Stay informed
2017 SEC comment letter trends
Income taxes

Current developments in SEC reporting
December 2017
To our clients and friends:

The SEC staff continues to emphasize the importance of having disclosures that provide reliable, useful, and transparent information to investors—particularly in areas of significant judgment. In today’s environment that is often challenging for companies.

How much is enough? How does an organization provide a reliable, useful, and transparent view to its tax position when the tax landscape continues to change?

We are excited to issue our latest edition of *Stay informed: SEC comment letters trends* specifically focused on income taxes. We have prepared this publication to assist you in understanding the SEC staff’s expectations for income tax-related disclosures by providing examples of the comments issued to financial statement preparers in a variety of sectors over the last year.

We hope you find this analysis useful. We look forward to working with you as you navigate the upcoming financial reporting season.

If you have any questions, or would like to discuss this document in more detail, please do not hesitate to reach out to your local PwC team or a member of PwC’s Tax Accounting Services team.

Best regards,

![Signature]

Rick Levin
US Tax Accounting Services Leader
Overview

The SEC’s Division of Corporation Finance (CorpFin) has a long history of reviewing filings made by public companies under the Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act). An important goal of these reviews is to monitor and improve compliance with applicable disclosure and accounting requirements, consistent with the SEC’s mission of investor protection. By law, the SEC must review a public company’s filings at least once every three years. In practice, these reviews occur more frequently, especially for larger public companies. The SEC staff does not publicly disclose the criteria it uses when selecting which companies and filings to review. However, the following factors outlined in the Sarbanes-Oxley Act are intended to guide the selection:

- Material restatements of financial results
- Issuers that experience significant volatility in stock price compared to others
- Companies with the largest market capitalizations
- Emerging companies with disparities in price to earnings ratios
- Businesses whose operations significantly affect any material sector of the economy
- Any other factors that the SEC may consider relevant

Once a filing has been selected, the SEC staff can conduct a full cover-to-cover review, limit its scope to financial statements and related disclosures (e.g., MD&A), or focus on one or more specific items. Although reviewers concentrate on critical disclosures that appear to conflict with SEC rules or applicable accounting standards, they may also comment on disclosures they believe are deficient or lack clarity. The deficiency is judged from the perspective of potential investors and the questions they would pose.

This publication provides representative examples of financial statement comments related to income taxes that have been made public by the SEC from October 1, 2016 through September 30, 2017.

CorpFin makes comment letters public no earlier than 20 business days after it has completed its review of a periodic or current report or declared a registration statement effective. As a result, there can be several months between the date the initial comment letter is issued and the date it is made publically available.

The population of comment letters was analyzed by sector based on the SIC codes indicated on the SEC EDGAR website for each respective registrant.

Observations:

- The majority of comment letters were issued based on Forms 10-K and 10-Q, as well as registration statements, including Forms S-1 and S-1/A related to initial public offerings, and Form 20-F, filed by foreign private issuers.
- Most of the comment letters relate to US GAAP financial statements; however, 9% of comments relate to IFRS filings.
In relation to income taxes, the SEC staff focuses on areas of judgment. They seek additional insight to understand what management considered in coming to their conclusions.

The chart by category displayed below highlights the SEC staff’s continued focus on the effective tax rate reconciliation disclosure. In 2017, 22% of the total income tax comment letters released relate to the rate reconciliation.

Nearly 60% of the comment letters reviewed for 2017 relate to four categories: presentation of the effective tax rate, assessments of the realizability of deferred tax assets, indefinite reinvestment of foreign earnings, and uncertain tax positions. These income tax focus areas are consistent with the SEC comment letter trends we have seen over the last several years.

Manufacturing/construction, information technologies, and consumer products together received 43% of the 2017 comments released, but comments were issued to a broad range of industries.

