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IFRS Committee – Public Agenda Paper

Meeting:	**24th IFRS Committee / 10 February 2014 / 10:30 – 12:30**
Item / Ref.:	**02 – IAS 12 uncertain tax position and other interpretation issues**
Issue:	**Discuss the ASCG position and the IFRS IC's next steps**
Paper:	**24_02_IFRS-FA_IAS12_CN**

1 Agenda papers for this agenda item

1 The following papers are presented for discussion of agenda item 02 in the 24th meeting:

Paper #	Title	Content
24_02	24_02_IFRS-FA_IAS12_CN	Cover Note and Description of the issues

State of information: 23 January 2014

2 Aim of the meeting

2 The aim of the meeting is to exchange views between the IFRS Committee of the ASCG and the IASB / IFRS IC representatives invited to this meeting. In particular, the discussion shall take into account the IASB's / IFRS IC's next steps and how the ASCG and its IFRS Committee could support the discussion of these issues.

3 Out of the list of interpretation issues currently, or recently, discussed by the IASB or IFRS IC, the ASCG has identified three issues that are of higher interest and/or warrant deeper consideration from the ASCG's and its constituents' point of view:

- Issue #1 = IAS 12 *Uncertain tax positions*;
- Issue #2 = IAS 12 *Recognition and measurement of deferred tax assets when an entity is loss making*
- Issue #3 = IAS 19 *Discount rate (the regional market issue and other questions)*.

4 This paper contains basic facts about the issues themselves as well as about the tentative ASCG position. The ASCG position will be explained in more detail during the meeting.

3 Issue #1 = IAS 12 Uncertain tax positions

3.1 Activities of the IFRS IC

5 In 2013 the IFRS IC received a submission on this IAS 12 issue. In August 2013, the IFRS IC staff started an outreach which also involved the ASCG. After consultation of its constituents the ASCG answered on this outreach request. The outreach request in particular offered the following two views, given in the original submission, how to account for an asset:

- View 1: IAS 12 and the 'probable' recognition threshold should be applied.
- View 2: IAS 37 and the 'virtually certain' recognition threshold should be applied.

6 On 29/30 January 2014 the IFRS IC is discussing this issue for the first time in a public meeting. The outcome from this initial discussion will be presented orally.

3.2 Activities of the ASCG and its IFRS Committee

7 The issue was first brought to the attention of the ASCG in late 2012. However, the issue was neither exactly described as in the submission to the IFRS IC, nor were particular views offered. The ASCG discussed, at that time, the issue in brief, resulting in the following findings:

- The issue is common and widespread in our jurisdiction with an upward trend.
- This is obviously a result of our particular national tax law. It requires that the tax authorities pay interest (at a legally fixed rate of currently 6 %) on tax payments in the case of, and until the date of, their reimbursement, e.g. if the entity successfully contested against it.
- In case the tax payment is contested, we consider recognising a tax asset for this payment to be the preferred approach. However, we observe diversity in practice.

8 As mentioned before, the ASCG (again) dealt with the issue in August 2013, after becoming involved by the IFRS IC outreach request. This was when the ASCG first got knowledge of this submission and the two views. In September 2013 the ASCG answered as follows:

- The issue is common and widespread in our jurisdiction with an upward trend.
- However, it should be noted that the issue is strongly interrelated with national tax laws, which may be complex as it is true for the German tax law.
- There is diversity in practice in the recognition of an asset on uncertain tax position in Germany. This is because both views presented in the Outreach Request find their supporters in Germany and are actually followed by the entities.
- However, as was made public through two different German accounting journals (at the end of 2012 / early in 2013), the local Financial Reporting Enforcement Panel in previous examinations considered it to be an error if entities followed View 1. At least big listed companies in Germany, therefore, follow View 2 in order not to risk errors in case of an examination. This is why view 2 is the predominant approach that we observe in Germany.

9 Additionally, in its 20th meeting the ASCG's IFRS Committee discussed the issue in a broader context. As a result, the ASCG concluded that

- there is at least a third view (view 3), which is that the payment constitutes a financial asset, hence IAS 39 / IFRS 9 is the standard that requires recognition of an asset;
- this issue is also relevant in other circumstances which look similar, but are not tax issues (thus, are not in the scope of IAS 12) – e.g. payments in escrow accounts or deposits in court.

3.3 Next steps / Questions

10 The ASCG and its IFRS Committee look forward to having this issue resolved, and an answer to be given is very welcome. Since this is of particular relevance in our jurisdiction, the ASCG would like to closely follow the process of this issue as well as to support reaching a consensus.

Question 1:

a) What are the next steps intended by the IASB / IFRS IC regarding this IAS 12 issue?

b) How could the ASCG support the discussion of this IAS 12 issue?

4 Issue #2 = IAS 12 Deferred tax assets (DTA) when an entity is loss making

4.1 Activities of the IFRS IC

11 The IFRS IC received a submission on this issue in summer 2013. in August 2013, the IFRS IC started an outreach request that again involved the ASCG. It forwarded the submission containing two cases with two different views each. Case A asked whether a DTA shall be recognised only in case of future profits or also in case of expected losses. Case B asked whether the DTA is restricted to a certain percentage if there is a minimum taxation rule.

12 After having received feedback from the ASCG (and probably other organisations), the IFRS IC discussed this issue in its November 2013 meeting. A preliminary view was reached for Case A, but for Case B further input was asked for.

13 Therefore, the IFRS IC again had a (consequential) outreach request which was also received and answered by the ASCG in early January 2014.

14 In a next step, the IFRS IC will discuss the issue in its meeting end of January 2014. The outcome from this initial discussion will be presented to the IFRS Committee orally.

