

STAFF PAPER

25 March 2014

IFRS Interpretations Committee Meeting

Project	IFRS 10 <i>Consolidated Financial Statements</i>		
Paper topic	Investment Entities Amendments—The definition of investment-related services or activities		
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This paper has been prepared by the staff of the IFRS Foundation for discussion at a public meeting of the IFRS Interpretations Committee. Comments made in relation to the application of an IFRS do not purport to be acceptable or unacceptable application of that IFRS—only the IFRS Interpretations Committee or the IASB can make such a determination. Decisions made by the IFRS Interpretations Committee are reported in *IFRIC Update*. The approval of a final Interpretation by the Board is reported in *IASB Update*.

Introduction

1. In November 2013, the IFRS Interpretations Committee (the ‘Interpretations Committee’) discussed a request to clarify the definition of ‘investment-related services or activities’ as it relates to ‘tax optimisation’ intermediate subsidiaries.
2. An investment entity is permitted to provide investment-related services or activities, either directly or through a subsidiary. If an investment entity provides investment-related services or activities through a subsidiary, the investment entity shall consolidate that subsidiary. In some jurisdictions, some investment entities establish wholly-owned intermediate subsidiaries, which own all or part of the portfolio of investments in the group structure. The sole purpose of the intermediate subsidiaries is to minimise the tax paid by investors in the ‘parent’ investment entity. There is no other activity within the subsidiaries and the tax advantage comes about because of returns being channelled through the jurisdiction of the intermediate subsidiary. The submitter asked whether the tax optimisation described should be considered as investment-related services or activities.

3. Our analysis of this issue was included in Agenda Paper 9B of the November 2013 meeting.¹
4. The Interpretations Committee tentatively decided that it would not add this topic to the agenda because it noted that, according to paragraph BC272 of IFRS 10, the IASB thinks that the fair value measurement of all of an investment entity's subsidiaries would provide the most useful information, except for subsidiaries that provide investment-related services or activities. In addition, the Interpretations Committee noted that the IASB had considered requiring an investment entity to consolidate investment entity subsidiaries that are formed for tax purposes, but had decided against this.
5. The Interpretations Committee's full tentative agenda decision can be found in IFRIC Update (November 2013).²

Comment letter summary

6. The comment period for the tentative agenda decision ended on 20 January 2014. We received three responses. These comment letters are in Appendix B.
7. One respondent, ESMA, agreed with the tentative agenda decision for the reasons provided in the agenda decision.
8. Two respondents, the Canadian standard-setter and Deloitte, agreed with the tentative agenda decision for the reasons provided in the agenda decision, but think that the agenda decision should either provide a more detailed explanation of how Example 4 of the Illustrative Examples of IFRS 10 illustrates the application of the relevant requirements, or the agenda decision should not refer to Example 4.

¹ Agenda Paper 9B of the November 2013 meeting
http://www.ifrs.org/Meetings/MeetingDocs/Interpretations%20Committee/2013/November/AP09_IFRS_10_Investment_Entity_Amendment.zip

² IFRIC Update (November 2013)
<http://media.ifrs.org/2013/IFRIC/November/IFRIC-Update-November-2013.html>

9. In addition, one respondent, Deloitte, expressed concern that the tentative agenda decision could be read as implying that a subsidiary incorporated primarily for tax optimisation purposes can never be deemed to provide investment-related services. The respondent recommended that the agenda decision should be amended to clarify that the agenda decision relates only to subsidiaries that are incorporated solely for tax optimisation purposes and have no other activities.

Staff analysis of the comments received

10. The staff considered the comments made by the respondents.

Provide more explanation or remove Illustrative Example 4

11. One respondent suggested that the agenda decision should provide a more detailed explanation on how Example 4 illustrates the application of the relevant requirements in relation to the issue. Another respondent suggested that the agenda decision should not refer to Example 4 of the Illustrative Examples of IFRS 10 because it is not relevant.
12. We think that the group structure in Example 4 resembles the group structure in the submission and would explain the structure that is relevant to the agenda decision. However, we understand the respondent's comment that Example 4 would not necessarily explain the application of the requirements that are relevant to the issue. Accordingly, we propose to delete the sentence.

Clarify description of the tax optimisation subsidiary

13. One respondent recommended that the agenda decision should be amended to clarify that the agenda decision relates only to subsidiaries that are incorporated solely for tax optimisation purposes and have no other activities. The respondent is concerned that, as a result of its reference to the description in the submission of there being 'no activity within the subsidiary', the tentative agenda decision could be read as implying that a subsidiary incorporated primarily for tax optimisation purposes could never be deemed to provide investment-related services. The

submitter stated that, in fact, such subsidiaries are often required to provide services, such as administration of regulatory or tax filings or governance services, for the acquisition and disposal of investments or are also used as financing vehicles.