We believe that income taxes will continue to be an area of significant interest and inquiry during 2018.
Effective tax rate reconciliation

The SEC staff continues to focus on understanding disclosures related to income tax expense and the effective tax rate (ETR) reconciliation in both the income tax footnote and MD&A. ETR reconciliation disclosures represents the largest category of comments by the SEC staff. Comment letters on ETR primarily asked for the following:

- Clarification and additional disclosures related to the impact of foreign earnings on the ETR, including disclosures about material foreign jurisdictions as well as disaggregation of components of “foreign rate differential” in the ETR reconciliation (e.g., differences in statutory tax rates, impact of permanent differences, changes in valuation allowance assessments in foreign jurisdictions, tax holidays)
- Qualitative explanations for year-over-year changes in the ETR
- Management’s consideration of disaggregating the impact of permanent differences and other items for separate disclosure in the ETR reconciliation
- Qualitative and quantitative disclosures in MD&A about significant items impacting the ETR and the expected impact of those items in future periods

Sample comments

Transportation and Leisure - Form 10-K

Based on your income tax reconciliation, we note your effective tax rate is significantly reduced by foreign earnings taxed at other than 35%. Further, you indicate the nature of the reconciling item is net of permanent differences including non-taxable income in foreign jurisdictions, foreign tax credits and rulings, resulting in a net tax benefit. Given its significance, please describe for us in greater detail the nature of underlying items comprising the difference and the factors that drive the change in this line item from year to year. Please identify for us the primary foreign jurisdictions that are included in this reconciling item. As part of your response, please tell us the amount of profit generated by each of those foreign jurisdictions, including each jurisdiction’s effective income tax rate.

Electronics and Machinery - Form 10-K

We refer to the income tax rate reconciliation. In future filings please revise the item “foreign rate differences” to separately disclose its material components, including the effects of differing statutory rates, tax holidays and any other material components. Refer to Rule 4-08(h) of Regulation S-X.

Consumer Products - Form 10-K

We note that there is an effect of foreign income tax that creates a difference between the statutory and effective tax rate. To the extent material, please revise your discussion to separately discuss the reasons for fluctuations in the effective tax rates related to each material country in which you operate and consider quantifying the impact of each country on the overall effective tax rate. If a particular country contributes disproportionately to your income based on significantly lower tax rates, explain the impact such tax structures had on your results. If changes in the geographical mix of income were a significant driver of changes in your effective tax rate, please explain to us and disclose the facts and circumstances leading to the changes in the geographical mix of income and whether you expect these changes to continue. We refer you to Item 303(a)(3)(i) of Regulation S-K and Section III.B of SEC Release No. 33-8350. Please also clarify for us your statement that your fiscal 2015 effective tax rate differs from the federal statutory rate “due to losses in the U.S. and certain foreign jurisdictions.”

Beverages, Apparel and Mining - Form 10-K

We note your disclosures indicate that you experienced a significant increase in pre-tax foreign income in fiscal 2016 while your domestic income before tax has declined over the past three years. Please explain the cause of the increase in your foreign income and the domestic loss in fiscal 2016 when 74% of your revenue is domestic. Please also explain how the effective tax rate was impacted by the mix of foreign and domestic income/(loss), including the impact of any intercompany agreements such as the effect of your Advance Pricing Arrangement on your foreign tax rate differential adjustment. Please expand your disclosure in management's discussion and analysis to describe any expectations about
trends that may impact your current or future tax expense. Please refer to Item 303(a)(3) of Regulation S-K and SEC Release No. 33-8350.

Manufacturing and Construction - Form 10-K

We note your discussion and analysis of the change in income tax (benefit) expense for fiscal year ended November 30, 2015 when compared to November 30, 2014. Please expand your disclosures to quantify all the material factors disclosed and provide a more meaningful analysis discussing the reasons behind each and whether the material factors impacting the effective tax rate are expected to have a continuing impact. As an example, we note that your disclosures indicate that the effective tax in 2015 rate included tax benefits for the domestic production activities deduction and energy tax credits which reduced the effective tax rate by 1.92%, however there is no robust discussion explaining the nature of those tax credits and whether they may be expected to have a continuing impact on the effective tax rate in the future. Please refer to Item 303(a)(3) of Regulation S-K and Sections 501.12.b.3 and 501.12.b.4. of the Financial Reporting Codification for guidance.

Transportation and Leisure - Form 10-K

Please tell us if any individual amount within "permanent differences" in the reconciliation between the expected and reported tax expense exceeds five percent of the amount computed by multiplying the income before tax by the applicable statutory income tax rate. If so, please disclose the amount and nature for each item. Refer to Rule 4-08(h)(2) of Regulation S-X for guidance.

Information Technologies and Services - Form 10-K

Please tell us what consideration you gave to providing a further quantitative breakdown of the "Other, net" category in the income tax rate reconciliation schedule pursuant to Rule 4-08(h)(2) of Regulation S-X and ASC 740-10-50-12.

