STAFF PAPER

IFRS Interpretations Committee meeting **May 2014**

IFRS Interpretations Committee meeting: January 2014

Project	IAS 12 *Income Taxes*—Threshold of recognition of an asset on uncertain tax position		
CONTACT(S)	Leonardo Piombino	lpiombino@ifrs.org	+44 (0)20 7246 0571

Introduction

1. The IFRS Interpretations Committee (the Interpretations Committee) received a request for guidance on the recognition of a tax asset in the situation in which tax laws require an entity to make an immediate payment when a tax examination results in an additional charge, even if the entity intends to appeal against the charge. In the situation described by the submitter, the entity expects, but is not certain, to recover some or all of that cash. The Interpretations Committee was asked to clarify whether IAS 12 *Income Taxes* (and a 'probable' threshold) is applied to determine whether to recognise an asset, or whether the guidance in IAS 37*Provisions, Contingent Liabilities and Contingent Assets* (and a 'virtually certain' threshold) should be applied.

2. The Interpretations Committee discussed this issue in the January 2014 meeting and tentatively decided not to add this issue to its agenda, because it observed that:

   (a) IAS 12 provides sufficient guidance on the recognition of current tax assets and current tax liabilities and

(b) in the specific fact pattern described by the submitter, an asset is recognised if the amount of cash paid (which is a certain amount) exceeds the amount of tax expected to be due (which is an uncertain amount).

3. We received ten comment letters on the tentative agenda decision. We analyse the comment letters in the following paragraphs.

Comment analysis

Comments received

4. Five respondents (ACSB, ASCG, Deloitte, ESMA and PWC) support the Interpretations Committee's tentative decision not to add this issue to its agenda.

5. ACSB thinks that addressing uncertain tax liabilities is too broad an issue to be addressed by the Interpretations Committee. They note that IAS 12 is currently on the IASB's agenda as a research project and that the issue of uncertain tax positions should be addressed under that project. They also think that use of the word 'sufficient', as set out in the tentative agenda decision, is too strong, because:

   (a) the broader issue of uncertain tax positions remains outstanding; and

   (b) agenda decisions are non-authoritative, so the wording should be neutral on this issue.

6. ASCG supports the decision. However, they note that the question being answered here is also relevant in other circumstances, which look similar but are not within the scope of IAS 12—ie taxes other than income taxes. The Interpretations Committee's tentative decision leaves open how to account for these issues. They also note that another (third) view has emerged: payments to escrow accounts or deposits in court are similar to a deposit and would constitute a financial asset; hence, IAS 39/IFRS 9 would likely be the relevant Standard in these circumstances, and they require recognition of an asset.

7. ESMA agrees with the Interpretations Committee's tentative decision not to add this issue to its agenda, but they:

(a) think that the conclusion that the requirements of IAS 12 should be applied raises broader questions about consistency between the requirements of IAS 12 and IAS 37. IAS 12 refers to a "probable" threshold whereas IAS 37 refers to a "virtually certain" threshold;

(b) observed divergent accounting policies and practices in this respect;

(c) note that the diversity in the recognition and measurement of uncertain tax assets or liabilities is widespread and covers a variety of situations related to tax examinations or disputes/court cases;

(d) think that the issue is too broad to be addressed by the Interpretations Committee on a timely basis and that additional guidance in this area is needed.

(e) Think that the issue on measurement of assets and/or uncertain tax position is sufficiently circumscribed to be included on the IASB's agenda as a narrow-scope project; and

(f) encourage the Interpretations Committee to refer this matter to the IASB.

8. Five respondents (Financial Supervisory Service of Korea, KASB, Kookmin Bank, KPMG and OIC) disagree with the Interpretations Committee's tentative decision.

9. The Financial Supervisory Service of Korea requests the Interpretations Committee to add this item to its agenda to revise the related Standards or issue an interpretation, because:

(a) there is diversity in accounting practices across countries.

(b) Paragraph 88 of IAS 12 requires an entity to disclose any tax-related contingent liabilities and contingent assets in accordance with IAS 37, but paragraph 5 of IAS 37 excludes income taxes from the scope of IAS 37. This points to a lack of clarity as to which Standard should take priority in the application of a recognition threshold[1].

---

[1] KASB and Kookmin Bank made a similar comment.

(c) The lack of guidance is also acknowledged by the IASB in paragraph BC58 of the Exposure Draft *Income Tax* (March 2009), which states that IAS 12 is silent on how to treat any uncertainty relating to amounts submitted to the tax authorities[2].

(d) FASB has issued FASB Interpretation No. 48 *Accounting for Uncertainty in Income Taxes* to address the specific situation of uncertain tax positions. Because of the similarity between paragraph 12 of IAS 12 and paragraph 8 of SFAS 109 *Accounting for Income Taxes*, the Financial Supervisory Service of Korea thinks that a similar interpretation for IFRSs is warranted.

(e) This issue can have a potentially significant impact on the accounting practices of many countries.

10. The KASB thinks that IAS 12 does not provide sufficient guidance on the recognition of an asset on uncertain tax position. We report below some of their comments:

(a) In the case of contingent assets from general lawsuits or other tax-related lawsuits (eg customs tax, VAT, and other national tax) IAS 37 should be applied, while IAS 12 should be applied to contingent assets from income tax lawsuits. This would be inconsistent and unreasonable, because general lawsuits and other tax-related lawsuits are no different from income tax lawsuits in terms of uncertainty[3].

(b) Paragraph 88 of IAS 12 states that any tax-related contingent liabilities and contingent assets from unresolved disputes with tax authorities shall be disclosed in the notes to the financial statements in accordance with IAS 37. However, if IAS 12 is applied to the recognition of an asset in connection with an uncertain tax position according to paragraphs 12 and 46 of IAS 12,

[2] KASB and Kookmin Bank made a similar comment.

[3] Kookmin Bank made a similar comment.

then paragraph 88 of IAS 12 becomes useless because it cannot be applied to any case[4].

(c) It is our belief that the Interpretations Committee tentative agenda decision (January 2014) that IAS 12 provides sufficient guidance on the recognition of uncertain tax position is not clear about how to apply the guidance on the recognition of an asset on uncertain tax position.

11. KPMG agrees with the analysis and the accounting outcome of the tentative agenda decision. However, they:

(a) note that our outreach[5] confirmed that the issue is widespread and that there are diverging interpretations in practice as to whether IAS 12 or IAS 37 should be applied to uncertain tax positions;

(b) note that the IASB acknowledged these diverging interpretations and practices and tried to address them in the project aimed at improving accounting for income taxes, which was stopped due to other agenda priorities;

(c) appreciate that accounting for uncertain tax positions is a challenging topic and that it may require extensive work to address it in a comprehensive manner; and

(d) understand that the IASB may consider this topic as part of its research project on income taxes, which is not expected to commence before the 2015 agenda consultation.

Consequently, and because of the noted divergence in practice, they disagree that issuing an agenda decision on this issue would be the appropriate way to address it. As an intermediate solution before the comprehensive project on income taxes, they recommend the Interpretations Committee to propose that

---

[4] Kookmin Bank made a similar comment.

[5] See Agenda Paper 13 (January 2014 IFRIC meeting) http://www.ifrs.org/Meetings/MeetingDocs/Interpretations%20Committee/2014/January/AP13-IAS%2012%20-%20Uncertain%20tax%20position.pdf.

the IASB should amend IAS 12 to state explicitly that uncertain tax positions are in the scope of IAS 12 and should be accounted for accordingly.

12. Kookmin Bank thinks that IAS 12 does not provide sufficient guidance on the recognition of an asset on uncertain tax position. They suggest issuing an Interpretation or amending the agenda decision to allow the current accounting practice of alternative applications of IAS 12 or IAS 37. We report below a summary of their comments:

(a) IAS 12 does not provide a definition of uncertain tax positions and does not provide any terms related to uncertain tax positions. Paragraph 12 of IAS 12 provides merely general guidance for current tax assets and liabilities, and therefore, it is not clear whether IAS 12 can be applied to uncertain tax positions.

(b) They note that according to our outreach the issue is common in 11 jurisdictions and in 7 of them, diversity in practice has been noted. In their view, such diversity in practice constitutes clear evidence of a lack of sufficient guidance in IFRS on uncertain tax positions.

(c) The Summary of FASB Interpretation No. 48 clearly notes the reason for issuing the interpretation (ie there is no specific guidance on how to address uncertainty in accounting for income tax assets and liabilities). Although paragraph 12 of IAS 12 and paragraph 8 of SFAS 109 were very similar, the FASB commented that SFAS 109 did not provide specific guidance on recognition criteria for uncertain tax positions. Consequently, they do not agree that IAS 12 provides sufficient guidance on recognition of uncertain tax positions.

(d) They note that application of IAS 12 in practice without specific guidance on the measurement of uncertain tax positions will not resolve the issue of diversity of accounting in current practice.

(e) They also expect practical issues from applying IAS 12 to uncertain tax positions, because:

(i) entities that applied IAS 37 to uncertain tax positions will be required to make retroactive adjustments of financial statements for prior periods and a reasonable estimate of the amount of tax assets/liabilities and the time of recognition would be difficult to make;

(ii) if the probability recognition threshold is applied, volatility of profit and losses will increase, while reliability of the accounting information will decrease; and

(iii) if tax assets should be recognised by making retroactive adjustments of financial statements for prior periods through applying IAS 12 to uncertain tax positions, the potential tax refund amounts to be determined later by the outcome of the lawsuit cannot be recognised as profit, and therefore, the periodic profit and losses will be distorted.

13. OIC thinks that an interpretation or an amendment is needed, because there are different views on whether the requirements of paragraph 12 of IAS 12 apply to tax litigation. They note that the Interpretations Committee's tentative decision deals with very limited circumstances (ie income tax litigation), but excludes other taxes and broader cases and does not consider the application by analogy to its decision to similar litigation (eg VAT litigation). They think that it would be important to clarify which Standard should be applied for the recognition of an asset against an immediate payment in any kind of litigation and what the accounting rules to be followed are. They are aware that on this broader issue there is difference in practice.

Staff view

14. We think that the comments received show us that the majority of the respondents agree with the accounting outcome of the tentative agenda decision (ie an asset is recognised if the amount of cash paid exceeds the amount of tax expected to be due).

15. However, these comments also show us that the fact pattern described by the submitter (and similar fact patterns) is widespread and that there is divergence in practice. Consequently, many respondents expressed concern about addressing this issue with non-authoritative guidance. We understand their concern.

16. We also think that the comments received show us that this fact pattern would be better considered within the context of a broader project on uncertain tax positions. In our view, the accounting for uncertain tax positions should be addressed comprehensively. In other words, we think that the following issues need to be addressed:

    (a) recognition and measurement of assets and/or liabilities relating to uncertain tax positions; and

    (b) consistency between the requirements of IAS 37 and IAS 12. In our view, the accounting for assets and liabilities deriving from income tax lawsuits and other lawsuits should be the same.

17. In our view, the IASB should:

    (a) consider these issues when it discusses the *Conceptual Framework* project, because in our view, the guidance in IAS 37 that contingent assets are recognised when they are virtually certain is an exception to the general principle in the *Conceptual Framework* (ie when it is probable that the future economic benefits will flow to the entity) and

    (b) should address them in its research project on *Income Taxes.*

18. Consequently, we think that:

    (a) the Interpretations Committee should not address this specific fact pattern in isolation; and

    (b) the accounting for uncertain tax positions is too broad an issue to be addressed by the Interpretations Committee on a timely basis.

Staff recommendation

19. After considering the comments received on the tentative agenda decision, we recommend that the Interpretations Committee should finalise its decision not to add this issue to its agenda. However, on the basis of this comment analysis, we think that the Interpretations Committee should recommend the IASB to address the accounting for uncertain tax positions in its research project on *Income Taxes*.

The proposed changes to the wording of the tentative agenda decision are illustrated in Appendix A of this paper.

Questions 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 have any comments on the proposed wording in Appendix A for the final agenda decision?

Appendix A—Proposed wording for the final agenda decision

A1 The proposed wording for the final agenda decision is as follows (new text is underlined and deleted text is struck through):

IAS 12 *Income Taxes*—threshold of recognition of an asset in the situation in which the tax position is uncertain

The Interpretations Committee received a request for guidance on the recognition of a tax asset in the situation in which tax laws require an entity to make an immediate payment when a tax examination results in an additional charge, even if the entity intends to appeal against the charge. In the situation described by the submitter the entity expects, but is not certain, to recover some or all of that cash. The Interpretations Committee was asked to clarify whether IAS 12 *Income Taxes* (and a 'probable' threshold) is applied to determine whether to recognise an asset, or whether the guidance in IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* (and a 'virtually certain' threshold) should be applied.

