ICAEW REPRESENTATION 10/16

Uncertainty over Income Tax Treatments

ICAEW welcomes the opportunity to comment on the IASB's *DI/2015/1 Uncertainty over Income Tax Treatments,* published in October 2015, a copy of which is available from this link.

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MAJOR POINTS

Support for the draft Interpretation

1. We broadly support the draft Interpretation *Uncertainty over Income Tax Treatments*. However, we have a number of concerns as discussed in our responses to questions 2 and 4 below.

RESPONSES TO SPECIFIC QUESTIONS

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?

2. Yes, we agree with the proposed scope of the draft Interpretation.

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?

3. Yes, we broadly agree with the proposals 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.

4. We note that the Draft Interpretation would allow two possible methods when an entity concludes that it is not probable that an uncertain tax treatment will be accepted by the taxation authorities: the ‘most likely amount’ method; and the ‘expected value’ method. The latter approach would be based on the sum of the probability-weighted amounts in a range of possible amounts.

5. We have some concerns with the ‘expected value’ method, in particular the practicality of calculating appropriate and supportable probability-weighted amounts. In our view, the expected outcome is likely to be relatively arbitrary and the existence of a range of homogenous tax positions should not necessarily lead to a probability-weighted approach. If the various positions are sufficiently alike, a binary outcome will be the same for all positions ie, it will either be accepted or not by the tax authorities. Therefore, while judgement will still be required, we believe the 'most likely amount' will, in the majority of cases, be more helpful for users. This approach is also more consistent with paragraph 46 of IAS 12 *Income taxes* which requires current tax liabilities (assets) to be measured at the amount expected to be paid to (recovered from) the tax authorities.

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?

6. Yes, we agree with the proposals on the determination of whether uncertain tax treatments should be considered collectively.

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?

7. We are not entirely convinced by the proposal that implicit acceptance of a tax treatment by tax authorities in a specific period should not also be considered a 'new fact' for other periods. In our view, if an entity is making its best estimate of how much tax is due for a particular year, we would expect it to take into account all tax treatments previously accepted by the tax authorities, whether implicitly or explicitly.

8. More generally, we believe it would be more appropriate for any subsequent change in facts and circumstances to be dealt with under the requirements of IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*, and IAS 10 *Events after the Reporting Period*. For example, if a tax authority agrees a tax position with an entity shortly after the year end, we would expect this to be dealt with as an adjusting post-balance sheet event in accordance with IAS 10.

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?

9. Yes, we agree with the proposed disclosure and transition requirements.