Beverages, Apparel and Mining - Form 10-K

Your discussion in MD&A indicates that your effective tax rate was 6.7% in 2015 as compared to an effective tax rate of 26.5% for 2014. Your discussion also indicates that the effective tax rate is impacted by recurring items such as foreign exchange rates on deferred tax balances, the impacts of mineral interest impairments, the full valuation allowance on the deferred tax assets in the United States and certain foreign jurisdictions, mining tax expense and uncertain tax position accruals. However, you provide no discussion or insight into the specific factors or circumstances that caused your effective tax rate to decline from 26.5% in 2014 to 6.7% in 2015. Please revise future filings to provide a discussion of the specific facts or circumstances that resulted in this significant change in your effective tax rate. Please provide your proposed disclosure as part of your response.
Valuation allowances

The realizability of deferred tax assets and related disclosures continue to be an area of SEC staff focus.

In providing comments relating to deferred tax asset valuation allowance assessments, the SEC staff has consistently requested additional information regarding the circumstances and judgments that led the preparers to their conclusions in the following situations:

- There is clear negative evidence, such as cumulative three-year net loss or recent NOL expiration but no valuation allowance was recorded
- Full or partial release of a valuation allowance
- A valuation allowance is recorded despite cumulative profitability

SEC staff has regularly asked for more details on the preparer’s assessment of the positive and negative evidence considered in the assessment of deferred tax asset realizability and the weighting of the evidence commensurate with the extent to which it is objectively verified.

Sample comments

Manufacturing and Construction - Form 10-K

We note your disclosures regarding deferred tax assets, including your determination of the tax valuation allowance. We also note your disclosure that “the total deferred tax asset (net of valuation allowance) is supported by projections of future taxable income exclusive of reversing temporary differences and taxable temporary differences that reverse within the carryforward period.” Please provide us a more detailed analysis that supports your determination of the tax valuation allowance at December 31, 2016, including your basis for concluding that realization of net deferred tax assets is more likely than not as required by ASC 740-10-30-5(e). Please specifically address your assumptions regarding each source of taxable income contemplated by ASC 740-10-30-18. In this regard, we note the significant increase in deferred tax assets at December 31, 2016 appears to be due to your assumption of U.S. pension plan assets and liabilities upon the Separation. It also appears you incurred losses in the U.S. during each of the last three years. To the extent your projections assume future U.S. taxable income, please fully explain your basis for such projections in light of recent cumulative losses.

Healthcare and Insurance - Form 10-K

With respect to the $XX million release of the valuation allowance previously held against a deferred tax asset related to foreign tax losses carried forward, please provide us with your analysis of all available evidence considered, both positive and negative, and how this evidence was weighted in determining that a partial release of this valuation allowance was warranted during the fourth quarter of 2016.

Information Technologies and Services - Form 10-K

We note that you released a significant portion of your deferred tax asset valuation allowance. Tell us what consideration you gave to disclosing the specific circumstances that led to such release and the circumstances that could reasonably cause you to adjust your valuation allowance in the future. Refer to Section III.B.3 of SEC Release No. 33-8350.

Information Technologies and Services – Form 20-F

We note that you have a full valuation allowance against net operating loss (“NOL”) carryforwards and a partial valuation allowance against other deferred tax assets. Please explain your basis for the valuation allowances in light of your cumulative income before income tax expense in recent years. Also, with regard to the decrease in NOL carryforwards in 2016 please clarify how much of the decrease was due to utilization as compared to expiration. Refer to ASC 740-10-30-16 through 24.

Telecommunications - Form 10-Q

Explain for us also how downward revision of forecasted future earnings affected your consideration of the recoverability of your deferred tax assets and the adequacy of your income tax
valuation allowance as of June 30, 2016. Tell us the specific positive and negative evidence you deliberated upon and how such evidence weighed into your consideration. In this regard, please provide quantitative and qualitative disclosure, as applicable, for any material uncertainty about the recoverability of the carrying value of deferred tax assets.

