BUSINESSEUROPE

IFRS Foundation
30 Cannon Street
London EC4M 6XH
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19 January 2016

Dear Members of the IFRS Interpretations Committee,

**Re: Exposure Draft Interpretation DI/2015/1 – Uncertainty over Income Tax Treatment**

BUSINESSEUROPE is pleased to respond to the Draft Interpretation DI/2015/1 – Uncertainty over Income Tax Treatment. We appreciate the IFRS Interpretation Committee's (IC) effort to try to reduce diversity in practice and enhance comparability. We think that the focus of the proposal should be on recognition rather than measurement. We note that the question raised with the IFRS IC concerned the recognition of an uncertain tax asset and this proposal should address specifically the recognition criteria.

With regard to the proposal however, we think that an Interpretation might not be the best way to address the issue. In our view, this subject could be handled within a narrow scope amendment to IAS 12 and would be well situated within an Annual Improvement or Narrow Scope Amendment. This could also be a good opportunity to include taxes other than income tax that are currently within the scope of IAS 37 and thereby enhancing comparability and understandability of the information provided.

We believe the scope of this interpretation should also cover the balance sheet presentation of tax liabilities related to an uncertainty over income tax treatments. In particular, some guidance on how the current and non-current principles should be applied in this context would be welcome.

In addition, we think that a prospective application of this interpretation should be permitted.

Please find our detailed comments to the questions asked by the IFRS IC on the following pages. If you wish to discuss any of the comments below, please don't hesitate to contact us.is

Yours sincerely,

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**APPENDIX**

| **Question 1—Scope of the draft Interpretation** |
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| 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*.<br><br>Do you agree with the proposed scope of the draft Interpretation? If not, why and what alternative do you propose? |

BUSINESSEUROPE welcomes the IFRS IC's effort to try to reduce diversity in practice and enhance comparability between entities.

As BC2 of the Draft Interpretation (DI) states, the IFRS IC was asked when it is appropriate to recognize a tax asset. It is also stated in the BC that the IFRS IC assumes that IAS 12.14 provides the guidance needed, as IAS 12.14 requires that it is probable that the economic benefits will flow to the entity and can be reliably measured (DI.BC16). In our view, the intended clarification and thus the scope of the interpretation should have been the determination of whether it is probable that there will be a flow of economic benefits.

In our view, the proposed scope concerns measurement rather than recognition by providing guidance in how to measure (current) tax assets or liabilities in cases where there is uncertainty whether the planned tax treatment will be accepted by taxation authorities. We would also like to note, that IAS 12.46 already provides guidance in the measurement of uncertain tax position by stating: "current tax liabilities (assets) for the current and prior periods shall be measured at the amount expected [underlining added] to be paid[...]".

Therefore we do not agree with the scope of the proposed interpretation since – in our view – it does not answer the question asked regarding whether to recognize a tax asset but provides guidance on how to measure it.

We also think that the IFRIC should provide relevant guidance regarding the application of IAS 1's definition of the current and non-current liabilities to tax liabilities resulting from the assessment of tax risks as measured according to this interpretation. The wording of IAS 1.69(d) could mistakenly be applied to classify all non-deferred tax liabilities as current. On the other hand, the entity often does not have existing obligation to pay in cases of uncertainty, since there is no due date for that liability, and thus presentation of tax liabilities in the balance sheet should be driven by the expected timing of settlement (by reference to IAS 1.69(a)-(c)), which would lead some elements of the tax liability to be presented as non-current, until the uncertainty is resolved.

Finally, we are aware of other types of charge such as taxes other than income taxes and levies which give rise to similar areas of uncertainty about acceptance and recovery of payments made. It would be helpful if the scope could be broadened to cover all such situations comprehensively.

| **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** |
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| 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.<br><br>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.<br><br>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.<br><br>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? |

As mentioned in our answer to Question 1, we see the proposed guidance as concerning the requirement for measurement rather than recognition. We agree with the IFRS IC that uncertainty over income tax treatments should play a role. In our view the appropriate treatment for binary cases would be:

- When an entity has made a prepayment over a disputed amount and concludes that it is probable that the taxation authority will accept this treatment, the entity should **recognize** a tax asset. It should measure this tax asset with regard to IAS 12.46 at the amount it expects to recover from tax authorities (which may be best represented by the expected value).
- When it is not probable that the entity will recover the disputed amount, the recognition criteria are not met and thus, the entity should not recognize a tax asset.

We are aware that by using the most likely amount as proposed in DI.16(a), the outcome would probably be the same, since the most likely amount would be equally zero. However, we think it would provide conceptually more stringent basis to not recognize an asset rather than to recognize an asset and measure it at zero.

For cases in which there are multiple possible outcomes, we think that it would be most appropriate if uncertainty was taken into account when the assessment about whether it is probable that there will be amounts to be paid or recovered to/from taxation authorities is made, that is, a judgement about recognition. Consequently, no tax liability or asset will be recognized only in those instances when it is not probable that there will be any tax payments or receipts. In all other cases, measurement of those assets and liabilities would follow IAS 12.46.

| **Question 3—Whether uncertain tax treatments should be considered collectively** |
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| 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.<br><br>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 IFRS IC's view to consider tax treatments collectively or separately.

| **Question 4—Assumptions for taxation authorities' examinations and the effect of changes in facts and circumstances** |
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| 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.<br><br>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 assumption that taxation authorities have full knowledge of all relevant information.

As stated in DI.A3 an entity would be required to assume a reexamination by tax authorities as long as the time limit for such reexaminations has not expired. We think that this might impose difficulties especially for entities in countries where taxation authorities have a never-ending right to reexamine prior tax filings. We therefore think that it may provide more useful information if entities incorporate that possibility as long as it is probable that the taxation authority would perform a reexamination. Thus, if it is improbable that a reexamination will be performed, uncertainty should no longer be considered.

We do agree with the IFRS IC's proposal that new or changed facts and circumstances should be reflected in the entity's judgement. Therefore we agree with the requirement to perform a reassessment when such changes occur.

| **Question 5—Other proposals** |
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| *Disclosure*<br><br>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*.<br><br>*Transition*<br>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.<br><br>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? |

As mentioned above, we are not of the view that the issue in question should be solved by issuing an Interpretation. Thus, we do not have comments on this question.
However, if the IFRS IC decides to approve this interpretation, we consider that prospective application should be permitted in respect of the complexity of the tax risk assessment procedures.

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