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IFRS-FA – öffentliche SITZUNGSUNTERLAGE

Sitzung:	38. IFRS-FA / 19.05.2015 / 09:00 – 10:30 Uhr
TOP:	07 – Interpretationsaktivitäten
Themen:	IFRS IC-Sitzung Mai 2015 sowie TAD zu IAS 19 / IFRIC 14
Unterlage:	38_07_IFRS-FA_Interpret_CN

1 Sitzungsunterlagen für diesen TOP

- 1 Für diesen Tagesordnungspunkt (TOP) der Sitzung liegen folgende Unterlagen vor:

Nummer	Titel	Gegenstand
38_07	38_07_IFRS-FA_Interpret_CN	Cover Note
38_07a	38_07a_IFRS-FA_Interpret_IAS19	Diskussionsgrundlage IAS 19

Stand der Informationen: 07.05.2015.

2 Ziel der Sitzung

- 2 Der IFRS-FA soll Kenntnis über die Themen und Entscheidungen der **IFRS IC-Sitzung am 12./13. Mai 2015** erhalten. Das IFRS IC hat vorgesehen, **zwei vorläufige Agendaentscheidungen (TAD)** sowie eine **endgültige Agendaentscheidungen (AD)** zu treffen. Informationen über die tatsächlichen Entscheidungen sind noch nicht bekannt, somit in dieser Unterlage **38_07** nicht enthalten, sondern werden mündlich berichtet. Ergänzende Hintergrundinformationen zu den Themen finden sich in Abschnitt 3 dieser Unterlage.
- 3 Des Weiteren soll die Diskussion des Themas *IAS 19 / IFRIC 14 – The Limit on a Defined Benefit Asset, Minimum Funding requirements and their interaction: Should an entity assume continuation of a minimum funding requirement for contributions relating to future service* fortgeführt werden. Zu diesem Thema hatte das IFRS IC eine vorläufige Entscheidung getroffen, die bis zum 2. Juni 2015 kommentiert werden kann.



- 4 Der IFRS-FA hat das Thema vorläufig als nicht relevant beurteilt, jedoch gebeten, weitere Informationen hierzu einzuholen. In dieser 38. Sitzung sollen dem IFRS-FA die Anmerkungen der AG Pensionen zu diesem Thema vorgelegt werden (siehe Unterlage **38_07a**). Auf dieser Basis ist zu entscheiden, ob der IFRS-FA mit der vorläufigen Entscheidung des IFRS IC einverstanden ist oder **ob ggf. Bedarf für eine Stellungnahme** besteht. Wenn dem so ist, müsste die Meinung des IFRS-FA und somit der Inhalt der Stellungnahme konkretisiert werden.

3 Informationen im Detail

3.1 Vorläufige Agendaentscheidungen

- 5 In der IFRS IC-Sitzung im Mai 2015 sollen folgende vorläufige Agendaentscheidungen (TAD) getroffen werden:

IAS/IFRS	Thema	TAD
IFRS 10	<i>Lessee accounting / assessment of control</i>	NIFRIC (sufficient guidance how to assess control, no case-by-case advice) --> leicht geänderte TAD im Vergleich zur vormaligen TAD von November 2014
IAS 23	<i>Transfer to general borrowings</i>	NIFRIC (sufficient guidance exists)

3.1.1 Zu IFRS 10 – *Lessee accounting / assessment of control*

- 6 Die Anfrage ans IFRS IC umfasst zwei Sachverhalte, die die Beurteilung von Kontrolle nach IFRS 10 beim Leasingnehmer betreffen. Im Oktober 2014 hatte das IFRS IC zwei *Outreach Requests* hierzu gestartet. Dabei wurden die Sachverhalte wie folgt übermittelt:

Submission / Issue A

1. Summary: Submission A - Operating lessee, financed by lenders

A structured entity (the SE) is created on behalf of a manufacturer. The SE holds a single asset manufactured by the manufacturer which is subsequently leased to a single customer, the lessee. The lease to the customer is an operating lease in the terms of IAS 17. The SE is financed by a third party lender, a bank. The bank manages the credit risk on the lease receipts and makes decisions about the sale of the residual asset if the lessee does not exercise its option to purchase. The bank also holds the equity in the SE. The submitter thinks that there are two views in practice with respect to whether the following are relevant activities of the SE:

- (a) use of the asset by the lessee during the lease term; and
- (b) the option to purchase the asset at the end of the lease term.

