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To: Technical Director

Re: FASB project on Uncertain Tax Positions Ref 1215-001

I agree with the Board's conclusion that there is diversity in practice in accounting for uncertain tax positions. However, I believe the draft has conceptual and operational problems that the Board should reconsider.

Conceptual

The draft will result in recognition of liabilities and expenses that lack representational faithfulness. Liabilities will be recognized for the full amount of tax and related interest that would hypothetically result from complete disallowance of positions taken on the return, when it is more likely than not that the amount ultimately paid will be zero or a small percentage settlement. That is confusingly mixed in with other tax liabilities measured on a best estimate basis. The resulting number seems to me to be indescribable and irrelevant.

Operational

I am concerned that the draft, if issued in this form, will generate unnecessary and intractable implementation questions and will fail to achieve the Board's objective of improved comparability.

One reason the draft will not achieve comparability is that different accountants have different views of what "probable" means. Most are in the range of 70% to 90%, but that is a significant difference in this application. A more difficult problem is that the proposed "two-step" recognition and measurement approach puts too much pressure on the definition of a "position" (or unit of accounting). Different assessments of what constitutes a "position" will lead to different recognition. In my opinion, it will be extremely difficult, if not impossible, to craft a set of rules that will result in consistent definitions of the "position". To illustrate, consider the R&D example in paragraphs A2-A11 of the ED. Might Enterprise A have decided on projects 3 and 4 that the expenditures likely to be disallowed were one "position" and the other types of expenditures included in the projects were another, thereby elevating the second to probable status? Or, might A have decided R&D was all one "position" and based on the relationship of best estimate to total claimed (50%) concluded no benefit should be recognized?

An additional operational concern arises from the "best estimate" guidance. Depending on the estimated probability distribution of the possible outcomes, (which is obviously quite subjective and not very precise in most cases), the single most likely outcome may not be a very good representation of the situation. Consider the following example distributions:

	Case				
	1	2	3	4	5
Benefit	***** probabilities %*****				
Outcome					
\$0	5%	20%	25%	15%	40%
\$700	20%	20%	20%	20%	0%
\$800	50%	20%	20%	20%	10%
\$900	20%	20%	20%	20%	10%
\$1,000	5%	20%	15%	25%	40%

The ED approach works in case 1 because the outcomes are similar to a normal distribution. I don't know how to apply it in case 2 or 5. It does not seem to me to provide very representative information in cases 3 and 4. Also, I submit that different reasonable and competent professionals could assess the same real world tax situation and arrive at different conclusions similar to at least cases 2, 3, and 4.

Suggestion

These problems could be avoided by eliminating the two-step approach and simply requiring an undiscounted expected value measurement for all positions for which the possibility of challenge is greater than remote.

Thank you for the opportunity to comment. If further discussion of any of the points in this letter would be useful, please call.



Timothy S. Lucas