A BIWEEKLY RESOURCE FOR RECENT FINANCIAL REPORTING DEVELOPMENTS

ACCOUNTING

Income tax provision considerations for financial statement preparers

Financial statement preparers should consider the impact of new tax laws and regulations on income tax calculations and disclosures in their 2022 financial statements. While the list below is not intended to be comprehensive, it provides a high-level summary of new laws that affect the 2022 tax year and may impact 2022 financial statements. For further information please consult RSM's tax alert and RSM ASC 740 tax specialists and/or income tax SMEs. RSM's full year-end tax alert can be accessed here.

Required capitalization of research and experimental expenditures

The Tax Cuts and Jobs Act (TCJA) of 2017 requires companies to capitalize research and experimental (R&E) expenditures beginning with tax years beginning after December 31, 2021 (i.e., calendar year 2022 tax returns). Domestic and foreign capitalized R&E expenditures are amortized over five and 15 years, respectively. Prior to the TCJA, these expenditures were expensed and deductible in the year incurred.

In accordance with the provisions of the Financial Accounting Standards Board's Accounting Standards Codification (ASC) Topic 740, Income Taxes, the new capitalization and amortization requirements will generally result in a temporary difference, with offsetting increases/decreases in current and deferred taxes. There may also be other indirect effects on a company's income tax provision. For example, companies that have historically incurred taxable losses will need to carefully consider the impact of this capitalization on current taxable income, utilization of net operating losses and realization of deferred assets. Foreign entities should also consider the impact of the global intangible low-tax income (GILTI) inclusion, and its interaction with the R&E capitalization, on their 2022 income tax returns and financial statements.

Limitations on interest expense under section 163(j)

Under section 163(j), a taxpayer's interest expense deductions are generally limited to 30% of adjusted taxable income (ATI). The determination of ATI no longer includes an add-back for depreciation, amortization or depletion in tax reporting years beginning on or after January 1, 2022. Companies need to assess the impact of this change on both their 2022 income tax returns and financial statements.

Inflation Reduction Act (IRA)

The Inflation Reduction Act (IRA) of 2022 includes a corporate alternative minimum tax (CAMT) effective for tax years beginning on or after January 1, 2023 that applies to each of the following:

- Corporations (excluding certain entities, as defined) with a three-year average adjusted financial statement net income (as defined) exceeding $1 billion, or
- Domestic (U.S) corporations (excluding certain entities, as defined) that are part of a controlled group with a foreign parent, where the aggregate three-year average adjusted financial statement income (as defined) for such domestic corporations exceeds $100 million, provided that the three-year average total adjusted financial statement income of the controlled group exceeds $1 billion.

The IRA also includes a new tax on public companies that repurchase their shares after December 31, 2022. This tax is not an income tax accounted for under ASC 740. Instead, the tax should be accounted for as a cost of the stock repurchase (i.e., within equity).

While the provisions of the IRA are effective for periods beginning on or after January 1, 2023, reporting entities should consider whether disclosures are required within their 2022 year-end financial statements.

SEC

SEC issues updated Financial Reporting Manual

The SEC's Division of Corporation Finance has published a revised Financial Reporting Manual (the "Manual"). In this version, revisions have been made:

- For communications with the CF-OCA (the contact number has been updated).
- To include the amendments to Rules 3-10 and 3-16 of Regulation S-X in SEC Release No. 33-10763, Financial Disclosures about Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities (issued March 2, 2020).
- To add guidance related to the implementation of Accounting Standards Update No. 2018-12, Financial Services – Insurance (Topic 944): Targeted Improvements to the Accounting for Long-Duration Contracts.
- To remove information that is no longer applicable due to the passage of time, such as the adoption of ASC 606.

Within the Manual the changes are marked with the updated date (the changes are as of December 31, 2022). The Manual has not yet been updated for *Amendments to Financial Disclosures about Acquired and Disposed Businesses*, *Qualifications of Accountants*, *and Management's Discussion and Analysis, Selected Financial Data* and *Supplementary Financial Information*.

It is important to remember that the Manual is intended to serve as internal guidance for use by the SEC. The Manual does not necessarily contain a discussion of all material considerations necessary to reach an accounting or disclosure conclusion—conclusions about a particular transaction are very fact dependent and require careful analysis of the transaction and of the relevant authoritative accounting literature and SEC requirements. The information in the Manual is non-authoritative.

New SEC clarification on Forms 10-K, 20-F and 40-F related to compensation clawback rules

The SEC's Division of Corporation Finance has issued three new Compliance and Disclosure Interpretations (C&DI) to clarify the use of the check boxes on the cover pages of Form 10-K (see question 104.19), Form 20-F (see question 112.04) and Form 40-F (see question 110.09) relating to whether the forms include the correction of an error in previously issued financial statements and a related recovery analysis (that are effective January 27, 2023).

The listing standards are not required to be effective until November 28, 2023 and issuers subject to such listing standards will not be required to adopt a recovery policy for 60 days following the date on which the applicable listing standards become effective. In the C&DI the SEC has explained that it does not expect compliance with the disclosure requirements until issuers are required to have a recovery policy under the applicable exchange listing standard. While the check boxes and other disclosure requirements will be in the rules and forms in 2023, they do not expect issuers to provide such disclosure until they are required to have a recovery policy under the applicable listing standard.

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