

Mr. Wayne Upton
Chairman
International Financial Reporting Committee
30 Cannon Street
London
United Kingdom
EC4M 6XH

Email: ifric@ifrs.org

5 September 2012

Dear Mr. Upton,

Draft IFRIC Interpretation DI/2012/1 *Levies Charged by Public Authorities on Entities that Operate in a Specific Market*

Deloitte Touche Tohmatsu Limited is pleased to comment on the IFRS Interpretations Committee's (the Committee's) Draft Interpretation DI/2012/1 *Levies Charged by Public Authorities on Entities that Operate in a Specific Market* (referred to as the 'draft Interpretation').

We agree that the consensus in the draft Interpretation provides an appropriate analysis of the treatment of levies within its scope under current IFRSs and, in particular, of the application of the definition of a liability provided in IAS 37 to such items, although we are concerned that the draft Interpretation does not deal with levies that are due only if a minimum revenue threshold is achieved, that are calculated as a fixed amount or are based on a graduated rate calculation. An Interpretation dealing only with certain levies is not helpful to preparers and users confronted with levies outside its scope and could lead to different financial reporting treatments of transactions whose economic substance is very similar.

However, we believe that a significant factor in the requests made to the Committee on specific levies was concern over whether the treatment described in the draft Interpretation provides the most useful information about the economic resources of the entity. As a result, as noted in our response to the IASB's *Agenda Consultation 2011*, and irrespective of whether the draft Interpretation is finalised or not, we would still encourage the Board to consider whether non-reciprocal transactions in general, and government levies in particular, are best dealt with by IAS 37 and whether an approach similar to the current tax requirements of IAS 12 could be developed to reflect better the nature of government levies.

Our detailed responses to the invitation to comment questions are included in the Appendix to this letter.

If you have any questions concerning our comments, please contact Veronica Poole in London at +44 (0) 207 007 0884.

Yours sincerely,

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

Veronica Poole
Global IFRS Leader – Technical

Appendix: Invitation to Comment

Question 1 – Scope

The draft Interpretation addresses the accounting for levies that are recognised in accordance with the definition of a liability provided in IAS 37 Provisions, Contingent Liabilities and Contingent Assets. Levies that are within the scope of the draft Interpretation are described in paragraphs 3-5.

Do you agree with the proposed scope? If not, what do you propose and why?

We agree with the exclusion from the scope of this Interpretation of income taxes, fines or other penalties and contracts between a public authority and a private entity as these are either within the scope of other standards or interpretations or, in the case of fines or other penalties, are satisfactorily addressed by the requirements of IAS 37. We are, however, concerned by the exclusion from the draft Interpretation of levies that are due only if a minimum revenue threshold is achieved or that are calculated as a fixed amount and note that it is unclear whether the draft Interpretation is intended to deal with levies that are based on a graduated rate calculation (as a graduated levy for which the rate starts at 0% is economically similar to a levy due only if a minimum revenue threshold is achieved) or levies that are due only if a minimum threshold of a metric other than revenue (for example, costs or number of items sold or imported) is reached.

We believe that all of these variants should be addressed in full (including illustrating, for example, the recognition of a graduated rate levy as revenues are generated and the levy rate under the relevant legislation changes) as an Interpretation dealing only with certain levies is not helpful to preparers and users confronted with levies outside of its scope and could also lead to diversity in practice between levies whose economic substance is very similar.

We also recommend that the explanation of ‘non-exchange transactions’ in paragraph 5(c) be clarified. Whilst levies of the type considered by the Committee do not give rise to recognition of a financial, tangible or intangible asset in the financial statements, some argue that, nonetheless, the entity paying the levy receives a ‘specific’ asset in the form of a ‘right to operate’ in the market in question. A clearer definition of a non-exchange transaction in this context would assist in determining which payments to public authorities are intended to be within the scope of the draft Interpretation. Clarity on this concept may also be helpful in respect of circumstances where an entity pays a levy to receive access to public services, amongst other things, but the amount paid is not commensurate with the fair value of the services received. This could be the case, for example, for a tonnage tax levied on users of the services of a port facility.

Finally, we would also make the following points of detail on the characteristics identified in paragraph 5 of the draft Interpretation:

- it could be made clearer that to be within the scope of the draft Interpretation, a levy needs to have all of the characteristics listed;
- it is unclear which levies are intended to be placed outside the scope of the draft Interpretation by the requirement in paragraph 5(b) that the levy be paid by entities that operate in a specific market given that the parameters of a ‘specific market’ are drawn quite widely (including an entire country);
- we believe that the trigger of ‘a specific activity’ referred to in paragraph 5(d) could more clearly be described as ‘a specific activity or condition’ as, for example, the UK banking levy is triggered by an entity’s status (as holder of a banking licence) and the existence of a specified level of liabilities at a point in time rather than by any ‘activity’ of the entity; and
- it is unclear whether the ‘data’ referred to in paragraph 5(e) is restricted to financial statement items (as are all the examples quoted), or could also be non-financial metrics (for example, carbon emissions) or single items (for example, ownership of a property or vehicle).

Question 2 – Consensus

The consensus in the draft Interpretation (paragraphs 7-12) provides guidance on the recognition of a liability to pay a levy.

Do you agree with the consensus proposed in the draft Interpretation? If not, why and what alternative do you propose?

We agree that the consensus in the draft Interpretation provides an appropriate analysis of the treatment of levies within its scope under current IFRSs and, in particular, of the application of the definition of a liability provided in IAS 37 to such items (although we suggest that the statement in paragraph 11 that the liability to pay a levy gives rise to an expense be accompanied by either a statement that the cost of the levy may be included in the cost of an asset if required or permitted by another IFRS or an explanation of why it is assumed that this will not be the case). However, we believe that a significant factor in the requests made to the Committee on specific levies was concern over whether the treatment described in the draft Interpretation provides the most useful information about the economic resources of the entity. IAS 37 is not principally focused on levies and ‘tax-type’ obligations and we believe that further consideration could be given to the financial reporting issues presented by these transactions.

Thus, as noted in our response to the IASB’s *Agenda Consultation 2011*, and irrespective of whether the draft Interpretation is finalised or not, we would still encourage the Board to consider whether non-reciprocal transactions in general, and government levies in particular, are best dealt with by IAS 37 and whether an approach similar to the current tax requirements of IAS 12 could be developed, for both interim and annual financial statements, to reflect better the nature of government levies.

We recognise that such a project would require changes to IFRSs and as such would be outside the scope of the Committee’s activities, but believe that this would allow the issue to be dealt with in a more comprehensive manner. In particular, we believe this project should clarify the treatment of levies excluded from the scope of a final Interpretation (for example, if the Interpretation is finalised without extending its scope, levies due only if a minimum revenue threshold is achieved), and the treatment of levies under which one payment is made to cover a number of years.

Question 3 – Transition

Entities would be required to apply the draft Interpretation retrospectively in accordance with IAS 8 Accounting Policies, Changes in Accounting Estimates and Errors.

Do you agree with the proposed transitional requirements? If not, what do you propose and why?

We agree with the proposed transitional provisions in the draft Interpretation.