

19 January 2016

Mr Hans Hoogervorst
Chairman
International Accounting Standards Board
30 Cannon Street
London EC4M 6XH
UNITED KINGDOM

Dear Hans

AOSSG comments on Draft IFRIC Interpretation 2015/1 *Uncertainty over Income Tax Treatments*

The Asian-Oceanian Standard-Setters Group (AOSSG) is pleased to provide comments on the Draft IFRIC Interpretation 2015/1 *Uncertainty over Income Tax Treatments* (the “DI”). In formulating its views, the AOSSG sought the views of its constituents within each jurisdiction.

The AOSSG currently has 26 member standard-setters from the Asian-Oceanian region: Australia, Brunei, Cambodia, China, Dubai, Hong Kong, India, Indonesia, Iraq, Japan, Kazakhstan, Korea, Macao, Malaysia, Mongolia, Nepal, New Zealand, Pakistan, Philippines, Saudi Arabia, Singapore, Sri Lanka, Syria, Thailand, Uzbekistan and Vietnam.

To the extent feasible, this submission to the IASB reflects in broad terms the collective views of AOSSG members. Each member standard-setter may also choose to make a separate submission that is consistent or otherwise with aspects of this submission. The intention of the AOSSG is to enhance the input to the IASB from the Asian-Oceanian region and not to prevent the IASB from receiving the variety of views that individual member standard-setters may hold. This submission has been circulated to all AOSSG members for their feedback after having initially been developed through the AOSSG Working Group on this Draft IFRIC Interpretation.

In principle, AOSSG members agree with the proposals in the draft Interpretation. However, some members have concerns regarding measurement guidance proposed in the draft Interpretation while another member noted that implementation challenges may arise from the draft Interpretation.

For our detailed comments, please see Appendix I of this letter.

Finally, AOSSG members would welcome the opportunity to discuss with the IASB and IFRS Interpretation Committee members and Staff on any aspects of our comments before finalising the Interpretation.

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The AOSSG hopes that our comments will be helpful for the IASB's future deliberations. If you have any questions, please feel free to contact us.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jee In Jang', is centered on the page.

Jee In Jang
AOSSG Chair

APPENDIX I – Detailed comments from the AOSSG on DI/2015/1 *Uncertainty over Income Tax Treatments*

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?

1. The majority of AOSSG members agree with the scope of the draft Interpretation. There is diversity in practice as to accounting for uncertain tax positions.
2. Some members recommend that the scope of the draft Interpretation be extended to cover the accounting for interest and penalties on uncertain tax positions, as there is also diversity in practice on these matters. They recommend the IFRS Interpretations Committee to clarify which standard is applied to interest and penalties (i.e. IAS 12 or IAS 37).
3. One member recommends that the IFRS Interpretations Committee should clarify whether the draft Interpretation is intended to be applicable to business combinations in which the acquiree has uncertain tax positions, and to taxes liabilities and assets when there is uncertainty over tax treatments but that are not within the scope of IAS 12. If these items are not within the scope of the draft Interpretation, the IFRS Interpretations Committee should explicitly state so in the scope.
4. Also, there is a recommendation that the draft Interpretation should clarify that a current tax asset is recognized according to paragraphs 14-16 of IAS 12, when an entity makes an immediate payment of a disputed amount according to tax laws but the entity intends to appeal against the tax charge.

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?

