THE SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS

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19 January 2016

IFRS Interpretations Committee
30 Cannon Street
London
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United Kingdom
Email: commentletters@ifrs.org

Dear Sir/Madam

SAICA SUBMISSION ON DRAFT IFRIC INTERPRETATION DI/2015/1 – *UNCERTAINTY OVER INCOME TAX TREATMENTS*

In response to your request for comments on Draft IFRIC Interpretation DI/2015/1 – *Uncertainty over Income Tax Treatments,* attached is the comment letter prepared by the Accounting Practices Committee (APC) of The South African Institute of Chartered Accountants (SAICA). This comment letter results from deliberations of the APC, which comprises members from reporting organisations, regulators, auditors, IFRS specialists, investment analysts and academics.

We thank you for the opportunity to provide comments on this document.

Please do not hesitate to contact us should you wish to discuss any of our comments.

Yours faithfully,

Kevin Davies
Chairman of the Accounting Practices Committee

Bongeka Nodada
Project Director – Financial Reporting Standards

GENERAL COMMENTS

We welcome the IFRS Interpretation Committee's (Interpretation Committee) draft Interpretation on Uncertainty over Income Tax Treatments.

Our responses to questions 1 to 5 below express specific matters that we would like to bring to the Interpretation Committee's attention.

SPECIFIC COMMENTS

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 draft Interpretation. However, we propose that the Interpretations Committee include a definition of the term *uncertainty* in the Interpretation and provide examples on how to determine the term given that the draft Interpretation appears to contemplate some of them as part of the discussion as currently there is a practical challenge on the meaning of *uncertainty*. Examples can include:

- Where the tax law is not very clear, or is not consistently understood; and
- In jurisdictions where the amounts finally payable are subject to lengthy negotiations involving a high level of subjectivity or discretion, or may even be random.

This relates to both:

- the timing of the uncertainty, i.e.
    - when preparing the financial statements;
    - when preparing the income tax return; or
    - when notified by the respective taxation authority.
- the nature of the uncertainty, i.e. what is the appropriate basis of judgment for the preparer to determine whether or not a tax position is uncertain.

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 principles in the draft Interpretation.

However, we recommend that guidance should be included that an entity should apply its judgement consistently when recognising similar transactions in a single tax jurisdiction.

While we agree with the principles, we believe that the application would be require significant judgement, and therefore recommend the inclusion of application guidance.

With regard to using the expected value versus the use of the most likely amount, the draft Interpretation should clarify:

- That an entity should consider the most appropriate method for a particular exposure or group of exposures (i.e. an entity should not select a policy of using one method or another).
- The entity can change the method over time for a particular exposure (for example, the amount could be changed from an expected value to a most likely amount when a court case for a similar matter provides greatly clarify on the application of the tax law).

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. However, we recommend that guidance should be included that an entity should apply its judgement consistently when recognising similar transactions in a single tax jurisdiction.

We also propose that the guidance in BC10 "*For example, if the resolution of uncertainty over an uncertain tax treatment is expected to affect, or be affected by, another uncertain tax treatment, considering them collectively might provide the best prediction. The Interpretations Committee noted that judgement is needed in order to reflect the range of situations that will arise in different jurisdictions*" should be included in the Interpretation to make it more authoritative.

Some of the constituents believe that the Interpretations Committee should provide examples on how to determine uncertain tax treatments independently or collectively in the Interpretation. For example, in the case of the collective assessment they felt that the disclosure of the nature of the individual exposures should also be given, as it is a judgement to collect the items together in the first place for this assessment, and if that judgement does not turn out to be the final position, the individual exposure could be relevant (and could be more than the amount recognised).

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 in the draft Interpretation on the assumptions for taxation authorities' examinations and on changes in facts and circumstances. However, we recommend that the Interpretations Committee should provide examples with a time frame on how to determine uncertainty when the facts and circumstances change. There is a practical challenge i.e.

- when preparing the income tax return;
- when the financial statements are being audited; or
- when notified by the respective taxation authority of the assessment.

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?

We agree with the proposals in the draft Interpretation on the disclosure requirements. However we raise the question whether the inclusion of the disclosure requirements in paragraphs 19 to 21, as they are already included in IAS 1, IAS 12 and IAS 37. While the proposal emphasises these requirements, they are nevertheless applicable to all transactions and therefore we question the need for a specific reference to these requirements in the draft Interpretation. We also suggest that the Interpretations Committee provides clarity on the presentation (i.e. include the uncertain tax treatment within the current and/or deferred tax line) as this is not consistent across preparers.

We welcome the Interpretation Committee's proposals on the transition requirements. However paragraph B2(a) refers to adjusting the opening balance of retained earnings or other appropriate component of equity. Therefore we recommend that the proposals should be clearer that the income tax charge should follow the recognition of the related transaction (i.e. applying the principles in paragraphs 58 and 61A of IAS 12). To the extent recognition in profit or loss would have been required in prior periods, retained earnings is adjusted.

OTHER COMMENTS

The Illustrative Examples are beneficial, however, we propose that Illustrative Example 4 should emphasise that the passage of time does not impact the probability of a matter being raised by the tax authorities if they can raise a query at any time i.e. the application of paragraph A2.

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