Accounting for Income Taxes

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Altera

Altera Overview

U.S. Tax Court issued its opinion on July 27, 2015

Held: 2003 cost-sharing regulations (“2003 Regulations”) requiring stock based compensation (“SBC”) to be included as an intangible development cost are invalid

Rationale: The 2003 Regulations, and the process under which they were promulgated, failed to take into account that uncontrolled parties acting at arm’s length would not share SBC. Thus, the regulation was held to be inconsistent with the arm’s length standard

Unanimous decision of the Tax Court

Note that the IRS had previously lost a similar Tax Court case in Xilinx in 2005 (affirmed by the 9th Cir in 2010) with respect to the 1995 cost-sharing regulations

Decision Timeline

- Opinion issued on July 27, 2015

- Once all mathematical computations have been settled and provided to the Tax Court, the decision will be entered

- Decision is not considered final until 90 days after it is entered
  - A party dissatisfied with the judgment has the option to challenge through either a post-trial motion or a notice of appeal. Post-trial motion is a request for the Tax Court to reconsider some aspect of its opinion
  - Note the opinion was unanimous so query whether this period (as it relates to the option to pursue a post-trial motion) is merely administrative here

- If the IRS appeals, the decision does not become final until an appellate court (in this case the Ninth Circuit Court of Appeals) renders its final decision

Altera Tax Return Implications

Altera Tax Return Implications - continued

Is cost sharing of SBC still permitted?

- Consider that the Regulation has not yet been withdrawn
- Form 8275R?

Might there be reasons why you would want to continue sharing SBC?

- Cash implications
- Lack of cash tax benefit

Altera Income Tax Provision Implications

Must consider both the <u>timing</u> and <u>amount</u> of benefit recognition

Altera Income Tax Provision Implications – Benefit Recognition

When is there a change in law?

- Opinion issued?
- Decision entered?
- Decision final?
- Final decision on appeal (or IRS decision not to appeal)

Is the legal language in a CSA relevant?

- What do your existing legal agreements require you to do?
- Will you amend your legal agreements?
- Are you likely to eventually claim a benefit for the current year? If so, what is your triggering event?

Altera Income Tax Provision Implications – Benefit Measurement

Distinguish the current year and prior years

Current year benefit may be obtained without claw-

Altera Income Tax Provision Implications – Benefit Measurement

What is the refund mechanism for prior years?

Claw-back of all SBC from past years in the current year?

- Is this permissible? MLTN? í í

FASB Developments

- APIC pool tracking
- Realization requirement
- Ordering rules – With / Without & Tax Retu Td (P)7.04 4T0 Tw Td (P)

Share-based payment accounting improvements

June 8, 2015

The Exposure Draft was issued - *Improvements to Employee Share-Based Payment Accounting (2015-270)*

- Question 2a – Should excess tax benefits and deficiencies be recognized in the income statement?
- Question 2b - Should an entity delay recognition of an excess tax benefit until the benefit is realized through a reduction of tax payable?
- Question 3 – Should the effect on tax cash flows related to excess tax benefits be classified as an operating activity on the statement of cash flows?

August 14, 2015 - Comment period ended

Share-based payment accounting improvements

Summary of the comments

- Respondents included industry groups, public accounting firms, companies, educators, and professional organizations [69 comment letters were received].

- Diverse views were expressed about the proposed changes to eliminate the APIC Pool and record excess tax benefits and tax deficiencies in the income statement (“P&L”).

  Common views expressed by proponents:

Other Proposals

Deferred Tax Classification

Intra-Entity Asset Transfers (aka ARB 51)

Simplification initiative #2 – Intra-entity asset transfers

- Proposed to eliminate exception on recognition of income tax expense for taxes paid by transferor for intra-entity transactions and of the related deferred tax to transferee
- Modified retrospective with a cumulative catch-up adjustment to opening retained earnings in the period of adoption

Comment period ended May 29, 2015 for simplification initiative #2

- 31 respondent comment letters were received
- Preparers generally aligned against the proposal