~~The Interpretations Committee noted that paragraph 12 of IAS 12 provides sufficient guidance on the recognition of current tax assets and current tax liabilities. It states that: current tax for current and prior periods shall, to the extent unpaid, be recognised as a liability. If the amount already paid in respect of current and prior periods exceeds the amount due for those periods, the excess shall be recognised as an asset.~~

~~The Interpretations Committee observed that, in this specific fact pattern, an asset is recognised if the amount of cash paid (which is a certain amount) exceeds the amount of tax expected to be due (which is an uncertain amount).~~

The Interpretations Committee noted that this specific fact pattern would be better considered within the context of a broader IASB project, such as the research project on *Income Taxes*. The Interpretations Committee observed that the following issues need to be considered:

- recognition and measurement of assets and/or liabilities relating to uncertain tax positions; and
- consistency between the requirements of IAS 37 and IAS 12.

The Interpretations Committee also noted that the accounting for uncertain tax positions is too broad an issue for it to be addressed by it on a timely basis. Consequently, ~~On the basis of the analysis above~~ the Interpretations Committee ~~[~~decided~~]~~ not to add this issue to its agenda.

Accounting Standards Board
AcSB
CNC
Conseil des normes comptables

277 Wellington Street West, Toronto, ON Canada M5V 3H2 Tel: (416) 977-3322 Fax: (416) 204-3412 www.frascanada.ca

277 rue Wellington Ouest, Toronto (ON) Canada M5V 3H2 Tél: (416) 977-3322 Téléc : (416) 204-3412 www.nifccanada.ca

April 14, 2014

(By email to ifric@ifrs.org)

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

Dear Sirs,

Re: Tentative agenda decision on IAS 12 *Income Taxes* – threshold of recognition of an asset in the situation in which the tax position is uncertain

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 above topic, as published in the January 2014 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. We think that in order to address this issue comprehensively the Interpretations Committee would need to provide guidance on the measurement of uncertain tax liabilities. We think that addressing uncertain tax liabilities is too broad an issue to be addressed by the Interpretations Committee. We note that IAS 12 is currently on the IASB's agenda as a research project and that the issue of uncertain tax positions should be addressed under that project. We think that the number of issues brought forward on IAS 12 continues to indicate the need for a broader project on income taxes.

Also, we think that use of the word 'sufficient', as set out in the tentative agenda decision, is too strong. As noted above the broader issue of uncertain tax positions remains outstanding. As agenda decisions are non-authoritative we think that the wording should be neutral on this issue.

We would be pleased to provide more detail if you require. If so, please contact me at + 1 416 204 3276 (email pmartin@cpacanada.ca) or Greg Edwards, Principal, at + 1 416 204 3462 (email gedwards@cpacanada.ca).

Yours truly,

Peter Martin, CPA, CA
Director, Accounting Standards

DRSC e. V. • Zimmerstr. 30 • 10969 Berlin

Telefon +49 (0)30 206412-12
Telefax +49 (0)30 206412-15
E-Mail info@drsc.de

Wayne Upton
Chairman of the
IFRS Interpretations Committee
30 Cannon Street
London EC4M 6XH

United Kingdom

Berlin, 7 April 2014

Dear Wayne,

IFRS IC tentative agenda decisions in its January 2014 meeting

On behalf of the Accounting Standards Committee of Germany (ASCG), I am writing to comment on several IFRS IC tentative agenda decisions, published in the January 2014 *IFRIC Update*. We list the decisions and our detailed comments in appendix A to this letter.

Further, we comment on one issue on which a final agenda decision has been made (see appendix B). We are particularly concerned about the short and probably incomplete rationale for this (final) decision as conveyed in the *IFRIC January 2014 Update*.

If you would like to discuss our views further, please do not hesitate to contact me.

Yours sincerely,

Liesel Knorr

President

Appendix A – Comments on recent tentative agenda decisions

IAS 1 – Issues related to the application of IAS 1

We agree with the IFRS IC's decision in general. In particular, we agree with the rationale that IAS 1 is designed to allow for diversity in practice, as this supports financial information to be presented in a decision-useful manner – depending on the individual entity and/or business. Thus, diversity cannot be marked as negative in all cases; it is rather essential to allow for individually useful presentation.

This said, we would not support if specific presentation formats, (dis)aggregation levels, etc. were mandated and fixed. This might be in the particular interest of some constituents, but not in the interest of IFRS financial reporting in general. Any change requiring more prescriptive presentation schemes would have to be the outcome of a comprehensive project to revise IAS 1.

However, to our understanding the IFRS IC makes a judgement on one particular issue amongst the numerous issues mentioned in the submission. If we understand it correctly, the IFRS IC concludes that additional pro-forma columns in the primary statements are unlikely to comply with IAS 1.112(c). We deem this statement being made unintentionally; otherwise it would conflict with the central idea of the general decision of not prescribing specific presentation. This might warrant amending the wording of this decision.

Nevertheless, we think there are indeed some examples for which (existing or expected) diversity might not be in line with IAS 1. However, it is difficult to determine for which particular issue diversity is deemed appropriate (and which, thus, may not be restricted by IAS 1) and for which it is not. In the examples given in the submission, we acknowledge that:

- example a.1) ("presentation of amortisation and impairment losses on capitalised development cost") would demonstrate that there were circumstances where a required way of presentation would be appropriate;
- example b.3) ("presentation of the share of profit or loss of associates or and joint ventures accounted for using the equity method") would demonstrate that there were circumstances (e.g. different subsidiaries within a group presenting it differently) where a required single-line presentation would not be appropriate.

Thus, we would support if clarification or guidance on these or any other examples were developed only through a more comprehensive review, e.g. as part of the current disclosure initiative. The IASB and the IFRS IC should ensure that such clarification or guidance is not developed only for selected issues that have been raised incidentally through a submission, but rather on a systematic manner.

IAS 12 – Recognition and measurement of DTA when an entity is loss-making

We do not support the outcome of recent discussions of issue #2 in the respective submission, which is whether a deferred tax asset (DTA) shall be recognised at a restricted amount when there is a legal "minimum taxation restriction". Whilst we acknowledge that this is not yet a tentative agenda decision (TAD), we deem our early comments being appropriate since a TAD on the related issue #1 of the very same submission has already been made by the IFRS IC. That former TAD (and its rationale) on issue #1 in particular make the outcome from recent discussions of issue #2 look surprising, or even inconsistent.

As a matter of fact, we note that in our jurisdiction tax law limits the extent to which tax losses can be recovered against future profits, i.e. only 60 % of future profits can be utilised for deducting tax losses carried forward in any given year. Thus, the issue is relevant and widespread. Recognition of a DTA without limitation (resulting from minimum taxation) is the predominant practice.

We note that a minimum taxation by tax law would not apply (ie. does not have any implication) in case future losses were expected. Thus, it appears inappropriate if in that case the amount to be recognised as a DTA was restricted.

However, due to the main underlying rationale for the IFRS IC's decision on issue #1 – which we clearly support –, the expectation of tax losses (or taxable profits) is not taken into account when determining the amount of a DTA to be recognised. Hence, recognising a DTA solely depends on the existence of reversing taxable temporary differences (being a deferred tax liability (DTL)), irrespective of whether future tax losses are expected. Thus, even in loss-making periods a DTA would be recognised in full, provided that a DTL was available.

If this rationale was carried over to issue #2, since future tax losses (or profits) were not taken into consideration, taxable temporary differences that allowed for recognising a DTA should not be limited to a certain percentage due to a minimum taxation requirement.

From a conceptual perspective, the decision on both issues should primarily depend on the existence of a DTL and not on the availability of future taxable profits or tax losses. As this is the underlying rationale for the TAD on issue #1, it should, consequently, result in supporting view 2 (or 1B) for issue #2 – which would be that a DTA is recognised without limitation by minimum taxation.

To summarise our reservations: It appears, as confirmed by the IFRS IC in its TAD on issue #1, that IAS 12 applies a formalistic approach in assessing the recognition of DTAs when DTLs are recognised at the same time. If sufficient DTLs were recognised one would not have to assess whether sufficient taxable amounts would be available against which the DTAs could be used. This implies that the actual tax impact in the year when the temporary difference reverses is not relevant as long as there are sufficient DTLs recognised. This becomes especially clear, when the DTA results from a tax loss carry-forward, as those unused losses cannot be used if no sufficient taxable income is available. From our point of view, the same formalistic approach needs to be applied in a tax regime where there is a minimum tax restriction. Otherwise, the recognition of a DTA, when actually tax losses are expected, would depend on the arbitrary assumption of the actual tax implications when no tax losses are expected under this tax regime. So far, the current decisions on both issues do not follow the same rationale and are, thus, inconsistent with each other.

IAS 12 – Threshold of recognition on an asset if the tax position is uncertain

We support the decision. However, the question being answered here is also relevant in other circumstances, which look similar but are not within the scope of IAS 12 – i.e. taxes other than *income* taxes. The IFRS IC's decision leaves open how to account for these issues. While discussing similar issues, another (third) view has emerged: Payments to escrow accounts or deposits in court are similar to a deposit and would constitute a financial asset; hence, IAS 39 / IFRS 9 would likely be the relevant standard in these circumstances, and they require recognition of an asset.

IAS 19 – Guaranteed return on contributions or notional contributions

We note the IFRS IC's view that this issue is too broad to be addressed in an efficient manner. Nevertheless, as the IFRS IC observed, these plans are part of a growing range of plan designs and the accounting for these plans results in diversity in practice. Therefore, we would welcome guidance on how to account for these plans.

This issue is the second IAS 19 issue recently removed from the IFRS IC's agenda because it was deemed too broad to be addressed by the IFRS IC. In addition, there are other issues relating to IAS 19 that are, or have recently been, under discussion (e.g. discount rates, regional market issue, etc.). This shows that a more fundamental review of IAS 19 by the IASB is warranted in the near future. Thus, we urge the IASB to carry out a comprehensive review of IAS 19 rather than a piecemeal approach.

Furthermore, we suggest that the IASB clearly define the scope of issues the IFRIC IC is able to solve. This should allow for a process that leads to answering issues rather than rejecting them for formal reasons; and it may result in adjustments to the due process handbook in order to clarify the borderline of responsibilities between the IASB and the IFRS IC, either in a general sense or, at least, with regard to potential minor "narrow-scope amendments" and/or interpretations.

Appendix B – Comments on a recent (final) agenda decision

IAS 32 – MCB convertible upon a contingent "non-viability" event

We basically support the IFRS IC's decision not to add this issue to its agenda. In our opinion, though, the decision is not well explained. We do not agree with the wording of the agenda decision as it does not include any statement by the IFRS IC on how to account for the submitted case. So far, it remains unclear whether the instrument may be considered a hybrid instrument and how its components (notional amount, interest payments) are to be accounted for.

More generally, we note that numerous requests with respect to IAS 32 have been submitted to the IFRS IC during the recent years. In our impression, these issues have been dealt with in a casuistic manner. Thus, we are concerned about IAS 32 related interpretations and decisions being inconsistent. Therefore, we recommend the IFRS IC to deliberate further whether the recent decision on the issue mentioned above is consistent with other interpretations/decisions made by the IFRS IC regarding IAS 32.

Deloitte Touche Tohmatsu Limited
2 New Street Square
London
EC4A 3BZ
United Kingdom

Tel: +44 (0) 20 7936 3000
Fax: +44 (0) 20 7583 1198
www.deloitte.com

Direct: +44 20 7007 0884
Direct fax: +44 20 7007 0158
vepoole@deloitte.co.uk

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

Email: ifric@ifrs.org

7 April 2014

Dear Mr Upton

Tentative agenda decision - IAS 12 *Income Taxes*: Threshold of recognition of an asset in the situation in which the tax position is uncertain

Deloitte Touche Tohmatsu Limited is pleased to respond to the IFRS Interpretations Committee's publication in the January IFRIC Update of the tentative decision not to take onto the Committee's agenda a request for guidance on the recognition of a tax asset in the situation in which tax laws require an entity to make an immediate payment when a tax examination results in an additional charge, even if the entity intends to appeal against the charge.

We agree with the IFRS Interpretations Committee's decision not to add this item onto its agenda for the reasons set out in the tentative agenda decision.

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

Yours sincerely

Veronica Poole
Global IFRS Leader

European Securities and Markets Authority

The Chair

23 April 2014
ESMA/2014/427

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

Re: The IFRS Interpretations Committee's tentative agenda decision on IAS 12 – *Income Taxes*: threshold of recognition of an asset in the situation in which the tax position is uncertain

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 (IFRS IC) tentative decision not to add to its agenda the request for clarification it received on the recognition of a tax asset in the situation when tax laws require an entity to make an immediate payment when a tax examination results in an additional charge, even if the entity expects, but is not certain, to recover some or all of that cash as it considered that paragraph 12 of IAS 12 – *Income Taxes* provides sufficient guidance on recognition of current tax assets and current tax liabilities.

ESMA agrees with the IFRS IC's decision not to add this specific issue to its active agenda. ESMA is however concerned that the third paragraph of the tentative agenda decision could be interpreted as suggesting that a tax asset can be recognised solely based on management's expectation to recover some or all of the cash without the need to assess whether the recovery is probable. ESMA points out that from a conceptual standpoint the recognition of an asset requires the flow of future economic benefits to be sufficiently certain. Consequently, ESMA would suggest the IFRS IC to clarify the wording of the tentative agenda decision and state that management's expectation should consider that the recovery of some or all of the cash requires is *probable*.