14. We think that the agenda decision could clarify the point by adding the sentence: ‘This agenda decision relates to subsidiaries that are incorporated for tax optimisation purposes and have no other activities.’

Other comments

15. ESMA emphasised the importance of speedily addressing the issues related to the Standards that are currently being implemented for the first time by a large number of entities:

ESMA welcomes the fact that the IFRS Interpretations Committee is addressing the issue speedily given that IFRS 10 is currently being implemented for the first time by a large number of European entities. ESMA believes that the analysis of the existing IFRS requirements that the IFRS Interpretations Committee provided in the tentative agenda decision is useful for market participants and could contribute to a more consistent application of IFRS 10 in requiring to measure such intermediate subsidiaries providing activities related to tax optimisation at fair value. In a period when a large number of new standards are applied for the first time, ESMA encourages the IFRS Interpretations Committee to provide timely answers to requests that would come up from emerging practices resulting from the application of other new standards such as IFRS 11 *Joint Arrangements*, IFRS 12 *Disclosure of Interest in Other Entities* and IFRS 13 *Fair Value Measurement*.

Staff recommendation

16. We recommend confirming the tentative agenda decision with some minor drafting changes. We have set out the wording for the final agenda decision in **Appendix A** of this paper for the Interpretations Committee’s approval.

Question for the Interpretations Committee

Question for the Interpretations Committee

1. Does the Interpretations Committee agree with the staff's recommendation that the Interpretations Committee should finalise its decision not to add this issue to its agenda?
2. Does the Interpretations Committee agree with the wording for the final agenda decision shown in Appendix A?

Appendix A—Final agenda decision

A1. We propose the following wording to finalise the agenda decision (new text is underlined and deleted text is ~~struck through~~):

IFRS 10 Consolidated Financial Statements: Investment Entities Amendments—The definition of investment-related services or activities

The Interpretations Committee received a request to clarify the definition of ‘investment-related services or activities’ as it relates to ‘tax optimisation’ intermediate subsidiaries.

An investment entity is permitted to provide investment-related services or activities, either directly or through a subsidiary. If an investment entity provides investment-related services or activities through a subsidiary, the investment entity shall consolidate that subsidiary.

Some investment entities establish wholly-owned intermediate subsidiaries in certain jurisdictions, which own all or part of the portfolio of investments in the group structure. The sole purpose of the intermediate subsidiaries is to minimise the tax paid by investors in the ‘parent’ investment entity. There is no other activity within the subsidiaries and the tax advantage comes about because of returns being channelled through the jurisdiction of the intermediate subsidiary. The submitter asked whether the ‘tax optimisation’ described should be considered investment-related services or activities.

The Interpretations Committee noted that, according to BC272 of IFRS 10, the IASB thinks that fair value measurement of all of an investment entity’s subsidiaries would provide the most useful information, except for subsidiaries providing investment-related services or activities. In addition, the Interpretations Committee noted that the IASB had considered requiring an investment entity to consolidate investment entity subsidiaries that are formed for tax purposes, but had decided against this.

The Interpretations Committee noted that one of the characteristics of ‘tax optimisation’ subsidiaries described in the submission is “that there is no activity within the subsidiary.” Accordingly, the Interpretations Committee considers that the parent should not consolidate such subsidiaries, because they do not provide investment-related services or activities, and do not meet the requirements to be consolidated in accordance with paragraph 32 of IFRS 10. The Interpretations Committee also noted that Example 4 of the Illustrative Examples of IFRS 10 illustrates the application of the relevant requirements. The parent should therefore account for such an intermediate subsidiary at fair value. This agenda decision relates to subsidiaries that are incorporated for tax optimisation purposes and have no other activities.

The Interpretations Committee considered that in the light of its analysis of the existing IFRS requirements, neither an interpretation nor an amendment to a Standard was necessary and consequently [decided] not to add the issue to its agenda.

Appendix B—Comment letters received

Wayne Upton
Chair
IFRS Interpretations
Committee
30 Cannon Street
London, EC4M 6XH L
United Kingdom

The IFRS Interpretations Committee's tentative agenda decision on IFRS 10 *-Consolidated Financial Statements: Definition of investment-related ser- vices or activities*

Dear Mr. Upton,

The European Securities and Markets Authority (ESMA) is an independent EU Authority that contributes to enhancing the protection of investors and promoting stable and well-functioning financial markets in the European Union (EU). ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

ESMA has considered the IFRS Interpretations Committee's tentative decision not to add to its agenda the request for clarification it received on the definition of investment-related services or activities related to tax optimisation of intermediate subsidiaries.

