



30 August 2012

Our ref: ICAEW Rep 123/12

Mme Françoise Flores
Chair
European Financial Reporting Advisory Group
13-14 Avenue des Arts
B-1210 Brussels

By email: commentletter@efrag.org

Dear Mme Flores

Levies Charged by Public Authorities on Entities that Operate in a Specific Market

ICAEW welcomes the opportunity to comment on EFRAG's draft comment letter in respect of the proposed Interpretation *Levies Charged by Public Authorities on Entities that Operate in a Specific Market* published by the IFRS Interpretations Committee on 31 May 2012.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

The Financial Reporting Faculty is recognised internationally as a leading authority on financial reporting. The Faculty's Financial Reporting Committee is responsible for formulating ICAEW policy on financial reporting issues, and makes submissions to standard setters and other external bodies. The faculty also provides an extensive range of services to its members, providing practical assistance in dealing with common financial reporting problems.

Attached as an appendix to this letter is a copy of ICAEW's draft response to the IASB. This indicative draft is provided to EFRAG in advance of the IASB's comment deadline to assist in the finalisation of EFRAG's own comment letter. The draft is not yet final and has still to receive approval from ICAEW's Financial Reporting Committee. The principal themes and specific detail of our response is set out in that document; in this letter we respond specifically to the questions that EFRAG has posed to its constituents. In general we agree with EFRAG's draft comment letter and like EFRAG support publication of the Interpretation. However, we have raised some specific points of detail below.

In our response to the IFRSIC we have referred to EFRAG's recent pro-active project *Improving the financial reporting of income tax*. We believe that the Interpretation is best viewed as a temporary

solution and that when the opportunity arises the IASB could perhaps incorporate this issue into a broader review of IAS 12 *Income Taxes*. The treatment of levies may be a question that EFRAG wishes to consider as it progresses its work on the pro-active project.

EFRAG'S QUESTIONS TO CONSTITUENTS

Do you believe that the scope of the Draft Interpretation is too broad? Please explain.

EFRAG suggests that the *de facto* scope of the Interpretation is broader than that suggested by the title and would in fact encompass the majority of payments to public authorities. We agree that this is an important observation. However, we are unconvinced that explicitly recognising this broader scope in the title is necessarily the best way forward. We accept that the Interpretation does appropriately apply the principles of IAS 37 and consequently would expect the same conclusion to be reached in other similar situations. But we do not believe that the Committee should attempt to widen the Interpretation's scope beyond the issue they were originally attempting to resolve.

Given the urgency of this issue we agree that it merits being addressed through the issue of a specific Interpretation. Nevertheless, there is a risk that by tackling such question in this way the assessment of liabilities becomes increasingly rules based. Therefore in the medium term we believe that the IASB should aim to withdraw the Interpretation.. While it would represent a significant broadening of scope, the question of how to deal with levies of this nature could perhaps be dealt with in a revision of IAS 12 or in a broader project looking at all non-reciprocal transactions with governments. Its wider scope can then be more properly considered at this point. For the lifetime of the Interpretation, its scope would be better limited to the urgent issue it was created to address.

Are there any levies to which the Draft Interpretation applies that you believe should be outside its scope? If so, please explain.

We would expect that the principle elaborated in the Interpretation, consistent as it is with IAS 37, could be applied to all non-exchange levy liabilities. As such we do not believe that any specific non-exchange levies should be scoped out.

Do you believe (based on the principles in IAS 37) that for levies that are due only if a minimum revenue threshold is achieved, crossing the minimum revenue threshold is the obligating event? If so, do you believe that this results in useful information and achieves faithful representation?

We agree with EFRAG that the Committee should consider removing the scope exemption in paragraph 4b. The specific question EFRAG has posed above does seem to be one that can be best addressed by further deliberation of the Committee. But conceptually it would appear sensible to apply equally the principles of IAS 37 to levies due only if a minimum revenue threshold is achieved.

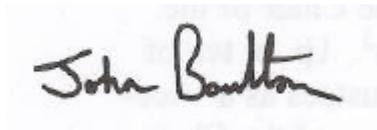
Are there any levies that you believe give rise to an asset (e.g. a right to operate until the next levy payment is due) and that are hence outside the scope of the Draft Interpretation? If so, please provide details.