ESMA believes that the IFRS IC's conclusion that the requirements of IAS 12 should be applied raises broader questions about consistency between the requirements of IAS 12 and IAS 37 – *Provisions, Contingent Liabilities and Contingent Assets* with regards to uncertain tax positions. ESMA points out that the asset recognition criteria in IAS 12 and IAS 37 are different: IAS 12 refers to a '*probable*' threshold whereas IAS 37 requires inflows of economic benefits to be '*virtually certain*'. Nevertheless, IAS 12 does not give any indications on the measurement basis that should be used for uncertain tax positions.

ESMA observed divergent accounting policies and practices in this respect. Many market participants argue that, as IAS 12 is a specific standard for income taxes, its guidance has precedence over the more general guidance when recognising assets arising from uncertain tax positions. On the other hand, some market participants believe that the measurement guidance in IAS 37 is more appropriate for certain situation arising from tax positions, arguing that as the control of the asset is questionable, recognition of an asset is conceptually justified only if inflows of economic benefits are virtually certain.

ESMA notes that the diversity in the recognition and measurement of uncertain income tax assets or liabilities is widespread, and covers a variety of situations related to tax examinations or disputes/court cases. Accordingly, although ESMA believes that the issue is too broad to be addressed by the IFRS IC on a timely basis, we are of the view that additional guidance in this area is needed. Indeed, we believe that the issue on measurement of assets and/or uncertain tax position is sufficiently circumscribed to be included on the IASB's agenda as a narrow scope project. ESMA would therefore encourage the IFRS IC to refer this matter to the International Accounting Standards Board (IASB).

We would be happy to discuss these issues further with you.

Steven Maijoor
Chair
European Securities and Markets Authority

Cc: Hans Hoogervorst, Chairman, International Accounting Standards Board

금융감독원 FINANCIAL SUPERVISORY SERVICE
Corporate Accounting System Team, Corporate Accounting System Office
38 Yeoui-Daero, Youngdeungpo-Gu, Seoul 150-743 REPUBLIC OF KOREA
Telephone: +82-2-3145-7761. Facsimile: +82-2-3145-7769. E-mail: jhkchoi@fss.or.kr

April 14, 2014

IFRS Interpretation Committee
30 Cannon Street,
London EC4M 6XM
United Kingdom
Company No: FC023235

Re: Tentative agenda decisions on IAS 12 Income Taxes - Threshold of recognition of an asset in the situation in which the tax position is uncertain

Dear Sirs,

The Financial Supervisory Service of Korea is pleased to comment on the IFRS Interpretation Committee's tentative agenda decision published in the January 2014 IFRIC Update on whether IAS 12 Income Taxes (and a 'probable' threshold) is applied to determine whether to recognize an asset, or the guidance in IAS 37 Provisions, Contingent Liabilities and Contingent Assets (and a 'virtually certain' threshold) should be applied.

We believe the Committee should reconsider its decision not to add this item to its agenda.

We note that there is diversity in accounting practices across countries but no sufficient guidance on the measurement of uncertain tax position (as indicated in paragraph 27 of the IFRIC Staff Paper IAS 12 Income Taxes—Threshold of recognition of an asset on uncertain tax position). In our jurisdiction, this lack of guidance will result in continued debates on measurement issues as they will remain an open question yet to be answered.

For instance, paragraph 88 of IAS 12 requires an entity to disclose any tax-related contingent liabilities and contingent assets in accordance with IAS 37 but paragraph 5 of IAS 37 excludes income taxes from the scope of IAS 37. This points to a lack of clarity as to which Standard should take priority in the application of a recognition threshold.

The lack of guidance is also acknowledged by the IASB in paragraph BC 58 of IAS 12 ED issued in March 2009 which states that IAS 12 is silent on how to treat any uncertainty relating to amounts submitted to the tax authorities.

We understand that Financial Accounting Standards Board (FASB) has issued FASB Interpretation No. 48 'Accounting for Uncertainty in Income Taxes' to address the specific situation of uncertain tax positions. Given the similarity between paragraph 12 of IAS 12 and paragraph 8 of SFAS 109 'Accounting for Income taxes,' the need for a similar interpretation for IFRSs is warranted.

Considering the potentially significant impact this issue can have on accounting practices of so many countries, we would like to request the Committee to add this issue to its agenda to revise related standards or issue an interpretation to address the issue.

We would be pleased to provide more details if you require. You can contact me at +82 2 3145 5039 (Abjyc@fss.or.kr), Jang Seok-il, Head of the Corporate Accounting System Team, at +82 2 3145 7752 (sijang@fss.or.kr), or Choi Jin-Hyuk, Senior Manager of the Corporate Accounting System Team, at +82 2 3145 7761 (jhkchoi@fss.or.kr).

Yours sincerely,

Choe Jin-Yeong
Chief Accountant

Korea Accounting Institute KAI
Korea Accounting Standards Board KASB

KCCI Bldg. 4th Flr.
39 Sejong-daero, Jung-gu,
Seoul 100-743, South Korea
Tel : 82-2) 6050-0150
Fax : 82-2) 6050-0170

14 April 2014

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

Dear IFRS Interpretations Committee:

The Korea Accounting Standards Board (KASB) sends its comments on Interpretations Committee tentative agenda decisions 'IAS 12 Income Taxes-threshold of recognition of an asset in the situation in which the tax position is uncertain'.

The enclosed comments represent official positions of the KASB. They have been determined after extensive due process and deliberation.

Please do not hesitate to contact us if you have any questions regarding our comments. You may direct your inquiries either to me(jjang@kasb.or.kr) or to Mr. Ji Hun Park (jhpark@kasb.or.kr), Assistant Technical Manager of the KASB.

Best regards,

Jee In Jang
Chair, Korea Accounting Standards Board

Cc: Hyunduck Choi, Research Fellow of Research Department

We are pleased to comment on Interpretations Committee tentative agenda decisions 'IAS 12 Income Taxes-threshold of recognition of an asset in the situation in which the tax position is uncertain'. Our comments include views from a public hearing and responses collected from the various associations. We finalized the comment letter through the due process established in the KASB.

We consider that IAS 12 does not provide sufficient guidance on the recognition of an asset on uncertain tax position based on the followings:

(1) IAS 12 needs to clarify the extent of application standards on uncertain tax position.

- IAS 12 principally provides the accounting treatment relating to tax issues and income taxes levied by taxation authorities. In addition, paragraph 88 of IAS 12 indicates that contingent liabilities and contingent assets may arise from unresolved disputes with the taxation authorities.

- In Korea, entities generally file a tax appeal against a taxation authority after making the additional tax payments (step 1). If the dispute with the taxation authority is not resolved during the tax appeal proceedings, then they usually claim a tax refund lawsuit to a court against the taxation authority (step 2). In practice, it is a common view that IAS 37 and the 'virtually certain' recognition threshold should be applied to contingent assets from income tax lawsuits during the step 2.

- In case of contingent assets from general lawsuits or other tax related lawsuits (e.g., customs tax, VAT, and other national tax) IAS 37 should be applied, while the IAS 12 should be applied to contingent assets from income tax lawsuits. This would be inconsistent and unreasonable because general lawsuits and other tax related lawsuits are not different from income tax lawsuits in terms of uncertainty.

(2) Paragraph 1 and 5 of IAS 37 and paragraph 88 of IAS 12 should be reviewed.

- Paragraph 1 and 5 of IAS 37 notes that a specific type of provisions, contingent liabilities and contingent assets those covered by IAS 12 are excluded from the scope of IAS 37. Thus, IAS 12 should be reviewed whether it deals with a specific type of the provisions, contingent liabilities and contingent assets regarding to income tax lawsuits against the taxation authority.

- Paragraph 88 of IAS 12 specifies that an entity discloses any tax-related contingent liabilities and contingent assets, but there is no specific guidance for the recognition and measurement of an asset on uncertain tax position in IAS 12. According to paragraph BC 58 of IAS 12 ED issued in March 2009, it also refers to the fact that IAS 12 is silent on how to treat any uncertainty relating to amounts submitted to the taxation authorities. Consequently, there is some opinion that IAS 37 should be applied to the disputes with the taxation authorities because of the absence of specific guidance in IAS 12.

- Paragraph 88 of IAS 12 states that any tax-related contingent liabilities and contingent assets from unresolved disputes with tax authorities shall be disclosed in the notes to the financial statements in accordance with IAS 37. However, if IAS 12 is applied to the recognition of an asset in connection with an uncertain tax position according to paragraph 12 and 46 of IAS 12, then paragraph 88 of IAS 12 becomes useless as it cannot be applied in any case.

(3) There is a concern that whether paragraph 12 and 46 of IAS 12 should be applied to ongoing tax disputes.

- According to paragraph 12 of IAS 12, if the amount already paid in respect of current and prior periods exceeds the amount due for those periods, the excess should be recognised as an asset. Paragraph 46 of IAS 12 requires that current tax assets for the current and prior periods should be measured at the amount expected to be recovered from the taxation authorities.

- Some argue, however, that the amount due for prior periods as a result of the disputes with the taxation authorities is not reduced until specific outcomes relating to the disputes are presented (It can take at least two years to receive futher outcomes).

- Thus, it is our belief that the Interpretations Committee tentative agenda decisions (Jan. 2014) that IAS 12 provides sufficient guidance on the recognition of uncertain tax position is not clear about how to apply the guidance on the recognition of an asset on uncertain tax position.

(4) In practice, there is some possibility of application of FASB Interpretation No. 48.

- In some views, FASB Interpretation No. 48 can be applied to the recognition of an asset on uncertain tax position because IAS 12 does not provides specific guidance on the recognition of uncertain tax position.

- According to paragraph BC 61 of IAS 12 ED, however, there is a difference in opinions of IASB and FASB regarding uncertain tax positions. Both boards acknowledged the desirability of convergence on this issue. Divergent treatment of the uncertainty could have a significant effect on the tax amounts recognised in the financial statements, but they observed that the divergence arises from different approaches to uncertainty more generally in IFRSs and US GAAP.

- Therefore, application of IAS 12 will not resolve the issue of diversity of accounting without specific guidance on the measurement of uncertain tax positions in practice.

KB Kookmin Bank KB Financial Group

36-3 Yeouido-dong, Yeongdeungpo-gu, Seoul 150-010 Accounting Department Tel)2073-8302

Document Number : KBAccountingDepartment4 2014-04-14

Attention : IASB

Reference : IFRS Interpretations Committee

Subject : Comment Letter on IFRS Interpretations Committee's Staff Paper

14 April 2014

International Accounting Standards Board
IFRS Interpretations Committee
30 Cannon Street, London EC4M 6XH
United Kingdom

Dear Sir or Madam:

Kookmin Bank (KB) in Korea officially submits the attached comment letter on the tentative agenda decision regarding IAS 12 Income Taxes – Threshold of recognition of an asset on uncertain tax position. We have a different opinion from the tentative agenda decision which stated that IAS 12 provides sufficient guidance on the recognition of current tax assets and liabilities in uncertain tax position.

It would be greatly appreciated if our comment letter is fully understood and considered for IFRIC agenda decision purpose. Please do not hesitate to contact us if you have any questions regarding our comments. You may send your inquiries to me by e-mail (jychoi@kbfg.com), Head of Accounting Policy of KB.

Yours truly,

Jae Young Choi
Head of Accounting Policy
Kookmin Bank

KB Kookmin Bank President & CEO

Staff Paper : IAS 12 Income Taxes – Threshold of recognition of an asset on uncertain tax position (January 2014)

<u>Comment Letter on IFRS Interpretations Committee's Staff Paper</u>

KB Kookmin Bank and KB Financial Group

April 14, 2014

Table of Contents

I. Main Contents of Staff Paper

❑ Summary of the issue

1. In some jurisdictions, tax laws require an entity to make an immediate payment where a tax examination results in an additional charge, even when the entity intends to appeal against the charge.

2. There is diversity in the approaches used to determine whether an asset should be recognized for the amount potentially recoverable from the tax authority. Two views exist in practice:

   (a) **View 1: IAS 12 and the 'probable' recognition threshold should be applied**

   (b) **View 2: IAS 37 and the 'virtually certain' recognition threshold should be applied**

❑ Staff analysis

1. The Staff thinks the main issue is not the recognition threshold for the tax asset, but the issue is the measurement of the liability. Paragraph 12 of IAS 12 provides guidance on the recognition of current tax assets and liabilities and states that:

> **Paragraph 12 of IAS 12**
>
> ...If the amount already paid in respect of current and prior periods exceeds the amount due for those periods, the excess shall be recognised as an asset...

2. In the Staff's view, this means that an asset is recognized if the amount of <u>cash paid (which is a certain amount)</u> exceeds the amount of <u>tax expected to be paid (which is an uncertain amount)</u>. An asset related to tax exposure is only a residual amount (i.e. cash paid minus tax liability) and so it cannot be measured on its own (i.e. without taking into account the uncertain tax liability).

