MINISTERIO
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Comment Letter on the IFRIC Interpretation DI/2015/1 Uncertainty over Income Tax Treatments, issued by the IFRS Interpretations Committee

European Financial Reporting Advisory Group
35 Square de Meeüs
Brussels B-l 000
Belgium

Dear Madam/Sir,

In the present letter ICAC gives its view on the questions included in the Draft IFRIC Interpretation DI/2015/1 Uncertainty over Income Tax Treatments. The opinion requested by the EFRAG in its comment letter is also included

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?**

ICAC response:

Overall, the ICAC agrees with the criteria set out in the interpretation. However, perhaps one could have reached the same solution with another reasoning and not excluding the scope of the draft IFRIC Interpretation (the payment a company takes to resolve a dispute when simultaneously decides to claim) from the scope of IAS 37
.

The project stems from the request to the IFRIC to clarify how to treat the payment made by a company in respect of current tax when it considers that the treatment determined by the tax authority for an operation is not correct and decides to claim. Specifically, the question is whether the payment made by the company, that may be recovered if it is finally right, should be accounted for as an expense or as an asset.

According to the content of the draft, in practice it seems to have reached the following interpretation:

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a. If the operation is included in the scope of IAS 37 this payment could be described as a contingent asset that is recognized only if the finding in favor of the company is virtually certain.

b. If the operation is outside the scope of IAS 37 the threshold for recognition as an asset is usually limited to the requirement of probability.

In the draft interpretation this case is not explicitly treated, notwithstanding on the basis of conclusions, BC 14 - BC20, it seems that the opinion of the IFRIC is the one indicated in letter b. above. The ICAC believes that this issue should be resolved expressly in the operative part the interpretation and not in the BC part.

Moreover, as noted above, perhaps the draft interpretation could have followed another argument without excluding the events analyzed out of the scope of IAS 37. The advantage would have been to be able to follow the same approach in similar cases such as the amount paid by a company in relation to other taxes such as value added tax (VAT).

When a company appeals against a decision of the tax authority it usually has two possibilities: to deliver a guarantee to secure the amount of the obligation, or to pay that amount. These two solutions should have the same impact on equity. If the company decides to give a guarantee, it will only recognize an expense and the corresponding liability if the requirements of IAS 37 are met. If alternatively it chooses to make the deposit and to claim that amount, the ICAC believes that the payment should be registered as an asset when the recovery is likely in order that the decision on the payment or the granting of a guarantee, has no effect on the net assets of the reporting entity. In reaching this conclusion it does not seem necessary to exclude the operation of the scope of IAS 37.

The criteria followed in Spain to account for this operation (applying local GAAP) is the one set forth in the preceding paragraph.

In summary, the ICAC agrees with the solution set out in the interpretation but believes it would have been preferable that the draft IFRIC interpretation had simply sought an interpretation to the particular problem within the scope of IAS 37. We also believe that the question that has been requested to the IFRIC (BC2), should be explicitly responded in the interpretation.

Additionally, in relation to the scope of the project it would make the following observations.

There are other common doubts that arise in practice and have not been discussed explicitly, in relation to the accounting treatment of a settlement made by the tax authorities in relation to a period prior to the current reporting tax period. In these

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cases it is usual that the settlement includes several additional concepts such as claim administration fee, default interest (accrued in previous years and in the same year) and, where applicable, the appropriate sanction.

The interpretation does not address explicitly the accounting of the above. It is clear how to deal with uncertainty for the purposes of assessing the amount of the obligation and it seems that any further changes to the information should be treated as a new estimate without affecting therefore retained earnings. It might be appropriate to clarify that if it becomes clear that the treatment followed by the company was an error, the accounting recognition of the tax obligation should be taken to retained earnings (at least in regard to current tax and interest for late payment to previous years).

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?

ICAC response:

The ICAC agrees with this solution. However, the main problem does not arise in the recognition and measurement of tax liabilities. The question arises in relation to the assets in the terms that have been asked to the IFRIC and that have been exposed in the first question.

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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?**

ICAC response:

The ICAC agrees with this solution.

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?**

ICAC response:

The ICAC agrees with this solution.

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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?**

ICAC response:

The ICAC agrees with the proposed solutions in the interpretation of these points.

2. Answers to EFRAG

EFRAG seeks inputs from constituents on whether they have concerns with the potential inconsistency in the recognition of uncertainties related to income taxes on the one hand and the uncertainties relating to other taxes and similar transactions on the other. Please explain how you account for these uncertainties at present, what IFRS you apply, and on this basis, your views on the outcome of the Interpretation.

ICAC response:

The ICAC shares the concern expressed by the EFRAG.

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The solution proposed in the interpretation is adequate, but the arguments that are used can lead to misunderstanding if other similar cases do not apply, such as a VAT settlement; there is no doubt that in this case the same approach should be followed.

The ICAC believes that the problem to be solved is not so much the value of the obligation or the collective or individual uncertainty analysis or treatment of the new information. All these aspects are clearly treated in interpretation in line with the solution that would result from having followed IAS 37.

The problem to solve is whether the amount entered in the Treasury following a tax treatment that is going to be appealed by the company should be registered, as an asset or as an expense.

The ICAC believes that the conclusion reached in the interpretation could have been reached through another reasoning and without excluding the economic fact analyzed out of the scope of IAS 37.

Please don't hesitate to contact us if you would like to clarify any point of this letter.

Madrid, 13rd January 2016

Ana Mª Martínez-Pina
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