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IFRS-FA – öffentliche SITZUNGSUNTERLAGE

Sitzung:	**23. IFRS-FA / 10.01.2014 / 9:00 – 10:00 Uhr**
TOP:	**02 – Interpretationsthemen**
Thema:	**IAS 12 *Recognition and measurement of deferred tax assets when an entity is loss making* – Stand der Diskussion**
Unterlage:	**23_02a_IFRS-FA_Interpret_IAS12**

1 Vorbemerkungen

1 Das o.g. Interpretationsthema wurde im Jahr 2013 beim IFRS IC eingereicht. Die Fragestellung betrifft die Anwendung von IAS 12.28 und .36 bzgl. Verlustvorträgen bei künftigen Verlusterwartungen. Der Wortlaut der Eingabe wurde vom IFRS IC mit den Unterlagen zu dessen November-2013-Sitzung (AP13) öffentlich gemacht.

2 Im September 2013 hatte das IFRS IC einen sog. *Outreach* hierzu gestartet. Das DRSC hatte sich hierbei eingebracht und eine erste Sichtweise (Antwort) formuliert.

3 Das IFRS IC hatte daraufhin im November 2013 den Sachverhalt erstmals in einer Sitzung erörtert. Dabei wurde einer der beiden dargestellten fraglichen Sachverhalte bereits (vorläufig) beantwortet, der andere wurde unbeantwortet vertagt, da weitere Analysen bzw. Informationen zur Klärung erforderlich schienen.

4 Der IFRS-FA hat sich in seiner 22. Sitzung (Dezember 2013) im Rahmen der Berichterstattung über das IFRS IC-Meeting vom November 2013 mit der Diskussion zu diesem Interpretationssachverhalt befasst. Hierbei wurde insb. thematisiert, dass der zweite der beiden dargestellten Sachverhalte noch nicht beantwortet sei. Diesbezüglich war vom IFRS IC angekündigt worden, dass Outreach-Aktivitäten folgen werden. Diese wurden zwischenzeitlich durchgeführt; das DRSC war hierbei involviert. Der IFRS-FA hatte zudem festgestellt, dass dieses Thema ein aktives Einbringen des DRSC in die Diskussion rechtfertige.

2 Bisherige Diskussion

5 Im Rahmen des o.g. ersten Outreach im September 2013 wurde der Sachverhalt wie folgt übermittelt und mit zwei Fragen versehen.

IAS 12 *Income Taxes* – Recognition and measurement of deferred tax assets when an entity is loss making

Case A: The submitter requested the Interpretations Committee to **clarify whether paragraphs 28 and 36 of IAS 12 require that a deferred tax asset is recognised**, regardless of an entity's expectations of future losses, when there are suitable reversing taxable temporary differences. The **fact pattern** described by the submitter is the following:

- an entity has tax losses carried forward of CU100 and taxable temporary differences of CU100;
- the tax law permits the losses to be offset against the taxable profit that will arise from the reversal of the taxable temporary differences;
- there are no limitations on the use of the tax losses in future periods; and
- the entity expects to incur tax losses in excess of the taxable temporary differences in future periods.

The submitter thinks that there are **two views** on this issue:

- View 1: deferred tax asset recognised regardless of expected future losses. According to IAS 12 paragraph 28, it is probable that taxable profit will be available against which a deductible temporary difference can be utilised when there are sufficient appropriate taxable temporary differences that are expected to reverse in the appropriate period. Consequently, a deferred tax asset is recognised in these circumstances, even though future tax losses are expected.
- View 2: deferred tax asset not recognised. According to IAS 12 paragraph 36 the existence of taxable temporary differences is an indicator, not evidence, that future taxable profits are probable. IAS 12 requires that there are future taxable profits. If the entity expects to incur further tax losses, the reversing taxable temporary differences will not give rise to taxable profit and the tax losses carried forward should not be recognised.

Case B: The submitter also asked the IC to **clarify how the guidance in IAS 12 should be applied when tax laws restrict the recovery of tax losses** to a certain portion of taxable profits in each year. The **fact pattern** described by the submitter is the following:

- assume that View 1 is the correct one (ie deferred tax asset are recognised regardless of expected future losses);
- an entity has tax losses carried forward of CU100 and taxable temporary differences of CU100 that will reverse next year and create CU100 of taxable profit;
- the entity expects to incur losses before and after the reversal of taxable temporary difference; and
- the tax law restricts the recovery of tax losses to 60% of taxable profit in each year.