3. The Staff thinks that in many cases View 1 and the Staff's view (View 3) should lead to similar results, because using View 1 the recognition threshold for tax assets and tax liabilities is the same as View 3.

4. The Staff also thinks that paragraphs 12 and 14 of IAS 12 provide sufficient guidance on the recognition of current tax assets and liabilities. However, the Staff thinks that IAS 12 does not provide sufficient guidance on the measurement of the uncertain tax position.

❑ **Outreach Request :** Responses from national standard-setters and regulators

1. As a result of the Outreach Request of the IFRS Interpretations Committee (the "Interpretations Committee"), Staff received responses from 17 jurisdictions. The issue is common in 11 jurisdictions. In 7 of them, diversity in practice has been noted.

2. The Staff understands that 3 views have been observed in practice. The third view observed in practice is the Staff's view: the cash paid to the tax authority is a certain asset, whereas the tax liability is considered as an uncertain position.

❑ **Staff Recommendation and the Interpretations Committee's tentative decision**

1. The Staff thinks that an asset is recognized if the amount is paid (which is a certain amount) exceeds the amount of tax expected to be paid (which is an uncertain amount). In Staff's view, paragraphs 12 and 14 of IAS 12 provide sufficient guidance on the recognition of current tax assets and liabilities.

2. Consequently, Staff recommends that the Interpretations Committee should not add the "recognition issue" to its agenda and the Interpretations Committee tentatively agreed with the recommendation.

II. Summary of KB's Review Opinion

We consider that paragraphs 12 and 14 of IAS 12 do not provide sufficient guidance on the recognition of income tax assets related to uncertain tax positions based on the followings:

① IAS 12 does not have any explicit guidance on uncertain tax positions

- The current IAS 12 standard does not provide a conceptual definition of uncertain tax positions and does not provide any terms related to uncertain tax positions. Therefore, it shall not be considered that IAS 12 provides clear guidance on uncertain tax positions.

- According to paragraph BC 58 of IAS 12 ED issued in March 2009, it is noted that IAS 12 is silent on how to treat any uncertainties related to uncertain tax positions. Also, according to the IASB Board Meeting Summaries disclosed in March 2010, it was mentioned that uncertain tax positions shall be considered after the revision of IAS 37.

- According to the Summary Paper on UTP issued by E&Y and Deloitte in 2009, it is clearly stated that IAS 12 does not provide any explicit guidance on the recognition and measurement of UTP, and this caused the development of diverse practices.

- Paragraph 12 of IAS 12 does not provide a sufficient guidance on complicated accounting issues such as uncertain tax positions, as the sentence is considered too generic and implicit.

  - ✓ In our opinion, paragraph 12 of IAS 12 provides just a general guidance for current tax assets and liabilities, and therefore, it is not clear whether the guidance can be applied to the uncertain tax positions.

  - ✓ Paragraph 14 of IAS 12 provides guidance on recognition of tax assets when it is probable that the entity will recover tax amounts due to tax losses. The tax loss amount has a certain tax position as long as there is taxable income to offset, and therefore is not directly related to the uncertain tax positions, where tax refund depends on the uncertain outcome of the lawsuit in the future.

② Lack of clarity over the applicable standards

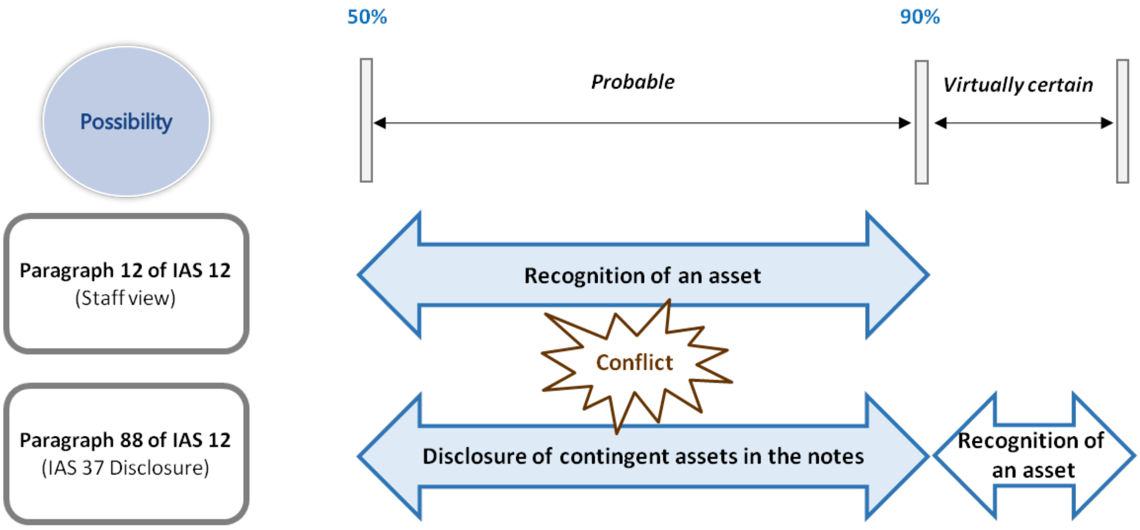
- Paragraph 5 of IAS 37 states that specific types of provisions, contingent liabilities and contingent assets are excluded from the scope of IAS 37, and income taxes are presented as an example of being scoped out and referred to IAS 12.

- However, although income taxes are scoped out of IAS 37 and referred to IAS 12, in case of uncertain tax positions, IAS 12 does not provide a clear guidance, but paragraph 88 of IAS 12 requires a disclosure of contingent assets from unresolved disputes with tax authorities in accordance with IAS 37.

③ Conflicts between paragraph 12 and paragraph 88 of IAS 12

- Paragraph 88 of IAS 12 specifies that contingent assets and contingent liabilities from unresolved disputes with tax authorities are required to be disclosed in the notes to the financial statements in accordance with IAS 37. However, the Staff's opinion that IAS 12 should be applied to recognize tax assets at the probable threshold contradicts with paragraph 88 of IAS 12 regarding the disclosure of "contingent assets".

- In accordance with the Staff's opinion, tax assets related to uncertainty are recognized at the **probable** threshold. Meanwhile, IAS 37 requires disclosing of tax-related contingent assets if it is **probable**. Therefore, if paragraph 12 of IAS 12 is applied to uncertain tax positions, then paragraph 88 IAS 12 becomes useless as it cannot be applied in any case.



④ Results of Outreach Request prove no existence of clear guidance

- As a result of the Outreach Request of the IFRIC, Staff received responses from 17 jurisdictions. The issue is common in 11 jurisdictions. In 7 of them, diversity in practice has been noted.

- Such diversity in practice shows a clear evidence of a lack of sufficient guidance on uncertain tax positions provided by IFRS.

⑤ Comparison with US GAAP

- Paragraph 12 of IAS 12 and paragraph 8 of SFAS No. 109 "Accounting for Income Taxes" (before 2006) are very similar as they provide recognition guidance for general income tax assets and liabilities.

- However, FASB Interpretation No. 48 "Accounting for Uncertainty in Income Taxes" (ASC 740-10-20) was issued in June 2006, which clearly addresses the specific situation of uncertain tax positions. Consequently, diversity in accounting practices was unified with consistency.

SFAS 109 Accounting for Income Taxes (before FIN 48)	SFAS 109 Accounting for Income Taxes (after FIN 48)
Par8. a) A current tax liability or asset is recognized for the **estimated taxes payable or refundable** on tax returns for	Par8. a) A tax liability or asset is recognized **based on the provisions of FASB Interpretation No. 48, Accounting**

the current year.	**for Uncertainty in Income Taxes**, for the estimated taxes payable or refundable on tax returns for the current and prior years. *Affected by: Paragraph 8(a) replaced by FIN 48...*

- Summary of US GAAP FIN 48 clearly notes the reason for issuing the interpretation that there is no specific guidance on how to address uncertainty in accounting for income tax assets and liabilities. Although paragraph 12 of IAS 12 and paragraph 8 of SFAS 109 were very similar, FASB commented that SFAS 109 did not provide specific guidance on recognition criteria for uncertain tax positions. Therefore, we do not agree with the opinion in the Staff Paper that states IAS 12 provides sufficient guidance on recognition of uncertain tax positions.

FASB Interpretation No. 48 Summary : Reason for Issuing This Interpretation

Statement 109 contains no specific guidance on how to address uncertainty in accounting for income tax assets and liabilities. As a result, diverse accounting practices have developed resulting in **inconsistency in the criteria used to recognize, derecognize,** and measure benefits related to income taxes. This diversity in practice has resulted in noncomparability in reporting income tax assets and liabilities.

⑥ Difficulties of IAS 12 application in practice

- Even if IAS 12 provides recognition guidance on uncertain tax positions in accordance with the Staff's view, it is difficult for an entity to estimate a reasonable amount when the measurement criteria are uncertain.

- Therefore, application of IAS 12 in practice without specific guidance on the measurement of uncertain tax positions will not resolve the issue of diversity of accounting in current practice.

⑦ Contingent assets from income tax lawsuits shall be recognized under the same standard as those from general lawsuits and other tax related lawsuits

- General lawsuits and other tax related lawsuits are not different from income tax lawsuits in terms of uncertainty (i.e., it is difficult to predict the outcome). As such, contingent assets from those lawsuits shall be recognized by the same standards.

- Especially in case of contingent assets from other tax related lawsuits (e.g., customs tax, VAT, and other national tax) IAS 37 shall be applied, while Staff Paper says IAS 12 shall be applied to contingent assets from income tax lawsuits. If different standards are applied although they are all tax related lawsuits, it would be inconsistent and unreasonable.

Based on our review opinion as above, we suggest the following alternatives on the tentative decision on the Staff Paper:

(Alternative 1) Issuance of a new interpretation to clarify the current IFRS standard

IFRS Interpretations Committee **shall issue a new interpretation, such as US GAAP FIN 48 (ASC 740-10-20),** regarding this issue to minimize confusion in application of the standard.

The new interpretation shall be a reasonable and commonly adopted guidance, which considers the following matters with a thorough investigation and reflection of various comments.

① Diverse tax appeal system in different jurisdictions (unlike US GAAP, which is used primarily in the United States, the new interpretation shall consider the characteristic of IFRS, which is used in many jurisdictions throughout the world)

② Diverse accounting practices and issues (practical relevance of measurement and recognition criteria)

③ Impacts of US GAAP FIN 48 (ASC 740-10-20) on the IFRS accounting practice

④ Financial impacts on entities and practicality of a new interpretation

⑤ Position of regulatory authorities of each jurisdiction

(Alternative 2) Amend agenda decision to allow the current accounting practice of alternative applications of IAS 12 or IAS 37

If an issuance of a clear recognition and measurement guidance on uncertain tax positions is difficult in an efficient way as mentioned in the Staff Paper, **the agenda decision shall be amended to allow the current practice of alternative applications of IAS 12 or IAS 37** considering the following situations of different jurisdictions and entities.

- Diverse accounting practices exist due to uncertainty in application of IAS 12 and IAS 37 related to uncertain tax positions and insufficient guidance provided by IAS 12.
- Change of the existing accounting practices without clear guidance may lead to inconsistency in the financial information and increase confusion of information users.

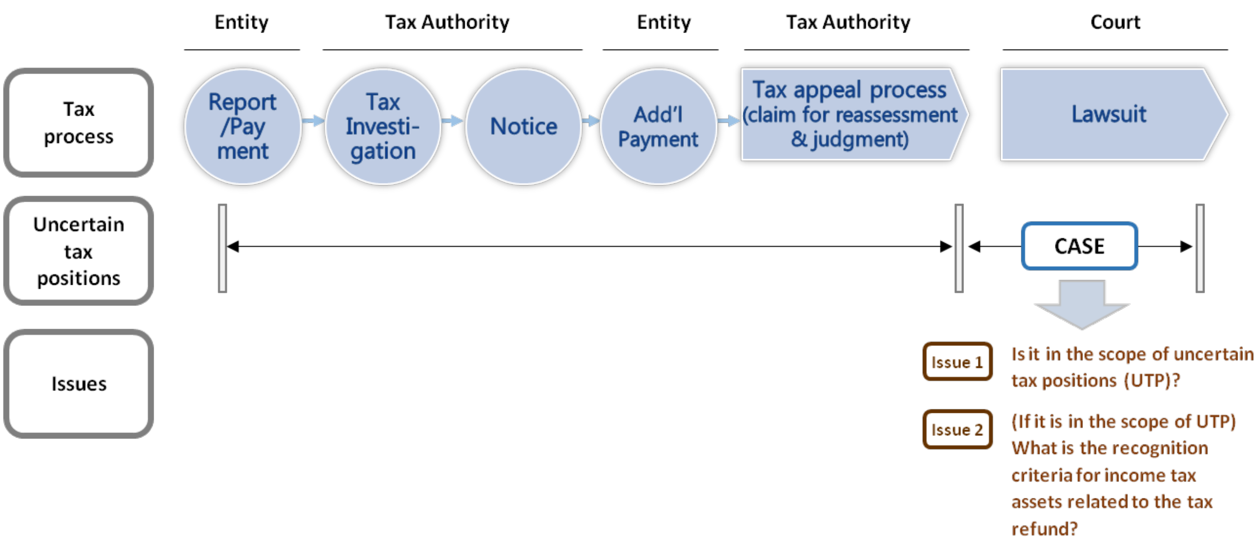
III. Details of KB's Review Opinion

For each taxation phase, there are various tax positions for an entity. The CASE described below is similar to the issue described in the Staff Paper, and therefore, we have focused our review on the CASE below.

