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Dear Roger,

Draft IFRIC Interpretation DI/2015/1 *Uncertainty over Income Tax Treatments*

On behalf of the Accounting Standards Committee of Germany (ASCG) I am writing to comment on EFRAG's Draft Comment Letter on the IASB's draft Interpretation DI/2015/1 *Uncertainty over Income Tax Treatments* (herein referred to as the 'DI'). We agree that the proposals are an appropriate interpretation of IAS 12, leading to a consistent application of the Standard as well as providing an economically meaningful result. Thus, we agree with EFRAG's position.

We note that the DI highlights an inconsistency between the accounting for uncertainty over *income* tax treatments and the accounting for uncertainty over *other* taxes that are in the scope of IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*. Whilst we appreciate that addressing this inconsistency is beyond the remit of the IFRS Interpretations Committee, we recommend the IASB address the wider issue of symmetric vs. asymmetric treatments of uncertainty in the revision of the Conceptual Framework. Once the conceptual basis has been agreed, the IASB should then consider aligning the accounting treatments of the different Standards.

Please find our detailed comments on the questions raised in the DI in the appendix to this letter that is attached to this letter, which we plan to submit to the IASB. If you would like to discuss our comments further, please do not hesitate to contact Franziska Schmerse or me.

Yours sincerely,

Andreas Barckow
President

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Appendix – Answers to the questions of draft Interpretation

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 with the proposed scope of the DI. Since the Interpretation relates to IAS 12, it is appropriate to capture all issues that are related to income taxes. However, we note that the DI highlights an inconsistency between the accounting for uncertainty over *income* tax treatments and the accounting for uncertainty over *other* taxes that are in the scope of IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*. Whilst we appreciate that addressing this inconsistency is beyond the remit of the IFRS Interpretations Committee, we recommend the IASB address the wider issue of symmetric vs. asymmetric treatments of uncertainty in the revision of the Conceptual Framework (in this regard, we refer to our response to the ED on the proposed amendments to the Conceptual Framework). Once the conceptual basis has been agreed, the IASB should then consider aligning the accounting treatments of the different Standards.

Notwithstanding our general agreement with the scope, we suggest reconsidering the introductory wording in paragraph 9 of the DI that *“This [draft] Interpretation does not change any existing requirements of IAS 12.”* We feel that such wording could be perceived as being inconsistent with the IFRS Interpretations Committee’s observation in paragraph 7, which we share, that diversity exists as regards *“the accounting for income tax in circumstances in which there is uncertainty in the application of the tax law.”* Even though the DI does not change existing requirements, its *application* will, in fact, lead to accounting changes for those entities that had reached a different conclusion on the issue. The wording could be read as implying that those entities’ accounting had been erroneous, which we do not believe is appropriate. Further, as this sentence does not add anything to the scope of the Interpretation, we suggest taking it out or at least softening the language and making its meaning less ambiguous.

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 in the DI 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.

In our view, the wording of the principle that an entity would have to use either the most likely amount or the expected value in situations in which the entity concludes that it is not probable that the taxation authority will accept an uncertain tax treatment, could be strengthened. The last sentence in paragraph 16 reads *“The entity shall use the method that it concludes will provide the better prediction of the resolution of the uncertainty.”* This sentence makes clear that the entity does not have a free choice but has to provide its best estimate of the likely resolution. We believe it would be better to move this sentence up and merge it with the one directly ahead of the enumeration to state: *“The entity shall use one of the following two methods that it concludes will provide the better prediction of the resolution of the uncertainty and reflection of its effect.”*

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 proposal to use judgement when determining whether uncertain tax treatments should be considered collectively or whether each uncertain tax treatment should be considered independently.

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 that an entity shall 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.

We also agree with the proposal that an entity shall reassess its judgements and estimates if facts and circumstances change as prescribed in paragraph 18 of the DI. However, when reading BC29 and BC30 of the draft Interpretation, it is not clear to us how new facts and circumstances are to be assessed in light of IAS 10. In our opinion, the entity needs to identify whether the implicit or explicit acceptance of an entity's tax treatment by a taxation authority is an adjusting or non-adjusting event in accordance with IAS 10 and deal with the situation accordingly. It has been brought to our attention that the equivalent requirement under US GAAP would foresee that

new facts and circumstances are always treated as non-adjusting events. We therefore believe that a clarification is warranted.

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

In general, we agree with not introducing new disclosure requirements but highlighting relevant existing disclosure requirements in the DI. However, we suggest adding a reference in the issues section (paragraph 10) as this lays out the issues that are then addressed in detail in the following paragraphs.

Transition

Whilst we agree with the proposed transition requirements, we wonder how often retrospective application would be seen. In most cases in which uncertain tax positions exist and that we are aware of, the entity would need the use of hindsight to have all necessary information, thus ruling out retrospective application.