Current status

- On October 5, 2015, the Board instructed its staff to perform further outreach and return with a recommendation to either (a) move forward with the adjustments to the codification as drafted in the existing exposure draft or (b) move forward with the exposure draft, but leave the exception in place for inventory. The Board continues to have the option to remove the issue from the agenda.
- Now de-linked from Balance Sheet Classification Initiative #1

FASB’s review of income tax disclosures

Undistributed foreign earnings disclosures

At its February 11, 2015 meeting the FASB tentatively decided that entities should:

- Disclose income before income taxes of individual countries that are significant in relation to total income before income taxes
- Disclose the domestic tax expense recognized in the period related to foreign earnings
- Disclose unremitted foreign earnings that, during the current period, are no longer asserted to be indefinitely reinvested and an explanation of the circumstances that caused the change
    - These disclosures should be provided in the aggregate and for each country for which the amount no longer asserted to be indefinitely reinvested is significant in relation to the aggregate amount.
- Separately disclose the accumulated amount of indefinitely reinvested foreign earnings for any country that is at least 10 percent of the aggregate amount.

FASB’s review of income tax disclosures

Unrecognized tax benefit disclosures – August 26, 2015 meeting

The FASB tentatively decided to:

- Add a disclosure requirement within the tabular reconciliation to disaggregate settlements between cash and noncash (e.g., settlement by using existing net operating loss or tax credit carryforwards)
- Add a disclosure requirement to provide a breakdown of the amount of total unrecognized tax benefits shown in the tabular reconciliation by the respective balance sheet lines on which such unrecognized tax benefits are recorded
- Eliminate the requirement in ASC 740-10-50-15(d) for entities to provide details of positions for which it is reasonably possible that the total unrecognized tax benefits will significantly increase or decrease in the next 12 months.

FASB's Review of Income Tax Disclosures

Income Tax Disclosures — October 21, 2015 Meeting

Rate reconciliation — The Board tentatively decided that:

- Nonpublic entities would be required to present a rate reconciliation in the notes to the financial statements, as ASC 740-10-50-12 currently requires for public entities.
- A disaggregation of a component of the rate reconciliation would be required if the individual component is greater than or equal to 5 percent of the tax at the statutory rate in a manner consistent with SEC Regulation S-X.
- An entity would be required to disclose a qualitative description of the items that have caused a significant year-over-year change to the effective tax rate.

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FASB’s Review of Income Tax Disclosures

Income Tax Disclosures — October 21, 2015 Meeting

Other disclosures – The Board tentatively decided to require disclosures about:

- Gross amounts and expiration dates of carryforwards recorded on a tax return
- Tax-effected amounts and expiration dates of carryforwards that give rise to a deferred tax asset
- Total amount of unrecognized tax benefits that offset deferred tax assets related to carryforwards

The additional disclosure requirements would apply to both public and nonpublic entities.

Next Steps

The Board instructed its staff to:

- Conduct further outreach with stakeholders including discussions with the Private Company Council.
- Begin drafting a proposed ASU for public comment for all the tentative decisions reached to date regarding income tax disclosure requirements including disclosure requirements related to indefinitely reinvested foreign earnings and unrecognized tax benefits.

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Appendix

Excess tax benefits (NQSO)

Example

Facts

- Company A grants a nonqualified stock option
  - $30 fair value, fully vested at grant date in 20X1
  - Strike price equals market price on date of grant = $40
  - 40% tax rate
  - $80 share price upon exercise in 20X2

Question

- What are the income tax journal entries for 20X1 and 20X2?

Excess tax benefits (NQSO)

Example

Solution

- 20X1 — fair value = $30, fully vested at grant, 40% tax rate

Journal entries	Current Guidance		Proposed Guidance	
DR Deferred tax asset	$ 12		**$ 12**	
CR Deferred tax expense		$ 12		**$ 12**

- 20X2 — upon exercise, actual deduction = $40 ($80 market less $40 strike, excess deduction = $10)

Journal entries	Current Guidance		Proposed Guidance	
DR Deferred tax expense	$ 12		**$ 12**	
CR Deferred tax asset		$ 12		**$ 12**
DR Current taxes payable	$ 16		**$ 16**	
CR APIC		$ 4		**N/A**
CR Current tax expense		$ 12		**$ 16**

Excess tax benefits (NQSO)

Example (Con’t)

Facts

- Assume the same facts as the previous example except the intrinsic value on the date of exercise was $240.
- Also assume the pre-tax book income was $50 in 20X2

Question

- Does the NOL of $150 require a valuation allowance?