CASE description:
The tax authority charged an entity additional tax payments based on results from the tax examination, and the entity had tax appeal proceeding against the tax authority after making the additional payments. As disputes with the tax authority were not resolved during the tax appeal proceedings, the entity filed a tax refund lawsuit to the court against the tax authority. In this case, an uncertainty exists as the tax refund depends on the outcome of the lawsuit.

- Issue 1: What is the IFRS's definition of uncertain tax positions and whether the CASE described above are in the scope of uncertain tax positions
- Issue 2: If the CASE is included in the scope of uncertain tax positions, whether the Staff view and View 1 provide reasonable guidance on the expected tax refunds and recognition of tax assets

<Figure> Definition of the CASE and major issues



❑ Issue 1: What is the IFRS's definition of uncertain tax positions and whether the CASE described above are in the scope of uncertain tax positions

1. To determine the recognition threshold for tax assets related to uncertainty, **the definition and scope of uncertain tax position** shall be determined first.

   - The current IAS 12 does not provide any terms related to uncertain tax positions.

   - Paragraph BC 58 of IAS 12 Exposure Draft ("ED") issued in March 2009 noted that IAS 12 is silent on how to treat any uncertainty relating to amounts submitted to the tax authorities. Also, according to the IASB Board Meeting Summaries disclosed in March 2010, uncertain tax positions would be considered after the revision of IAS 37.

2. It is considered that **the CASE is not in the scope of uncertain tax positions, as uncertain tax position is related to the tax authority, not with the court.**

   - In the CASE situation, the tax authority gave a "confirmed notice" for additional charges to the entity as a result of the tax examination.
   - Even during the tax appeal process filed by the entity, the tax authority's position did not change, and therefore it led to the lawsuit.
   - Paragraph 26 of IAS 12 ED (March 2009) stated that "uncertainty" is about whether the tax authorities will accept the amounts reported to them by the entity, and therefore, the **uncertain tax position is deemed to be the uncertainty of the tax authority's position, not the uncertainty from the lawsuit.**

Paragraph 26 of IAS 12 Exposure Draft (March 2009)
Uncertainty about whether the tax authorities will accept the amounts reported to them by the entity affects the amount of current tax and deferred tax…

3. As such, it is not reasonable to apply the recognition threshold of tax assets in accordance with IAS 12 to the CASE above as it is considered not in the scope of uncertain tax positions. In order to apply a consistent asset recognition threshold to all lawsuits regardless of the relation to tax, applying IAS 37 to the CASE is considered to be reasonable.

4. If the Staff Paper is finalized as it is without a specific definition of uncertain tax positions, diverse issues in practice will continue to arise similar to the CASE described above.

❑ **Issue 2: Review opinions on the Staff View (View 3) and View 1** (Under the assumption that the CASE is in the scope of uncertain tax positions)

Even if the CASE is in the scope of uncertain tax positions, **it is difficult for us to agree with the Staff's position (View 3) and View 1 regarding recognition of tax assets**. The followings are our comments regarding 6 assertions supporting View 1 and View 3 in the Staff Paper.

1. Comment on the assertion that "Income Taxes are specifically excluded from the scope of IAS 37" (Paragraph 14 of the Staff Paper)

1.1. IAS 12 does not specifically address contingent assets related to the CASE, and therefore the CASE is not deemed to be excluded from the scope of IAS 37.

- According to paragraph 5 of IAS 37, provisions, contingent liabilities or contingent assets that have specific guidelines in another standard are excluded from the scope of IAS 37, and income taxes are excluded from IAS 37 and referred to IAS 12.
- However, we do not agree with View 1, which states that it is not appropriate to apply IAS 37 to income taxes. Firstly, it should be considered whether IAS 12 explicitly addresses contingent assets related to the CASE.
- IAS 12 does not explicitly address contingent assets related to the CASE, and therefore, a reasonable interpretation would be that contingent assets related to the CASE are not excluded from the scope of IAS 37.

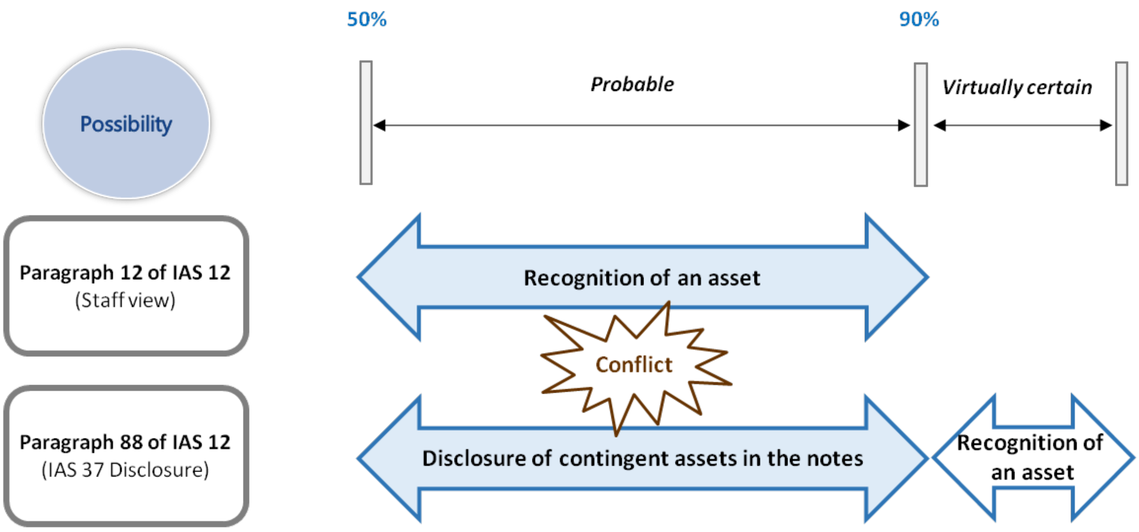
> **Paragraph 5 of IAS 37**
>
> When another Standard deals with a specific type of provision, contingent liability or contingent asset, an entity applies that Standard instead of this Standard. For example, some types of provisions are addressed in Standards on:
>
> (a) construction contracts (see IAS 11 *Construction Contracts*);
> (b) income taxes (see IAS 12 *Income Taxes*);
> …

1.2. Paragraph 88 of IAS 12 proves that IAS 12 does not explicitly provide guidance for the CASE.

- Paragraph 88 of IAS 12 specifies that contingent assets and contingent liabilities from unresolved disputes with tax authorities are required to be disclosed in the notes to the financial statements in accordance with IAS 37.

▪ **The Staff's opinion that IAS 12 should be applied to recognize tax assets at the probable threshold contradicts with paragraph 88 of IAS 12 regarding the disclosure of "contingent assets**." In accordance with the Staff's opinion, tax assets related to uncertainty are recognized at the **probable** threshold. Meanwhile, IAS 37 requires disclosing of tax-related contingent assets if it is **probable**. Therefore, if paragraph 12 of IAS 12 is applied to uncertain tax positions, then paragraph 88 IAS 12 becomes useless as it cannot be applied in any case.

<Figure> Conflict between paragraph 12 and 88 of IAS 12



- We think paragraph 12 of IAS 12 is not the relevant standard for addressing the recognition threshold of contingent assets related to tax lawsuits. Therefore, it is unclear whether IAS 12 has relevant standard for addressing the recognition threshold of tax assets for the CASE.

> **Paragraph 88 of IAS 12**
>
> An entity discloses any tax-related contingent liabilities and contingent assets in accordance with IAS 37 Provisions, Contingent Liabilities and Contingent Assets. Contingent liabilities and contingent assets may arise, for example, from unresolved disputes with the taxation authorities...

2. Comment on the assertion that "IAS 12 provides sufficient guidance for recognition and measurement of tax assets and liabilities that can be applied to the tax uncertainties" (Paragraph 15 of Staff Paper)

2.1. Responses from the Outreach Request itself prove that there is no clear guidance in IAS 12 that specifically addresses the uncertain tax position

- As concluded in the Staff Paper on the Outreach Request, there is diversity in practice. The diverse practice itself proves that the guidance for uncertain tax positions, including the situation of the CASE, is insufficient under IFRS.

Paragraph 30 – 33 of the Staff Paper Out of the 17 jurisdictions subjected to the Outreach Request, the issue of the uncertain tax position is common in 11 jurisdictions. Of the 11, 7 jurisdictions noted that there is diversity in practice. Also, three views regarding uncertain tax positions have been observed in practice.

- In order to provide explicit and sufficient standards for a specific issue, the issue should be fully contemplated during the development stages of the standards. However, it is doubtful whether the issue of uncertain tax positions was fully contemplated during the development of IAS 12 standard from the beginning. In addition, unlike FIN 48 of US GAAP, IAS 12 does not provide specific guidelines addressing the matter of uncertain tax positions.

2.2. IASB has also acknowledged that IAS 12 does not explicitly address the issue of uncertain tax positions

- According to paragraph BC 58 of IAS 12 ED issued in March 2009, it is noted that IAS 12 is silent on how to treat the uncertain tax positions.

- Also, according to the IASB Board Meeting Summaries disclosed in March 2010, it was mentioned that practical issues of uncertain tax positions shall be considered related to Income Taxes Project.

- As IASB has also acknowledged that there is no guidance that specifically addresses the issue of uncertain tax positions, it is not reasonable to argue that IAS 12 provides sufficient guidelines for the issue.

Paragraph BC 58 of IAS 12 Exposure Draft (March 2009) IAS 12 is silent on how to treat any uncertainty relating to amounts submitted to the tax authorities…
IASB Board Meeting Summaries (IFRS Update) (March 2010) **Where are we in the project?** In the March 2010 Board meeting, the Board decided that the scope of the project should be to consider the following practice issues: ➢ Uncertain tax positions, but only after the revision of IAS 37 is finalized ➢ Deferred tax on property remeasurement at fair value ➢ …

2.3. With regard to the IAS 12 ED issued in 2009, E&Y and Deloitte among the Big 4 accounting firms clearly stated in their Summary Paper on ED that, IAS 12 does not provide any explicit guidance on the recognition and measurement of UTP (refer to Appendix 3)

- According to the E&Y's **Supplement to IFRS Outlook** "ED Income Tax, A Proposal to replace IAS 12" issued in April 2009, it is clearly stated that **"IAS 12 does not explicitly address the recognition and measurement of uncertain tax positions."**

- According to the Deloitte's **IAS Plus Update** "Changes proposed for income tax accounting" issued in May 2009, it is clearly stated that, **"IAS 12 does not provide any explicit guidance on how to account for uncertain tax positions, and divergent practice has developed."**

- Considering the fact that even the big 4 accounting firms, who are the most experienced experts on the accounting principles, had expressed the above opinions, it is obvious that IAS 12 does not provide any explicit guidance on the recognition and measurement of UTP.

2.4. The decision to do further work on uncertain tax positions only after the revision of IAS 37 reflects the relationship between uncertain tax positions and IAS 37

- In the IASB Board Meeting Summaries disclosed in March 2010, it was mentioned that further work on uncertain tax positions are to be considered only after the revision of IAS 37 is finalized. This IASB's decision made in March 2010 can also be confirmed in the Staff Paper.

- If, like the Staff's view, IAS 12 provides sufficient guidelines for addressing the recognition threshold for uncertain tax positions, then there would have been no reason for IASB to have made the decision to work on uncertain tax positions only after the revision of IAS 37.

- We think IASB's decision made in March 2010 is an acknowledgement that under the current IFRS, uncertain tax positions are related to IAS 37, and IAS 12 does not provide sufficient guidelines for the threshold recognition of assets on uncertain tax positions.

2.5. Paragraph 12 and 14 of IAS 12 only deals with normal situation not involving tax disputes subject to a lawsuit

- In our opinion, paragraph 12 of IAS 12 provides just a general guideline for current tax assets and liabilities, and therefore it is unclear whether the guideline can apply to uncertain tax positions. Despite this unclearness is the most important part, Staff Paper does not provide detailed rationale to support the conclusion that paragraph 12 provides sufficient guidelines for the issue of uncertain tax positions.

- Paragraph 14 of IAS 12 is considered to provide guidelines for recognizing tax assets when it is probable that the entity will recover the tax amounts due to tax losses. The tax loss amount has a certain tax position, and is therefore not directly related to the CASE, where the tax refund amount is uncertain due to the dependence on the lawsuit's outcome in the future.