Some levies, such as the example in EFRAG's draft response, may well give rise to intangible assets. However, we do not agree that the Interpretation should be adjusted to encompass these instances. The Interpretation is focussed on non-exchange transactions for good reason, as in the absence of any future benefit it is difficult to apply the principles of IAS 37 or to analogise to other situations. Hence the need for the Interpretation. Where a benefit is expected in a future period the recognition question becomes much more analogous to that for similar liabilities. The Interpretation is necessary to address an identified urgent issue and its scope should be limited to this.

Do you believe that the Draft Interpretation results in decision-useful financial information in annual financial statements and in interim financial statements? Please explain why. If not, please indicate what you would recommend the IASB/ IFRS Interpretation Committee, along with your reasoning.

The Interpretation reaches a conclusion that is consistent with IAS 37 and we support it on this basis. However, in some cases this may give rise to a rather counter-intuitive answer. The UK Bank Levy provides an example of this; here the obligating event would not occur until the last day of the annual accounting period and therefore no liability would be recognised in the Interim accounts. This may be rather confusing for some users who might otherwise have been expecting to see the liability there. We explore this issue in more detail in our response, where we suggest that it can to some degree be addressed through appropriate disclosure.

Yours sincerely

A handwritten signature in black ink that reads "John Boulton". The signature is written in a cursive style and is centered within a light grey rectangular box.

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APPENDIX – ICAEW DRAFT COMMENT LETTER TO THE IFRSIC

Levies Charged by Public Authorities on Entities that Operate in a Specific Market

ICAEW welcomes the opportunity to comment on the draft Interpretation *Levies Charged by Public Authorities on Entities that Operate in a Specific Market* published by the IFRS Interpretations Committee on 31 May 2012.

We appreciate the effort the IFRSIC has made in tackling this important issue. In the UK at least this does appear to be an area where there is a demand for further guidance. The financial crisis has seen the imposition of a material levy on banks (the Bank Levy), and views have differed over the correct accounting treatment for the liability arising.

We agree with the IFRSIC's consensus opinion; recognising the liability only once the obligating event occurs, whether that is at a point in time or over time, appears to us to be the most appropriate treatment. We support the Board's rejection of suggestions that a constructive obligation might exist for future payment just because the entity was likely to continue in business in the future. A similar argument could be applied to other future liabilities where a constructive obligation existed and we are encouraged to see that the Committee firmly avoided the risk of setting a new precedent in this instance.

However, although we agree that the Committee has reached the correct answer in the context of current practice, it should be noted that this treatment may be seen as counter-intuitive, particularly by those who believe that, since the entity cannot avoid the obligation if it is to remain in business, the obligation should be recognised at an earlier stage. Therefore, there is a danger that more critical commentators, particularly those already attuned to perceived deficiencies with IFRS, seize upon the Interpretation to evidence their concerns about IFRS. This risk is particularly apparent in the UK where the obligating event for the Bank Levy will not occur until the balance sheet date and therefore none of the levy charge will be recognised in the interim accounts.

In light of these concerns we note that appropriate disclosure can be helpful in assisting users to understand the impact of later occurrence of the obligating event. Voluntary disclosure of this type has certainly already been seen in the UK in relation to the Bank Levy, where users of the accounts might have expected to see a liability for it in interim financial statements.

Following publication of the Interpretation, the Board should remain mindful that this issue would benefit from further consideration (after the conclusion of the next three year agenda period). We note that one standard that may attract the Board's future attention is IAS 12 *Income Taxes*. Indeed EFRAG's proactive paper *Improving the financial reporting of income taxes* has recently marked the commencement of some useful research in this area. In our opinion this issue would lend itself well to inclusion in any future project to examine tax accounting. We did discuss whether the Interpretation also indicates a broader need to re-evaluate the principles of IAS 37 – particularly as the Board had recently been working on a project to do just that. However, on balance we would not support this route. We do not accept that this issue indicates a significant deficiency with IAS 37; rather it is merely an outlying, and isolated, example of a liability to which those principles might be applied. In our opinion this issue fits more naturally within the tax standard and should in future be tackled outside the scope of IAS 37.