**Manufacturing and construction - Form 10-Q**

We note that in the second quarter of 2016, you moved from a cumulative loss position over the previous three years to a cumulative income position for the first time since you established the full valuation allowance in 2008. You indicate that absent the effect of the Company's debt refinance transaction, you continued that trend of profitability in the third quarter of 2016. With this positive historical evidence and the projection of future profitability resulting in taxable income, you determined that there was sufficient positive evidence to conclude that it is more likely than not that the valuation allowance should be released against your net federal and some state deferred tax assets. Please provide us with and expand your disclosures to include a comprehensive analysis of the specific positive and negative evidence management evaluated in arriving at this conclusion. Your analysis should include the weighting of the evidence that is commensurate with the extent to which it is objectively verified. Ensure your response and expanded disclosures address the following:

- With reference to the appropriate accounting literature, please address the appropriateness of assessing profitability absent the effect of your debt refinance transaction. In this regard, we note that the impact of this transaction was a part of your total results and given your substantial amount of indebtedness, similar transactions may occur in future periods;

- In light of the fact that uncertainty of the housing market was part of the significant negative evidence you considered in determining whether your deferred tax assets were realizable as of December 31, 2015, please tell us and expand your disclosures to discuss the changes in the extent and timing of the housing market recovery. In this regard, we note your discussion on page 21 which highlights items that continue to hamper a strong recovery. Furthermore, you indicated in your Form 10-K for the year ended December 31, 2015 that (i) the realization of a deferred tax asset ultimately depends on the existence of sufficient taxable income in the applicable carryback or carry forward periods and that relying solely on projections of future taxable income to support the recovery of deferred tax assets is not sufficient and (ii) that simply coming out of a cumulative loss position is not viewed as a bright line and may not be considered sufficient positive evidence to reverse some or all of the valuation allowance if there is other negative evidence;

- Tell us and disclose the minimum amount of taxable income you will be required to generate to realize your deferred tax assets; and

- For any tax-planning strategies that you are relying on in your analysis, please ensure that your response and revised disclosures provide a detailed explanation of the nature of, and any uncertainties, risk and assumptions for those strategies.
**Indefinite reinvestment assertion and liquidity**

Comment letters related to the indefinite reinvestment assertion and liquidity show an emphasis in the following areas:

- **Effects of repatriation of undistributed earnings** – SEC staff requested expanded liquidity discussions in MD&A regarding the amount of cash and cash equivalents held by foreign subsidiaries that may be presently available to fund domestic operations, especially if those funds were identified as indefinitely reinvested, and the tax implications of repatriating the undistributed earnings.

- **Change in indefinite reinvestment assertion** – Questions were asked about the facts and circumstances that led to management’s determination that funds previously indefinitely reinvested must now be partially repatriated to the US. This includes how management was able to conclude that the remainder of their undistributed earnings of foreign subsidiaries should continue to be indefinitely reinvested. Similarly, when earnings had been repatriated in the past year, the SEC staff asked for the specific plans for foreign earnings that support the conclusion that they will now be indefinitely reinvested.

The SEC staff also requested the disclosures required by ASC 740-30-50 when undistributed foreign earnings have been indefinitely reinvested. For example SEC staff provided requests to include the following in either future filings or a revised filing:

- The amount of unrecognized deferred tax liability on unremitted foreign earnings or a statement that such determination is not practicable

- The amount of undistributed earnings of foreign subsidiaries that are considered indefinitely reinvested

**Sample comments**

**Manufacturing and Construction - Form S-1**

Please expand your liquidity discussion to include the amount of cash and cash equivalents held by foreign subsidiaries that would be subject to the potential tax impact associated with the repatriation of undistributed earnings on foreign subsidiaries. Please state these cash and cash equivalents are not presently available to fund domestic operations and obligations without paying a significant amount of taxes upon their repatriation, if true. In this regard, we note 49% of your net revenues came from sales outside of the United States.

**Consumer Products - Form 10-K**

Please advise us of the nature of your ongoing operations and countries from which you have generated accumulated net earnings of $XXX million that is considered indefinitely invested outside of the U.S. Reference is made to ASC 740-30-25. Also, please tell us the amount and your consideration of disclosing in Liquidity and Capital Resources section of Management’s Discussion and Analysis of Financial Condition and Results of Operations the cash and short-term investments held outside the U.S. for which there would be tax implications if repatriated to the U.S.

