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Wayne Upton
Chairman of the
IFRS Interpretations Committee
30 Cannon Street
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Berlin, XX April 2014

United Kingdom

Dear Wayne,

IFRS IC tentative agenda decisions in its January 2014 meeting

On behalf of the Accounting Standards Committee of Germany (ASCG), I am writing to comment on several IFRS IC tentative agenda decisions, published in the January 2014 *IFRIC Update*. We list the decisions and our detailed comments in appendix A to this letter.

Further, we comment on one issue on which a final agenda decision has been made. We are particularly concerned about the short and probably incomplete rationale for this (final) decision as conveyed in the *IFRIC January 2014 Update*.

Finally, we provide some comments on one issue related to an item of work in progress. Although the IFRS IC has not yet made a tentative agenda decision, we deem it helpful to provide our input at this early stage with reference to some particular aspects in our jurisdiction in order to support finding an appropriate answer on the issue.

If you would like to discuss our views further, please do not hesitate to contact me.

Yours sincerely,

Liesel Knorr

President



Appendix A – Comments on recent tentative agenda decisions

IAS 1 – Issues related to the application of IAS 1

We agree with the IFRS IC's decision in general. In particular, we agree with the rationale that IAS 1 is designed to allow for diversity in practice, as this supports financial information to be presented in a decision-useful manner – depending on the individual entity and/or business. Thus, diversity cannot be marked as negative in all cases; it is rather essential to allow for individually useful presentation.

This said, we would not support if presentation schemes, (dis)aggregation levels, etc. were prescribed and fixed. This might be in the particular interest of enforcement institutions, but not in the interest of IFRS financial reporting in general. If, in any specific case, presentation shall follow more strict schemes, this would require a comprehensive project for changes to IAS 1.

However, and to our surprise, we deem the wording of the IFRS IC's tentative decision containing judgement on one particular issue. If we understand it correctly, the IFRS IC concludes that additional pro-forma columns in the primary statements are unlikely to comply with IAS 1.112(c). We deem this statement being made unintentionally; otherwise it would conflict with the central idea of the decision. This might warrant amending the wording of this decision.

Nevertheless, we think there are indeed some examples for which (existing or expected) diversity might not be in line with IAS 1. Therefore, these examples would deserve being further discussed by the IFRS IC in order to develop clarification. Amongst the examples given in the submission, we acknowledge that at least the following would benefit from clarification:

- example a.1) = presentation of amortisation and impairment losses on capitalised development cost;
- example b.3) = presentation of the share of profit or loss of associates or and joint ventures accounted for using the equity method.

Thus, we would support if potential clarification or guidance on these or any other examples were developed only through a more comprehensive review, e.g. within the current disclosure initiative. If so, the IASB and the IFRS IC should make sure that such clarification or guidance is not developed only for selected issues that have been raised incidentally through a submission, but rather on a systematic manner.



IAS 12 – Recognition and measurement of DTA when an entity is loss-making

We do not support the outcome of recent discussions of issue #2 in the relevant submission, which is whether a deferred tax asset (DTA) shall be recognised at a restricted amount when there is a legal "minimum taxation restriction". While we acknowledge that this is not yet a tentative agenda decision (TAD), we deem our early comments being appropriate since a TAD on the related issue #1 of the very same submission has already been made by the IFRS IC. That former TAD (and its rationale) on issue #1 in particular make the outcome from recent discussions of issue #2 look surprising, or even inconsistent.

As a matter of fact, we note that in our jurisdiction tax law limits the extent to which tax losses can be recovered against future profits, i.e. only 60 % of future profits can be utilised for deducting tax losses carried forward. Thus, the issue is relevant and widespread. Recognition of a DTA without limitation (resulting from minimum taxation) is the predominant practice.

From a pragmatic perspective, we note that a minimum taxation by tax law would not apply (ie. does not have any implication) in case future losses are expected. Thus, it appears inappropriate if in that case the amount to be recognised as a DTA were restricted.

However, due to the main underlying rationale for the IFRS IC's decision on issue #1 – which we clearly support –, the expectation of tax losses (or taxable profits) shall not be taken into account when determining the amount of a DTA to be recognised. Hence, recognising a DTA solely depends on the existence of reversing taxable temporary differences (being a deferred tax liability (DTL)), and is irrespective of whether future tax losses are expected. Thus, even in loss-making periods a DTA would be recognised in full, provided that a DTL is available.

If this rationale were carried over to issue #2, since future tax losses (or profits) shall not be taken into consideration, taxable temporary differences that allow for recognising a DTA must not be limited to a certain percentage due to a minimum taxation requirement.