Paragraph 14 of IAS 12 When a tax loss is used to recover current tax of a previous period, an entity recognises the benefit as an asset in the period in which the tax loss occurs because it is probable that the benefit will flow to the entity and the benefit can be reliably measured.

- Especially, paragraph 12 of IAS 12 does not provide a sufficient guidance on complicated accounting issues, such as uncertain tax positions, as the sentence is considered too generic and implicit, unlike standards provided by US GAAP.

- Paragraph 12 of IAS 12 and paragraph 8 of SFAS No. 109 "Accounting for Income Taxes" (before 2006) are very similar in terms of the fact that they provide recognition guidance for general income tax assets and liabilities.

- However, FASB Interpretation No. 48 "Accounting for Uncertainty in Income Taxes" (ASC 740-10-20) was issued in June 2006, which clearly addresses the specific situation of uncertain tax positions. Consequently, diversity in accounting practices was unified with consistency.

SFAS 109 Accounting for Income Taxes (before FIN 48)	**SFAS 109 Accounting for Income Taxes (after FIN 48)**
Par8. a) A current tax liability or asset is recognized for the estimated taxes payable or refundable on tax returns for the current year.	Par8. a) A tax liability or asset is recognized **based on the provisions of FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes**, for the estimated taxes payable or refundable on tax returns for the current and prior years. *Affected by: Paragraph 8(a) replaced by FIN 48...*

- Summary of US GAAP FIN 48 clearly notes the reason for issuing the interpretation regarding the issues discussed above.

FASB Interpretation No. 48 **Summary : Reason for Issuing This Interpretation** In principle, the validity of a tax position is a matter of tax law. It is not controversial to recognize the benefit of a tax position in an enterprise's financial statements when the degree of confidence is high that that tax position will be sustained upon

examination by a taxing authority. However, in some cases, the law is subject to varied interpretation, and whether a tax position will ultimately be sustained may be uncertain. **Statement 109 contains no specific guidance on how to address uncertainty in accounting for income tax assets and liabilities. As a result, diverse accounting practices have developed resulting in inconsistency in the criteria used to recognize, derecognize, and measure benefits related to income taxes.** This diversity in practice has resulted in noncomparability in reporting income tax assets and liabilities.

2.6. Although tax assets were not recognized for uncertain tax positions under IFRS during the US SEC filing, there were no comments from the US SEC staff

(Staff View) If IAS 12 is applied to uncertain tax positions, the probable recognition threshold should be applied to tax assets → this is similar to the recognition standards of topic ASC 740-10-20 of US GAAP

- As a US NYSE listed FPI (Foreign Private Issuer), KB Financial Group ("KBFG") converted to IFRS in the fiscal year of 2011 (IFRS conversion date: January 1, 2010), and converted its accounting standards from US GAAP to IFRS when filing to the US SEC. Disclosures of tax assets related to the CASE were as follows:
  - ✓ **Prior to the fiscal year 2011:** KBFG recognized tax assets in accordance to US GAAP (i.e., probable based recognition)
  - ✓ **Fiscal year 2011 (IFRS conversion):** KBFG applied IAS 37 to the CASE and did not recognize tax assets, but disclosed it as contingent assets in the notes to the financial statements. KBFG disclosed the uncertain tax positions as one of the GAAP differences between US GAAP and IFRS (see Appendix 3).
  - ✓ **Fiscal years after 2011:** By applying IAS 37, tax assets are not recognized, but only disclosed in the notes to the financial statements.
- The US SEC staff had no comments regarding the de-recognition of tax assets during KBFG's IFRS conversion.
- In addition, paragraph BC 61 of IAS 12 ED mentioned that there is a difference in opinions of IASB and FASB regarding uncertain tax positions.

Paragraph BC 61 of IAS 12 Exposure Draft (March 2009)

Both boards acknowledged the desirability of convergence on this issue. Divergent treatment of the uncertainty could have a significant effect on the tax amounts recognised in the financial statements. The boards observed, however, that the divergence arises from different approaches to uncertainty more generally in IFRSs and US GAAP...

2.7. IAS 12 ED suggested probability-weighted average of all possible outcome method, which is, by nature, covers not only measurement but also recognition. This proves that IAS 12 did not have clear guidance on recognition as well as measurement related to uncertain tax positions.

(Staff view) The paragraph 34 of Staff Paper stated that IAS 12 ED in March 2009 tried to present an alternative method for measuring the uncertain tax positions → This implies that IAS 12 was already providing sufficient guidance on recognition of uncertain tax positions and the issue was related to measurement only.

- According to BC 58 of IAS 12 ED, it suggested not to apply the **probability-based recognition threshold**, but apply the method of probability-weighted average of all possible outcomes to uncertain tax positions.
- By nature, the probability-weighted average of all possible outcome method cannot be applied separately for recognition and measurement. Therefore, IAS 12 ED tried to propose an alternative for not only measurement but also recognition of uncertain tax positions. This proves that IAS 12 did not have clear guidance on recognition as well as measurement on uncertain tax positions.

Paragraph BC 58 of IAS 12 Exposure Draft (March 2009)

IAS 12 is silent on how to treat any uncertainty relating to amounts submitted to the tax authorities. The Board considered the Interpretation issued by the FASB but noted that it was not consistent with the Board's thinking behind the proposed amendments to IAS 37 published in June 2005. Applying that reasoning, the Board concluded that an entity has a liability to pay more tax if the tax authority does not accept the amounts submitted. Consistently with the approach taken in the proposed amendments to IAS 37, no probability-based recognition threshold is applied. Rather, the uncertainty is included in the measurement of the tax assets and liabilities. That is done by measuring current and deferred tax assets and liabilities using the probability-weighted average of all possible outcomes.

3. Comment on the assertion that "A tax uncertainty affects both current and deferred tax assets, and that it is counterintuitive and confusing for users of the financial statements to apply different recognition thresholds" (Paragraph 16 of Staff Paper)

3.1. The recognition thresholds of contingent assets related to tax lawsuits should differ

from the general recognition thresholds of current tax assets and deferred tax assets.

(View 1) If IAS 37 is applied to uncertain tax positions, current tax is recognized in accordance to the virtually certain threshold, while deferred tax asset is recognized in accordance to the probable threshold. Therefore, it is counterintuitive and confusing.

- As for the general income tax accounting, recognition standards for current taxes and deferred taxes shall be consistent with each other.

- However, in the situation for the CASE, a lawsuit is brought to the court, which is an independent third party and the outcome of the lawsuit is uncertain. Although there is no difference in the uncertainty of outcome of lawsuits, if IAS 12 (the probable threshold) is applied to the CASE and IAS 37 (the virtually certain threshold) is applied to general lawsuits, it would be more counterintuitive and confusing to information users.

3.2. Contingent assets from income tax lawsuits shall be recognized under the same standard as those from general lawsuits and other tax related lawsuits

- General lawsuits and other tax related lawsuits are not different from income tax lawsuits in terms of uncertainty (i.e., it is difficult to predict the outcome). As such, contingent assets from those lawsuits shall be recognized by the same standards.

- Especially in case of contingent assets from other tax related lawsuits (e.g., customs tax, VAT, and other national tax) IAS 37 shall be applied, while Staff Paper says IAS 12 shall be applied to contingent assets from income tax lawsuits. If different standards are applied although they are all tax related lawsuits, it would be inconsistent and unreasonable.

4. Comment on the assertion that "It is counterintuitive to apply different recognition thresholds to tax liabilities and tax assets related to tax uncertainties" (Paragraph 17 of the Staff Paper)

4.1. It is a basic understanding of IAS 37 that the recognition thresholds of assets and liabilities differ from each other in relation to lawsuits. Therefore, it is more intuitive for information users of the financial statements.

(View 1) It states that it is counterintuitive to apply the probable recognition threshold to tax liabilities, while the virtually certain recognition threshold is applied to tax assets in case of tax uncertainty.

- In the situation for the CASE, a lawsuit is brought to the court, an independent third party. In accordance with IAS 37, the recognition thresholds for contingent assets and liabilities in case of lawsuits differ from each other. It is understood that assets in relation to lawsuits shall be recognized under more strictly than liabilities.

- It is difficult to say that the application of different recognition standards to contingent assets and liabilities in case of lawsuits is counterintuitive. It could be more intuitive to apply IAS 37 to the CASE, to be consistent with recognition of contingent assets from other lawsuit cases.

5. **Comment on the assertion that "The probable threshold is consistent with the *Conceptual Framework* and that guidance in IAS 37 that contingent assets are recognized when they are virtually certain is an exception to the *Conceptual Framework*." (Paragraph 18 of the Staff Paper)**

5.1. For the CASE, we think that the application of the exceptional standard of IAS 37 for asset recognition is more appropriate than applying general standard for asset recognition

- The issue related to uncertain tax positions is about which IFRS standards should be selected to apply for recognizing tax asset.

- We believe that it is more appropriate to apply IAS 37 (an exception to the Conceptual Framework) to the CASE, because the tax refund amount is only based on the uncertainty of the outcome of the lawsuit.

6. **Comment on the assertion that "An asset is recognized if the amount of cash paid (which is a certain amount) exceeds the amount of tax expected to be paid (which is an uncertain amount) and so it is only a residual amount and cannot be measured on its own." (Paragraph 25 of the Staff Paper)**

6.1. As the tax authority's position is certain in the CASE, it is difficult to view that tax liability is an uncertain amount

- For the CASE, the additional payments made to the tax authority can only be refunded through lawsuits. Therefore, it is unreasonable to consider the contingent asset as just a residual amount because there is high uncertainty related to the lawsuits.

- The situation where an entity made additional payments to tax authorities and the situation where the entity filed for a lawsuit should be considered separately as follows:

  ✓ Tax liability becomes certain when appeal to the tax authorities ended in additional tax payment.

  ✓ Recoverable amount of additional tax payment (i.e., tax assets) is only based on the future outcome of the lawsuit and therefore, is not recognized as a residual amount.

- The following similar situations need to be considered:

- ✓ Entity A contracted to make fixed payments to Entity B, when certain conditions are met.
- ✓ When the certain conditions were met, Entity A made a fixed payment to Entity B.
- ✓ Subsequently Entity A determined that the conditions were not met, and Entity A filled a lawsuit against Entity B to refund the amount paid.

In case of the situation above, it is reasonable to separately account for the transaction where Entity A made a payment to Entity B, and the transaction where Entity A filed a lawsuit against Entity B. It is also reasonable to recognize the asset based on the outcome of the lawsuit, and not based on the amount already paid to Entity B.

6.2. Different terms are used without clear definitions or interpretations

(Staff view) The issue of recognizing tax assets is converted to measurement of tax liabilities and paragraph 12 and 14 of IAS 12 are suggested as supporting sufficient guidance on tax uncertainty.

- Paragraph 12 of IAS 12 defines the tax asset to be the paid amount exceeding "the amount due", and paragraph 46 of IAS 12 defines tax liabilities as "the amount expected to be paid".
- Although the definitions for "the amount due" and "the amount expected to be paid" would not be the same, they are used in the Staff Paper without clear definitions.
- Despite the fact that paragraph 46 of IAS 12 provides guidance for measurement of tax assets and liabilities, it is used for recognition of tax assets and liabilities as well although there is a paragraph 12 of IAS 12 for the recognition criteria for tax assets and liabilities.
- The paragraph 24 of the Staff Paper states that the main issue is the measurement of the tax liability and not the recognition threshold for the tax asset. However, it is very difficult to come to the same conclusion by just reading the current paragraph 12, 14 and 46 of IAS 12.

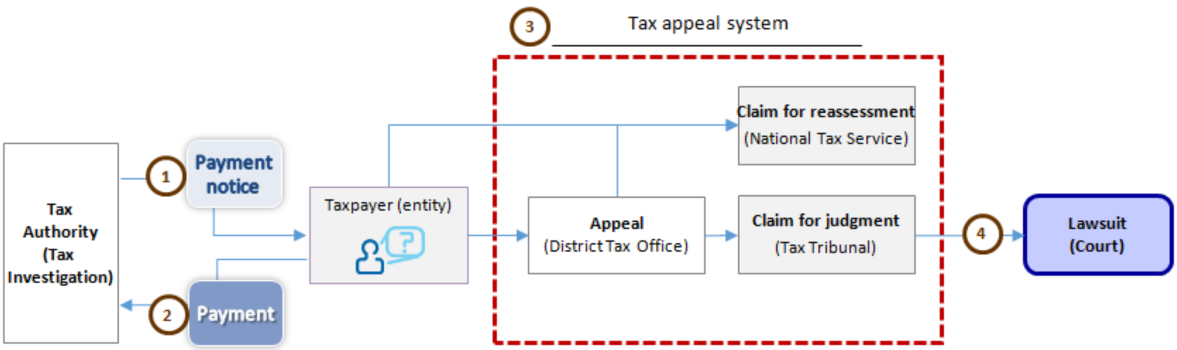
IV. Features of the Tax Appeal System & Practical Issues in Korea

In order to come to an appropriate conclusion regarding the issue, an understanding of each jurisdiction's tax appeal system and accounting standards would be needed. Therefore, we would like to explain the tax appeal system and practical issues related to the recognition of tax assets in Korea.