**Beverages, Apparel and Mining - Form 10-K**

We note that no deferred income taxes have been recognized on cumulative undistributed earnings of foreign subsidiaries of $XXX million as these earnings are considered indefinitely reinvested. However, we note that you have repatriated a portion of your foreign earnings in fiscal 2015 and 2014 and also incurred domestic net loss before income taxes in fiscal 2016. Please tell us how you were able to conclude that all of your undistributed earnings of foreign subsidiaries should be considered to be indefinitely reinvested pursuant to ASC 740-30-25-17. Please address your specific plans for reinvestment for these undistributed earnings that demonstrate remittance of the earnings would be postponed indefinitely.
Manufacturing and Construction- Form 10-Q

During the quarter ended September 30, 2016, you determined that a portion of your foreign earnings were not permanently reinvested within the meaning of ASC 740-30-25-17. You estimated that approximately $XX million would be repatriated to the U.S. in the fourth quarter of 2016. Please help us better understand the facts and circumstances which led to your determination that these funds should be repatriated and correspondingly the amount to repatriate. As of December 31, 2015, undistributed earnings of foreign subsidiaries amounted to $XXX million and were considered to be indefinitely reinvested and accordingly no provision for U.S. federal and state income taxes was recorded. Upon your planned repatriation of the approximately $XX million, please tell us how you were able to conclude that the remainder of your undistributed earnings of foreign subsidiaries should continue to be considered to be indefinitely reinvested pursuant to ASC 740-30-25-17. Please address your specific plans for reinvestment for these undistributed earnings that demonstrate remittance of the earnings would be postponed indefinitely.

Electronics and Machinery - Form 10-K

We note that you have significant foreign operations and have not provided for U.S. Federal income taxes on the undistributed earnings of your international subsidiaries. Please revise future filings to disclose the amount of undistributed earnings for which you have not provided deferred taxes as of the most recent balance sheet date as required by ASC 740-30-50-2(b).

Information Technologies and Services - Form S-1

We note that you have not provided for withholding taxes on the undistributed earnings of foreign subsidiaries because you intend to reinvest such earnings indefinitely. Please tell us what consideration was given to disclosing the amount of the unrecognized deferred tax liability related to such undistributed earnings or a statement that determination of the unrecognized deferred tax liability is not practicable. Refer to ASC 740-30-50-2(c).
Uncertain tax positions

Due to the judgmental nature of the accounting estimates and assumptions management must make in accounting for uncertain tax positions (UTPs) disclosures for uncertain tax positions have historically attracted scrutiny. We often see comment letters issued when a registrant’s disclosures lack the clarity necessary to enable financial statement users to understand the impact of significant changes in unrecognized tax benefits (UTBs) that have occurred. Generally, these comments focus on (1) understanding how changes in UTPs impact the effective tax rate reconciliation, (2) reconciliation of significant prior year increases or decreases of UTBs within the required tabular rollforward, and (3) soliciting additional information to enable users to better understand future changes that may have a material effect on a company’s financial condition or operating performance.

Sample comments

Transportation and Leisure - Form 10-K

We note the decrease in the effective tax rate resulting from a decrease in your reserve for uncertain tax positions of $XX million for the year ended December 31, 2016. Please revise to provide a discussion of the specific facts or circumstances that resulted in this change in your effective tax rate. In this regard, ASC 740-10-50-15(d) indicates the nature of uncertain tax positions for which it is reasonably possible that the total amounts of unrecognized tax benefits will significantly increase or decrease within 12 months of the reporting date shall be disclosed. Please provide your proposed disclosure as part of your response.

Electronics and Machinery - Form 10-K

We note from your discussion of the case that in August 2016 the government approved a final settlement of the case and the balance of unrecognized tax benefits and associated interest was adjusted to reflect the agreed upon settlement. Tell us the caption in which this development is reflected in the reconciliation of unrecognized tax benefits. In addition, tell us the primary reasons for the $XX billion reduction for tax positions of prior years’ shown in that same reconciliation.

Information Technologies and Services - Form 10-Q

We note your disclosure that if the IRS prevails in its position it could result in an additional federal tax liability of an estimated aggregate amount of approximately $X to $XX billion, plus interest and any penalties asserted. Please tell us whether the amounts are additional to amounts reported in unrecognized tax benefits, which gross balance was $X billion as of June 30, 2016. If the amounts associated with this issue are included in the unrecognized tax benefit balance as of June 30, 2016, please tell us when they were accrued.

Manufacturing and Construction - Form 10-K

You disclose that you have received tax assessments in excess of established reserves. You also disclose that if tax assessments are settled in excess of established reserves they could have a material impact on your results of operations, financial position or cash flows. Please tell us the amount of the tax assessments received, the amount of established reserves, and how you determined the amounts accrued. If you believe a material loss in excess of amounts accrued is reasonably possible, please clarify that fact and disclose the potential loss or a range of loss in excess of amounts accrued as required by ASC 450-20-50, or explain why you are unable to provide such an estimate.
Other SEC comment letters

Comment letters released outside of the four key areas highlighted above evidence the SEC staff’s continued interest in a variety of other income tax-related areas. These areas included business combinations, interim periods, and foreign operations. These comments generally focused on (1) requests for additional information, (2) the omission of required disclosures, and (3) the presentation of non-GAAP financial measures.