2. Views

View A: Yes, they are the relevant activities that should be considered in an IFRS 10 analysis.

This view is based on the premise that the SE, as legal owner of the asset, is exposed to the risks and rewards incidental to owning the asset. Through the lease agreement, the lessee can significantly affect these risks and rewards because it has use of the asset during the lease period, and use of the asset is



an activity that significantly affects the asset's fair value and therefore the returns of the SE. Under this view, if use of the asset and the purchase option are considered the most relevant activities of the SE, which the submitter believes would likely be the case, the lessee would consolidate the SE. Because the lessee consolidates the lessor (the SE), the IAS 17 classification is not relevant.

View B: No, they are not the relevant activities that should be considered in an IFRS 10 analysis.

This view is based on the premise that the lease agreement creates the risks which the SE is designed to be exposed to, ie credit risk of the lessee and residual value risk. These risks are managed by the SE/Bank through its actions in monitoring default, monitoring use of the asset and managing the sale of the asset in the event the purchase option is not exercised by the lessee. Under this view, use of the asset is not a relevant activity. Therefore, the lessee would not consolidate the SE and its accounting for the transaction would be determined by reference to IAS 17.

3. Questions

- (a) Are you aware of any transactions of this type that take place in your jurisdiction? If yes,
- How common is this type of transaction?
 - How is the structured entity accounted for in your jurisdiction, ie which entity would consolidate the SE in each case?
 - Is there diversity in practice?
- (b) If you have a preferred or recommended treatment, what is it and why?
- (c) Do you have any other comments on these submissions?

Submission / Issue B

1. Summary: Submission B - Finance lessee, financed by lenders

A manufacturer sells high value, technologically-advanced PPE. A structured entity (the SE) is created on behalf of the manufacturer / its customer. The SE holds a single asset made by the manufacturer which is subsequently leased to the customer under a finance lease.

1.1. Case 1

The cost of the asset is 80 CU. The customer pays 25% of the consideration directly to the manufacturer. The remaining 75% of the asset is sold to the SE which is, itself, financed by both senior and junior lenders. The customer enters into a finance lease with the SE for the remaining 75% interest in the leased asset:

Lease financing 75%	CU
Lease payments-principal	60
Lease payments- interest	25
Total payments	85
Residual value of asset	20

If the lessee/customer defaults, the senior lender has the right to repossess the leased asset and resell it. In order to protect the junior lender from a resale by the senior lender at a reduced price, the junior lender has a right to buy the asset from the senior lender at an amount equal to the principal and interest due to the senior lender. The junior lender can then sell the asset in order to recoup as much of its



unpaid principal and interest as possible. Amounts in excess of the sums due to the junior lender go to the lessee. The submitter asks whether the junior lender should consolidate the SE.

View A: The junior lender consolidates the SE.

Supporters of this view refer to IFRS 10.B53 which considers the case of an entity that has no relevant activity other than managing receivables on default. By analogy, supporters of this view think that managing the sale of the leased asset on default is the relevant activity of the SE and, consequently, the junior lender has power over the SE. Because the junior lender has power over the SE and has variable rights to be derived from the SE in terms of the proceeds of sale of the leased asset, supporters of this view think that the junior lender controls the SE.

View B: The junior lender does not consolidate the SE.

Supporters of this view think that this reflects the economics of the arrangement. At inception, it is not expected that default will occur or the lease would not be initiated. Managing the asset on default, therefore, is not the relevant activity of the SE. In addition, the junior lender has no right to variable returns in the normal course of the lease. Supporters of this view think that the junior lender's right to buy the asset is a protective right typical of any secured loan and, in accordance with IFRS 10.B28, the junior lender does not have power over the SE.

