

Heads Up

In This Issue:

- Overview
- Presentation and Disclosure
- Effective Date and Transition

The ASU eliminates diversity in practice for presentation of a unrecognized tax benefit when an NOL carryforward, a similar tax loss, or a tax credit carryforward is available to reduce the taxable income or tax payable that would result from disallowance of a tax position.

FASB Issues ASU on Presenting an Unrecognized Tax Benefit When NOL Carryforwards Exist

by Karen Wiltsie and Jiaojiao Tian, Deloitte & Touche LLP

On July 18, 2013, the FASB issued [ASU 2013-11](#),¹ which provides guidance on financial statement presentation of an unrecognized tax benefit² when a net operating loss (NOL) carryforward, a similar tax loss, or a tax credit carryforward exists. The FASB's objective in issuing this ASU is to eliminate diversity in practice resulting from a lack of guidance on this topic in current U.S. GAAP.

This ASU applies to all entities with unrecognized tax benefits that also have tax loss or tax credit carryforwards in the same tax jurisdiction as of the reporting date.

Editor's Note: The ASU is based on the EITF consensus on Issue 13-C. For more information about this Issue, see Deloitte's June 2013 [EITF Snapshot](#).

Overview

The settlement of an unrecognized tax benefit does not always result in a cash payment. Additional taxable income or income tax arises when an uncertain tax position is not sustained. However, a cash payment is not required if a sufficient NOL carryforward, a similar tax loss, or a tax credit carryforward is available and the governing tax law permits the loss or credit carryforward to be used to settle the additional taxes payable.

Under current U.S. GAAP, there is no explicit guidance on presentation of unrecognized tax benefits when such carryforwards exist, which has led to diversity in practice. Many entities present an unrecognized tax benefit as a liability (i.e., on a gross basis) in the statement of financial position unless the unrecognized tax benefit is "directly associated with a tax position taken in a tax year . . . that resulted in the recognition of a[n] NOL or a tax credit] carryforward for that year and the [NOL or tax credit] carryforward has not been utilized."³ However, other entities present an unrecognized tax benefit as a reduction of a deferred tax asset for an NOL or tax credit carryforward whenever the NOL or tax credit carryforward would be available to reduce the additional taxable income or tax due if the tax position is disallowed.

ASU 2013-11 supports the second presentation approach described above. This approach is consistent with how an unrecognized tax benefit is usually settled when NOL or tax credit carryforwards exist as well as with the offsetting guidance in ASC 210-20.⁴

¹ FASB Accounting Standards Update No. 2013-11, *Presentation of an Unrecognized Tax Benefit When a Net Operating Loss Carryforward, a Similar Tax Loss, or a Tax Credit Carryforward Exists* — a consensus of the FASB Emerging Issues Task Force.

² The Codification Master Glossary defines "unrecognized tax benefit" as "[t]he difference between a tax position taken or expected to be taken in a tax return and the benefit recognized and measured pursuant to Subtopic 740-10."

³ Paragraph 2 of the Basis for Conclusions in ASU 2013-11.

⁴ FASB Accounting Standards Codification Subtopic 210-20, *Balance Sheet: Offsetting*.

The ASU does not affect the amounts disclosed in the tabular reconciliation of the total amount of unrecognized tax benefits.

The assessment of whether to net the unrecognized tax benefit with a deferred tax asset should be performed as of the reporting date (i.e., on a hypothetical-return basis). The entity should not evaluate whether the deferred tax asset will expire or be used before the unrecognized tax benefit is settled. However, the entity must consider whether there are any limitations on the use of the deferred tax asset, such as an alternative minimum taxation system.

Editor's Note: Entities may need to consider the limitation on the use of NOL or similar carryforwards in certain jurisdictions (e.g., use of the carryforward may be limited to a specified percentage of the current-year taxable income) when assessing whether an unrecognized tax benefit can offset a deferred tax asset. These limitations, as well as other provisions of the relevant tax law, may result in more complex application of this new guidance than one would expect.

Presentation and Disclosure

Under the ASU, an entity must present an unrecognized tax benefit, or a portion of an unrecognized tax benefit, in the financial statements as a reduction to a deferred tax asset for an NOL carryforward, a similar tax loss, or a tax credit carryforward except when:

- An NOL carryforward, a similar tax loss, or a tax credit carryforward is not available as of the reporting date under the governing tax law to settle taxes that would result from the disallowance of the tax position.
- The entity does not intend to use the deferred tax asset for this purpose (provided that the tax law permits a choice).

If either of these conditions exists, an entity should present an unrecognized tax benefit in the financial statements as a liability and should not net the unrecognized tax benefit with a deferred tax asset.

Additional recurring disclosures are not required because the ASU does not affect the recognition or measurement of uncertain tax positions under ASC 740.⁵ This amendment does not affect the amounts public entities disclose in the tabular reconciliation of the total amounts of unrecognized tax benefits because the tabular reconciliation presents the gross amounts of unrecognized tax benefits.

Effective Date and Transition

The ASU's amendments are effective for public entities for fiscal years beginning after December 15, 2013, and interim periods within those years. Nonpublic entities may wait until fiscal years, and interim periods within those years, beginning after December 15, 2014, to adopt these amendments. Early adoption is permitted for all entities.

The amendments should be applied to all unrecognized tax benefits that exist as of the effective date. Entities may choose to apply the amendments retrospectively to each prior reporting period presented.

⁵ FASB Accounting Standards Codification Topic 740, *Income Taxes*.

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