

DRAFT – FOR DISCUSSION PURPOSES ONLY

FASB Staff Q&A on Whether to Discount the Tax Liability on the Deemed Repatriation

Background

The Tax Cuts and Jobs Act (Act) imposes a tax on undistributed and previously untaxed post-1986 foreign earnings and profits. The Act permits a company to pay the one-time transition tax over eight years on an interest free basis. The earnings are reported on the 2017¹ tax return and the tax is generally due in annual installments of 8 percent per year for the first 5 years, 15 percent in year 6, 20 percent in year 7, and 25 percent in year 8, if properly elected. The payments are due without regard to whether a company has future taxable income or losses.

Question

Does the FASB staff believe that the tax liability on the deemed repatriation of earnings should be discounted?

Response

The FASB staff believes that the tax liability on the deemed repatriation of earnings should not be discounted. The FASB staff notes that paragraph 740-10-30-8 prohibits the discounting of deferred tax amounts. Due to the unique nature of the tax on the deemed repatriation of foreign earnings, the staff believes that the guidance in paragraph 740-10-30-8 also should be applied to the payable recognized for this tax.

Furthermore, the FASB staff does not believe that Subtopic 835-30 on the imputation of interest applies to the unique circumstances related to this tax liability. The guidance in Subtopic 835-30 addresses the accounting for business transactions that often involve the exchange of cash or property, goods, or services for a note or similar instrument. Subtopic 835-30 is premised on the fact that when a note is exchanged for property, goods, or services in a bargained transaction entered into at arm's length, the interest rate should represent fair and adequate compensation to the supplier. The FASB staff believes that the transition tax liability is not the result of a bargained transaction and that the scope exception in paragraph 835-30-15-3(e) for transactions where interest rates are affected by tax attributes or legal restrictions prescribed by a governmental agency (such as, income tax settlements) would apply.

The FASB staff also notes that the tax liability is not a fixed obligation because it is subject to estimation and future resolution of uncertain tax positions (for example, amount of earnings and profits from foreign subsidiaries, amount of earnings held in cash and cash equivalents, or reduction of the tax for foreign tax credits). Any recognized uncertain tax position related to the deemed repatriation of foreign earnings would not be discounted, and the staff does not believe it is appropriate to have a discounted tax liability when the uncertain tax position is undiscounted.

¹ In some cases, amounts are reported on the 2018 tax return (for example, when a calendar year-end company has a controlled foreign corporation with a November 30 year-end).