1.2. Case 2

The facts are the same except that the customer / lessee does not pay 25% of the consideration directly to the manufacturer. Instead, it pays 25% to the SE itself and consequently the customer becomes an investor in the SE. At the end of the lease, the customer/lessee has the residual interest in the leased asset. Both sales of the asset on default and the sale of the asset at the end of the lease are considered to be the relevant activities of the SE. The junior lender controls the sales activities on lessee default, and the customer / lessee controls the sales activities at the end of the lease. Given that default is unlikely and the asset's residual value at the end of the lease is significant, selling the asset (or continue its use) at the end of the lease may prove to be the more relevant activity. In that case, the most relevant activities of the SE are controlled by the customer / lessee and consequently the lessee has power over the SE. Supporters of this view think that the lessee would consolidate the SE, not the junior lender.

The submitter notes that the way in which the asset is financed through a lease is identical in each case, but the way in which the SE itself is financed differs:

	Case 1		Case 2
Leased asset	60	Leased asset	80
Senior loan	(45)	Senior loan	(45)
Junior loan	(15)	Junior loan	(15)
		Lessee contribution	(20)

The submitter thinks that Case 1 and 2 are similar economically and is concerned that if View A above prevails the consolidation decision made in accordance with IFRS 10 differs.

2. Questions

- (a) Are you aware of any transactions of this type that take place in your jurisdiction? If yes,
* How common is this type of transaction?



** How is the structured entity accounted for in your jurisdiction, ie which entity would consolidate the SE in each case?*

** Is there diversity in practice?*

(b) *If you have a preferred or recommended treatment, what is it and why?*

(c) *Do you have any other comments on these submissions?*

7 Die DRSC-Antworten vom 24. Oktober 2014 hierzu lauteten wie folgt:

Submission / Issue A

Ad (a) Those transaction are very common and deserve a high priority. We see diversity in practice.

Ad (b) Different preparers and auditors have expressed different preferences, so generally both views were considered acceptable. For some, it seems crucial to take a holistic view, i.e. consider all facts and circumstances. In particular, no activities should be excluded from the assessment of relevance.

Ad (c) We deem the questions of (a) which activities are relevant and (b) whether the lease agreement should be included as being crucial. As we deem IFRS 10 lacking clarity, we would welcome additional guidance.

Submission / Issue B

Ad (a)+(b) These transactions are common. We have no clear answer on how they are accounted for or about a preference. It depends on the individual facts and circumstances. We deem the balance between asset risk and credit risk being the crucial item to answer on this issue. Further, we think that the economics of the transaction are relevant only to the extent that they result in similar rights over the same entity and activities, i.e. economically similar agreements should not necessarily be accounted for similarly.

Ad (c) n/a

8 Das Thema wurde im November 2014 erstmals in öffentlicher Sitzung des IFRS IC diskutiert. Die vorläufige Entscheidung und der Wortlaut der Begründung lauten wie folgt (Auszug IFRIC Update 11/2014):

Control of a structured entity by an operating lessee (Issue A)

The IFRS IC received a request for clarification about the interaction of IFRS 10 and IAS 1. In the submitter's example, a structured entity (the 'SE') is created to lease a single asset to a single lessee. The submitter asks whether the lessee controls the SE and whether the lessee should consolidate the SE. The lease is an operating lease as defined by IAS 17.

The IFRS IC noted that, in assessing the effect of a lease on an assessment of power made in accordance with IFRS 10, it is necessary to make a careful assessment of the facts and circumstances. It also noted that it is not the IFRS IC's practice to give case-by-case advice on individual fact patterns. It concluded, however, that the principles established within IFRS 10 would enable a determination to be made when all required information is known.

The IFRS IC further concluded that it did not expect significant diversity in the application of IFRS 10 to arise following the implementation of the Standard.



Consequently, the IFRS IC thought that neither an Interpretation nor an amendment to a Standard is required and [decided] not to add this issue to its agenda.

Control of a structured entity by a junior lender (Issue B)

The IFRS IC received a request for guidance related to assessing whether a particular party controls a structured entity (the 'SE') that is created to lease a single asset to a single lessee and is financed by a senior and a junior lender. The submitter asked whether the junior lender controls the SE and whether that lender should consolidate the SE. The lease is a finance lease as defined by IAS 17.

