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IFRS-FA – öffentliche SITZUNGSUNTERLAGE

Sitzung:	46. IFRS-FA / 09.02.2016 / 09:00 – 10:30 Uhr
TOP:	05 – Interpretationsaktivitäten
Thema:	Diskussion von Themen aus der IFRS IC-Sitzung im Januar 2016
Unterlage:	46_05_IFRS-FA_Interpret_CN

1 Sitzungsunterlagen für diesen TOP

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

Nummer	Titel	Gegenstand
46_05	46_05_IFRS-FA_Interpret_CN	Cover Note
46_05a	46_05a_IFRS-FA_Interpret_Update	IFRIC Update 1/2016
46_05b	46_05b_IFRS-FA_Interpret_Eingabe	DRSC-Eingabe zu IFRIC 12 vom 7. August 2015

Stand der Informationen: 28.01.2016.

2 Ziel der Sitzung

- 2 Der IFRS-FA soll über die **Themen und Entscheidungen der IFRS IC-Sitzung im Januar 2016** informiert werden.
- 3 Zur (einzigen) vorläufigen Agenda-Entscheidung (TAD) betreffend IFRIC 12 wird der IFRS-FA um Fortsetzung der bereits begonnenen Meinungsbildung und ggf. um **Entscheidung über eine Stellungnahme** an das IFRS IC gebeten (Kommentierungsfristende: 25. März 2016).
- 4 Zudem könnte bei diesem IFRIC 12-Thema erörtert werden, ob die vorläufige IFRS IC-Entscheidung Implikationen für die noch bevorstehende IFRS IC-Diskussion des in der DRSC-Eingabe vom 7. August 2015 dargestellten umfassenderen IFRIC 12-Themas erkennen lässt.



3 Vom IFRS IC behandelte Themen und getroffene Entscheidungen

Thema	Status	Entscheidung	Nächste Schritte
IFRIC 12 – (variable) payments by an operator to a grantor	Work in progress	TAD (NIFRIC)	Kommentierung bis 25.03.2016
IFRS 5 – Several issues	TAD to finalise	AD (NIFRIC)	Keine
IFRS 9 – Transition issues relating to hedging	TAD to finalise	AD (NIFRIC)	Keine
IFRS 11 – Remeasurement of previously held interests	TAD to finalise	AD (NIFRIC)	Keine
IAS 12 – Recognition of DTA/DTL	TAD to finalise	AD (NIFRIC)	Keine
IAS 39 – Embedded Derivatives in a negative interest environment	TAD to finalise	AD (NIFRIC)	Keine
IAS 32 – Classification of a liability for prepaid cards	TAD to finalise	Keine	IFRS IC-Diskussion fortsetzen

- 5 Details zu allen Themen/Entscheidungen sind dem IFRIC Update (Unterlage **46_05a**) zu entnehmen.
- 6 Zur TAD betreffend IFRIC 12 sind im nachfolgenden Abschnitt 4 dieser Unterlage vertiefende Informationen – insb. über die bisherige Befassung des IFRS-FA bzw. DRSC mit dem jeweiligen Thema – dargestellt.



4 Informationen im Detail

4.1 TAD zu IFRIC 12 – *Payments by an operator to a grantor*

- 7 Die hier diskutierte IFRIC 12-Frage ist Teil einer umfassenden Diskussion, die das IFRS IC seit 2011 führt. Die konkrete Frage, ob und unter welchen Umständen Zahlungen eines Betreibers an den Konzessionsgeber als Teil des *service concession arrangement* (SCA) gelten und somit nach IFRIC 12 zu bilanzieren sind, wurde aus dem Gesamtkontext separiert. Das IFRS IC sieht allerdings weiterhin die Verbindung zu jenem Thema, das unter dem Titel *IAS 16/38 – Variable payments for asset purchases* diskutiert wird. Zu IAS 16/38 wurde in der IFRS IC-Sitzung im November 2015 eine vorläufige ablehnende Entscheidung (TAD) getroffen.
- 8 Zwecks Diskussion der hier angesprochenen IFRIC 12-Fragestellung hatte das IFRS IC im Juli 2015 einen *Outreach Request* gestartet und folgende Details bzw. Fragen übermittelt:

The IFRS IC discussed the accounting for contractual payments made by an operator to a grantor under a service concession arrangement (SCA) within the scope of IFRIC 12. The submitter had requested clarification on whether such payments should be treated as executory (and recognised over the term of the arrangement) or whether they should be recognised at the start of the concession as an asset with an obligation to make the related payments. Where concession fees are variable, the IFRS IC noted that the issue is linked to the broader issue of variable payments for the separate acquisition of PPE and intangible assets outside of a business combination.

In the context of this issue, we would appreciate your observations and feedback on the following aspects of this issue:

1. How common are SCA that involve payments to be made by the operator to the grantor in your jurisdiction?
2. In your jurisdiction, what is the predominant approach to accounting for such payments? What is the basis for the approach taken?