ESMA welcomes the fact that the IFRS Interpretations Committee is addressing the issue speedily given that IFRS 10 is currently being implemented for the first time by a large number of European entities. ESMA believes that the analysis of the existing IFRS requirements that the IFRS Interpretations Committee provided in the tentative agenda decision is useful for market participants and could contribute to a more consistent application of IFRS 10 in requiring to measure such intermediate subsidiaries providing activities related to tax optimisation at fair value. In a period when a large number of new standards are applied for the first time, ESMA encourages the IFRS Interpretations Committee to provide timely answers to requests that would come up from emerging practices resulting from the application of other new



standards such as IFSR 11 - *Joint Arrangements*, IFRS 12, - *Disclosure of Interest in Other Entities* and IFRS 13 - *Fair Value Measurement*.

ESMA agrees with the Interpretations Committee's decision not to add the issue to its active agenda for the reasons stated in the tentative agenda decision.

Yours sincerely,

Steven 

Chair

European Securities and Markets Authority



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January 17, 2014

(By e-mail to ifric@ifrs.org)

IFRS Interpretations Committee
30 Cannon Street,
London EC4M 6XH
United Kingdom

Dear Sirs,

**Re: Tentative agenda decision on IFRS 10 Consolidated Financial Statements:
Investment Entities Amendments – Definition of investment-related services or
activities**

This letter is the response of the staff of the Canadian Accounting Standards Board (AcSB) to the IFRS Interpretations Committee’s tentative agenda decision on the request to clarify the definition of “investment-related services or activities” as it relates to “tax optimization” intermediate subsidiaries. This tentative agenda decision was published in the November 2013 IFRIC Update.

The views expressed in this letter take into account comments from individual members of the AcSB staff but do not necessarily represent a common view of the AcSB or its staff. Views of the AcSB are developed only through due process.

We agree with the Committee’s decision not to add this item to its agenda for the reasons provided in the tentative agenda decision. However, we think that the reference to Example 4 of the Illustrative Examples should be explained more fully. In our view, Example 4 illustrates whether several entities meet the definition of an investment entity when the funds are related and are established to meet legal, regulatory or tax requirements rather than a tax planning arrangement, but we agree that the subsidiaries do not carry out “investment management activities” in both Example 4 and the circumstances addressed in the submission. Consequently, we think that the Committee should provide more detail to explain how Example 4 illustrates the application of the relevant requirements.

*AcSB Staff Response to Tentative agenda decision on
IFRS 10 Consolidated Financial Statements: Investment Entity
Amendments – Definition of investment-related services or activities*

January 17, 2014

We would be pleased to provide more detail if you require. If so, please contact me at +1 416 204-3276 (e-mail pmartin@cpacanada.ca), or Nicky Lahner, Principal, Accounting Standards at +1 416 204- 3348 (e-mail nlahner@cpacanada.ca).

Yours truly

A handwritten signature in black ink that reads "Peter Martin". The signature is written in a cursive, slightly slanted style.

Peter Martin, CPA, CA
Director, Accounting Standards

Wayne Upton
Chairman
IFRS Interpretations Committee
30 Cannon Street
London
United Kingdom
EC4M 6XH

Email: ifric@ifrs.org

21 January 2014

Dear Mr Upton

Tentative agenda decision – IFRS 10 *Consolidated Financial Statements: Investment Entities Amendments*: Definition of investment-related services or activities

Deloitte Touche Tohmatsu Limited is pleased to respond to the IFRS Interpretations Committee's publication in the November IFRIC Update of the tentative decision not to take onto the Committee's agenda a request for clarification of the definition of 'investment-related services or activities' as it related to 'tax optimisation' intermediate subsidiaries.

We agree with the IFRS Interpretations Committee's decision not to add this item onto its agenda and can accept the Committee's reading of paragraph BC272 of the Basis for Conclusions on IFRS 10 in the context of an entity that exists solely for tax purposes. However, we do not agree that Example 4 of the Illustrative Examples of IFRS 10 is relevant to this consideration and recommend that this reference be removed from the agenda decision.

In addition, we are concerned that, as a result of its reference to the description in the submission of there being "no activity within the subsidiary", the tentative agenda decision could be read as implying that a subsidiary incorporated primarily for 'tax optimisation' purposes can never be deemed to provide investment-related services. In fact, such subsidiaries are often required to provide services such as administration of regulatory or tax filings or governance services around the acquisition and disposal of investments or are also used as financing vehicles. We recommend that the agenda decision be amended to clarify that it relates only to subsidiaries that are incorporated solely for tax optimisation purposes and have no other activities.

If you have any questions concerning our comments, please contact Veronica Poole in London at +44 (0)20 7007 0884.

Yours sincerely

A handwritten signature in black ink, appearing to read 'V. Poole', with a stylized flourish at the end.

Veronica Poole
Global IFRS Leader

