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RÉPUBLIQUE FRANÇAISE



AUTORITE DES NORMES COMPTABLES

5, PLACE DES VINS DE FRANCE

75573 PARIS CÉDEX 12

Phone 33 1 53 44 28 53

Internet <http://www.autoritecomptable.fr/>

Mel jerome.haas@anc.gouv.fr

Chairman

**JH
n°90**

Paris, the 25th July 2013

Madame Françoise FLORES
Chairman

**EFRAG –European Financial Reporting Advisory
Group**
35 Square de Meeûs
B – 1000 BRUSSELS

Re : IFRIC 21 Levies

Dear Mrs Flores,

I am writing on behalf of the Autorité des Normes Comptables (ANC) to express our position as regards EFRAG's proposed recommendation to adopt the above-mentioned interpretation in the European Union. These views result from the ANC's due process, involving all interested stakeholders. More precisely, the due process includes fundamental work by a diversified experts task force, a full fledge discussion of its assessment by a complete Commission for all International standards and then a global and strategic discussion in the Collège (Board) before this letter was signed.

The ANC acknowledges that there is some diversity in practice in how entities account for levies, and that specific guidance in this case could have contributed to consistency in the application of IFRS.

The ANC does acknowledge that the consensus reached in IFRIC 21 is aligned with the requirements in IAS 37.

Nevertheless, as mentioned in our comment letter on the draft interpretation¹, we believe that these requirements do not allow a faithful representation of the financial position and the financial performance of entities submitted to taxation in most cases, and especially in the interim financial statements.

This is due to the specific characteristics of levies enacted by public authorities, which are intended to finance public spending over a fiscal year and the subject of most of them are economic items generated over a year.

¹http://eifrs.ifrs.org/eifrs/comment_letters/3/3_57_JrmeHAASAutoritedesNormesComptables_0_ANC_DraftIFRICDI_2012_1LevieschargedbyPublicAuthoritiesonEntitiesthatoperateinaspecificmarket.pdf

According to IFRIC 21 requirements:

- An entity does not have a constructive obligation to pay a levy that will be triggered by operating in a future period as a result of the entity being economically compelled to continue to operate in the future period (§ 9), even if the underlying elements on which the levy is based are generated during the ongoing period;
- The preparation of the financial statements under the going concern assumption does not imply that an entity has a present obligation to pay a levy that will be triggered by operating in a future period (§ 10).

We believe that the relevance of the reported performance could be significantly affected:

- By the inability to recognise levies charged on a recurring basis (like annual levies), before the point of time identified by the legislation when the levy becomes due is reached, even when the entity has no realistic possibility of avoiding the obligation;
- By the associated effects in the interim financial statements, which could result in full or no recognition of the levies charged on a recurring basis.

We think that there is no difference in substance between levies charged on an annual basis generated over the spending year and income taxes, except the fact that income taxes are charged on taxable profit, whereas levies are charged on other items. The application of IAS 37 to such levies will lead to very different results than if IAS 12 had been applied.

We therefore believe that the accounting based on the underlying substance of the levies charged on a recurring basis would provide more relevant and faithful information in the financial statements, when the entity has no realistic possibility to avoid their payment.

We acknowledge that the IFRS IC has not been requested to address these issues, but we think that it should have pointed out the inconsistencies resulting from the application of IAS 37 to some taxes and should have suggested to the IASB to undertake a new project to deal with these specific issues.

Furthermore, we do not believe that the expected advantages of increasing comparability by reducing the diversity in practices are sufficient to outweigh the significant lack of relevance that would be introduced in the accounting of levies by IFRIC 21 requirements in some cases.

Therefore, our opinion is that IFRIC 21 does not satisfy the technical criteria for EU endorsement in all material respects.

In addition, we note that:

- There have been several debates about whether a liability exists if the need to transfer economic resources depends on the entity's future actions;
- The IASB acknowledged that the existing Conceptual Framework does not address specifically this question and that the principles underlying individual standards can appear to be inconsistent and lead to diversity in practice;
- The IASB restarted in 2012 its "Conceptual Framework" project, including guidance to support the definition of a liability, and started discussions on whether an entity has a "present" obligation if a future transfer of resources is conditional on the occurrence or non-occurrence of future events;
- In that respect, the Staff outlined three approaches for identifying present obligations and illustrated the consequences of each approach for a range of topical examples, **including levies**;
- No tentative decisions have been made at this time, but only one of the three approaches identified by the staff would lead to recognition principles of levies aligned with IFRIC 21 requirements;
- There is a risk that the requirements of IFRIC 21, aligned with the existing Conceptual Framework, will not be compliant with the future Conceptual Framework.

Finally, we wonder whether it is desirable to apply such an interpretation before the IASB undertakes to address the issue of taxes charged on an annual basis, or before the IASB concludes on a new definition of a liability.

In that respect, we suggest:

- That the IASB undertakes to not pursue IFRIC 21 solutions before it has reconsidered the accounting for levies as explained above;
- Should the IASB maintain these solutions, that EFRAG recommends to the EU Commission to not endorse IFRIC 21 *Levies*.

If you have any questions concerning our comments, we would be pleased to discuss them.

Yours sincerely,



Jérôme HAAS