



Letter of Comment No: 38
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September 12, 2005

Via email

Technical Director
File Reference No. 1215-001
Financial Accounting Standards Board
401 Merritt 7
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Re: File Reference No. 1215-001 – Invitation to Comment
Proposed Interpretation, *Accounting for Uncertain Tax Positions,*
an Interpretation of FASB Statement No. 109

Wells Fargo & Company (Wells Fargo) is a diversified financial services company with over \$430 billion in assets providing banking, insurance, investments, mortgage and consumer finance services. We appreciate the opportunity to comment on the issues being considered by the Board in determining whether to revise U.S. accounting standards for uncertain tax positions.

We believe that the proposed interpretation is unnecessarily complex, difficult to apply in practice, unnecessarily constrains the use of professional judgment for a complex subject matter and will produce inconsistent financial reporting results, including the overstatement of tax liabilities for many companies. We are concerned with the overall approach of the proposed interpretation and that the proposed effective date of year-end 2005 is not realistic.

Complexity of the Tax Process

Accounting for income taxes is a very complex area of accounting that by its very subjective nature requires the use of professional judgment. This complexity is evident in the significant effort devoted to income tax accounting by the Board over the years embodied in APB 11, SFAS No. 96 and SFAS No. 109. Income tax accounting is characterized by the evolution of tax issues, which are ultimately settled, individually or as a group, with a taxing authority either through a negotiation process, or are finally adjudicated through litigation. As such, income tax accounting cannot rely too heavily on the application of detailed formulas or mechanical rules.

Significant professional judgment always must be applied in this area of accounting to ensure that the final result best reflects the economic reality of the tax process. We do agree with the Board that there needs to be general principles, not formulaic rules, established in this area to ensure that consistency and financial statement integrity are maintained, but the importance of professional judgment in accounting for complex and interwoven tax controversies needs to be at the forefront of any final guidance.

Dual Threshold Approach for Recognition and Derecognition

Tax benefits are reflected in income tax returns filed by companies, resulting in a reduction in the amount of income taxes paid. Tax positions that ultimately are not realized will result in the payment of additional taxes. Any additional taxes that must be paid will result in the recognition of a liability for income taxes. The key accounting issue relates to the need for recognition of this tax liability, not recognition of the asset related to the tax benefit reflected in the tax return. The guidance related to liability recognition is SFAS No. 5. This guidance already adequately describes the criteria for liability recognition.

The Board has decided on a dual threshold approach that would require one threshold for recognition and another threshold for derecognition. A tax position must meet a probable threshold for a benefit to be recorded in the financial statements. A previously recorded tax position that no longer meets the probable recognition threshold should be derecognized when it is concluded that it is more likely than not that the position will not be sustained on audit. We do not believe this to be a workable approach and are concerned that this dual threshold approach will result in inconsistent accounting treatment for similar tax positions between companies as well as even for the same company. Over time, a tax position originally deemed probable may no longer meet that threshold, but still meet the more likely than not threshold. Under the proposed guidance, the original tax benefit recorded while the tax position was deemed probable would not be reversed. Tax benefits related to the same tax position originating on subsequent year tax returns filed by the company or any other entity, however, would no longer be reflected. Additionally, as discussed more fully in the Transition section below, we are concerned with inconsistency that this dual threshold approach will create at implementation. We do not think that the dual threshold approach contributes to the Board's mission to make financial reporting transparent.

We are also concerned with the lack of clear definition of probable. In practice, probable could be viewed as anything from a 70% up to a 90% confidence level. Such a wide range of interpretation will most certainly produce significant differences in the application of this proposed guidance. We agree with the alternative view expressed in paragraph B47 that provides that more likely than not is the appropriate threshold since that level is consistent with the tax law.

We believe that the current guidance in SFAS No. 109 is adequate. Tax positions are recognized in the financial statements based on how they are reflected in the tax return. The resulting tax benefits recorded are evaluated for realizability using the more likely than not criteria of SFAS

No. 109. Tax contingency accruals are recorded to reduce tax benefits recognized to the appropriate amounts that are expected to be realized.