1. Features of the tax appeal system in Korea

- In Korea, taxpayers who receive a payment notice from the tax authorities must first make the payment, and then they can claim a tax appeal to the tax authorities including District Tax Office, National Tax Service and Tax Tribunal.
- In cases where the disputes with tax authorities are unresolved during the tax appeal process, it is possible to bring the case to the court by filing a lawsuit, but could take over 5 years to receive the outcome.

<Figure> Tax appeal system in Korea



2. The history of relevant discussions in Korea

- A variety of accounting issues came up during the adoption of IFRS in 2011, and uncertain tax positions was one of the topics of discussions.
- Companies, accounting firms and the KASB (Korea Accounting Standard Board) participated in the discussion of issues regarding the IFRS conversion. The issue of uncertain tax positions was also discussed and various interpretations were made regarding the issue. The following conclusions were resulted from the discussions:
  - In the cases where an entity files for a lawsuit for tax refunds after making the payment to the tax authorities, recognizing contingent assets in accordance to IAS 37 IFRS can be allowed.
  - The above conclusion was made considering the unclearness of IFRS on the issue of uncertain tax positions, IAS 12 ED, and the tax appeal system and tax environment in Korea.

- The FSS (Financial Supervisory Service) in Korea also agreed that the application of IAS 37 to recognition of tax asset related to lawsuits is reasonable. Since the FSS provided its opinion regarding this matter, all Korean entities applied IAS 37 for uncertain tax positions.

- Apart from the above accounting practices in Korea, Korean entities are closely monitoring the revision trends of IASB's IAS 12 and IAS 37. However, there were pauses and delays in the relevant projects so far, and many entities are now confused due to the recently issued IFRIC Staff Paper (issued in January 2014) which states that "IAS 12 clearly provides the guidance for recognition of tax assets on uncertain tax positions".

3. Practical issues expected from applying IAS 12 to the CASE

3.1. Adjustment of prior period financial statements due to the different interpretations will lead to practical difficulties and deterioration of reliability

- If IAS 12 should be applied to the CASE, all entities in Korea and in some jurisdictions, which applied IAS 37 to uncertain tax positions, will be required to make retroactive adjustments of financial statements for prior periods.

- However, a reasonable estimate of the amount of tax assets/liabilities and the time of recognition would be difficult to make, because in most cases, the outcome of the lawsuits are already known (there will be a hindsight issue when making retroactive adjustments).

> **Paragraph 53 of IAS 8.**
>
> Hindsight should not be used when applying a new accounting policy to, or correcting amounts for, a prior period, either in making assumptions about what management's intentions would have been in a prior period or estimating the amounts recognised, measured or disclosed in a prior period.

3.2. Volatility of profit and losses and confusion of information users will increase, while reliability of accounting information will decrease

- In the cases of tax lawsuits against the tax authorities, it is very difficult to estimate the outcome of the lawsuit and the refund amount. There are many cases that lead to partial-win and partial loss of lawsuits.

- As there will be multiple trials until the final ruling, if the probability recognition threshold is applied, then many entities would suffer from high volatility in their financial statements.

- Even for cases where legal experts expect a high probability of winning, there are many cases that actual outcome are lost or only partially ruled in favor of the entity. As such, the volatility of P&L will be even higher if the probability recognition threshold is applied based on the legal experts' expectations, and therefore the reliability of the accounting information will greatly deteriorate.

- In addition, there could be manipulation of P&L by obtaining favorable opinions from legal experts saying it is probable to win the lawsuit. It is easier for legal experts to say "probable" than "virtually certain".

3.3. Distortion of periodic profit and losses

- Additional taxes paid by Korean entities based on the tax examinations from the tax authorities were already recognized as expenses at the point of payment.

- If tax assets should be recognized by making retroactive adjustments of financial statements for prior periods through applying IAS 12 to uncertain tax positions, the potential tax refund amounts to be determined later by the outcome of the lawsuit cannot be recognized as profit, and therefore, the periodic profit and losses will be distorted.

- Also, if the outcome of lawsuits is partially or completely lost, the tax assets recognized under IAS 12 should be expensed again in the current period, even though the related amount was already recognized as tax expense in the prior periods.

<Appendix 1> Related Information

❑ Conceptual Framework for Financial Reporting

Paragraph 4.44

An asset is recognised in the balance sheet when it is probable that the future economic benefits will flow to the entity and the asset has a cost or value that can be measured reliably

❑ IAS 12 Income Taxes

Paragraph 5 of IAS 12

The following terms are used in this Standard with the meanings specified:...

...

Current tax is the amount of income taxes payable (recoverable) in respect of the taxable profit (tax loss) for a period.

...

Paragraph 12 of IAS 12

Current tax for current and prior periods shall, to the extent unpaid, be recognised as a liability. If the amount already paid in respect of current and prior periods exceeds the amount due for those periods, the excess shall be recognised as an asset.

Paragraph 14 of IAS 12

When a tax loss is used to recover current tax of a previous period, an entity recognises the benefit as an asset in the period in which the tax loss occurs because it is probable that the benefit will flow to the entity and the benefit can be reliably measured.

Paragraph 24 of IAS 12

A deferred tax asset shall be recognised for all deductible temporary differences to the extent that it is probable that taxable profit will be available against which the deductible temporary difference can be utilised, unless the deferred tax asset arises from the initial recognition of an asset or liability in a transaction that:

(a) is not a business combination; and
(b) at the time of the transaction, affects neither accounting profit nor taxable

However, for deductible temporary differences associated with investments in subsidiaries, branches and associates, and interests in joint arrangements, a deferred tax asset shall be recognised in accordance with paragraph 44.

Paragraph 46 of IAS 12

Current tax liabilities (assets) for the current and prior periods shall be measured at the amount expected to be paid to (recovered from) the taxation authorities, using the tax rates (and tax laws) that have been enacted or substantively enacted by the end of the reporting period.

Paragraph 88 of IAS 12

An entity discloses any tax-related contingent liabilities and contingent assets in accordance with IAS 37 Provisions*, Contingent Liabilities and Contingent Assets*. Contingent liabilities and contingent assets may arise, for example, from unresolved disputes with the taxation authorities. Similarly, where changes in tax rates or tax laws are enacted or announced after the reporting period, an entity discloses any significant effect of those changes on its current and deferred tax assets and liabilities (see IAS 10 *Events after the Reporting Period*).

❑ IAS 12 Income Taxes (Exposure Draft : March 2009)

Paragraph 26 of IAS 12 ED

Uncertainty about whether the tax authorities will accept the amounts reported to them by the entity affects the amount of current tax and deferred tax. An entity shall measure current and deferred tax assets and liabilities using the probability-weighted average amount of all the possible outcomes, assuming that the tax authorities will examine the amounts reported to them and have full knowledge of all relevant information. Changes in the probability-weighted average amount of all possible outcomes shall be based on new information, not a new interpretation by the entity of previously available information.

Paragraph BC 57 of IAS 12 ED

In June 2006 the FASB issued an Interpretation (FIN 48 Accounting for Uncertainty in Income Taxes—an Interpretation of FASB Statement No. 109) on uncertain tax positions. FIN 48 requires an entity to recognize tax benefits it has claimed only if it is more likely than not that the tax authorities will accept the claim. If a tax benefit meets the recognition threshold, the amount recognised is the maximum amount that is more likely than not to be accepted by the tax authorities.

Paragraph BC 58 of IAS 12 ED

IAS 12 is silent on how to treat any uncertainty relating to amounts submitted to the tax authorities. The Board considered the Interpretation issued by the FASB but noted that it was not consistent with the Board's thinking behind the proposed amendments to IAS 37 published in June 2005. Applying that reasoning, the Board concluded that an entity has a liability to pay more tax if the tax authority does not accept the amounts submitted. Consistently with the approach taken in the proposed amendments to IAS 37, no probability-based recognition threshold is applied. Rather, the uncertainty is included in the measurement of the tax assets and liabilities. That is done by measuring current and deferred tax assets and liabilities using the probability-weighted average of all possible outcomes.

Paragraph BC 59 of IAS 12 ED

FIN 48 requires an entity to assume that the tax authorities will review the amounts submitted when recognising and measuring tax benefits. The alternative would be to require entities to include their assessment of whether the tax authorities will review the amount in the recognition and measurement of tax assets and liabilities. The Board agreed with the approach in FIN 48.

Paragraph BC 60 of IAS 12 ED

The Board's proposed measurement is not the same as fair value or the settlement value required by IAS 37. No adjustment is made for risk and deferred tax assets and liabilities are not discounted amounts. Consideration of such issues is outside the scope of the convergence project on income tax. Nonetheless, the Board believes that the use of a probability-weighted average of all possible outcomes, without any probability-based recognition threshold, provides more relevant information than an approach that uses a probability-based recognition threshold. No possible outcomes are ignored in the measurement.

Paragraph BC 61 of IAS 12 ED

Both boards acknowledged the desirability of convergence on this issue. Divergent treatment of the uncertainty could have a significant effect on the tax amounts recognised in the financial statements. The boards observed, however, that the divergence arises from different approaches to uncertainty more generally in IFRSs and US GAAP. The boards are addressing these differences in the joint conceptual framework project and do not think they can be resolved in a convergence project on income tax.

Paragraph BC 62 of IAS 12 ED

The Board also noted that an expected outcome approach is not used in assessing the need for a valuation allowance (see paragraphs BC52–BC56). The Board does not think it is appropriate in a convergence project to extend such an approach to an established aspect of IAS 12 that is already aligned with US GAAP. In contrast, the proposed treatment of uncertainty relating to tax is a new proposal on an issue not addressed currently in IAS 12 and on which the Board does not wish to adopt a treatment inconsistent with its most recent thinking.

Paragraph BC 63 of IAS 12 ED

Some contend there are few amounts reported to the tax authorities over which there is no uncertainty. They argue that it would be unduly onerous to use a probability-weighted average of the expected outcomes in all cases, even when the possibility of an outcome different from the amount reported is remote. However, the Board does not intend entities to seek out additional information for the purposes of applying this aspect of the proposed IFRS. Rather, it proposes only that entities do not ignore any known information that would have a material effect on the amounts recognised.

❑ IAS 37 Provisions, Contingent Liabilities and Contingent Assets

Paragraph 5 of IAS 37

When another Standard deals with a specific type of provision, contingent liability or contingent asset, an entity applies that Standard instead of this Standard. For example, some types of provisions are addressed in Standards on:

(a) construction contracts (see IAS 11 Construction Contracts);
(b) income taxes (see IAS 12 Income Taxes);

(c) leases (see IAS 17 Leases). However, as IAS 17 contains no specific requirements to deal with operating leases that have become onerous, this Standard applies to such cases;
(d) employee benefits (see IAS 19 Employee Benefits); and
(e) insurance contracts (see IFRS 4 Insurance Contracts). However, this Standard applies to provisions, contingent liabilities and contingent assets of an insurer, other than those arising from its contractual obligations and rights under insurance contracts within the scope of IFRS 4.

Paragraph 10 of IAS 37

The following terms are used in this Standard with the meanings specified:

...

A contingent asset is a possible asset that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity.

...

Paragraph 31 of IAS 37

An entity shall not recognise a contingent asset.

Paragraph 33 of IAS 37

Contingent assets are not recognised in financial statements since this may result in the recognition of income that may never be realised. However, when the realisation of income is virtually certain, then the related asset is not a contingent asset and its recognition is appropriate.

Paragraph 34 of IAS 37

A contingent asset is disclosed, as required by paragraph 89, where an inflow of economic benefits is probable.

Paragraph 89 of IAS 37

Where an inflow of economic benefits is probable, an entity shall disclose a brief description of the nature of the contingent assets at the end of the reporting period, and, where practicable, an estimate of their financial effect, measured using the principles set out for provisions in paragraphs 36-52.

❑ US GAAP ASC 740-10-20 “Accounting for Uncertainty in Income Taxes”

Summary

Reason for Issuing This Interpretation

In principle, the validity of a tax position is a matter of tax law. It is not controversial to recognize the benefit of a tax position in an enterprise’s financial statements when the degree of confidence is high that that tax position will be sustained upon examination by a taxing authority. However, in some cases, the law is subject to varied interpretation, and whether a tax position will ultimately be sustained may be uncertain. Statement 109 contains no specific guidance on how to address uncertainty in accounting for income tax assets and liabilities. As a result, diverse accounting practices have developed resulting in inconsistency in the criteria used to recognize, derecognize, and measure benefits related to income taxes. This diversity in practice has resulted in noncomparability in reporting income tax assets and liabilities.

Paragraph 4

The term *tax position* as used in this Interpretation refers to a position in a previously filed tax return or a position expected to be taken in a future tax return that is reflected in measuring current or deferred income tax assets and liabilities for interim or annual periods. A tax position can result in a permanent reduction of income taxes payable, a deferral of income taxes otherwise currently payable to future years, or a change in the expected realizability of deferred tax assets. The term tax position also encompasses, but is not limited to:

a. decision not to file a tax return
b. An allocation or a shift of income between jurisdictions
c. The characterization of income or a decision to exclude reporting taxable income in a tax return
d. A decision to classify a transaction, entity, or other position in a tax return as tax exempt.