The submitter thinks that there are **two views** on this issue:

- <u>View 1A: Deferred tax asset restricted to 60% of the taxable temporary difference</u>. It is not probable that there will be future taxable profits in excess of reversing taxable temporary differences, and consequently the deferred tax asset recognised is restricted to 60% of the taxable temporary difference.
- <u>View 1B: Deferred tax asset recognised to the full extent of sufficient taxable temporary difference.</u> The tax law restricts the recovery of tax losses to 60% of the taxable profit. If the entity expects to incur tax losses in the future, the tax law restriction does not apply, because the actual taxable profit will be zero (or it will be a tax loss). Consequently, the deferred tax asset is recognised to the full extent of the taxable temporary differences.

Q1: In your jurisdiction, how common are these issues? If they are common, could you provide us with information that the IC could use to assess how widespread the issues are?
Q2: In your view, is there diversity in practice in the recognition and measurement of deferred tax assets for losses carried forward in these fact patterns? Please describe the predominant approach that you observe in your jurisdiction.

6 Die DRSC-Antwort hierzu lautete wie folgt:

zu Q1: Both cases (A and B) are common and widespread in Germany.
zu Q2: <u>Case A:</u> There is no diversity in practice; View 1 is applied in Germany. <u>Case B:</u> There is diversity in practice, however, the (clearly) predominant approach we observe in Germany is View 1B.

7 Über die erste Diskussion zu diesem Thema im IFRS IC (November 2013-Sitzung) wird wie folgt zusammenfassend berichtet (Auszug aus IFRIC Update 11/2013):

The IC received a request for guidance on the recognition and measurement of deferred tax assets when an entity is loss-making. The IC was asked to clarify two issues:

a. whether IAS 12 *Income Taxes* requires that a deferred tax asset is recognised regardless of an entity's expectations of future tax losses when there are suitable reversing taxable temporary differences; and
b. how the guidance in IAS 12 is applied when tax laws limit the extent to which losses can be recovered against future profits.

Regarding the first issue, the IC noted that according to paragraphs 28 and 35 of IAS 12, a deferred tax asset is recognised to the extent of the taxable temporary differences of an appropriate type that reverse in an appropriate period. The reversing taxable temporary differences enable the utilisation of the deductible temporary differences and are sufficient to justify the recognition of deferred tax assets. Consequently, it is not necessary to take into consideration future tax losses. The IC tentatively decided that the agenda criteria were not met for this issue and requested that the staff should prepare a tentative agenda decision for discussion at its January 2014 meeting.

The IC had a preliminary discussion on the second issue and directed the staff to do some further analysis, including presenting a recommendation at a future Interpretations Committee meeting.

8 Der somit offen gebliebene zweite Sachverhalt (Case B) führte zu einem anschließenden weiteren Outreach. Im Rahmen dessen wurden zwei Fragestellungen übermittelt, die das DRSC wie folgt beantwortet hat:

Q1: Is our understanding correct, that

- **(German) tax law restricts the recovery of tax losses to a certain portion of taxable profits in each year and**
- **the predominant approach (in Germany) is that deferred tax assets are recognised to the full extent of the reversing taxable temporary difference, even though entities expect to incur tax losses before and after the reversal of the taxable temporary difference.**

Q2: If yes, for which reasons do these entities recognise the deferred tax asset in full?

zu Q1: Yes, it is correct that German tax law restricts the recovery of tax losses due to minimum taxation. Though, this only applies if the entity expects to incur taxable profits. If future tax losses are expected, minimum taxation does not have any impact.

zu Q2: Entities would distinguish whether they expect tax losses or tax gains to occur.

- If tax losses are expected, there is effectively no minimum taxation, thus, the general requirements of IAS 12 would apply. Due to IAS 12.28 and .35 deferred tax assets would be recognised to the full extent.
- If tax gains are expected, minimum taxation would have an impact, such as that deferred tax assets are recognised but limited to the percentage of reversing taxable temporary difference that equals the minimum taxation percentage (i.e. 60 %).

9 In welcher Sitzung das IFRS IC die Diskussion hierzu fortsetzt, ist derzeit noch nicht bekannt.

3 Nächste Schritte des IFRS-FA

10 Der IFRS-FA wird gebeten, ggf. Meinungen und Hinweise zum derzeitigen Diskussionsstand zu äußern.

11 Sofern der IFRS-FA konkrete Aktivitäten – im Sinne des Beschlusses in der 22. Sitzung, das DRSC solle sich aktiv in die Diskussion einbringen – als sinnvoll erachtet, wird um entsprechenden Vorschlag gebeten.