Application to Individual Tax Positions

The proposed guidance is required to be applied to individual filing positions in a previously filed tax return or expected filing positions reflected in measuring current or deferred income tax expense or benefit for interim or annual periods prior to filing a tax return. We do not believe it is appropriate to require that this guidance be applied only to individual filing positions because this methodology is not reflective of the economic reality of how income tax liabilities are ultimately determined. The proposed guidance would require that tax benefits be recorded at amounts that are probable of being sustained upon audit by the taxing authority, including final resolution of any related litigation or appeals process. Tax issues, however, are frequently resolved through a negotiation process between the company and the taxing authority. These negotiations are predominately characterized by consideration of the population of all disputed tax positions, with trade-offs occurring on certain individual tax positions to produce a desired overall result. Individual tax positions are frequently not decided entirely on their merits. Accounting for each tax position individually will therefore not always produce a meaningful accounting result. The overriding objective of accounting for income taxes should be whether the aggregate tax liabilities or assets represent taxes payable or benefits realizable. We believe that this fundamental concept is adequately embodied in the existing guidance in SFAS No. 109.

Use of "Should Prevail" Tax Opinion

The proposed guidance provides examples of specific facts and circumstances that may demonstrate a probable level of confidence. One item listed is an "unqualified should prevail" tax opinion from a qualified expert for which all conditions are objectively verifiable. We note that such a tax opinion is predicated on the assumption that the tax position will be subject to the entire settlement process of the taxing authority, including litigation. In fact, however, a company may not want to pursue an individual tax position through the entire process, but rather choose to settle it based on the specific strategy, facts and circumstances associated with its overall tax position. Frequently, therefore, tax benefits are only partially realized. The practical reality of partial realization of a tax position is not addressed by the tax opinion. We believe that it is important to record the best estimate of the amount related to a tax position even if a "should prevail" tax opinion does not exist. It would be misleading to ignore this tax position entirely. We are also concerned with the implied need to obtain periodic updates of historic tax opinions to support the ongoing accounting for the tax positions.

We are also concerned with the Board indicating that an "unqualified should prevail" tax opinion is necessary to demonstrate that the probable standard has been met. An "unqualified should prevail" opinion would seem to be equivalent to a "will prevail" opinion. We believe that the Board may therefore have unknowingly created a "will prevail" standard for recognition.

Transition

The proposed interpretation indicates that only tax positions that meet the probable recognition threshold at the effective date may be recognized or continue to be recognized upon initial implementation. Tax benefits that met the probable standard of the proposed guidance at the time of their initial recognition but that subsequently have declined to the more likely than not threshold at the time of implementation of this guidance would be reversed. The dual threshold approach again produces an inconsistent result in that a decline from probable to more likely than not after implementation of the guidance would not result in derecognizing the tax benefit. We believe that a more likely than not threshold should be applied to existing tax benefits at implementation. This treatment would be consistent with the evaluation necessary to demonstrate the continued ability to recognize previously recorded tax benefits under the proposed interpretation after implementation.

Effective Date

The Board concluded that the proposed interpretation should be effective as of the end of the fiscal first fiscal year ending after December 15, 2005, which would be the year ending December 31, 2005 for companies with calendar year ends. The proposed timeframe is too short. Given the Board's previous history with SFAS No. 96 and the lessons learned from that experience, we urge the Board to give full consideration to constituent comment letters. In addition, this proposed effective date does not allow for an adequate transition period, especially since final guidance will most likely not be issued until the fourth quarter. Given the potentially significant financial statement impact that the implementation of the Board's tentative conclusions may have, many companies will need to thoroughly review and apply significant judgment to each of their complex tax positions. The guidance will require implementation of new processes and procedures, which the company will be required to document and test for purposes of their Sarbanes-Oxley compliance. Such an aggressive effective date does not allow entities adequate time to conscientiously implement this new accounting guidance. We recommend that the Board delay the effective date of any new accounting so that there is at least one year after issuance of a final standard.

Conclusion

Income tax accounting requires the interpretation and application of very complex tax laws to tax positions. As such it is a very judgmental area of accounting. The proposed accounting guidance attempts to impose a level of precision in income tax accounting that just does not exist.

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We appreciate the opportunity to comment on the issues contained in the Board's invitation. If you have any questions, please contact me at (415) 222-3119.

Sincerely,

/s/ Richard D. Levy

Richard D. Levy
Senior Vice President & Controller

CC: Ms. Donna Fisher, American Bankers Association
Ms. Gail Haas, New York Clearinghouse Corporation