The IFRS IC noted that, in assessing the effect of a lease on an assessment of power made in accordance with IFRS 10, it is necessary to make a careful assessment of the facts and circumstances. It also noted that it is not the IFRS IC's practice to give case-by-case advice on individual fact patterns.

It concluded, however, that the principles and guidance in IFRS 10 would be sufficient to enable a determination to be made when all required information is known. It also noted that it had not received any evidence that there was diversity in the application of IFRS 10 on this issue.

Consequently, the IFRS IC thought that neither an interpretation nor an amendment to the Standard was required and [decided] not to add this issue to its agenda..

- 9 Der IFRS-FA hatte im Dezember 2014 und Januar 2015 Kenntnis von diesem Beschluss erhalten und folgendes festgestellt (Auszug Protokoll 34. IFRS-FA-Sitzung):

Abweichend zu den vorläufigen Agendaentscheidungen zu IFRS 10-Themen (*Control of a structured entity by an operating lessee* und *Control of a structured entity by a junior lender*) sieht der IFRS-FA *diversity in practice* in Deutschland. Diese Auffassung soll dem IFRS IC in einem Schreiben mitgeteilt werden.

- 10 Daraufhin hat der IFRS-FA eine Stellungnahme an das IFRS IC adressiert, in der - neben anderen Themen - folgendes zu IFRS 10 formuliert wurde:

The November 2014 IFRIC Update states that the IFRS IC had not received any evidence that there was diversity in the application of IFRS 10 on these issues. As communicated to the technical staff in their outreach on these issues, we observed that these transactions are common in Germany and that we see diversity in practice. As we think that IFRS 10 is lacking clarity, we would welcome additional guidance and would therefore appreciate further elaboration of these issues.

- 11 Zwischenzeitlich hat das IFRS IC das Thema weiterdiskutiert. Dabei wurde zum einen anerkannt, dass einige - darunter das DRSC - auf *diversity in practice* hingewiesen haben. Insofern muss der Wortlaut der IFRS IC-Entscheidung entsprechend angepasst werden. Im Grundsatz will das IFRS IC voraussichtlich seine vorläufige Entscheidung bestätigen, wird formal aber wahrscheinlich eine erneute (überarbeitete) vorläufige Entscheidung treffen und publizieren. Details hierzu folgen mündlich.



3.1.2 Zu IAS 23 – *Transfer to general borrowings*

- 12 Die Anfrage ans IFRS IC betrifft eine Klarstellung hinsichtlich des direkten Zusammenhangs zwischen Fremdkapitalaufnahme und dem von dieser Finanzierung betroffenen Vermögenswert. Im April 2015 hatte das IFRS IC einen *Outreach Requests* hierzu gestartet. Dabei wurde der Sachverhalt wie folgt übermittelt:

1. Back ground and issue

An entity borrows funds specifically to finance the construction of a qualifying asset. The construction of the specified asset has now been completed and the borrowing has not been fully repaid. The issue is related to clarifying whether those funds borrowed specifically to finance the construction of a qualifying asset, the construction of which has now been completed, must be included as part of general borrowings.

2. Divergent views identified by the submitter

The submitter notes that the Standard's requirement and the IASB's intent for such borrowings may not have been clearly explained and this has led to differing interpretations in practise.

View A: Judgement is required

- Proponents of this view state that management will need to exercise judgement in determining its policy and assessing the nature of loans when construction activity is completed. They note that the Standard acknowledges the difficulty in identifying a direct relationship between particular borrowings and a qualifying asset.

View B: Specific borrowings are transferred to the general borrowings pool

- Proponents of this view note that if specific borrowings were not repaid once the relevant qualifying asset was completed, they become general borrowings for as long as they are outstanding. This is because if the cash was not spent on other qualifying assets, it could be directed to repay this specific loan. Thus, the borrowing cost could be avoided.
- This is consistent with paragraph 10 of IAS 23 which states that borrowing costs directly attributable to the acquisition, construction or production of a qualifying asset are those borrowing costs that would have been avoided if the expenditure on the qualifying asset had not been made.