5. The majority of AOSSG members agree that guidance should be provided regarding how the effect of uncertainty should be taken into account in determining the tax-related amounts in the financial statements. However, some AOSSG members have concerns regarding measurement guidance proposed in the draft Interpretation.
- (1) Tension might arise between the proposed ‘most likely amount’ or ‘expected value’ method of reflecting the uncertainty over tax treatments (paragraph 16 of draft Interpretation) and the existing ‘probable taxable profit’ criterion for recognising deferred tax assets. For example, if an entity concludes that it is not probable that the taxation authority will accept a particular tax planning opportunity, the proposals require the entity to overlay paragraph 16 with the probable taxable profit criterion when it determines the amount of future taxable profit to recognise and measure deferred tax asset. However, this might be problematic because: (i) under the expected value method, it appears possible to recognise deferred tax asset to the extent of taxable profit that is probable of being created by the tax planning opportunity, which is akin to the ‘cumulative probability’ approach. However, the resulting measure from the cumulative probability approach is neither the most likely amount nor the expected value; (ii) under the most likely amount method, the most likely amount does not necessarily meet the probable threshold. Therefore, it is unclear whether a deferred tax asset should be recognised only when the most likely amount of taxable profit is also probable of being created by the tax planning opportunity. The Interpretations Committee should clarify that, when there is tension between paragraph 16 and the probable taxable profit criterion, the latter should prevail. This is because the Interpretation does not change any existing requirements in IAS 12 and the existing use of that criterion to limit the extent of deferred tax asset recognised is, in itself, a departure from the general ‘best estimate’ approach implied in IAS 12.
 - (2) The Interpretation contains limited guidance on how the term ‘probable’, in paragraph 15, should be applied in practice. Although the term ‘probable’ is defined in the Glossary as

'more likely than not', there is no consistent application of this definition. Therefore, the Interpretation should clarify how 'probable' is to be applied in measuring the tax amounts within the context of IAS 12.46. Also the IFRS Interpretations Committee should clarify how the term 'probable' can be applied in the context of tax assets as well as for tax liabilities as it is not clear whether the recognition threshold for tax assets and tax liabilities are the same.

- (3) The draft Interpretation is not sufficiently clear whether the use of the cumulative probability approach as used in the US GAAP is acceptable; the Interpretation should identify the approach clearly as permissible or otherwise under IFRS.
6. It is also suggested that the IASB uses the term 'best estimate' instead of the term 'better prediction' in paragraph 16. As it would be more appropriate to use familiar terminology (in this case, by referring to the terminology in IAS 37) given that this is an interpretation of the existing standards. Introducing new terminology without explaining the term could lead to unintended consequences.
7. One member shares some concerns of implementation challenges that may arise from the draft Interpretation. It is noted that the amounts of income tax exposures that should be recognised would be subject to significant judgement as determining the probability of whether an uncertain tax treatment will be accepted is very subjective and the tax authorities' opinions may differ on a case to case basis and it is difficult to judge what the outcome could possibly be.

In addition, in a tax dispute situation or in circumstances in which there is uncertainty over income tax treatments, it may be challenging for entities to remain neutral because of self-interest or advocacy threats – and this may result in a questionable provision.

The member noted that from some entities' perspective, by recognising an amount in the financial statements as not probable that the tax authority will accept the uncertain tax treatment, it may be viewed as creating biasness in an outcome which is in favour of the tax authority.

These entities are also concerned disclosing the value of the probable outcome of the uncertain tax treatments will only jeopardise an entity's case if the entity is filing for an appeal or pursuing legal proceedings against the tax authorities. Under the situation of filing a judicial review, an entity will argue for the maximum benefits. However, the probable value in the financial statements may be a lower value than the amount in the judicial review. For example, in an out-of-court settlement, it may be detrimental to the entity as a result of questions raised with respect to the differences between the two values. They therefore believe it is best not to pre-empt the tax authorities' position by making any disclosures in the financial statements.

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?

8. The AOSSG members generally agree with the proposals in the draft Interpretation that entities should use judgment to determine whether uncertain tax treatments should be considered collectively.
9. Nevertheless, some members recommend that it might be helpful if the IASB redraft the paragraph 12 of the draft Interpretation so as to ensure the consistency between paragraph 11 of the draft Interpretation and the objective of financial reporting. This is because the benchmark stated in paragraph 11 of the draft Interpretation is generally appropriate, conditions stated in paragraph 12 of the draft Interpretation (that is, when doing so better reflects the manner in which the entity prepares and supports tax treatments or when collective assessment is consistent with the approach that the entity expects the taxation authority to take during an examination, or both) do not appear to be sufficiently consistent with the conditions stated in paragraph 11 of the draft Interpretation (that is, whether the collective approach provides better predictions of the resolution of the uncertainty).

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?

10. The AOSSG members generally agree with the proposals in the draft Interpretation.
11. However, some members are concerned about period of change. The period in which a change in facts and circumstances ought to be reflected in the accounting for income taxes should be determined using principles consistent with IAS 10 *Events after the Reporting Period*, i.e. whether the change provides evidence of conditions that existed at the end of the reporting period.