Share-based payments

Current guidance

OPERATING ACTIVITIES:
Excess tax benefits from stock-based compensation (78) (429) (62)

FINANCING ACTIVITIES:
Excess tax benefits from stock-based compensation 78 429 62

Company ABC
Consolidated Statement of Cash Flows
(in millions)

	Year Ended December 31,		
	2013	2012	2011
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	8,084	5,269	3,777
OPERATING ACTIVITIES:			
Net income (loss)	274	(39)	631
Adjustments to reconcile net income (loss) to net cash from operating activities:			
Depreciation of property and equipment	3,253	2,159	1,083
Stock-based compensation	1,134	833	557
Other operating expense (income), net	114	154	154
Losses (gains) on sales of marketable securities, net	1	(9)	(4)
Other expense (income), net	166	253	(56)
Deferred income taxes	(156)	(265)	136
Excess tax benefits from stock-based compensation	(78)	(429)	(62)
Changes in operating assets and liabilities:			
Inventories	(1,410)	(999)	(1,777)
Accounts receivable, net and other	(846)	(861)	(866)
Accounts payable	1,888	2,070	2,997
Accrued expenses and other	736	1,038	1,067
Additions to unearned revenue	2,691	1,796	1,064
Amortization of previously unearned revenue	(2,292)	(1,521)	(1,021)
Net cash provided by (used in) operating activities	5,475	4,180	3,903
INVESTING ACTIVITIES:			
Purchases of property and equipment, including internal-use software and website development	(3,444)	(3,785)	(1,811)
Acquisitions, net of cash acquired, and other	(312)	(745)	(705)
Sales and maturities of marketable securities and other investments	2,306	4,237	6,843
Purchases of marketable securities and other investments	(2,826)	(3,302)	(6,257)
Net cash provided by (used in) investing activities	(4,276)	(3,595)	(1,930)
FINANCING ACTIVITIES:			
Excess tax benefits from stock-based compensation	78	429	62
Common stock repurchased		(960)	(277)
Proceeds from long-term debt and other	394	3,378	177
Repayments of long-term debt, capital lease, and finance lease obligations	(1,011)	(588)	(444)
Net cash provided by (used in) financing activities	(539)	2,259	(482)
Foreign-currency effect on cash and cash equivalents	(86)	(29)	1
Net increase (decrease) in cash and cash equivalents	574	2,815	1,492
CASH AND CASH EQUIVALENTS, END OF PERIOD	8,658	8,084	5,269
SUPPLEMENTAL CASH FLOW INFORMATION:			
Cash paid for interest on long-term debt	97	31	14
Cash paid for income taxes (net of refunds)	169	112	33
Property and equipment acquired under capital leases	1,867	802	753
Property and equipment acquired under	877	29	259

UK Diverted Profits Tax

DPT Effective Date, Tax Rate & Penalties

- Effective date 4/1/15 (enacted 3/26/15)
- 25% tax rate for all industries except oil and gas which is subject to 55%
- DPT is in addition to and not credited against regular 20% UK corporate tax rate
- Late payment penalty 5%, 10% or 15% (depending on months overdue)
- Late notification penalty
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DPT Scope

- Applies to structures that avoid UK Permanent Establishment
  - “Tax Mismatch Condition” – “effective tax mismatch outcome” (ETMO)

DPT Example Facts

A foreign company (“FC”) sells products to customers located throughout the world. The group operates in the UK through a subsidiary which employs a team of UK based individuals assisting with sales and marketing activity throughout Europe. The activity is remunerated on a cost plus basis. A

DPT Example Analysis

- Based on the details of the arrangement between the UK ops and the FC there is good reason to assume that they are designed to ensure that FC is not trading in the UK through a PE.

