

Wayne Upton
Chairman
IFRS Interpretations Committee
30 Cannon Street
London
United Kingdom
EC4M 6XH

19 January 2016

Dear Mr Upton

Draft IFRIC Interpretation 2015/1 – Uncertainty over Income Tax Treatments

Deloitte Touche Tohmatsu Limited is pleased to respond to the IFRS Interpretations Committee's ('the Committee's') draft IFRIC Interpretation *Uncertainty over Income Tax Treatments* ('the draft Interpretation').

We welcome the Committee's proposals to provide additional guidance in an area that is often challenging in practice and, subject to some points of detail, support the proposals in the draft Interpretation.

The distinction between income tax and interest and penalties can, in some cases, become unclear, potentially resulting in a lack of clarity over what is and is not within the scope of the draft Interpretation. As a result, we recommend that the scope of the draft Interpretation be extended to cover interest and penalties, at least insofar as they arise directly from uncertain tax treatments already within its scope.

Our detailed responses to the questions in the invitation to comment are included in the Appendix to this letter.

If you have any questions concerning our comments, please contact Veronica Poole in London at +44 (0) 20 7007 0884.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Veronica Poole', with a stylized flourish at the end.

Veronica Poole
Global IFRS Leader

Appendix

Question 1 – Scope of the draft Interpretation

The draft Interpretation provides guidance on accounting for current and deferred tax liabilities and assets in circumstances in which there is uncertainty over income tax treatments. Such uncertain tax treatments may affect taxable profit (tax loss), tax bases, tax credits or tax rates that are used to recognise and measure current or deferred tax liabilities or assets in accordance with IAS 12 Income Taxes.

Do you agree with the proposed scope of the draft Interpretation? If not, why and what alternative do you propose?

We agree that it is important to address the issues of tax uncertainties in a comprehensive manner and with the statement in paragraph BC5 of the Basis for Conclusions on the draft Interpretation that limiting the scope of an Interpretation to specific situations would be arbitrary.

We are concerned, however, by the broad statement in paragraph BC9 of the Basis for Conclusions on the draft Interpretation that interest and penalties are excluded from its scope because there is no significant diversity in practice. In our experience, there can be significant interaction between uncertain tax positions and interest and penalties. For example:

- balances arising from uncertain tax positions, such as a prepayment of tax that is expected to be recovered upon resolution of a tax dispute may themselves accrue interest; and
- when there is significant uncertainty regarding the amount of income tax to be paid, an entity may in the course of its discussions with the tax authorities delay making payment for the full amount of tax possibly payable (to avoid, for example, prejudicing a future appeal against the amount claimed as due by the tax authorities) and, by so doing, risk incurring interest and penalties.

In such circumstances, the distinction between income tax and interest and penalties can become unclear, potentially resulting in a lack of clarity over what is and is not within the scope of the draft Interpretation.

As a result, we recommend that the scope of the draft Interpretation be extended to cover interest and penalties, at least insofar as they arise directly from uncertain tax treatments already within its scope as we believe this should be achievable without undue delay to issuance of a final Interpretation.

More generally, we also note that there is currently a lack of clarity over whether tax uncertainties acquired as part of a business combination should be measured at fair value or (as for deferred tax balances) in accordance with IAS 12 and would encourage the Board to consider this issue along with, as noted in our response to the Board's Request for Views on its 2015 Agenda Consultation, the issue of non-reciprocal transactions more broadly.

Question 2 – When and how the effect of uncertainty over income tax treatments should be included in determination of taxable profit (tax loss), tax bases, unused tax losses, unused tax credits and tax rates

The draft Interpretation requires an entity to consider whether it is probable that a taxation authority will accept an uncertain tax treatment, or group of uncertain tax treatments, that it used or plans to use in its income tax filings.

If the entity concludes that it is probable that the taxation authority will accept an uncertain tax treatment, the draft Interpretation requires the entity to determine taxable profit (tax loss), tax bases, unused tax losses, unused tax credits or tax rates consistently with the tax treatment included in its income tax filings.

If the entity concludes that it is not probable that the taxation authority will accept an uncertain tax treatment, the draft Interpretation requires the entity to use the most likely amount or the expected value in determining taxable profit (tax loss), tax bases, unused tax losses, unused tax credits and tax rates. The method used should be the method that the entity concludes will provide the better prediction of the resolution of uncertainty.