Requests for additional information

Consistent with SEC staff comments in other areas, the SEC staff frequently asked for greater transparency into events that had or may have a material effect on a company’s financial condition or operating performance. In this respect, comment letters often note that disclosures are deficient or lack clarity, fail to address significant matters affecting the comparability of information, or are inconsistent with other information disclosed in the financial statements.

Sample comments

Manufacturing and Construction - Form 10-K

Upon your divestiture of the ABC business, you recorded a $XX million pre-tax loss and a $X million after-tax gain. Please help us better understand the impact of income taxes on this transaction pursuant to ASC 740 and correspondingly how this resulted in the recording of an after-tax gain in light of the pre-tax loss.

Information Technologies and Services - Form 10-Q

We note that the decrease in your income tax expense in the first quarter of 2017 was primarily attributable to a tax benefit resulting from the restructuring of certain foreign entities. Please describe for us, in detail, the nature of the restructuring and explain how this resulted in a decrease in your income tax expense. In addition, tell us the impact you expect the restructuring will have on your full year effective tax rate and what consideration you gave to disclosing the potential impact. We refer you to ASC 740-10-50-14.

Electronics and Machinery - Form 10-Q

We note your disclosure that the consolidated tax provision decreased due to a larger adjustment to reduce the tax rate to the projected full-year tax rate. Please revise future filings to explain the nature of the larger adjustment and to further discuss the reasons for the significant changes in your effective income tax rate each period.

Information Technologies and Services - Form 10-K

We note that your cash paid for income taxes is significantly less than your income tax provision for each reporting period. For the years ended December 31, 2015, 2014 and 2013 you paid $XX million, $XX million and $X million for income taxes while your current tax provision was $XXX million, $XXX million and $XXX million, respectively. Please describe to us in detail the factors causing the differences between the cash paid for income taxes and the current tax expense included in your provision. In addition, tell us whether you anticipate that future cash outlays for income taxes will substantially exceed income tax expense in the future.

Transportation and Leisure - Form 10-K

Please consider expanding your incomes taxes critical accounting policy within MD&A to include a discussion regarding your foreign earnings and their respective lower tax rates than in the U.S. given their significance to your rate reconciliation and income tax provision. Additionally, please consider disclosing the amount of profit or earnings on your operations in Belgium and effective income tax rate for each year presented, as you disclose that this country has the largest impact on your effective income tax rate.

Information Technologies and Services - Form 20-F

We note your disclosure that during 2015 you recorded a net income tax expense of $XXX million which was negatively impacted by $XX million attributable to taxable foreign exchange impacts. However, we note that the foreign exchange impact described in your rate reconciliation is $X million. Please reconcile these disclosures. Further, it appears...
that there are additional material reconciling items that impacted your tax expense during 2015 including $XX million relating to “Other, including non-taxable/non-deductible items and changes to net provisions related to tax uncertainties” and $XX million relating to “Change in unrecognized tax losses and deductible temporary differences.” Please further describe the nature of these reconciling items and how they impacted your tax expense. Tell us what consideration you gave to further explaining all of the factors that materially impacted your tax expense for the period.

Consumer Products - Form 10-K

Please explain to us why deferred income taxes presented in the first table do not agree to deferred income taxes reflected as an adjustment to reconcile net income to net cash provided by operating activities in the consolidated statements of cash flows.

Omission of required disclosures

The SEC staff reviews financial statements to ensure all required disclosure have been included. The following represent some of the comment letters that demonstrate the importance on ensuring that required disclosures are provided in the financial statements.

Sample comments

Electronics and Machinery - Form 10-K

We note that your operations are primarily conducted outside of the U.S. In future filings, please expand to describe the tax years that remain open for each major taxing jurisdiction. Refer to ASC 740-10-50-15e.

Real Estate and Commodities - Form 10-K

Please revise your disclosure in future filings to disclose the amounts and expiration dates of your net operating loss carryforwards for tax purposes. Reference is made to ASC 740-10-50-3a.

