Insights

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Accounting

Proposed Amendments to FIN 48

On May 18, 2009, the Financial Accounting Standards Board (FASB) issued a proposed FASB Staff Position (FSP), which, if finalized, would amend FASB Interpretation (FIN) No.48, *Accounting for Uncertainty in Income Taxes*, to include guidance on the application of FIN 48 to pass-through entities and tax-exempt not-for-profit entities and to eliminate certain disclosures for nonpublic entities. Proposed FSP No. FIN 48-d, *Application Guidance for Pass-through Entities and Tax-Exempt Not-for-Profit Entities and Disclosure Modifications for Nonpublic Entities*, takes a principles-based approach to providing guidance on three issues related to the application of FIN 48 to pass-through entities and tax-exempt not-for-profit entities. The overriding principle proposed in the FSP is that all entities are subject to FIN 48, even if the only tax position in question is the entity's status. Additionally, even if it is more likely than not that the entity's status as a pass-through entity or tax-exempt not-for-profit entity would be sustained upon examination, the entity may have other tax positions to consider that fall within the scope of FIN 48. The three issues addressed in the proposed FSP are:

- Definition of a tax position – The proposed FSP defines a tax position the same as defined in FIN 48. Several illustrations of situations that are considered to be tax positions are included in the proposed FSP.
- Attribution of income taxes to the entity or its owners - Management must determine whether the laws and regulations of the taxing jurisdiction attribute income taxes to the entity or its owners. If the taxing jurisdiction's laws and regulations attribute income taxes to the entity, amounts due to or from the taxing jurisdiction would be classified as income taxes, and the recognition, measurement, and disclosure provisions of FIN 48 would be applied to those income taxes. If the taxing jurisdiction's laws and regulations attribute income taxes to the owners, amounts due to or from the taxing jurisdiction would be classified as a transaction with owners. A conclusion about whether income taxes are attributable to the entity or its owners is to be based on the laws and regulations of the taxing authority rather than on who pays the income taxes.
- Financial statements of a group of related entities – Per the FSP, regardless of the tax status of a consolidated or combined reporting entity, the consolidated or combined financial statements would include all tax positions for each entity within the consolidated or combined group that is subject to income taxes or that has taxable income assigned to it from a pass-through entity.

In addition, the proposed FSP would modify the disclosure requirements of FIN 48 for nonpublic entities as that term is defined in FASB Statement No. 109, Accounting for Income Taxes. As a result, only a public enterprise would need to disclose the tabular reconciliation of the total amounts of unrecognized tax benefits at the beginning and end of each annual reporting period presented. Also, nonpublic entities would no longer be required to disclose the total amount of unrecognized tax benefits that, if recognized would affect the effective tax rate.

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As proposed, the FSP would be effective upon issuance for all entities currently applying the provisions of FIN 48. For entities that have deferred the application of FIN 48, the FSP would be applied upon initial adoption of FIN 48 (i.e., annual financial statements for years beginning after December 15, 2008).

The proposed FSP is available for comment until June 17, 2009 at http://www.fasb.org/fasb_staff_positions/prop_fsp_fin48-d.pdf.

SEC

Filing Registration Statements on Form S-3 after Adoption of Certain Accounting Standards

Item 11(b) of Form S-3 requires the inclusion of restated financial statements when there has been a change in accounting principles that requires a material retroactive restatement of financial statements. The SEC Staff has recently shared with the SEC Regulations Committee its views regarding how the first quarter adoption of the following recent accounting pronouncements should be considered when filing a registration statement on Form S-3 (including any amendments) that incorporates the most recent annual report on Form 10-K in addition to financial statements for an interim period that includes the date of adoption:

- FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements*, an amendment of ARB 51, changes the way noncontrolling interests (previously referred to as minority interests) are presented throughout the financial statements. The SEC staff has indicated that once a company has adopted Statement No. 160 and has filed interim financial statements for a period that includes the date of adoption, Item 11(b) of Form S-3 would require a registrant to recast its prior-period annual financial statements that are incorporated by reference into a registration statement to reflect a material retrospective application of Statement No. 160.