- 9 Die DRSC-Antwort vom 7. August 2015 hierzu (zeitgleich mit unserer Eingabe) lautete wie folgt:

Simultaneously and independently from your outreach request, the ASCG was asked to evaluate the accounting treatment for combined lease and SCA. Our constituents (particularly public transportation industry) raised the question about which accounting consequences arise from a lease arrangement for infrastructure as part of a SCA. These arrangements lead to lease payments from the operator to the grantor or (more commonly) to an affiliated or economically linked third-party lessor. Our IFRS Committee finally decided to prepare a PAIR on this issue. It contains three sub-issues:

- *Sub-Issue 2 of our PAIR basically covers your request on the accounting for contractual payments made by an operator to a grantor under a SCA within the scope of IFRIC 12. We can confirm that our constituency also requests clarification on whether such payments should be treated as executory (and recognised over the term of the arrangement) or whether they should be recognised at the start of the concession as an asset with an obligation to make the related payments.*



Additionally, two other issues arise, which were not covered in your request and the related discussion in the IFRS IC up to 2013:

- *Sub-Issue 1 of our PAIR questions whether the arrangements in the fact pattern fall under the scope of IFRIC 12. This is of particular interest as some argue that IFRIC 12 shall only apply to SCA that cover (inter alia) a construction and upgrade service which is not the case in the operating lease scenario of our fact pattern.*
- *Sub-Issue 3 of our PAIR asked how an agency role of the operator with regard to the lease affects the accounting. This is of particular interest as the lease arrangement is economically linked to the grantor but provided by a separate legal entity. I.e. three parties are involved in the transaction and principal-agent questions arise.*

Regarding the two questions you explicitly raised in your Outreach Request we would like to share the following observations and give feedback on the following aspects:

Q1: *The European public transport market is characterized by tendering/franchising procedures whenever public funds are needed to make the business economically attractive. One model, which is often initiated, offers financing support such as lease payment guarantees, residual value guarantees, etc. The issues concern major parts of the European passenger transport market. In Germany, a large number of PTAs has chosen to initiate SCA linked with guaranteed lease contracts leading to payments from the operator to the grantor/lessor. Similar models are also common in France (e.g. passenger rail transport in region Ile-de-France) or the Netherlands (e.g. line Arnhem-Nijmegen, fast ferry Breskens Vlissingen).*

Q2: *We could not identify a predominant approach to accounting for such lease payments. One of the reasons might be that arrangement with the above fact pattern are quite new and some are not yet effective (ie. lease has not commenced yet). However, our local outreach has confirmed that there is diversity in practice on all three sub-issues described above.*

However, there are predominant approaches depending on the industry and/or the nature of the conditions on which variable payments depend. In most cases, we expect a liability to be recognised as soon as the purchaser has agreed on the payments and has received the asset when the variability is based on indices. In this respect there is more diversity for variability which is based on the resulting inflow of resources as a result of using the asset (e.g. sales) of the buyer. The liability is based on the expected amount(s) to be paid. Subsequent adjustments are rather capitalised as part of the cost in case the variability of payments is performance- or output-driven. However, also regarding the accounting for subsequent changes to the liability there is considerable diversity in practice.

- 10 Das IFRS IC hatte im November 2015 diskutiert, ob die Frage nach dem Einbezug in IFRIC 12 auch losgelöst von der unter IAS 16/38 erörtert bzw. beantwortet werden kann, war sich diesbezüglich aber uneins und hat es letztlich verneint. Somit kann eine Antwort nur im Gesamtkontext – also mit IAS 16 und IAS 38 – gefunden werden, was jedoch als zu umfassend und komplex erscheint, als dass es durch das IFRS IC erfolgen kann. Somit lehnt das IFRS IC die weitere Behandlung dieses Themas ab.



- 11 In seiner 44. Sitzung hat der IFRS-FA erörtert, ob die IFRS IC-Aussage/Entscheidung, das Thema könne nicht losgelöst von variablen Zahlungen im Zusammenhang mit dem Erwerb von Vermögenswerten (IAS 16/38) entschieden werden, sachgerecht ist. Dabei hat der IFRS-FA vorläufig befunden, dass die eher formale Begründung für die ablehnende Entscheidung bzgl. IAS 16/38 akzeptabel ist – nämlich dass (a) die entscheidende Frage ist, ob sich das Unternehmen aufgrund seiner künftigen Aktivitäten der Zahlungsverpflichtung entziehen kann (falls ja, kein Ansatz einer Verbindlichkeit), und dass (b) das IFRS IC hierüber keine Einigung erzielen konnte. Die besagte Frage an sich ist aber unter IFRIC 12 nicht relevant, somit müsste eine Entscheidung über variable Zahlungen unter IFRIC 12 durchaus getroffen werden können. Daher sollte nach Auffassung des IFRS-FA die IFRIC 12-Frage unbedingt losgelöst von IAS 16/38 diskutiert und beantwortet werden - und nicht abgelehnt werden.
- 12 Daraufhin hatte sich das DRSC wie folgt informell an das IFRS IC gewandt:

We are unsure as to why the IFRS IC did not (tentatively) decide on the IFRIC 12 issue ("variable payments by an operator to a grantor") in the context of the tentative decision on the "broader" issue ("variable payments for asset purchases under IAS 16/38"). We understand that this IFRIC 12 issue had been discussed separately in order to find out whether a solution could be developed without addressing that broader issue, which - on balance - was denied. In other words, the IFRIC 12 issue cannot be resolved separately but only in the context of that broader issue. Consequently, we would have expected that the recent tentative decision on the "broader" issue would automatically include the "specific" IFRIC 12 issue. However, this is not the case, and it remains unclear to us why.

Having said this, we believe that there is indeed an economic difference that warrants a different accounting treatment and, hence, a different decision. We understand that the IFRS IC denied taking the IAS 16/38 issue onto its agenda because it could not reach a consensus as to whether variable payments for asset purchases meet the definition, and lead to recognition, of a liability, as far as the variable payments depend on the purchaser's future activity. In contrast, variable payments under a service concession arrangement (i.e. concession fees) are different. This is the case because the (variable) payments by an operator to the grantor (= lessor) result from a leasing arrangement which is "embedded" in a "host" SCA under which the operator incurs an obligation to provide the service. Consequently, because of that obligation to provide the service, the "leasing payments", although being variable, are not dependent on the operator's future activity.

- 13 Das IFRS IC hat nunmehr im Januar 2016 vorläufig entschieden, das Thema nicht weiter zu behandeln. Allerdings legt das IFRS IC ausführlich dar, wie festzustellen und abzugrenzen ist, ob bzw. wann vertragliche Zahlungsansprüche des Betreibers gegenüber dem Konzessionsgeber zur Bilanzierung eines Vermögenswerts gemäß IFRIC 12 (*concession asset*) oder zum Ansatz eines Vermögenswerts gemäß einem anderen Standard führen. Der Wortlaut dazu lautet wie folgt (Auszug aus IFRIC Update 1/2016):



The IFRS IC discussed this issue at several meetings. The IFRS IC observed that in some cases, the operator may be acting as an agent with respect to the contractual payments. For example, the operator may collect payments on behalf of, and remit them to, the grantor. The IFRS IC observed that in cases in which the operator is acting as a principal with respect to the contractual payments:

- (a) If the contractual payments give the operator a right to a good or service that is separate from the SCA, the operator would account for that separate good or service in accordance with the applicable Standard.
- (b) If the contractual payments are linked to the right to use a tangible asset that is separate from the infrastructure, the operator would assess whether the arrangement contains a lease. If the arrangement contains a lease, that portion of the arrangement would be considered to be within the scope of the applicable Standard on leases.
- (c) If the contractual payments do not give the operator a right to a separate good or service or a separate right of use that meets the definition of a lease, the contractual terms of the SCA would determine the accounting for the contractual payments to be made by the operator to the grantor:
 - (i) if the SCA results in the operator having only a contractual right to receive cash from the grantor (ie the financial asset model in IFRIC 12 applies), the IFRS IC observed that the grantor is no different from a customer in a revenue arrangement. Consequently, the contractual payments would be accounted for in accordance with the guidance on consideration payable to a customer in paragraphs 70-72 of IFRS 15;
 - (ii) if the SCA results in the operator having only a right to charge users of the public service (ie the intangible asset model in IFRIC 12 applies), the IFRS IC observed that the operator has received an intangible asset (ie the right to charge the users of the public service) in exchange for construction/upgrade services and the contractual payments to the grantor. Consequently, the IFRS IC noted that the contractual payments represent additional consideration for the intangible asset (ie part of the cost of the intangible asset recognised in accordance with IAS 38); and
 - (iii) if the operator has both a right to charge users of the public service and a contractual right to receive cash from the grantor, the entity should consider the substance of the contractual payments to determine whether it represents consideration for the concession right intangible asset or if it should be accounted for as consideration payable to the customer.

5 Fragen an den IFRS-FA

14 Folgende Fragen werden dem IFRS-FA zur Sitzung vorgelegt:

1. Möchte der IFRS-FA sich zur vorläufigen Entscheidung (TAD) zu IFRIC 12 per Stellungnahme äußern? Wenn ja, mit welchen konkreten Anmerkungen?
2. Welche Implikationen ergeben sich nach Auffassung des IFRS-FA aus dieser TAD zu IFRIC 12 für das in der DRSC-Eingabe behandelte umfassendere IFRIC 12-Thema?