27 September 2011

Mr Wayne Upton
Chairman
IFRS Interpretations Committee
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DRAFT COMMENT LETTER

Comments should be sent to commentletters@efrag.org by 11 October 2011

Dear Sir

Re: tentative agenda decision on IAS 12 Income Tax—rebuttable presumption to determine the manner of recovery

On behalf of the European Financial Reporting Advisory Group (EFRAG), I am writing to comment on the IFRS Interpretations Committee's ('the Interpretations Committee') response to a request to clarify whether the rebuttable presumption in paragraph 51C of IAS 12 can be rebutted in cases other than the case described in that paragraph.

This letter is submitted in EFRAG's capacity of contributing to the Interpretations Committee's due process. EFRAG addresses wordings for rejection published by the Interpretations Committee by exception.

Notes to constituents

In December 2010, the IASB issued Amendments to IAS 12 *Deferred Tax: Recovery of Underlying Assets* ('the Amendments'). The Amendments introduce a 'default' single measurement attribute (in the form of a rebuttable presumption) to determine deferred taxes on investment property measured at fair value under IAS 40 *Investment Property*. IAS 12.51C (as amended) describes the rebuttable presumption as follows:

51C If a deferred tax liability or asset arises from investment property that is measured using the fair value model in IAS 40, there is a rebuttable presumption that the carrying amount of the investment property will be recovered through sale. Accordingly, unless the presumption is rebutted, the measurement of the deferred tax liability or deferred tax asset shall reflect the tax consequences of recovering the carrying amount of the investment property entirely through sale. This presumption is rebutted if the investment property is depreciable and is held within a business model whose objective is to consume substantially all of the economic benefits embodied in the investment property over time, rather than through sale. If the *presumption is rebutted, the requirements of paragraphs 51 and 51A shall be followed.*

51 The measurement of deferred tax liabilities and deferred tax assets shall reflect the tax consequences that would follow from the manner in which the entity expects, at the end of the reporting period, to recover or settle the carrying amount of its assets and liabilities.

51A In some jurisdictions, the manner in which an entity recovers (settles) the carrying amount of the asset (liability) may affect either or both of:

(a) The tax rate applicable when an entity recovers (settles) the carrying amount of the asset (liability); and

(b) the tax base of the asset (liability).

EFRAG believes that the first part of the wording for rejection as published in the September 2011 IFRIC Update is factually accurate:

> *The Interpretations Committee noted that a presumption is a matter of policy in applying a principle (or an exception) in IFRSs in the absence of acceptable reasons to the contrary and that it can be rebutted when there is sufficient evidence to overcome the presumption. Because paragraph 51C is expressed as a rebuttable presumption and because the sentence explaining the rebuttal of the presumption does not express the rebuttal as 'if and only if', the Committee thinks that the presumption in paragraph 51C of IAS 12 can be rebutted in other circumstances as well, provided that sufficient evidence is available to support that rebuttal. However, the Committee understands that the Board's intention on introducing a rebuttable presumption in paragraph 51C was to remove the subjectivity in the determination of the expected manner of recovery in paragraph 51. …*

On the other hand, in the remainder of the wording for rejection, the Interpretations Committee provides an interpretation that is not directly based on the wording of the amendment to IAS 12:

> *… As a result, the Committee thinks that, if the presumption is rebutted, the resulting deferred tax should reflect recovery of the carrying amount entirely through use, rather than be based on any dual purpose analysis.*
>
> *The Committee thinks that the standard is clear and that diversity in practice on the rebuttal of the presumption should not emerge. Consequently, the Committee [decided] not to add this issue to its agenda.*

In our view, the wording for rejection is in effect an interpretation. Rejection notices should not be written as though they were authoritative guidance and should not result in a change in accounting practice, as they are not subject to a full due process, and also not subject to an endorsement process in the European Union. Therefore, we believe that the Interpretations Committee should remove the sentence that states that 'the resulting deferred tax should reflect recovery of the carrying amount entirely through use, rather than be based on any dual purpose analysis', because this interpretation contradicts the measurement principle in paragraph 51 of IAS 12. In addition, the sentence describing the Interpretations Committee's understanding of the Board's intention, while reflective of paragraph BC10 of IAS 12, does not contradict the previous sentence in the wording for rejection. Therefore, we would recommend the Interpretations Committee to delete that sentence or to remove the word 'however' at the beginning of that sentence.

If you wish to discuss further, please do not hesitate to contact Isabel Batista or me.

Yours sincerely

Françoise Flores
EFRAG, Chairman