<Appendix 2> IASB Board Meeting Summaries (IFRS Update)

❑ Income Taxes project

The project objective is to resolve problems in practice under IAS 12 Income Tax, without changing the fundamental approach under IAS 12 and preferably without increasing divergence from US GAAP.

The IFRIC and IASB staff have received many questions on IAS 12, indicating that it is a standard that is sometimes difficult to apply. Income tax is also frequently identified as a source of significant reconciling items for US-listed foreign registrants applying IFRS.

The project originally started as a convergence project with US GAAP. The exposure draft of an IFRS to replace IAS 12 was issued in March 2009. However, the Board has decided to consider a fundamental review of the accounting for income tax sometime in future and has changed the project objective of this project to resolve problems in practice under IAS 12.

❑ Where are we in the project

In the March 2010 Board meeting, the Board decided that the scope of the project should be to consider the following practice issues:

- Uncertain tax positions, but only after the revision of IAS 37 is finalized
- Deferred tax on property remeasurement at fair value
- New proposals after the review of ED

❑ Estimated project completion

The IASB is considering to issue an exposure draft to amend IAS 12 in the second half of 2010 and finalize it in 2011.

<Appendix 3> E&Y and DTT's Summary Paper on UTP (2009)

❑ **E&Y : Supplement to IFRS Outlook "ED Income Tax, A Proposal to replace IAS 12"**

Issue 36 / April 2009

Supplement to IFRS outlook

ED Income Tax
A proposal to replace IAS 12

Uncertain tax positions

Uncertain tax positions arise where there is an uncertainty as to the meaning of the law, the applicability of the law to a particular transaction, or both. IAS 12 does not explicitly address the recognition and measurement of uncertain tax positions, although it notes that the principles of IAS 37 *Provisions, Contingent Assets and Contingent Liabilities* may be relevant to the disclosure of tax-related contingent assets and contingent liabilities. As a result, practice in this area has been varied.

❑ **Deloitte : IAS Plus Update "Changes proposed for income tax accounting"**

Deloitte.

May 2009

IAS Plus Update.

Changes proposed for income tax accounting

Uncertain tax positions

It is common for uncertainties to arise regarding the tax treatment of items and whether the treatment adopted will ultimately be sustained on investigation by the relevant tax authority. These types of uncertainties are referred to as 'uncertain tax positions'. IAS 12 does not provide any explicit guidance on how to account for uncertain tax positions, and divergent practice has developed.

<Appendix 4> KBFG US SEC Form 20-F Disclosure

Disclosure of contingent asset (F-section)

iii) Kookmin Bank underwent a tax investigation by the Seoul Regional Tax Office and in early 2007 was assessed to owe additional corporate tax including local income tax of ₩482,755 million. Kookmin Bank paid this amount to the tax authorities. Subsequently, Kookmin Bank filed a claim for adjudication on August 2007 for repayment of the amount of ₩482,643 million. Of this amount, ₩117,135 million has been refunded to Kookmin Bank following a successful appeal to the National Tax Tribunal and administrative litigations. Further a portion of the claim amounting to ₩970 million has been extinguished following litigation. Meanwhile, the claim for a refund of ₩364,538 million, specifically related to the merger of Kookmin Card Co., Ltd. was ruled in favor of Kookmin Bank in an original case on April 1, 2011, and in a second trial at the Seoul High Court on January 12, 2012. The ruling has been appealed by the Tax authorities to the Supreme Court, where it is currently pending third trial.

Impact of IFRS adoption on the financial information

46.2.2 The impact on the financial information of the Group as a result of adoption of IFRS

The impact on the Group's assets, liabilities, equity, profit and comprehensive income as a result of adopting IFRS is as follows:

The details of adjustments to the assets, liabilities, and equity as of January 1, 2010 (transition date):

	Assets	Liabilities	Equity
	(In millions of Korean won)		
US-GAAP	₩253,855,432	₩236,279,157	₩17,576,275
Adjustments:			
Consolidation	2,618,184	2,566,606	51,578
Classification and fair value measurement of debt and equity securities	632,170	—	632,170
Classification of Foreign Exchange spot contracts	2,448,302	2,448,302	—
Interest income recognized by effective interest method	(300,319)	—	(300,319)
Loan impairment	91,140	—	91,140
Provisions for unused commitments/guarantees	—	(21,441)	21,441
Revaluation of fixed assets (Property and equipment)	1,735,752	—	1,735,752
Goodwill and intangible assets acquired in business combinations	(457,169)	—	(457,169)
Hybrid capital investments	—	(1,000,000)	1,000,000
Uncertain Tax Positions	(575,057)	—	(575,057)
Others	124,374	163,667	(39,293)
Tax effects	(13,838)	291,992	(305,830)
Total adjustments	6,303,539	4,449,126	1,854,413
IFRSs issued by the IASB	₩260,158,971	₩240,728,283	₩19,430,688

Disclosure of the difference between US GAAP and IFRS

Uncertain Tax Positions	A tax position taken or expected to be taken in a tax return is evaluated to determine whether it is more likely than not to be sustained upon examination by the tax authorities, including resolution of any related appeals or litigation processes, based on the technical merits of the position. Only tax positions that meet the more-likely-than-not criteria are measured to determine the amount of benefit to recognize in the financial statements. The tax position is measured as the largest amount of benefit that has a greater than 50% likelihood of being realized upon ultimate settlement with the tax authorities. Differences between tax positions taken in a tax return and amounts recognized are reflected in the financial statements as adjustments of income tax expense or deferred tax assets (liabilities).	There is no clear guidance on recognizing and measuring the benefits of uncertain tax positions, therefore uncertain tax positions are recognized based on the guidance in IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*. Accordingly a liability related to an uncertain tax position is recognized if the uncertain tax position is probable of resulting in additional payment to the tax authorities. Meanwhile assets related to uncertain tax positions, caused by a claim for rectification or an appeal for refund claimed from the tax authorities related to additional assessments, are treated as contingent assets. Therefore tax expenses are recognized in the financial statements when the uncertain tax position is probable of resulting in additional payment to the tax authorities while tax benefits are recognized only when the tax refund is virtually certain.

KPMG IFRG Limited
8 Salisbury Square
London EC4Y 8BB
United Kingdom

Tel +44 (0)20 7694 8871
Fax +44 (0)20 7694 8429
mark.vaessen@kpmgifrg.com

Mr Wayne Upton
International Accounting Standards Board
1st Floor
30 Cannon Street
London
EC4M 6XH

Our ref MV/288
Contact Mark Vaessen

22 April 2014

Dear Mr Upton

Tentative agenda discussion: IAS 12 - Threshold of recognition of an asset in the situation in which the tax position is uncertain

We appreciate the opportunity to comment on the IFRS Interpretations Committee's (Committee) tentative agenda decision, *IAS 12 Income Taxes - Threshold of recognition of an asset in the situation in which the tax position is uncertain* (IFRIC Update January 2014). We have consulted with, and this letter represents the views of, the KPMG network.

We agree with the analysis and the accounting outcome of the tentative agenda decision, which is consistent with our position on the issue - i.e. all uncertain tax positions, including resulting assets, fall in the scope of IAS 12 and should be accounted for accordingly. However, as noted in the IFRIC staff s assessment of the issue against the agenda criteria (Agenda paper 13, January 2014), the outreach performed by the IFRIC staff confirmed that the issue is widespread and that there are diverging interpretations in practice as to whether IAS 12 *Income Taxes* or IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* should be applied to uncertain tax positions. We also note that the Board acknowledged these diverging interpretations and practices and tried to address them in the project aimed at improving accounting for income taxes, which was stopped due to other agenda priorities.

We appreciate that accounting for uncertain tax positions is a challenging topic and that it may require extensive work to address it in a comprehensive manner. We also understand that the Board may consider this topic as part of its research project on income taxes, which is not expected to commence before the 2015 agenda consultation. Therefore and because of the noted divergence in practice, we disagree that issuing an agenda decision on this issue would be the appropriate way to address it. As an intermediate solution before the comprehensive project on income taxes, we recommend the Committee propose that the Board amend IAS 12 to state explicitly that uncertain tax positions are in the scope of IAS 12 and should be accounted for accordingly.

Please contact Mark Vaessen +44 (0)20 7694 8871 or Thomas Schmid + 41 58 249 2922 if you wish to discuss any of the issues raised in this letter.

Yours sincerely

KPMG IFRG Limited

KPMG IFRG Limited

cc Reinhard Dotzlaw

Organismo Italiano di Contabilità – OIC
(The Italian Standard Setter)
Italy, 00187 Roma, Via Poli 29
Tel. 0039/06/6976681 fax 0039/06/69766830
e-mail: presidenza@fondazioneoic.it

IFRS Interpretations Committee
30 Cannon Street
London EC4M 6XH
United Kingdom
ifric@ifrs.org

29 April 2014

Re: Interpretation Committee tentative agenda decisions

Dear Wayne,

We are pleased to have the opportunity to provide our comments in order to contribute to the IFRS IC agenda decision (issued in January 2014) on IAS 12 – "*Threshold of recognition of an asset in the situation in which the tax position is uncertain*".

IAS 12 – "Threshold of recognition of an asset in the situation in which the tax position is uncertain"

The issue relates to the recognition of a tax asset in the situation in which tax laws require an entity to make an immediate payment when a tax examination results in an additional charge, even if the entity intends to appeal against the charge. The Interpretations Committee noted that paragraph 12 of IAS 12 provides sufficient guidance on the recognition of current tax assets and current tax liabilities.

On this position taken by the IFRS IC, we have the following comments.

We are not fully sure that the requirements of paragraph 12 of IAS 12 apply also to the cases of a resolution of a tax litigation. Indeed, the term "tax litigation" is not recalled in paragraph 12 because in this paragraph the issue is related to an excess payment. There are very different views on this point, therefore it does not seem appropriate to resolve it just with a rejection. An interpretation or amendment seems to be needed.

Moreover it is noted that the IFRS IC's analysis deals with very limited circumstances (current tax litigation), but excludes broader cases and does not consider the application by analogy of its solution to other types of litigation.

In fact, it could happen that the litigation relates to another type of tax, such as VAT, rather than income tax, while maintaining the same counterparty. In this case, IAS 12 would not be applicable because this Standard should be applied in accounting for income taxes only.
In addition, we would like to understand how the case should be assessed where the litigation is not related to taxes related issues. We are aware that on the recognition of the asset against the immediate payment in any kind of litigation there is difference in practice.

For these reasons, we think that IFRS IC should reconsider its decision not to take the item into the agenda, and activate the process to issue an interpretation that considers the matter as broadly as possible because, as it stands, the immediate payment in any kind of litigation does not find an homogenous accounting treatment.

Should you need any further information, please do not hesitate to contact us.

Yours sincerely,
Angelo Casò
(Chairman)

Mr Michael Stewart
Director of Implementation Activities
International Accounting Standards Board
30 Cannon Street
London
EC4M 6XH

14 April 2014

Dear Mr Stewart

Tentative agenda decisions on IAS 12 Income Taxes:

- recognition and measurement of deferred tax assets when an entity is loss-making
- impact of an internal reorganisation on deferred tax amounts related to goodwill
- threshold of recognition of an asset in the situation in which the tax position is uncertain

We are responding to the invitation to comment on the above tentative agenda decisions, published in the January 2014 edition of IFRIC Update, on behalf of PricewaterhouseCoopers. Following consultation with members of the PricewaterhouseCoopers network of firms, this response summarises the views of member firms who commented on the tentative agenda decisions. 'PricewaterhouseCoopers' refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

We agree with the Committee's decision not to take these items onto the agenda because of the reasons set out in the tentative agenda decisions. We however suggest a clarification to the tentative agenda decision on the impact of an internal reorganisation on deferred tax amounts related to goodwill. The tentative agenda decision only addresses the narrow set of facts included in the submission, rather than the principle that intra-group transfers of assets would not typically affect the consolidated financial statements unless there is an effect on the tax base of assets or liabilities, the tax rate applicable to the recovery or settlement of those assets or liabilities or the recoverability of any related deferred tax asset.

We believe that the Committee discussed this principle and thus suggest that the following might be added to the tentative agenda decision to reflect that discussion:

> The Interpretations Committee also noted that an intra-group transfer of assets would not typically affect the consolidated financial statements if there is no effect on the tax base of assets, the tax rate applicable to the recovery of those assets or liabilities, the tax rate applicable to the recovery or settlement of those assets or liabilities or the recoverability of any related deferred tax asset.

PricewaterhouseCoopers International Limited, 1 Embankment Place, London WC2N 6RH
T: +44 (0) 20 7583 5000, F: +44 (0) 20 7822 4652

If you have any questions in relation to this letter please do not hesitate to contact John Hitchins (020 7804 2497).

Yours sincerely

PricewaterhouseCoopers International Ltd