Seen from another (more conceptual) perspective, the decision on both issues should primarily depend on the existence of a DTL, and not on the availability of future taxable profits or tax losses. As this is the underlying rationale for the TAD on issue #1, it should consequently result in supporting view 2 (or 1B) for issue #2 – which would be that a DTA is recognised without limitation by minimum taxation.

So far, the current decisions on both issues do not follow the same rationale, thus, are inconsistent.



IAS 12 – Threshold of recognition on an asset if the tax position is uncertain

We support the decision. However, this question now being answered is also relevant in other circumstances which look similar, but are not income tax issues, thus, are not in the scope of IAS 12 – e.g. payments in escrow accounts or deposits in court. The IFRS IC's decision leaves open how to account for those similar issues. While we discussed this issue, another (third) view has emerged: Such payments are similar to a deposit and would constitute a financial asset, hence, IAS 39 / IFRS 9 is the standard that requires recognition of an asset.

IAS 19 – Guaranteed return on contributions or notional contributions

We note the IFRS IC's view that this issue is too broad to be addressed in an efficient manner. Nevertheless, as the IFRS IC observed, these plans are part of a growing range of plan designs and the accounting for these plans results in diversity in practice. Therefore, we would welcome guidance on how to account for these plans.

This issue is the second IAS 19 issue recently removed from the IFRS IC's agenda because it is too broad to be addressed by the IFRS IC. In addition, there are other issues relating to IAS 19 that are, or have recently been, under discussion (e.g. discount rates, regional market issue, etc). This shows that a fundamental revision of IAS 19 by the IASB is necessary in the near future. Thus, we urge the IASB to conduct a comprehensive revision of IAS 19.

Furthermore, we would suggest that, whenever the IFRS IC determines that an issue is too broad to be addressed, the IASB feels obliged to define the circumstances in which the IFRS IC is able (and empowered) to solve the issue. As a result, this should allow for a process that actually leads to answering issues rather than rejecting them for formal reasons. This may result in adjustments to the due process handbook in order to clarify the borderline of responsibilities between the IASB and the IFRS IC, either in a general sense or, at least, with regard to potential minor "narrow-scope amendments" and/or interpretations.



Appendix B – Comments on a recent (final) agenda decision

IAS 32 – MCB convertible upon a contingent "non-viability" event

In our opinion, the decision of the IFRS IC not to add this issue to its agenda is not well explained. We do not agree with the wording of the agenda decision as it does not include any statement by the IFRS IC on how to account for the submitted case. So far, it remains unclear whether the instrument may be considered a hybrid instrument and how its components (nominal amount, interest payments) are to be accounted for. As mentioned above, we would appreciate if the IFRS IC were to discuss a case that has the opposite features to the case submitted (i.e. the bond does not need to be settled but the entity has to pay a certain amount every year, irrespective of any profit or loss during this year).

More generally, we note that numerous requests with respect to IAS 32 have been submitted to the IFRS IC during the recent years. In our impression, these issues have been dealt with in a casuistic manner. Thus, we are concerned about IAS 32 related interpretations and decisions being inconsistent. This said, we recommend the IFRS IC to deliberate further whether the recent decision on the issue mentioned above is consistent with other interpretations/decisions made by the IFRS IC regarding IAS 32.



Appendix C – Comments on an issue related to an item of work in progress

IAS 12 – Recognition of DTA for unrealised losses

We support the effort of the IFRS IC to amend IAS 12 in order to clarify the recognition of deferred tax assets for unrealised losses on debt instruments measured at fair value. However, we do not agree with the approach the IFRS IC prefers namely recognition of deferred tax assets only if recovering the debt instrument by holding it until an unrealised loss reversing reduces future tax payments and not only avoids higher tax losses.

We would advocate assessing the recognition of deferred tax assets for unrealised losses on FVOCI debt instruments only based on the entity's ability and intention to hold the investment in this debt instrument until recovery or maturity, separately from the entity's other deferred tax assets and regardless whether the entity is in a loss position or not. That is because the future tax losses or gains that the entity expects to have in the foreseeable future will not be affected by the recovery of the carrying amount of the FVOCI debt instrument.

Furthermore, we would like to point out that the IFRS IC's approach will lead to changes in current accounting practice. If an entity expects and has the ability to recover the carrying amount of the asset by holding it to maturity and collecting all of the contractual cash flows, this is currently considered justifying the recognition of a deferred tax asset for unrealised losses recognised in OCI.