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Mr. W Upton,

Chairman IFRS Interpretations Committee

Paris, 3 september, 2012

Dear Mr. Upton,

Draft IFRIC Interpretation DI/2012/1 Levies Charged by Public Authorities on Entities that Operate in a Specific Market (the DI) [Submission deadline for IFRIC 5 September 2012]

We welcome the opportunity to respond to the invitation to comment on the Draft IFRIC Interpretation Levies Charged by Public Authorities on Entities that Operate in a Specific Market (the DI).

We do not agree with the consensus of the DI as we do not believe that it will result in accounting for such levies that will provide useful information for users in general. We are of the view, therefore, that this Interpretation should not be finalised in its present form. Our view is based on the following principal reasons:

Scope

The scope of the DI, as described in paragraph 5, is very broad and will, in our view, encompass all payments to public authorities resulting from legislation which are of the nature of a tax, other than income taxes as defined in IAS 12 and certain specific levies which utilise a threshold mechanism. It is clear that, for the purposes of the DI, a "specific market" can be a country, and thus all taxes other than those specifically excluded by paragraph 4 could come within the scope. In France a wide range of taxes could fall within this scope, such as, for example, payroll-related taxes (which may also be dealt with differently in IAS 34), taxes based on the value or notional value of fixed assets, and taxes based on revenue. The setting of such a broad scope could therefore lead to unintended consequences, such as widespread changes of accounting policy, while not guaranteeing a reduction in diversity since entities would have to re-examine all the levies in the scope and draw conclusions about the obligating event in each case, which might not be consistent among entities.

As discussed later, the exclusion of levies with a threshold mechanism from the scope is of particular concern. The reason why a tax with a threshold is out of the scope appears to be only that the Committee could not come to a consensus. Exclusion from the scope could lead to inconsistencies in application. For example, some taxes have a threshold which depends upon who is the debtor subject to the tax. Should these taxes be excluded of the scope or not?

We are also uncertain as to the meaning of the phrase in paragraph 5(a) "(or to a third party designated by a public authority)". Some interpret this to mean that levies collected on behalf of public authorities by designated third parties are subject to the DI, whereas others think that levies that are collected by and for the use of parties other than public authorities are not within the scope of this DI, even though the levy might be imposed by legislation. We therefore are concerned that this too may lead to diversity in application. It also raises the question about whether a definition of "public authorities" is required.

Accounting for the expense

What all the levies within the scope of the DI appear to have in common is that the payments are not the result of a commercial contract between entities based on economic rationality, but are imposed on the entity by a public authority in pursuit of its revenue-raising logic, and, occasionally, its wish to encourage certain behaviours amongst entities.

The mechanism of the legislation in general, and the identification of the "obligating event" that triggers the payments, in particular, have little to do with the economic substance of the entity's operations but are motivated largely by the authority's funding requirements and the constraints placed upon it by the constitution within which it functions. The purpose of the levies is to raise funds for the authority to utilise during the next budgetary period, usually of one year. This is often reflected in the periodicity of the levy and the date of the "obligating event" identified in the legislation.

We offer the following as an example of this fund-raising constraint. In France the administration is not permitted to raise taxes by retroactive legislation. Development and approval of the annual budget for year N+1 can be slow and not completed until just before the fiscal year-end N. In order to ensure that funds are generated as quickly as possible, the solution chosen in some instances is to set a trigger event on 1 January in year N+1 but based on data and activity of year N. In these circumstances one may legitimately question whether the trigger event identified in the legislation is the substantive obligating event or rather the mechanism used to set the payment date of the levy on the previous year's activity. One might also question whether the charge relates only to one day or to the whole of the budgetary period for which it is raised or upon which the amount is based. In common with the FASB (see below) we think the latter is the substance of the levy.

The DI does not make a convincing argument as to why the IFRIC decided that such an expense is not an asset and could not be deferred and allocated to the periods from which it "benefits". In BC22 it limits its justification to an assertion that if the obligation exists at the end of an interim reporting period the corresponding expense should not be deferred. On the other hand, BC13 concludes that the obligation does not represent a liability at the period end if the levy arises in a future period, on the grounds that the levy relates to the future conduct of the business and is an operating cost of that future period.