4.2 Activities of the ASCG and its IFRS Committee

15 In September 2013 the ASCG received the first outreach request and, after consultation of its constituents, answered to the IFRS IC team on both cases (A+B) as follows:

- Both cases (A and B) are common and widespread in Germany.
- Case A: There is no diversity in practice; View 1 (*deferred tax asset recognised regardless of expected future losses*) is applied in Germany.
- Case B: There is diversity in practice, however, the (clearly) predominant approach we observe in Germany is View 1B (*Deferred tax asset is recognised to the full extent of sufficient taxable temporary difference, in case of future loss expectation, thus, there is no restriction resulting from minimum taxation*).

16 After having taken notice of the results from the IFRS IC's initial discussion in its November 2013 meeting, the ASCG's IFRS Committee discussed the issue again in its 22nd meeting (December), in particular the question related to Case B that has not being answered by the IFRS IC yet. At the same time, the consequential outreach request initiated by the IFRS IC was received by the ASCG. As a result, the ASCG answered (by mid December 2013) as follows:

- It is correct that German tax law restricts the recovery of tax losses due to a minimum taxation. Though, this only applies if the entity expects to incur taxable profits. If future tax losses are expected, minimum taxation does not have any impact.
- Entities would distinguish whether they expect tax losses or tax gains to occur.

- If tax losses are expected, there is effectively no minimum taxation, thus, the general requirements of IAS 12 would apply. Due to IAS 12.28 and .35 deferred tax assets would be recognised to the full extent.
- If tax gains are expected, minimum taxation would have an impact, such as that deferred tax assets are recognised but limited to the percentage of reversing taxable temporary difference that equals the minimum taxation percentage (i.e. 60 %).

17 In its January 2014 meeting, the ASCG's IFRS Committee discussed the current status in this debate. It underlined the high relevance of the issue in Germany expressed its intention to develop a comment letter as soon as the IFRS IC has tentatively decided upon Case B.

4.3 Next steps / Questions

18 The ASCG and its IFRS Committee look forward to having this issue resolved, and an answer to be given is very welcome. Since this is of particular relevance in our jurisdiction, the ASCG would like to closely follow the process of this issue as well as to support reaching a consensus.

Question 2:

a) What are the next steps intended by the IASB / IFRS IC regarding this IAS 12 issue?

b) How could the ASCG support the discussion of this IAS 12 issue?

5 Issue #3 = IAS 19 Discount rate: regional market issue (and other questions)

5.1 Activities of the IFRS IC

19 The IFRS IC had started to discuss the discount issue as two different sub-issues. The one is the issue of "Actuarial assumptions: Discount rate", the other is the issue of "Discount rate: regional market issue". In addition, the IASB intended to start a research project on "Discount rates" in a broader context.

20 The discussion of "*Actuarial assumptions: Discount rate*" was initiated through a submission by the ASCG in mid 2012. This submission was mainly asking whether corporate bonds with a rating lower than 'AA' can be considered to be HQCB. The IFRS IC discussed this issue in its May 2013 meeting and concluded tentatively (in July 2013) and finally (in November 2013) not to add this issue onto its agenda, because "*issuing additional guidance on, or changing the requirements for, the determination of the discount rate would be too broad for it to address in an efficient manner. The IFRS IC therefore recommends that this issue should be addressed in the IASB's research project on discount rates*".

21 The discussion of "*Discount rate: regional market issue*" was initiated through a submission by ESMA in June 2013. The IFRS IC discussed this issue in July 2013, the IASB considered it in October 2013, and in November 2013 the IFRS IC decided to propose an amendment within the AIP 2012-2014 cycle, that would change the wording in respect of bonds with the same currency (instead of the same country). The AIP proposals were published in December 2013.

5.2 Activities of the ASCG and its IFRS Committee

22 With respect to the first issue ("*assumptions*"), it is the ASCG that had submitted the issue as a "Potential Agenda Item Request" to the IFRS IC mid 2012. The submission states that,

- due to changes in the bond markets and the economics behind, procedures to determine the discount rate do not generate appropriate results anymore – the discount rate is considered to be distorted;
- therefore, two views are provided how to resolve this (deemed) issue, which are either (A) to expand the bond universe or (B) to only consider AAA and AA bonds as "high quality";
- hence, the IFRS IC is asked whether expanding the HQCB is an acceptable approach.

23 After the IFRS IC's tentative agenda decision as of July 2013, the ASCG commented on this by a comment letter dated 3 September 2013. In there, the ASCG mainly expressed that

- it is important to provide guidance and clarifications on this issue;
- the IFRS IC developed several facts that, if they were brought together, would state that corporate bonds with a rating of 'AA' and 'AAA' are to be considered as HQCB, however it was not stated explicitly in the agenda decision;

- thus, the ASCG has serious concerns that the unclear wording could result in divergent practice in determining the discount rate.
- Furthermore, the IFRS IC decision does not address the issue whether government bonds have to be "high quality" when being used to determine the discount rate.

24 With respect to the second issue ("*regional market issue*"), the ASCG is still developing its view. The ASCG intends to comment on this within a comprehensive comment letter on the AIP 2012-2014 proposals. The discussion and opinion-making probably will be concluded by early march 2014. The tentative view of the ASCG's IFRS Committee will be provided orally.

5.3 Next steps / Questions

25 The ASCG and its IFRS Committee look forward to having this issue resolved, and an answer to be given is very welcome. The ASCG intends to comment on this "discount rate" issue in a broader sense while commenting on the AIP 2012-2014, which proposes an amendment of one sub-issue in the context of discount rate. However, the ASCG would like to undertake additional steps, if appreciated, in order to support reaching a solution.

Question 3:

a) What are the next steps intended by the IASB / IFRS IC regarding this IAS 19 issue?

b) How could the ASCG support the discussion of this IAS 19 issue?