Do you agree with the proposal in the draft Interpretation on when and how the effect of uncertainty should be included in the determination of taxable profit (tax loss), tax bases, unused tax losses, unused tax credits and tax rates? If not, why and what alternative do you propose?

We agree with the proposal for the reasons set out in the Basis for Conclusions on the draft Interpretation.

Question 3 – Whether uncertain tax treatments should be considered collectively

The draft Interpretation requires an entity to use judgement to determine whether each uncertain tax treatment should be considered independently, or whether some uncertain tax treatments should be considered together, in order to determine taxable profit (tax loss), tax bases, unused tax losses, unused tax credits and tax rates.

Do you agree with the proposal in the draft Interpretation on the determination of whether uncertain tax treatments should be considered collectively?

If not, why and what alternative do you propose?

We agree with the principle, as explained in paragraph 11 of the draft Interpretation, that consideration of uncertain tax treatments separately or as a group should be based on which approach provides a better prediction of the resolution of the uncertainty. However, we are concerned that the further explanation in paragraph 12 of the draft Interpretation (particularly its reference to “the manner in which the entity prepares and supports tax treatments”) suggests a choice in determining the appropriate unit of account thus departing from the principle of using the approach that provides a better prediction of resolution of the uncertainty. We believe that the explanation in paragraph 11, supplemented by a clarification that in most cases this will be driven by the regulations and practices enacted by the relevant tax authority, would be sufficient and, as a result, recommend that paragraph 12 can be deleted to avoid confusion.

We also note that Illustrative Example 2 conflates the separate questions of collective consideration of multiple uncertain tax treatments and measurement using an expected value approach, whilst Illustrative Example 1 could be read as assuming that an uncertain tax treatment considered independently will be

measured using a most likely amount approach. We recommend that the distinction between recognition (independent or collective consideration of tax uncertainties) and measurement (use of a most likely or expected value approach) be made clearer in the examples – for example, by amending paragraph IE5 of the Illustrative Examples to state that Entity B must apply judgement in determining whether a most likely amount of CU800 or an expected value of CU650 provides a better prediction of the resolution of the multiple tax uncertainties already determined to be appropriate for collective consideration.

Question 4 – Assumptions for taxation authorities’ examinations and the effect of changes in facts and circumstances

The draft Interpretation requires an entity to assume that a taxation authority with the right to examine any amounts reported to it will examine those amounts and will have full knowledge of all relevant information when making those examinations.

The draft Interpretation also requires an entity to reassess its judgements and estimates if facts and circumstances change. For example, if an entity concludes that new information indicates that it is no longer probable that the taxation authority will accept an uncertain tax treatment, the entity should reflect this change in its accounting. The expiry of the period in which the taxation authority may examine the amounts reported to it would also be an example of a change in circumstances.

Do you agree with the proposal in the draft Interpretation on the assumptions for taxation authorities’ examinations and on changes in facts and circumstances? If not, why and what alternative do you propose?

We agree with the proposal for the reasons set out in the Basis for Conclusions on the draft Interpretation.

Question 5 – Other proposals

Disclosure

The draft Interpretation does not introduce any new disclosure requirements, but highlights the relevance of the existing disclosure requirements in paragraphs 122 and 125–129 of IAS 1 Presentation of Financial Statements, paragraph 88 of IAS 12 and IAS 37 Provisions, Contingent Liabilities and Contingent Assets.

Transition

The draft Interpretation requires an entity to apply its requirements by recognising the cumulative effect of initially applying them in retained earnings, or in other appropriate components of equity, at the start of the reporting period in which an entity first applies them, without adjusting comparative information. Full retrospective application is permitted, if an entity can do that without using hindsight.

Do you agree with the proposals in the draft Interpretation on the disclosure and the transition requirements? If not, why and what alternative do you propose?

We agree that additional disclosure requirements are not necessary as application of the existing paragraphs of IAS 1 and IAS 12 referred to in the draft Interpretation should provide sufficient information on the effect of uncertainties over income tax treatments.

We also agree with the proposed transitional provisions for existing IFRS reporters, but note that for first-time adopters of IFRSs determining whether changes in uncertain tax positions subsequent to the date of transition should be presented in profit or loss, other comprehensive income or equity could be problematic. As a result, we recommend that first-time adopters be provided with relief from the need for 'backward tracing' through an option to present all such subsequent movements in profit or loss.

In addition, we recommend that the draft Interpretation clarify whether retrospective application is permitted for some, but not all, of an entity's tax uncertainties.