

SEC Staff provides Guidance for Public Companies on Tax Cuts and Jobs Act

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by Jason Brenkert

On December 22, 2017, the Securities and Exchange Commission announced publication of staff guidance for issuers, auditors, and others to ensure timely public disclosures of the accounting impacts of the Tax Cuts and Jobs Act (the “TCJA”), which was enacted on December 22, 2017. Specifically, the staff of the Office of the Chief Accountant and the Division of Corporation Finance issued the following interpretations:

- Staff Accounting Bulletin (SAB) No. 118 expresses views of the staff regarding application of U.S. GAAP when preparing an initial accounting of the income tax effects of the TCJA.
- Compliance and Disclosure Interpretation 110.02 expresses views of the staff regarding the applicability of Item 2.06 of Form 8-K with respect to reporting the impact of a change in tax rate or tax laws pursuant to the TCJA.

SAB 118

The staff issued SAB 118 to address certain fact patterns where the accounting for changes in tax laws or tax rates under ASC Topic 740 is incomplete upon issuance of an issuer’s financial statements for the reporting period in which the TCJA is enacted.

As detailed in SAB 118, in the financial reporting period during which the TCJA is enacted, companies must first reflect the income tax effects of the TCJA in which the accounting under ASC Topic 740 is complete. These completed amounts would not be provisional amounts. The income tax effects of the TCJA for which the accounting under ASC Topic 740 is incomplete, but for which a reasonable estimate is determinable, would be reported as provisional amounts, which would be subject to adjustment during a “measurement period” until the accounting under ASC 740 is complete. For any specific income tax effects of the Act for which a reasonable estimate cannot be determined, provisional amounts would not be reported, and companies would continue to apply ASC Topic 740 based on the provisions of the tax laws that were in effect immediately prior to the TCJA being enacted. For those income tax effects for which companies were not able to determine a reasonable estimate (such that no related provisional amount was

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reported for the reporting period in which the Act was enacted), companies would report provisional amounts in the first reporting period in which a reasonable estimate can be determined.

The measurement period begins in the reporting period that includes the TCJA's enactment date and ends when an issuer has obtained, prepared, and analyzed the information that was needed in order to complete the accounting requirements under ASC 740. During the measurement period, the staff expects that issuers will be acting in good faith to complete the accounting under ASC 740. The staff notes that in no circumstances should the measurement period extend beyond one year from the enactment date.

During the measurement period, an issuer may need to reflect adjustments to its provisional amounts or report additional tax effects upon obtaining, preparing, or analyzing additional information about facts and circumstances that existed as of the enactment date. Any income tax effects of events unrelated to the TCJA should not be reported as measurement period adjustments.

SAB 118 also describes supplemental disclosures that should accompany the provisional amounts, including the reasons for the incomplete accounting, the additional information or analysis that is needed, and other information relevant to why the issuer was not able to complete the accounting required under ASC 740 in a timely manner.

C&DI 110.02

In C&DI 110.02 the staff clarifies that the re-measurement of a deferred tax asset ("DTA") to incorporate the effects of newly enacted tax rates or other provisions of the TCJA does not trigger an obligation to file under Item 2.06 of Form 8-K. The re-measurement of a DTA to reflect the impact of a change in tax rate or tax laws is not an impairment under ASC 740. Issuers employing the "measurement period" approach as contemplated by SAB 118 that conclude that an impairment has occurred due to changes resulting from the enactment of the TCJA may rely on the Instruction to Item 2.06 of Form 8-K and disclose the impairment, or a provisional amount with respect to that possible impairment, in its next periodic report.