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IFRIC Interpretation 23 *Uncertainty over Income Tax Treatments* **Follow-up on EFRAG's recommendations**

Objective

- 1 The objectives of this paper are to:
 - (a) consider how the IASB, in the final version of IFRIC Interpretation 23 *Uncertainty over Income Tax Treatments* ('IFRIC 23'), has addressed the issues raised and recommendations made by EFRAG in its comment letter (Appendix 1); and
 - (b) summarise the feedback received by the IASB in response to the Draft Interpretation *Uncertainty over Income Tax Treatments* (Appendix 2).

Background

- 2 On 21 October 2015, the IFRS Interpretations Committee ('IFRS IC') published the Draft Interpretation DI/2015/1 *Uncertainty over Income Tax Treatments* ('DI'). The DI proposed to clarify how an entity should apply the recognition and measurement requirements of IAS 12 when there is uncertainty over income tax treatments. The issues arise from the fact that the application of the tax law to a particular transaction might have different interpretations and in some circumstances it may be unclear whether the tax authority would accept the entity's tax treatment. The acceptability, or not, might depend on future decisions of the tax authority and therefore that uncertainty may affect the entity's accounting for a current or deferred tax asset or liability.
- 3 On 12 February 2016, the EFRAG published its comment letter where it welcomed the guidance as it will remove the existing diversity in accounting for uncertain income tax treatments.
- 4 On 7 June 2017, the IASB issued the final version of the IFRIC 23. A comparison of the final requirements with the comments from EFRAG is provided in Appendix 1.

Outcome of the redeliberations

- 5 At its September 2016 meeting, the IFRS IC discussed the feedback received from constituents and considered ways to address it. A summary of the feedback is presented in Appendix 2.
- 6 The IFRS IC decided to confirm the proposals in the DI except for the issue raised on first-time adopters. The IFRS IC decided not to require first-time adopters whose date of transition to IFRS Standards is before 1 July 2017 to present in their first IFRS financial statements comparative information that reflects this Interpretation.

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Question to EFRAG TEG

- 7 Does EFRAG TEG have any comments on the comparison of IFRIC 23 with the comments raised by EFRAG in its comment letter on the DI or the redeliberations by the IASB?

Appendix 1: Follow-up on EFRAG's recommendations

- 1 Overall, EFRAG supported the draft Interpretation, while noting the different treatments under IFRS Standards of uncertainties in income taxes and other taxes. The following table shows how the issues and recommendations in EFRAG's comment letter have been addressed by the IASB in the final version of Interpretation.

#	IASB proposal in the ED	EFRAG recommendations	Final outcome
1	The ED proposed to limit the guidance on uncertain income tax treatments to items that are within the scope of IAS 12.	EFRAG observed that for taxes, other than income taxes, the accounting treatment may not be clear and different approaches might be applied.	<p>The IASB decided not to expand the scope of the Interpretation to taxes or levies outside the scope of IAS 12 because it was concerned that a wider scope might create conflicts within other IFRS Standards.</p> <p>In the same way the IASB decided not to add to the Interpretation requirements relating to interest and penalties associated with uncertain tax treatments. It noted that if an entity considers a particular amount payable or receivable for interest and penalties to be an income tax, then that amount is within the scope of IAS 12 and, when there is uncertainty, that uncertainty is also within the scope of this Interpretation.</p>
2	The ED did not specifically address the accounting for tax assets and liabilities acquired or assumed in a business combination when there is uncertainty over income tax treatments.	EFRAG noted that uncertain tax positions may also arise in business combinations. EFRAG observed that paragraph BC295 of IFRS 3 <i>Business Combinations</i> explains that, when developing IFRS 3, IAS 12 was silent on income tax uncertainties and therefore the IASB did not address this issue.	The IASB noted that IFRS 3 <i>Business Combinations</i> applies to all assets acquired and liabilities assumed in a business combination. Consequently, the IASB concluded that the Interpretation should not explicitly address tax assets and liabilities acquired or assumed in a business combination.

