The New Tax Regime – Disclosure Considerations for Public Companies

December 21, 2017

The Tax Cuts and Jobs Act has now passed both houses of Congress and is expected to soon be signed into law. Key features of the tax bill are discussed in our memorandum **released yesterday**. Below we address in further detail disclosure considerations for public companies that could arise once the Tax Cuts and Jobs Act goes into effect.

In particular, the reduced corporate income tax rate may result in a reduction in the value of deferred tax assets. Companies will need to determine, with their accounting advisors, whether such a reduction is a re-measurement of an asset or an impairment of an asset. If it is an impairment, Form 8-K requires disclosure when a material charge for asset impairment is required under generally accepted accounting principles and an estimate of the charge (unless the company is not able in good faith to estimate the charge, in which case disclosure of the estimate can be delayed until known). No Form 8-K filing is required if the company reaches the conclusion in connection with the preparation of financial statements required to be included in the next Form 10-K or Form 10-Q, and the SEC staff has made clear that a conclusion that "coincides" with the preparation of the financial statements is made "in connection with" their preparation. While some companies, in particular those with fiscal quarters or years ending on or about December 31, may reach a conclusion as to any impairment charges in connection with the preparation of the next set of financial statements and thus elect to include the disclosure in their Form 10-K or Form 10-Q, others may reach the conclusion at an earlier stage and therefore need to file a Form 8-K within four business days of the conclusion.

Even if a company concludes that no Form 8-K is required, companies should consider the new law's impact on their results for 2017 and anticipated results for 2018. While there is generally no duty to update investors immediately on such matters, investors and analysts are likely to ask companies about the impact of the tax law on their results. If a company has not provided a public update, it may not be able to answer questions selectively without running afoul of Regulation FD. Accordingly, companies should consider whether to provide public disclosure of the impact of the tax law on their 2017 and future results to address likely investor and analyst questions.

Whether or not companies provide public disclosure off-cycle, they will need to address the tax law in their periodic reports to the extent that the law materially affects future results. In particular, companies should update their discussion of known trends and uncertainties in MD&A for the impacts of the legislation as well as any changes in their business or strategy that may result from these impacts. Companies should also carefully consider the impact that future tax rates and any impairments could have on contractual provisions, such as debt maintenance covenants and executive compensation targets, and update disclosure accordingly.

For a more complete overview of the Tax Cuts and Jobs Act, please see our memorandum **released yesterday**, which includes links to Davis Polk's series of memoranda on recent tax reform efforts.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

John Banes	**+44 20 7418 1317**	**john.banes@davispolk.com**
Bruce K. Dallas	**+1 650 752 2022**	**bruce.dallas@davispolk.com**
Alan F. Denenberg	**+1 650 752 2004**	**alan.denenberg@davispolk.com**
Joseph A. Hall	**+1 212 450 4565**	**joseph.hall@davispolk.com**
Sophia Hudson	**+1 212 450 4762**	**sophia.hudson@davispolk.com**
Michael Kaplan	**+1 212 450 4111**	**michael.kaplan@davispolk.com**
James C. Lin	**+852 2533 3368**	**james.lin@davispolk.com**
Byron B. Rooney	**+1 212 450 4658**	**byron.rooney@davispolk.com**
Richard D. Truesdell, Jr.	**+1 212 450 4674**	**richard.truesdell@davispolk.com**