to the

point

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Current issues for boards of directors

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The high US corporate tax rate and repatriation of foreign earnings will likely be key issues in debate over tax reform.

The JOBS Act: What directors need to know

The Jumpstart Our Business Startups (JOBS) Act was the result of a bipartisan effort to help spur growth in the United States by easing the regulatory burden for startup companies that want to go public. While a broad array of key stakeholders in the business and policy world strongly support the objectives of the Act, some have expressed concern about a perceived easing of protections for investors, as well as the potential for fraud.

In order to encourage companies to complete an equity initial public offering (IPO), the JOBS Act created a so-called "IPO onramp" for emerging growth companies (EGCs). To qualify as an EGC, a business must have less than $1 billion in annual revenue and must have priced its IPO no earlier than December 9, 2011. EGCs can access capital through "crowdfunding" (Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure), which allows them to raise up to $1 million from wider pools of smaller investors, through avenues like the internet, with fewer restrictions than imposed on established companies. The Act also increases to two thousand from five hundred the number of shareholders EGCs can have without also having to publicly disclose certain financial information.

Companies are eligible as EGCs for up to five years after their IPO before they have to follow the Securities and Exchange Commission rules that apply to all publicly traded companies. Companies can lose their EGC status before five years if they top $1 billion in annual revenue, their market capitalization tops $700 million, or they issue more than $1 billion in non-convertible debt securities in any three-year period.

Under the JOBS Act, EGCs:

- Can "test the waters" by gauging the interest of institutional investors prior to filing a registration statement.
- Can make oral and written offers to qualified institutional buyers and investors before or after filing registration statements.
- Have a temporary, five-year exemption from the audit requirement of Sarbanes-Oxley Section 404(b), which requires external auditor attestation regarding the company's internal controls. (Note: the temporary exemption does *not* apply to the internal control management reporting requirements of the Sarbanes-Oxley Act.)
- May submit two years of historical audited financial results in their IPO prospectus, compared to the requirement of three for non-EGC companies.

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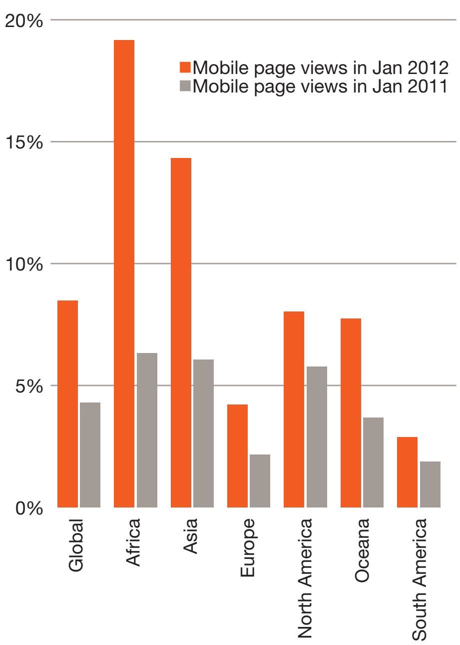
Directors, can you hear me now? Considering mobile computing as an integral part of strategy.

Mobile page views as a percentage of total web page views



Source: StatCounter (February 2012) via: mobiThinking

The middle class is growing—fast. By 2030, it is expected to grow to 4.9 billion people from 1.8 billion today, and 85% of the growth will come from Asia.[1] Middle class spending is also expected to soar. In less than 20 years, Asia's middle class consumption will be more than that of every middle class consumer on the planet today.[2]

While the population is growing, the world is becoming smaller, thanks in part to mobile technologies and devices. Mobile cellular subscriptions across the globe reach 87% of the world's total population.[3] In 2010 alone, China and India added a combined three hundred million new mobile subscriptions—more than the existing number of total US subscribers. And mobile broadband subscriptions have grown by 45% annually over the last four years.[4]

Markets like the US and Europe will continue to use fixed broadband access through telephone wires and cable lines, which will coexist with mobile broadband platforms. But the move to mobile is happening even in these developed countries. Today the world has twice as many mobile broadband subscriptions as fixed broadband subscriptions,[5] accessed by Android and iOS smartphones and tablets.

Millions of web users are now accessing the internet solely with their mobile computing devices. In the US, 25% of people do so. But the percentage is higher in emerging countries, where mobile is often the only method of access available: 59% in India and 70% in Egypt.[6] Facebook users are currently spending more time on the site using their smartphones than personal computers,[7] which could quickly change the business model for advertisers.

Mobile devices are changing the way individuals communicate, shop, and even do their jobs. People use them at home and work to get the news, text with friends, and access corporate email accounts.

What does this mean for companies and directors

Many companies have been slow to embrace mobile technologies, despite most CEOs seeing opportunities to exploit mobile devices. Some companies are deciding whether to invest in mobile platforms. But currently, only 45% of companies use mobile channels to interact with customers and suppliers.[8] Most are still trying to understand how mobile platforms create risks to their corporate assets, customer data, and enterprise systems.