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#	IASB proposal in the ED	EFRAG recommendations		Final outcome
		EFRAG therefore observed that the existence of the Interpretation suggested that this could be reconsidered.		
3	The ED did not state explicitly that income tax is to be measured in accordance with applicable tax laws, but relied on paragraph 46 of IAS 12 <i>Income Taxes</i> .	EFRAG considered that, although IAS 12 stated that the tax treatment had to be in compliance with the tax law, it should be explicitly stated in the Interpretation. EFRAG recommended including the following sentence: " <i>IAS 12 requires that income tax is determined based on compliance with the tax law</i> ".	×	The IASB decided not to address the issue and to continue to rely on IAS 12.
4	The ED did not refer to disclosures in the list of issues to be addressed in the Interpretation.	EFRAG suggested that the list of issues addressed in the Interpretation should also include a reference to the disclosure requirements in other IFRS Standards that are referred to in the Interpretation.	×	IASB did not include a reference to disclosure requirements in the list of issues addressed in the Interpretation and continued to refer to existing disclosure requirements as set out in IAS 1 and IAS 12.

Appendix 2: Summary of the feedback received by the IASB

Overall feedback

- 1 The IASB received 61 comment letters mainly from Europe (34%) and Asia (33%). Respondents included standard setting bodies (28%), preparers (26%) and accountancy bodies (21%).

General Comments

- 2 Generally, the comment letters received were supportive of the proposals set out in the DI, indicating that the Interpretation would provide clarification of the requirements in IAS 12 regarding the accounting for uncertainties over income tax treatments.
- 3 Nonetheless, some of the respondents disagreed with certain aspects of the proposals, or identified areas that could be developed further. In particular, the following aspects were raised:
 - (a) **Due Process:** Few respondents argued that a narrow-scope amendment or annual improvements, either amending IAS 12 or IAS 37, could be more appropriate to address the issue rather than an Interpretation.
 - (b) **Probability threshold:** One respondent disagreed with the proposal, in his view, the 'virtually certain' threshold would be more appropriate to apply because probability is difficult to assess on uncertainty of the recovery of economic benefits arising from income tax assets.
 - (c) **Similar economic issues:** Some respondents raised concerns about the different asset recognition threshold for taxes that could fall in the scope of IAS 12 (probable threshold) or IAS 37 (virtually certain threshold) that are similar.

Interaction with the Conceptual Framework

- 4 A few respondents commented on the interaction of the Interpretation with the proposals in the Exposure Draft *Conceptual Framework for Financial Reporting* ('CF ED'). In particular, it was suggested that the IASB should address the symmetric and asymmetric treatments of uncertainty in the revised *Conceptual Framework* and therefore the Interpretation should be postponed until the *Conceptual Framework* project has been concluded.

Scope of the Draft Interpretation

- 5 There was wide support for the proposed scope of the Interpretation, however, a few respondents consider that the scope should have also addressed issues about interest and penalties and uncertain tax treatments other than those related to income tax.

Consensus

- 6 The respondents were generally supportive of the proposed consensus.
- 7 A few respondents suggested that the Interpretation should clarify that the period for which an entity assumes a taxation authority's right to examine tax amounts continues until that right expires.
- 8 Some respondents suggested, to reflect the effect of uncertainty, to consider the "cumulative probability" approach in addition to the two methods proposed. The "cumulative probability" approach would be based on tax filing but adding a level of adjustment to incorporate the probability risk in the measurement.

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- 9 A few members have shown their disagreement with the proposals and thought that an entity should consider uncertain tax treatments collectively, unless there was an overriding reason to consider them independently.
- 10 Other respondents, also asked for more clarity on whether an entity should consider uncertain tax treatments separately and collectively by providing examples.

Disclosure

- 11 Almost all respondents agreed with the proposal to introduce no additional disclosure requirements in the draft Interpretation.
- 12 A few respondents disagreed with the disclosure proposals because, in their view, the proposals provide insufficient disclosure requirements.

Transition

- 13 The transition proposals received well wide support from respondents.
- 14 Notwithstanding, some respondents considered that the IASB should delete the option to apply the Interpretation retrospectively because they doubted that it would be possible to apply the Interpretation retrospectively without the use of hindsight.

Other comments

- 15 A few respondents asked for clarity on the application of the Interpretation to business combinations due to the fact that the Interpretation did not address whether the requirements are applicable in situations in which an entity has acquired uncertain tax treatments as part of a business combination.