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International
Accounting Standards
Board

INFORMATION FOR OBSERVERS

IFRIC meeting:	**July 2007, London**
Project:	**Review of tentative agenda decision published in May IFRIC Update** **IAS 12 *Income Taxes* – Deferred tax arising from unremitted overseas earnings (Agenda Paper 7A)**

Tentative agenda decision published in May 2007 IFRIC Update

The IFRIC was asked to provide guidance on whether entities should recognise a deferred tax liability in respect of temporary differences arising because foreign income is not taxable unless remitted to the entity's home jurisdiction. The foreign income in question did not arise in a foreign subsidiary, branch, associate or joint venture.

The submission referred to paragraph 39 of IAS 12 and noted that, if the foreign income arose in a foreign subsidiary, branch, associate or interest in a joint venture and met the conditions in IAS 12 paragraph 39(a) and (b), no deferred tax liability would be recognised.

The IFRIC noted that the Board was considering the recognition of deferred tax liabilities for temporary differences relating to investments in subsidiaries, branches, associates and joint ventures as part of its Income Taxes project. As part of this project, the Board has tentatively decided to eliminate the notion of 'branches' from

IAS 12 and to amend the wording for the exception for subsidiaries. The IASB Income Taxes project team has been informed of the issue raised with the IFRIC.

Since the issue is being addressed by a Board project which is expected to be completed in the near future, the IFRIC [decided] not to add the issue to its agenda.

Staff Analysis

1. One comment letter was received in respect of the tentative agenda decision published in the May 2007 issue of IFRIC Update (see attachment 1 to this paper). That letter supported the IFRICs tentative decision not to take the issue onto its agenda but disagreed with the proposed wording. In particular, the commentator believed that the wording should refer to the guidance in IAS 12.15 rather than IAS 12.39, and that reference to the Board's income tax project should be removed.

2. IAS 12 paragraph 15 states that 'a deferred tax liability shall be recognised for all temporary differences except…temporary taxable differences associated with investments in subsidiaries, branches and associates, and interests in joint ventures [in which case] a deferred tax liability shall be recognised in accordance with paragraph 39.'

3. The submission noted that there is no definition of a branch in IAS 12. Therefore, in situations in which an entity has overseas earnings, it is not clear whether it can apply paragraph 39 to those earnings if they do not arise in an investment in a subsidiary or an associate or an interest in a joint venture. Three questions therefore arise:

   i. What is meant by a branch in the context of IAS 12.15 and IAS 12.39?

   ii. Is meeting the conditions in IAS 12.39(a) and IAS 12.39 (b) sufficient to justify describing a source of overseas earnings as a branch?

   iii. Can IAS 12.39 be applied by analogy to other overseas earnings that are in substance the same as those arising from investments in subsidiaries, branches and associates and interests in joint ventures?

4. The staff considers that including the reference to IAS 12.39 and the notion of a branch in the agenda decision is important as, without this, the agenda decision will not explain why the IFRIC has not taken on a project to develop a definition of 'a branch'.

5. Furthermore, the staff considers that making a statement that implies that it is never possible to analogise to the treatment of overseas income arising from investments in subsidiaries, branches and associates, and interests in joint ventures may be seen as being interpretive. This could be seen as reaching a

conclusion that was not considered in the staff paper discussed in May 2007. Additionally, such an interpretation may pre-empt the Board's final decisions from its income tax project.

6. The staff does however consider that, by not making reference to the question of 'what is a branch', the tentative wording may be unclear.

7. The staff therefore recommends that the tentative wording is clarified before finalisation. [Proposed changes to the tentative agenda decision omitted from the observer note]