Information Technologies and Services - Form 20-F

We note your disclosure of your unrecognized tax benefits. Please explain why you have not presented a corresponding obligation within your contractual obligations table nor have you disclosed the basis for excluding these amounts from the table. We refer you to Item 5.F of the Instructions to Form 20-F.

Presentation of non-GAAP measures

The SEC staff has continued to focus on the presentation of non-GAAP financial measures, including the income tax effects of such measures. Many of the comments focused on compliance with the 2016 updates to the SEC staff’s Compliance and Disclosure Interpretations (C&DI) regarding how the income tax effects of non-GAAP measures should be presented, with a focus on adjustments presented “net of tax,” and enhanced disclosures explaining how income tax effects were calculated.

Sample comments

Information Technologies and Services - Form 10-K

We note that the adjustments to arrive at core earnings are presented “net of tax.” Please present the income tax effects of your non-GAAP adjustments as a separate adjustment. In addition explain to us and in future filings include a discussion of how you calculated the tax effects of your non-GAAP adjustments. See Question 102.11 of the Non-GAAP Compliance and Disclosure Interpretations issued on May 17, 2016.

Information Technologies and Services - Form 8-K

In your reconciliation of non-GAAP net income (loss) you continue to present your non-GAAP adjustments “net of tax” which is inconsistent with Question 102.11 of the updated Compliance and Disclosure Interpretations issued on May 17, 2016. Please revise your presentation in future filings to show income taxes as a separate line item adjustment that is clearly explained. Also, please explain to us in greater detail how you arrived at the income tax effects. In this regard, we note the tax effects appear to be insignificant compared to the significance of the adjustments. As part of your response, please compare for us the effective US GAAP tax rate for the periods presented to the non-GAAP tax rate.
Consumer Products - Form 10-K

Please explain to us in more detail why you have proposed to present an effective tax rate that differs from your consolidated effective tax rate for the specific items for which you are adjusting when calculating net income/loss, as adjusted. To assist us in understanding your response, please show us how your presentation of this measure would have differed for each of the year ended December 31, 2016 and the quarter ended March 31, 2017, including a detailed explanation of how the tax effect would have been calculated. Your response should clearly explain how these specific adjustments, if hypothetically made in these specific periods, would have changed the consolidated amount of current and deferred income tax expense recorded on your books, and why your proposed methodology of averaging your state and foreign tax rates is a reasonable estimate of that tax effect given the tax jurisdictions to which these adjustments relate.

Manufacturing and Construction - Form 10-K

Please expand your disclosures to clarify why there is no apparent tax effect related to your 2016 and 2015 adjustments. Please present the income tax effects of your non-GAAP adjustments as a separate adjustment and explain how you calculated the income tax effects related to these adjustments. Please also address this comment as it relates to future earnings press releases. See Question 102.11 of the updated Non-GAAP Compliance and Disclosure Interpretations issued on May 17, 2016.

Beverages, Apparel and Mining - Form 10-K

We note you have adjusted the effective tax rate and diluted earnings per share to exclude certain tax and related interest adjustments. From your disclosure, it appears these adjustments are related to tax on transfer pricing adjustments, repatriation of foreign earnings and foreign tax credits. Please explain why you believe these adjustments are not normal, recurring, cash operating expenses necessary to operate your business. Refer to Question 100.01 of the Compliance and Disclosure Interpretations issued on May 17, 2016. Additionally, please clarify your disclosure to explain in greater detail the reasons why you believe these measures provide useful information to investors. Please refer to the guidance in Item 10(e)(1)(i)(C) of Regulation S-K.

In the footnote to the tabular disclosure of adjusted net income, you state that tax adjustments include movements in tax valuation allowance and tax adjustments and that these tax adjustments were primarily the result of a tax restructuring and a loss carryback which resulted in an increase in your valuation allowance on credits and capital losses. Please tell us if these tax adjustments all relate to the non-GAAP adjustments and if not quantify any adjustments that are unrelated to these items and explain why you believe they are appropriate.
Acknowledgements

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Let’s talk

For a deeper discussion on SEC comment letters in the income tax area, please contact your PwC engagement team, one of the authors of this publication, or one of the following PwC tax accounting specialists:

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PwC Tax Accounting Services

Companies are facing increased strain on their tax accounting and reporting professionals. Financial restatements, increased regulatory scrutiny over income tax disclosures and account balances, compressed close cycles, as well as new reporting considerations and standards have increased organizational needs for tax accounting. PwC can help you manage tax accounting issues and focus on being more strategic.