- ETMO and insufficient economic substance tests.

a) ETMO:

i) The relevant transaction is the royalty payment from FC to IPCo

ii) The expenses of FC are increased as a result of the provision

iii) FC achieves a tax saving at 35% whereas IPco is not subject to tax on the income

iv) The 80% requirement is not met.

b) Insufficient Economic Substance:

IPco has only one employee and management confirmed that the value added by this individual is not significant in relation to either the tax benefits or the income received by IPco.

DPT Example Conclusion

- Based on the above, it would appear that the ETMO and the insufficient economic substance tests are met.
- Consequently, DPT may apply and FC would be subject to tax in the UK on an appropriate proportion of the profits from all sales arising from the UK-related activity.

DPT Exemptions

- SME Exemption
  - Less than 250 employees
  - Revenue <=50 million or total assets <=43 million EUR consolida(t)-set -0D(e

DPT Compliance Obligations

- If applicable Company (Co.) required notification to UK Tax Authority (HMRC) due within 3 months of period end
- HRMC may issue prelim. assessment 2 years from period end
- Co. reply due within 30 days or 4 years from HRMC prelim. assessment date depending if notification was made by Co. to HRMC
- After Co. reply to prelim assessment HRMC must issue charging notice or confirm no notice within 30 days of representation period
- DPT due within 30 days of charging notice
- HMRC review & amend up to 12 months from issue of notice
- Once review period over taxpayers have right to file appeal within 30 days before charging notice becomes final

DPT - Avoided PE

- Tax Avoidance Condition: Notional PE profits of foreign company – profits which would have been assessed to UK CT if actual PE had been created using the authorized OECD approach to branch profits allocation

- Tax Mismatch Condition: DPT depends upon whether the parties would have undertaken the same type of transactions(s) as they actually did, if tax had not been a relevant consideration
  - If yes calculate notional PE profits of foreign company
  - In all other cases calculate by reference to alternative transactions that would have been undertaken in absence of tax considerations

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DPT Accounting Implications

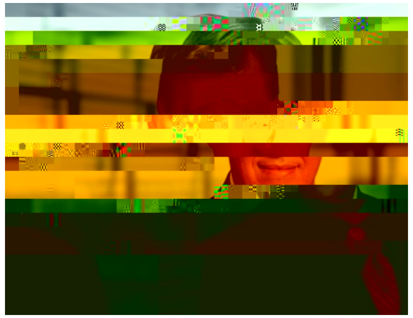
- Current Taxes - Estimated effective rate impact begins in quarter that includes the effective date of 4/1/15
- Deferred Taxes – if applicable, recognize discrete event in quarter that includes the date of legislation enactment (3/26/15)
- Uncertain Tax Positions
- Interest and Penalties

Tom Dong

Tom has more than 14 years experience in public accounting and currently serving several large multi-national corporations in the Silicon Valley practice. Tom's service focus includes complex tax provision preparation and review, post-acquisition restructuring and the related impacts on effective tax rates, valuation allowance analysis, cash tax optimization, accounting methods and periods planning, and general corporate transaction planning.

Prior to relocating to the San Jose office at the end of 2010, Tom completed a two year rotation in the Washington National Tax group that specializes in accounting for income taxes. While in the national office, Tom worked closely with the firm's accounting / tax technical leadership and consulted on ASC 740 technical issues. In addition, Tom has

Louis Gomes



Louis Gomes is a Tax Partner with BDO located in San Jose, California. He has over 30 years of experience working in public accounting and industry providing tax services, including ASC 740 tax accounting, stock compensation consulting, audit assistance, Sarbanes-Oxley tax documentation, and a wide variety of federal, international, and multi-state strategic tax consulting and compliance.

Prior to joining BDO, Mr. Gomes managed a Northern California tax practice for a national professional services firm, worked in the "Big 4", and was a Tax Director for a NYSE company. His clients include software, biotechnology, semiconductor, solar and various other multinational high tech companies, as well as non-high tech companies, including retail, consumer products, manufacturing, construction and distribution.

Mr. Gomes is a frequent instructor and has taught various practical tax seminars on accounting for income taxes, stock option accounting, the SOX tax cycle and various other tax courses. He is also a Certified Public Accountant.

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