- FASB Staff Position (FSP) No. APB 14-1, *Accounting for Convertible Debt Instruments That May Be Settled upon Conversion (Including partial Cash Settlement)*, addresses the accounting for convertible debt instruments that, by their terms, may be settled in cash or other assets upon conversion, including partial cash settlement. The SEC staff has indicated that once a company has adopted FSP No. APB 14-1 and has filed interim financial statements for a period that includes the date of adoption, Item 11(b) of Form S-3 would require a registrant to recast its prior period annual financial statements that are incorporated by reference into a registration statement to reflect a material retrospective application of FSP No. APB 14-1.

- FSP No. EITF 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities*, provides that unvested share-based payment awards that contain nonforfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities and must be included in the computation of earnings per share (EPS) pursuant to the two-class method described in Statement No. 128, Earnings per Share. With respect to registration statements after the registrant has filed interim financial statements for a period that includes the date of adoption of the FSP, the SEC staff will allow a registrant to follow what it calls the “accommodation approach”, as is allowed for certain other subsequent events, such as stock splits. Under the accommodation approach, if the registrant and its registered independent public accounting firm conclude that the financial statements being incorporated by reference do not require revision as a result of the application of FSP No. EITF 03-6-1, and the independent auditor consents to the use of its report without such revision, the registrant may disclose EPS as revised for FSP No. EITF 03-6-1 in the selected financial data included in the registration statement, or in a Form 10-Q or Form 8-K incorporated by reference.

Compliance with Interactive Data Reporting Requirements

On January 30, 2009, the SEC issued Final Rule No. 33-9002, *Interactive Data to Improve Financial Reporting*, which will require public companies to submit Exhibit 101 containing their financial statements and any applicable financial statement schedules in interactive data format. Interactive data exhibits will be required at the same time as

the rest of the related report or Securities Act registration statement, except that the initial interactive data exhibit of a filer will be required within 30 days after the earlier of the due date or filing date of the related report or registration statement, as applicable. As a result of these requirements, Form 10-K and Form 10-Q have been revised to include a paragraph on the cover page as follows:

> Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this Chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).
>
> ❑ Yes ❑ No

On April 30, 2009, the SEC issued a *Compliance and Disclosure Interpretation*, which concludes that if a company is not yet required to submit interactive data files with its Exchange Act reports, it should not start checking the cover page box relating to interactive data file compliance until it is required to submit those files. For example, if a company is first required to include an interactive data file with its second quarter Form 10-Q and, as permitted by the grace period rules, includes such file in a Form 10-Q amendment 30 days after the date the report is due and filed, the company should not check the interactive data file box on the cover page of its initial Form 10-Q. Rather, it should check the box once the first interactive data file is submitted — in this case, with the Form 10-Q amendment. Companies that have been voluntarily submitting interactive data files should not check the box until they are required to submit the files.

SEC Seminar to Present Information Regarding Interactive Data Reporting Requirements

On June 10, 2009, the SEC will hold a public seminar to help companies comply with new Final Rule No. 33-9002, *Interactive Data to Improve Financial Reporting*, which will require financial reports to be filed using interactive data. The SEC staff will present information about the technology requirements for complying with the rules and also will provide an overview of the tools and information provided by the SEC to assist with compliance. In addition, the seminar will cover frequently asked questions about the rules and technology requirements.

This seminar will be held at the SEC's headquarters in Washington, D.C., with seating on a first-come, first-served basis. The seminar also will be web cast via the SEC Web site. The SEC staff is seeking suggested questions and topics to be discussed at the seminar. Interested parties should email their questions to ask-OID@sec.gov and include in the subject line "Public Education Seminar." For additional information about the seminar, call 202.551.4144.