Directors should ask questions about management's plans for mobile platforms and how mobile fits into the company's overall strategy. They should understand how a mobile strategy can provide business opportunities and competitive advantage, improve customer relationships and interaction, and contribute to a more satisfied workforce. Boards should also recognize the business implications of transitioning websites from PC delivery to mobile devices.

Directors should understand the risks associated with an increased use of mobile devices, such as a damaged reputation as a result of employee misuse. Directors should ask management to specify the company's policies for mobile technologies and how they are communicating them to employees.

1 Homi Kharas, "The Emerging Middle Class in Developing Countries," OECD Development Centre Working Paper No. 285, Organisation for Economic Co-operation and Development, January 2010.

2 Sheela Subramanian, "Why Mobile Ads in Emerging Markets Are the Future," *Jana blog,* April 12, 2012.

3 International Telecommunication Union, *The World in 2011: ICT Facts and Figures, 2011.*

4 International Telecommunication Union (November 2011), in "Global Mobile Statistics 2012," mobiThinking, February 2012.

5 Ibid.

6 On Device Research, "The 'Mobile Only' Internet Generation," December 2010.

7 "comScore Introduces Mobile Metrix 2.0, Revealing that Social Media Brands Experience Heavy Engagement on Smartphones," comScore press release, May 7, 2012.

8 PwC, *Raising Your Digital IQ: 4th Annual Digital IQ Survey November 2011.*

What's next for tax reform?

Taxes will be a hot topic up to and through the November elections, with debate over expiring tax provisions and tax reform certain for both political parties.

There are currently many tax reform proposals circulating in Washington, DC, with leaders of both political parties outlining general corporate tax reform principles for a potential overhaul of US tax laws. Serious efforts to enact corporate tax reform, however, are not likely before 2013.

While the content of any potential tax reform bill is uncertain at this point, the US corporate tax rate, taxes on foreign earnings, and "base broadening" measures are three key issues that will likely be in play in any corporate tax reform debate. Another issue is the expiration of the current 15% top individual tax rate for dividends, which will increase to 39.6% at the end of this year under existing law absent action by Congress.

Corporate tax rate

The United States now has the highest statutory corporate tax rate among advanced economies. The combined US rate is 39.2%, including average state and local levies on top of the 35% federal rate. Japan used to have the highest corporate tax rate at 39.8%, but lowered it to 36.8% in April 2012. The United Kingdom also recently reduced its corporate rate to 24% from 26%, and UK officials reaffirmed plans to reduce the rate to 22% by 2014.

In comparison, the average rate among other Organization for Economic Cooperation and Development (OECD) countries was 25.1% in 2011.

Taxes on foreign earnings

The United States is one of the few developed countries to tax foreign earnings under a worldwide tax system. The other Group of Seven (G-7) countries and 26 out of 34 OECD countries instead use territorial tax systems, under which all or most foreign earnings are exempt from domestic taxation.

Many analysts believe the worldwide tax system reduces the ability of US companies to compete effectively in foreign markets. Others criticize the substantial tax barrier to repatriating earnings back into the US economy—the more than $1 trillion in foreign earnings that is held by foreign subsidiaries cannot be remitted to US parent companies without the parent companies incurring an additional tax liability.

Base broadening measures

Proponents of revenue-neutral tax reform might want to limit or repeal certain provisions of the tax code to offset the cost of any rate reductions. A limited number of business tax provisions account for the majority of the revenue loss attributed to business "tax expenditures." The most significant provisions include accelerated depreciation, tax credits for research and development expenditures, deductions for domestic manufacturing activities (Section 199), and the last in, first out (LIFO) inventory accounting method.

What directors should do

Directors should be sure to understand the:

- Impact of potential changes in the dividend tax rate on dividend payout strategies.
- Impact of the potential repeal of certain business tax provisions on the company.
- Impact on sourcing strategies should the US corporate tax rate be reduced.
- Impact on financial statements should the approach to taxing foreign earnings change.
- Cash tax impact of various tax reform proposals.

Directors should discuss these issues with management and understand any implications for or potential unintended consequences to their companies. They should also monitor and evaluate any tax reform bills and changes in dividend tax rates as they develop.

The JOBS Act: What directors need to know
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- Can make reduced disclosures about executive compensation.
- Can use the same timeframe as private companies when adopting any new or revised accounting standard.

What directors should know and do

The advantages of fewer disclosures and audit requirements should ease the burden of raising capital for EGCs, but it is too early to understand the full impact of the JOBS Act.

That said, directors should remain vigilant to mitigate any concerns (litigation or otherwise) that the more limited historical audited financial results and a lack of external validation of internal controls could put companies more at risk for financial statement restatements or reports of material weaknesses in internal controls. Section 302(c) of the Act expressly imposes liability on issuers and their directors and officers for material misrepresentations and omissions made to investors in connection with a crowdfunding offering. Additionally, directors should understand the possibility of hidden costs, i.e., increased premiums for liability insurance for EGCs.

Directors should evaluate the pros and cons of being an EGC filer as the market and investor appetite becomes clearer for these types of offerings. They should also consider the landscape as it evolves and assess their particular circumstances.

How PwC can help

To have a deeper discussion of how these subjects might affect your company or board, please contact:

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BoardroomDirect

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