3. Questions

1. In your jurisdiction, what is the prevalent approach for accounting for specific borrowings that are not repaid upon completion of construction of the specified asset?
2. If possible, could you please describe the rationale for that approach?
3. To what extent do you observe diversity in the accounting treatment in such situations?

- 13 Die DRSC-Antwort vom 23. April 2015 hierzu lautet wie folgt:

Ad 1) and 2) Due to the feedback we received we recognise that there is no prevalent approach for the accounting within our jurisdiction. To our knowledge, both views are acceptable - for the reasons set out in the submission. However, there are circumstances where no free capital transfer is possible. In this scenario only view A could be supported.

Ad 3) As both views are acceptable, we expect diversity in practice.



- 14 Das IFRS IC wird den Sachverhalt erstmals in öffentlicher Sitzung erörtern. Das IFRS IC wird voraussichtlich entscheiden, den Sachverhalt nicht weiter zu behandeln, da IAS 23 hinreichend Anleitung enthält – der zufolge eine Umgliederung in den *pool of general borrowings* vorzunehmen ist. Über die tatsächliche Entscheidung wird mündlich berichtet.

3.2 Endgültige Agendaentscheidungen

- 15 In der IFRS IC-Sitzung im Mai 2015 soll folgende endgültige Agendaentscheidung getroffen werden:

IAS/IFRS	Thema	AD
IAS 24	<i>Close members of a family</i>	NIFRIC (guidance is clear) --> wie TAD

3.2.1 Zu IAS 24 – *Close members of a family*

- 16 Die Anfrage an das IFRS IC betrifft die Anwendung von IAS 24.9, und hierbei, ob die (leiblichen) Eltern als nahestehende Familienmitglieder gelten, obwohl sie in IAS 24.9(a)-(c) nicht aufgezählt werden. Ende Dezember 2014 hatte das IFRS IC einen *Outreach Request* hierzu gestartet, an dem sich das DRSC nicht beteiligt hatte.
- 17 Das Thema wurde im Januar 2015 erstmals in öffentlicher Sitzung des IFRS IC diskutiert; es wurde vorläufig beschlossen, dass die nicht abschließende Aufzählung in Tz. 9(a)-(c) Eltern nicht ausschließt. Die Entscheidung mit Begründung lautet wie folgt (vgl. IFRIC Update 1/2015):

The IFRS IC received a submission regarding the definition of close members of the family of a person in IAS 24.9. The submitter points out that the definition of close members of the family of a person in IAS 24.9 does not specify that the parents of a person could be included in this definition. The submitter thinks that this definition should include a person's parents, because in its view they are among the closest members of the family of a person who may be expected to influence, or be influenced by, that person in their dealings with the entity. The submitter further observes that some jurisdictions include the parents of a person within the definition of 'close members of the family of a person'.

The submitter suggests that the IFRS IC could:

- specify that this definition includes 'those persons who are considered to be close members of the family according to the law or the prevailing customary norms in the jurisdiction where the entity operates'; and
- remove the examples of 'close members of the family of a person' from the definition.

The IFRS IC observed that the definition of close members of the family of a person in IAS 24.9 is expressed in a principle-based manner and involves assessing whether a family member is expected to influence or be influenced by a person. This assessment involves the use of judgement to determine whether members of the family of a person (including that person's parents) are related parties or not.

The Interpretations Committee also noted that the list in IAS 24.9(a)-(c) specifies members that would be considered close members of the family of a person. Moreover it noted that this list is non exhaustive and does not preclude other family members from being considered close members of the family. Consequently the IFRS IC thought that other family members, including parents or grandparents, could



qualify as close members of the family depending on the assessment of specific facts and circumstances.

In the light of the existing IFRS requirements the IFRS IC determined that neither an Interpretation nor an amendment to a Standard was necessary and therefore [decided] not to add this issue to its agenda.

- 18 Der IFRS-FA hat Anfang Februar 2015 von dieser Entscheidung Kenntnis erhalten, aber **keinen weiteren Diskussionsbedarf festgestellt**.
- 19 Das IFRS IC wird seine vorläufige Entscheidung und die zugehörige Begründung nun voraussichtlich bestätigen. Über die tatsächliche Entscheidung wird mündlich berichtet.