Hence, it is recommended that explicit guidance should be included in the Interpretation to clarify the application of IAS 10 to uncertain tax positions, as the information relating to uncertain tax positions will emerge between the reporting date and the date of approval.
12. There is a view that the form of acceptance by the taxation authority (i.e. whether explicit or implicit) should not affect the relative strength of the acceptance as a new fact for similar tax treatments not within the scope of the examination. Instead, the assessment should be based on the specifics of the circumstances, including how a jurisdiction's taxation authority customarily communicates its acceptance.

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?

Disclosure

13. AOSSG members generally agree with the draft Interpretation that emphasizes the disclosure requirements in IAS 1 and IAS 12.
14. One member does not support the reference to disclosure requirements of contingent liabilities under IAS 37 for uncertain tax positions. This member noted that the original intention of the draft Interpretation was to clarify that entities should apply IAS 12 instead of IAS 37 for uncertain tax positions. Hence, this member is of the view that a reference to IAS 37 implies that any significant uncertainty surrounding the measurement of a liability is itself a contingent liability, and such an assertion would amount to a fundamental change in the concept of “contingent liabilities” which is not supported by IAS 37 (we note in particular that IAS 37.44 directs the entity to make disclosure under IAS 37.85(b) when there are uncertainties surrounding the measurement of a provision, and does not direct the entity to IAS 37.86). Accordingly, this member thinks that in the circumstances described in paragraph 21 of the draft Interpretation, the entity should refer to IAS 1.125 for the relevant disclosure requirements.
15. Some members do not believe that the draft Interpretation provides sufficient details as to what information should be disclosed the two points described below:
 - (1) Paragraph 19 of the draft Interpretation should be redrafted to require disclosure of the significant judgments an entity makes in determining the effects required by paragraphs 11, 14 and 16 of the draft Interpretation by stating for example that ‘...in accordance with paragraph 122 of IAS 1, an entity shall disclose significant judgments required by paragraphs 11, 14 and 16 of this Interpretation, when such information is considered to be material.’
 - (2) Paragraph 20 of the draft Interpretation should be redrafted to require disclosure of the information about the assumptions an entity makes and other estimates used, by stating, for example, that ‘based on the determinations in accordance with paragraphs 125-129 of IAS 1, an entity shall disclose information about the assumptions it makes and other estimate used in determining taxable profit (tax loss), tax bases, unused tax losses, unused tax credit and tax rates, when the information is considered to be material.’

- (3) Paragraph 21 of the draft Interpretation should be redrafted to require that an entity shall disclose the following when the potential impact of the uncertainty is material:
 - (a) an estimate of financial effect of the uncertain tax treatments which are not reflected in the financial statements,
 - (b) an indication of the uncertainties relating to the amount or timing of any outflow, and
 - (c) the prediction of an entity over the timing of resolution of the uncertainty.

Transition

16. Majority of AOSSG members agree with the limited retrospective application. There are three additional comments:
 - (1) The proposed relief from full retrospective application should be extended to the first-time adopters of IFRS, as the risk of using hindsight would be equally applicable to such entities. In fact, IFRS 1 *First-time Adoption of IFRS* provides specific exceptions or exemptions from full retrospective application to avoid the use of hindsight.
 - (2) The draft Interpretation should be clearer that information that was not available in prior periods should not be adjusted for by way of restatement.
 - (3) It might be helpful that Interpretations Committee identify specific cases before finalising the IFRIC Interpretation since it is not clear if there are really cases where relevant information is available without the use of hindsight such that retrospective application of the draft Interpretation is possible.
17. One member commented that disclosure is not commonly required by other IFRS of the choice of transition method

Other comments

18. One member thinks that the drafting in paragraph IE5 could be softened to avoid implying that a similar conclusion should be drawn by another entity with a similar dispersion profile, for example (new text is underlined and deleted text struck through):

IE5 Entity B observes that the possible outcomes are widely dispersed and ~~notes that~~ considers the most likely amount of CU800 does not provide the better prediction of the resolution of the uncertainty in this instance. Entity B therefore concludes that the expected value (CU650) would provide the better prediction of the resolution of the uncertainty.