



SEC Guidance Related to the Tax Cuts and Jobs Act

On December 22, 2017, the Securities and Exchange Commission (the “Commission”) provided staff guidance for public companies related to the preparation of their filings with the Commission in light of the recent passage of the Tax Cuts and Jobs Act.

Many reporting companies are in the midst of preparing their year-end financial statements and evaluating the effects of the Tax Cuts and Jobs Act on their companies’ financial results. For many companies, the Act may diminish the value of their deferred tax assets. This might trigger the re-measurement of, or the impairment of, an asset. To the extent that a company were to conclude that an impairment has occurred, a Form 8-K filing would be required. The Commission staff guidance addresses in Compliance and Disclosure Interpretation 110.02 the applicability of Item 2.06 of Form 8-K as follows:

Question 110.02

Question: Does the re-measurement of a deferred tax asset (“DTA”) to incorporate the effects of newly enacted tax rates or other provisions of the Tax Cuts and Jobs Act (“Act”) trigger an obligation to file under Item 2.06 of Form 8-K?

Answer: No, 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 Topic 740. However, the enactment of new tax rates or tax laws could have implications for a registrant’s financial statements, including whether it is more likely than not that the DTA will be realized. As discussed in Staff Accounting Bulletin No. 118 (Dec. 22, 2017), a registrant that has not yet completed its accounting for certain income tax effects of the Act by the time the registrant issues its financial statements for the period that includes December 22, 2017 (the date of the Act’s enactment) may apply a “measurement period” approach to complying with ASC Topic 740. Registrants 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 Act may rely on the Instruction to Item 2.06 and disclose the impairment, or a provisional amount with respect to that possible impairment, in its next periodic report.

The Staff also issued Staff Accounting Bulletin (SAB) No. 118,¹ which sets out the Staff’s views regarding the application of U.S. GAAP when assessing the income tax effects of the Act. Given the extensive changes brought about by the Act, many public companies will face challenges in complying with the requirements of ASC Topic 740, which addresses changes in tax laws that are to be recognized in the financial reporting period, including the enactment date of such changes—in the case of the Act, December 22, 2017. Based on the guidance provided in

¹ Staff Accounting Bulletin No. 118, available at: <https://www.sec.gov/interps/account/staff-accounting-bulletin-118.htm>.

SAB 118, to the extent that accounting for tax changes as required by ASC Topic 740 is incomplete upon the issuance of a public company's financial statements for the financial period in which the Act is enacted, the company would report a provisional amount based on a reasonable estimate. This provisional amount would be subject to adjustment during a "measurement period" until the accounting required by ASC 740 is complete. The public company would have to accompany provisional amounts with disclosures describing the additional information or analysis needed in order to complete the accounting required by ASC 740. To the extent that a public company cannot determine a reasonable estimate for the tax effects of the Act, it would not include any provisional amount, so no adjustment to current or deferred taxes would be made until a reasonable estimate could be determined. SAB 118 notes that a measurement period begins in the reporting period that includes the Act's enactment date and ends when the public company has obtained and analyzed the information necessary to complete the accounting requirements of ASC Topic 740. The SAB notes that in no event should the measurement date extend beyond one year from the Act's enactment date.

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