Public Sector

Guidance for Mergers and Acquisitions by Not-for-Profit Entities

The Financial Accounting Standards Board (FASB) has issued FASB Statement No. 164, *Not-for-Profit Entities: Mergers and Acquisitions*. This Statement establishes principles and requirements for how a not-for-profit entity:

- Determines whether a combination is a merger or an acquisition;
- Applies the carryover method in accounting for a merger;
- Applies the acquisition method in accounting for an acquisition, including determining which of the combining entities is the acquirer; and
- Determines what information to disclose to enable users of financial statements to evaluate the nature and financial effects of a merger or an acquisition.

Statement No. 164 also amends Statement No. 142, *Goodwill and Other Intangible Assets*, to make it fully applicable to not-for-profit entities.

Statement No. 164 is effective for mergers occurring on or after December 15, 2009, and acquisitions for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2009.

Statement No. 164 is available in full at http://www.fasb.org/pdf/fas164.pdf.

International

Share-based Payments: IFRS vs. U.S. GAAP

This article is the twentieth in a series of articles that takes our readers on a journey through International Financial Reporting Standards (IFRS) with a special focus on the standards' quintessential feature: they are principles-based. In this article, we provide an overview of some of the most significant differences between IFRS and U.S. generally accepted accounting principles (GAAP) with regard to share-based payments. Actual differences in the accounting treatment between the two frameworks depend on specific circumstances.

IFRS pronouncements relating to share-based payment transactions include IFRS 2, *Share-based Payment*, IFRIC 8, *Scope of IFRS 2*, and IFRIC 11, *IFRS 2 - Group and Treasury Share Transactions*. U.S. GAAP for such transactions can be found in FASB Statement No. 123(R), Share-Based Payment, together with various interpretations. Under both frameworks, share-based payments generally occur when equity instruments are used to "pay for" goods or services, and such transactions are considered to be real economic transactions that must be reflected in the financial statements. However, when the two frameworks are applied in practice, nuances emerge and can result in significant differences in how the awards are recognized.

One of the most common differences between IFRS 2 and Statement No. 123(R) is in the treatment of a graded vesting award (i.e., an award with multiple vesting dates and where different parts may have different expected terms). Under Statement No. 123(R), an entity must make a policy decision about whether to recognize compensation cost on a straight-line basis over the requisite service period for (a) each separately vesting portion of the award as if the award was, in-substance, multiple awards, or (b) the entire award as whole. Under IFRS, each vesting portion is treated separately using the "multiple awards" approach.

IFRS 2 states that if the fair value of the equity instruments cannot be estimated reliably, the entity is allowed to measure the equity instruments at their intrinsic value. However, it explains that in virtually all cases, the estimated fair value of employee share options at grant date can be measured with sufficient reliability. Statement No. 123(R) allows non-public entities to make a policy decision of whether to measure all of its liabilities incurred under share-based payment arrangements at fair value or to measure all such liabilities at intrinsic value.

External providers of goods or services can be paid with share-based payment awards, and these transactions are under the scope of both IFRS 2 and Statement No. 123(R). However, under IFRS, for equity-settled share-based payments there is a rebuttable presumption that the fair value of the goods or services received can be estimated reliably. The measurement date is when goods are obtained or services are received. Under U.S. GAAP, those transactions are measured at the fair value of the consideration received, or the fair value of the equity instruments issued, whichever is more reliably measurable. The measurement date is the earlier of either the date at which a commitment for performance by the counterparty to earn the equity instruments is reached or the date at which the counterparty's performance is complete.

Deferred taxation is another area where IFRS 2 and Statement No. 123(R) take a different approach. Under IFRS, the approach to deferred taxation is based on the estimated future tax deduction, which is revised at each reporting date. Under U.S. GAAP, the deductible temporary difference must be based on the compensation cost recognized for financial reporting purposes.

This summary analysis of differences is not exhaustive. Other differences exist between the two frameworks, but a complete analysis can be performed only based on specific facts and circumstances.

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