

FIN 48 – A New and Complex Challenge for Non-public Companies

by Randy Robason

Are you a CEO or CFO of a non-public entity that issues financial statements for use by anyone outside your organization? If so, you may have a surprise on the way!

By now the public company C-suite executive group is painfully aware of the implications that FIN 48, Accounting for Uncertainty in Income Taxes-An Interpretation of FASB Statement 109, has had on their organization. In fact, improperly accounting for income taxes has consistently been a leading cause of financial restatements.

According to Segal and Associates, 431 of 601 public companies with revenues of at least \$2 billion adjusted their tax reserves by a total of \$14.9 billion when they adopted FIN 48. These same companies accrued interest in penalties of \$26 billion relating to the adjusted reserves. These adjustments apply to the largest corporations in the United States and generally companies with sophisticated tax departments.

Public company consternation with FIN 48 will continue into the foreseeable future as these companies contend with quarterly and annual filings and the implications of the alignment of international and domestic accounting rules. Many C-suite executives in the private sector have yet to realize that the same recognition and measurement requirements apply to all companies reporting under GAAP, their company included. Fortunately for these executives, the application of FIN 48 was deferred to years beginning after Dec. 15, 2008; therefore, it must be addressed for the first time for the 2009 calendar year for most entities.

Note that I said “entities.” Yes, the rules apply to taxpaying as well as non-taxpaying organizations. This includes tax-exempt entities, such as charities and hospitals, as well as partnerships, subchapter S corporations and other flow-through entities. The amount of work that may be required varies depending upon the type of entity, the entity’s history and records, and the complexity of their operations; however, each entity will have to address FIN 48’s application prior to the issuance of its GAAP-basis financial statements.

By now you may be thinking, “Well, certainly this will not mean much for me.” That’s probably what one nationally recognized tax- exempt organization thought before they received their first \$1 million+ invoice from an accounting firm for assistance with its first issuance of FIN 48-compliant financial statements.

Compounding the numerous implications for this new interpretation is a general shortage of tax practitioners skilled in the area. Although all service providers have made a concerted effort to expand their resources, the sheer volume of non-public entities in the United States, as compared to public companies, is certain to create a significant strain between now and the first issuance of calendar-year 2009 financial statements in the first six months of 2010.

This area is one of the most technically complex in the accounting world and requires individuals who have mastered all aspects of the tax code, the tax rules of other jurisdictions and even other GAAP accounting standards. The more time an entity allows itself to address FIN 48 adoption, the more efficient and meaningful the results will be. Waiting to address FIN 48 creates a significant risk that you will have to defer the issuance of your 2010 financial statements, in addition to putting significant strain on your company and its people.

In the last 60 days we have seen a marked increase in the number of non-public companies that have begun to focus on this area. Many companies anticipated correctly that there would be no further

deferrals by the FASB of FIN 48 for non-public enterprises. Keep in mind that you will be competing for resources with both public companies and the significantly larger private company base.

Further, there are likely to be nasty surprises waiting if you are required to book a significant adjustment to your deferred tax asset. You may also have to contend with numerous related areas, including but not limited to, breached debt covenants that result from a decrease in equity as a result of an unanticipated expense. Of course, you could also be a member of the more fortunate group that realizes unforeseen benefits as the result of your review.

Either way, there is no better time to start than now! Procrastinators will just end up delaying the issuance of their financial statements, working longer hours in peak periods or spending more time with their accountant over their winter holidays.

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