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RÉPUBLIQUE FRANÇAISE

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Paris, the 7th January 2015

N° 2

M. Roger MARSHALL
Acting President
EFRAG BOARD
35, Square de Meeûs
B – 1000 Bruxelles

Re : EFRAG Short Discussion Series – Levies : what would have to be changed in IFRS for a different accounting outcome ?

Dear Mr Marshall,

I am writing on behalf of the Autorité des Normes Comptables (ANC) to express our views on the above mentioned EFRAG Short Discussion Series. These views result from the ANC's due process, involving all interested stakeholders and the ANC's IFRS Commission.

To summarise, we believe that the application of IFRIC 21 requirements does not allow for a faithful representation of the financial position and the financial performance of entities submitted to taxation in **the case of interim financial statements**.

Accordingly, the ANC is supportive of a Research project to deal with taxes which are outside of the scope of IAS 12. However, this project should be only limited to the treatment of such taxes in the financial statements according to IAS34.

Please find our detailed answers to the EFRAG's questions in the Appendix.

If you have any questions concerning our comments, we would be pleased to discuss them.

Gérard Gil
ANC Board Member
ANC IFRS Commission Chair

Appendix – Questions to constituents

Q1 Do you have concerns that the application of IFRIC 21 and other relevant Standards may sometimes result in inappropriate outcomes (such as charging immediately to profit or loss the cost of a levy that should be instead recognised over a period)? (see paragraph 3)

Answer

As we have previously expressed to IFRIC, we believe that the application of IFRIC 21 requirements does not allow for a faithful representation of the financial position and the financial performance of entities submitted to taxation in the case of the interim financial statements. This is due to the specific characteristics of levies enacted by public authorities.

Taxes enacted by Public Authorities are intended to finance public spending in a given period, usually a calendar year. This is why most taxes have a yearly basis.
Although generating events for taxes may vary from one tax jurisdiction to another or within a single jurisdiction (immediate or gradual event), as well as due dates and payments, they are only technical features related to the approval process of tax regulations.
However, the dominant common feature is that taxes are intended to fund annual public budgets and they are generally a compulsory levy on the economic items generated by the economic activity throughout the tax year (revenues, sales) or the economic items themselves (assets for example), which support the economic activity over the same period. Moreover, many taxes are enacted for an indefinite period from the date of application and it is therefore expected that they recur from year to year.

When the ultimate obligating event to pay the levy, as identified by the legislation, is to operate in the market on 1/01/N+1, we believe that it seems unrealistic in most cases to go out of the business to avoid the payment of the levy.
Therefore, we believe that it would be relevant to recognise the levies both in the annual and in the interim reporting periods on the basis of systematic and rational allocation procedures, in accordance with paragraph 4.51 of the Conceptual Framework.

Q2 Based on the existing applicable Standards, do you think that entities will be able in practice to identify assets or services received in exchange for levies? (see paragraphs 58-64)

Q3 Is the proposed guidance in paragraph 62 helpful in this respect? And, should the guidance also include criteria to distinguish if an entity has received an asset rather than a service (or vice versa)? (see paragraph 64)

Answer (Q2 and Q3)

We acknowledge that, under certain circumstances, the recognition of an asset in exchange of the payment of levies could compensate some undesired effects of the application of IFRIC21 requirements.

Nevertheless, identifying an asset requires defining whether the entity receives future economic benefits embodied by the payment of the levies.

We cannot ignore that, in many jurisdictions, levies are intended to fund annual public budgets, which are thereafter redistributed in public services, which the entity could directly benefit.

Nevertheless, in most cases, there is no correspondence between the amount of the levy paid and the economics benefits received in exchange. Moreover, defining whether an entity receives an asset requires a high level of judgment, which could result in a diversity of practices and a lack of comparability

Q4 For those levies where the law indicates a point-in-time obligation, do you agree that there may be other elements in the law to designate the obligating event? If so, do you agree with the elements described in paragraphs 65 to 68?

Answer

We support the view that when the law indicates a point-in-time obligation, other features should be taken into consideration to define the real obligating event.
Although generating events for taxes may vary from one tax jurisdiction to another one, or within a single jurisdiction (immediate or gradual event), as well as due dates and payments, they are only technical features related to the approval process of tax regulations.

It is necessary to identify if a point-in-time obligation is the main (or potentially the only one) feature of the obligating event. If so, the entity has no choice but accounting the levy when the point-in-time obligating event is reached.

Conversely, when the law indicates that the levy is triggered by the generation of income over time, and that the last payment obligation is to be in operation at a specific point of time, this point of time obligation should be considered as an ancillary technical feature. Consequently, the entity should consider that the obligating event is the activity performed over time and it should recognise progressively a liability, if it has no realistic possibility to avoid the payment of the levy.

Q5 In which cases, if any, can a levy measured on a balance sheet figure be linked to an activity performed over time? (see paragraphs 56 and 74)

Answer

We believe that, when a levy is measured on a balance sheet figure (asset or liability), there could be a basis for its progressive recognition.

But this implies assessing whether this balance sheet elements have been supporting the activity over the period. Such an assessment is generally possible for generating assets or premises, which are used by the entity in the carrying out of its business over the period.

Q6 Do you agree with the inclusion of a specific requirement in IAS 34 as a short term solution? (see paragraph 76)

Answer

The ANC's opinion is in line with the one expressed for the annual reporting period.
We think that, for levies measured on revenues or expenses generated over time, it would be relevant with the economic reality of taxation, to be able to recognise them in the interim reporting period on the basis of systematic and rational allocation procedures, in accordance with paragraph 4.51 of the Conceptual Framework.

We note that IAS34 requirements articulate specific approaches for contingent lease payments, employer payroll taxes and insurance contributions, and year-end bonuses and that such approaches could be applied for levies, when the entity has no realistic alternative but paying for them.

We consider that amending IAS34 requirements would be the most useful improvement to deal with the concerns with IFRIC 21 outcome.

Q7 Do you agree that the IASB should add to its agenda a Research project to deal with transactions with Government authorities in their capacity as authorities? (see paragraphs 82-83)

Answer

As a consequence to our answer to Q6, we think that a Research project should prior focus on IAS 34 amendments. The other alternatives discussed seem to be less efficient,

Q8 Do you think that other different alternatives could be explored in the paper in order to reach a different outcome when accounting for levies?

Answer

The ANC does not identify other alternative to be explored.