

PROPOSED FASB STAFF POSITION

No. FAS 109-b

Title: Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creation Act of 2004

Comment Deadline: December 1, 2004

1. The American Jobs Creation Act of 2004 (the Act) introduces a special one-time dividends received deduction on the repatriation of certain foreign earnings to a U.S. taxpayer (repatriation provision), provided certain criteria are met. The Board directed the FASB staff to issue this FASB Staff Position (FSP) to provide accounting and disclosure guidance for the repatriation provision.

Background

2. On October 22, 2004, the Act was signed into law by the President. This Act provides for a special one-time tax deduction of 85 percent of certain foreign earnings that are repatriated, as defined in the Act.¹ The FASB staff understands that a number of enterprises are requesting that Congress or the Treasury Department provide additional clarifying language on key elements of the repatriation provision. That clarifying language could affect an enterprise's evaluation of the effect of the Act on its plan for repatriation or reinvestment of foreign earnings.

Issue

3. FASB Statement No. 109, *Accounting for Income Taxes*, left intact the provisions of APB Opinion No. 23, *Accounting for Income Taxes—Special Areas*, that relate to the accounting treatment for unremitted earnings of a foreign investment. Opinion 23 provides an exception to the requirement of accruing income taxes payable by the investor on the unremitted earnings in a foreign investment (a subsidiary or corporate joint venture that is essentially permanent in nature) if the investor can overcome the presumption of repatriation of the foreign earnings. According to paragraph 12 of Opinion 23, this presumption can be overcome "if sufficient evidence shows that the subsidiary has invested or will invest the undistributed earnings indefinitely."

4. Additionally, paragraph 27 of Statement 109 requires adjustments of deferred tax liabilities and assets for the effects of a change in tax laws or rates in the period that includes the enactment date.

¹This FSP refers to and describes a provision within the Act. While those comments reflect the best efforts of the FASB staff to describe relevant aspects of the Act, this FSP shall not be considered a definitive interpretation of any provision of the Act for any purpose.

5. As a result of the Act, an issue has arisen as to whether an enterprise should be allowed additional time beyond the financial reporting period in which the Act was enacted to evaluate the effects of the Act on its plan for reinvestment or repatriation of foreign earnings for purposes of applying Statement 109.

FASB Staff Position

6. An enterprise should be allowed time beyond the financial reporting period of enactment to evaluate the effect of the Act on its plan for reinvestment or repatriation of foreign earnings for purposes of applying Statement 109. The FASB staff believes that the lack of clarification of certain provisions within the Act and the timing of the enactment necessitates that additional time be provided if an enterprise is unable to make a determination of the Act's effect on its plan for reinvestment or repatriation of foreign earnings.

7. However, if an enterprise has recognized a deferred tax liability for some or all of its unremitted foreign earnings because it did not overcome the presumption of repatriation of foreign earnings, it shall continue, during the period it is evaluating the effect of the Act, to presume repatriation of those foreign earnings as well as current foreign earnings that are not expected to be indefinitely reinvested.

8. An enterprise in a position to determine the impact of the repatriation provision is required to apply the provisions of Statement 109 in the period in which it makes that determination.

9. If that determination is not complete, yet it becomes apparent that a portion of undistributed foreign earnings will be repatriated under the repatriation provision, the enterprise should recognize income tax expense attributable to those remittances in accordance with paragraph 12 of Opinion 23.

10. The FASB staff considered the temporary nature of the special one-time repatriation provision in developing this FSP. Therefore, given the temporary nature of the repatriation provision within the Act, analogies should not be made to this FSP.

11. The following information shall be disclosed for an enterprise that has not yet completed its evaluation of the repatriation provision for purposes of applying Statement 109 for each period for which financial statements covering periods affected by the Act are presented:

- a. A summary of the repatriation provision, including the status of an enterprise's evaluation of the effects of the repatriation provision as well as its expected completion date

- b. The range of reasonably possible amounts² that is being considered for repatriation as a result of the repatriation provision and the related potential range of income tax effects of such repatriation
 - c. Pro forma financial data giving effect to the Act if the enterprise is able to determine the Act's effect on its plan for reinvestment or repatriation of foreign earnings only subsequent to the date of its financial statements but prior to the issuance of those financial statements
 - d. For amounts that have been recognized under paragraph 9, disclose the effect on income tax expense (or benefit). The effect should be shown separately in the same place (either on the face of the income statement or in the footnotes) that the amounts of current and deferred taxes are disclosed for the period.
12. The following information shall be provided in an enterprise's financial statements for the period in which it completes its evaluation of the repatriation provision:
- a. The effect on income tax expense (or benefit) for the period as a result of the repatriation provision. The effect should be shown separately in the same place (either on the face of the income statement or in the footnotes) that the amounts of current and deferred taxes are disclosed for the period.

Effective Date

13. This FSP is effective upon issuance.

²Excluding any amount that it is apparent will be remitted.