



Protecting FIN 48 and Other Tax Accrual Workpapers

Blank Rome delivers value by assisting clients to establish and maintain attorney work-product protection over tax accrual workpapers.

FIN 48 workpapers contain sensitive information that would allow a tax auditor to more easily: (a) assess additional tax and (b) defend such assessment.

- FIN 48 requires every GAAP-reporting entity to identify and provide detailed documentation with respect to each of its uncertain tax positions.
- The detail contained in FIN 48 workpapers provides a road map to taxpayers' uncertain tax positions.
- For this reason, tax auditors are more aggressively attempting to compel taxpayers to produce their FIN 48 workpapers.
- Recent court decisions have held that—while FIN 48 workpapers may be protected attorney work-product—such protection is limited and may be waived.

Blank Rome delivers value to our clients by protecting with FIN 48 workpapers through a phased approach.

In Phase I we:

- Establish attorney work-product protection.
- Recommend protocols and procedures to maintain such protection (*i.e.*, reduce risk that it may be waived).

In Phase II we:

- Provide supplemental insight to support uncertain tax positions.
- Develop alternative strategies that may reduce or eliminate FIN 48 reserves.
- Identify potential tax refund opportunities and planning strategies.

How to Protect FIN 48 and Other Sensitive Tax Accrual Workpapers

What is FIN 48 and what does it require?

Financial Accounting Standards Board Interpretation 48, *Accounting for Uncertainty in Income Taxes* ("FIN 48") is an accounting pronouncement that applies to every (public and non-public) GAAP-reporting entity.

FIN 48 requires a company to create detailed workpapers documenting each of the company's uncertain tax positions.

What do FIN 48 workpapers contain and how do they impact a company's financial statements.

FIN 48 workpapers must specifically identify and document each uncertain tax position a company has taken.

A company must record a reserve on its financial statements for each uncertain tax position unless the company can establish that the company will more likely than not prevail if a taxing authority were to challenge such position.

Why do taxing authorities want access to a company's FIN 48 workpapers?

Taxing authorities are more aggressively seeking to compel taxpayers to produce their FIN 48 workpapers because they provide a detailed road map of every uncertain tax position a taxpayer has taken.

FIN 48 workpapers also provide a taxing authority with the taxpayer's view of the likelihood of success and the taxpayer's rationale to support its positions.

Therefore, a taxing authority that accesses FIN 48 workpapers may more easily assess additional tax and will be negotiating any settlement from a position of strength.

How can a company prevent a taxing authority from accessing its FIN 48 workpapers?

Recent federal court cases have held that—while **FIN 48 workpapers may be protected** attorney work product—**such protection is limited and may be waived**.

Therefore, to claim attorney work-product protection for FIN 48 workpapers, a company should:

- Retain counsel to assist in the preparation of FIN 48 workpapers; and
- Establish and implement protocols to prevent the waiver of such protection.