This means that the operating cost relates to only one day unless the legislation makes it clear that the levy arises over time. We do not agree with this narrow interpretation for a number of reasons:

a) As discussed above, the charging of such levies is intended to provide financing on a recurrent basis for the authority for a certain period, usually of a year but sometimes for a shorter period. It thus represents a charge for the entity in respect of that period. In addition, for the period between the settlement of two consecutive levies the entity enjoys a "holiday" from the levy. This implies that the levy has a certain value to the entity and that the levy has an economic life equal to the period between two charges. It can therefore be argued that the payment represents a right to the quiet enjoyment of a period exempt from further charges from the same source. This may not be a "specific asset" but it is a (pre)payment, the benefit of which the entity controls since no other entity can benefit from it. Deferral and allocation of the charge seems to us to be the most pertinent way to deal with this.

b) The informational value of the allocation of the levy to a single point in time is, in our view, minimal if not misleading. Such treatment would require specific explanation by way of notes to the interim or annual financial statements in order to facilitate the user's understanding of the economic substance of the transaction and its impact on the entity, and to enable the user to forecast the future cashflows and income statement effects related to it. We do not think that this is helpful to the user, and anticipate that the reworking of the accounts that it will entail will represent a burden to the user.

c) There are a number of specific instances within the body of IFRS where the IASB has recognised the link between the charge and the period to which it relates and has consequently decided that the allocation of charges on a systematic basis over reporting periods provides a more relevant and useful representation of the economic reality of the charge. Examples of this are the accounting for bonuses, [income taxes] and employers' payroll taxes and contributions to government-sponsored insurance schemes in IAS 34; and the prohibition of dealing with government grants on a receipts basis unless there is no basis to allocate these to any period except that in which they are received under paragraphs 15 and 16 of IAS 20.

d) FASB Accounting Standards Update N° 2010-27 requires deferral and allocation of certain levies over relevant periods. In our view this appropriately reflects the link between the levy and the period to which it relates. The DI would introduce divergence from US GAAP in this area, which we think is unnecessary and undesirable.

Recognition of the liability

While we can understand the reasons for the DI's consensus, we are of the opinion that this interpretation is very theoretically orientated and may not be helpful to the user from an informational standpoint. As outlined above, we think that in deciding that the trigger event identified in the legislation is the single obligating event for recognition purposes, the DI may be placing more weight on the legal form of the levy rather than paying attention to its underlying substance and economic reality seen from the viewpoint of the entity.

An example of what we see as a very theoretical approach is the interpretation the DI makes of the provisions of IAS 37 paragraphs 17-19, that is, that the entity can avoid future expenditure by its future actions and therefore no obligation exists at an earlier date than the date of the final event which confirms the liability's existence. Whilst it may be true that the entity always has the choice of continuing to operate in a market or to withdraw from it and avoid the levy, if that market (or country) is the only or predominant market in which it operates, then in reality, the entity has essentially no free choice. When the legislation identifies that the trigger event for the levy is the entity's existence on one specific day each year, it seems to us to be specious to argue that the entity has a realistic choice of action to avoid paying the levy.

The obligatory and constraining nature of the relationship between a public authority and a reporting entity is very different from that which exists between the entity and most other participants in the markets in which it operates. We think therefore that, rather than publish the DI as it stands, it would be more useful for the Board to consider the particular nature of the fund-raising activities of the public authorities and how the entity should account for these in a comprehensive project covering all forms of taxes and quasi-taxes, including income taxes. Such a project would benefit from taking into account current developments in respect of the recognition and measurement of liabilities and the nature of the asset or expense they give rise to.

In view of the current views on the orientation of the Board's Agenda, we suggest that this could be a project for the medium term, but that there is also no urgency for the publication of this DI.

Broader concerns

Finally, in our view the failure of the IFRS Interpretations Committee to form a consensus about the timing of the recognition of the liability in the case of a levy triggered by the achieving of a minimum threshold is significant. It would seem to follow from paragraph 7 and Example 2 of the DI that the obligating event is the achievement of the minimum threshold. The fact that the members of the IFRIC did not reach a consensus (as explained in BC7) throws doubt on the basis for the conclusions reached for those levies which are within the scope of the DI, since the passing of the threshold is the obligating event identified by the legislation and upon which identification the consensus relies. This lack of consensus also reflects the divergence of opinion which became apparent among the members of the FASB and the IASB when they discussed the accounting for emissions quotas in [September] 2010. These elements indicate that in the absence of a contract or clear constructive liability the determination of the obligating event is far from clear-cut, and that a more substantial pronouncement than an Interpretation is required.

Consequently, we do not agree with the publication of the DI as an Interpretation.

If you require any further information on any of the above, please do not hesitate to contact us.

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Patrice MARTEAU Chairman	François SOULMAGNON Director General	Agnès LEPINAY Director of economic and financial affairs