deemed invalid. The AICPA believes that this revision will further encourage compliance with proper tax accounting principles and provide for more certainty to the processing of Forms 3115, as well as assist taxpayers in complying with ASC 740-10 (formerly FIN 48) and practitioners in complying with IRC section 6694.

H. Modify Section 8.13 of Rev. Proc. 97-27 and Section 6.02(10) of Rev. Proc. 2011-14 Regarding the Filing of Combined Forms 3115.

The AICPA recommends that the IRS combine sections 8.13 and 8.17 of Rev. Proc. 97-27 and modify section 6.02(10) of Rev. Proc. 2011-14 to reflect that a parent corporation (or certain designated shareholders) may file a single application to change an identical method of accounting on behalf of two or more members of a consolidated group, two or more trades or businesses, or two or more foreign corporations. In addition, the AICPA recommends that the IRS modify these rules to clarify that a taxpayer may file a single application to change an identical method of accounting on behalf of two or more Qualifying Subchapter S Subsidiaries and two or more partnerships that are wholly-owned within a consolidated group. Furthermore, the AICPA recommends that the IRS allow the U.S. parent corporation of a consolidated group to file a single application to change an identical method of accounting on behalf of U.S. entities within the consolidated group and foreign corporations when all controlling U.S. shareholders of the foreign corporations are members of the consolidated group or the parent corporation is the sole controlling U.S. shareholder of the foreign corporations.

The current requirement to file separate accounting method change applications for each partnership in particular causes significant administrative burdens for taxpayers that have numerous partnerships in their structure due to legal reasons. For example, it is not uncommon for certain types of taxpayers to have 10-20 partnerships in their structure that would require separate applications, resulting in substantial compliance burdens for both the taxpayer and the IRS, and filing fees that could exceed $100,000. This substantial administrative and financial burden frustrates voluntary compliance as it may be cost prohibitive to file that many Forms 3115.

The AICPA believes that the above recommendations would significantly reduce the complexity and administrative burden of taxpayers in changing accounting methods and encourage taxpayers to comply with proper tax accounting principles, provide greater certainty and transparency in the processing of accounting method change requests, and assist taxpayers in complying with ASC 740-10 (formerly FIN 48) and practitioners in complying with IRC section 6694.