



COUNTANTS Advancing the Profession

January 16, 2007

Mr. Robert H. Herz Chairman Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Dear Bob:

The Financial Reporting Committee (FRC) of the Institute of Management Accountants is writing to provide its views on the potential delay in the effective date of FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes ("FIN 48"). We understand that other organizations and associations have raised concerns about the ability of companies to effectively implement FIN 48 within the time frame provided for in the standard.

The view of the FRC on the need for a delay is best characterized as mixed. On the one hand, some of the companies represented on the FRC do not believe a delay is warranted provided that certain key implementation issues, which have been summarized in Appendix A, are dealt with as soon as possible in a practical manner. On the other hand, other companies represented on the FRC have indicated that even with the resolution of the issues identified in Appendix A, the implementation of FIN 48 may not be possible by the required effective date. Indeed, those working with small to mid-sized public companies have indicated that because of resource constraints as well as the complexity and far reaching nature of FIN 48, adoption by the required implementation date is proving to be much more difficult than had been anticipated. Accordingly, we would encourage the Board to carefully consider both points of view in addressing the concerns raised.

We appreciate the opportunity to share our views on this important issue. We would be pleased to answer any questions the Board may have.

Very truly yours

Pascal Desroches

Chairman

IMA Financial Reporting Committee

Appendix A

The FRC believes that the following three implementation issues should be addressed by the FASB in order to facilitate the adoption of FIN 48. If the FASB cannot address these issues before February 28, then the entire FRC would support a delay in the effective date.

1. Subsequent Recognition of Tax Benefits

The first implementation issue is the question of subsequent recognition of tax benefits. Paragraph 10 of FIN 48 provides that positions that have not previously been recognized shall be recognized if the amount is "ultimately settled through negotiation." Paragraph 12 further provides that "a tax position need not be legally extinguished and its resolution need not be certain to subsequently recognize...the position". We understand that the FASB Staff is interpreting the above sentence in paragraph 12 related to recognition very narrowly to require a resolution that legally cannot be reopened by tax authorities except in the case of fraud or misstatement of fact. This appears to mean that the successful completion of an IRS audit does not satisfy the "ultimately settled" requirements in paragraph 10 even if the agent specifically identified, considered and did not object to the reporting of a transaction involving significant tax uncertainty. Rather, as we understand the Staff's current view, the issue is ultimately resolved through settlement only if it is settled in a manner that essentially cannot be legally reopened.

We believe this reading of FIN 48 is unnecessarily restrictive. In practice, numerous tax issues are resolved during the course of audit and appeals negotiations. For routine issues, the resolutions do not take the form of legally binding agreements. However, it is the practice of the Internal Revenue Service and most other tax authorities not to reopen completed audits except in unusual circumstances (taxpayers also generally don't seek to undo final but legally unenforceable agreements, except in the unlikely event an examination is reopened for other reasons).

For issues resolved through routine negotiation, unless they are of the type that falls into the unusual circumstances exception, such settlements are virtually certain to be sustained and should be viewed as "ultimately settled" under paragraph 10 in light of paragraph 12. While there would be judgment involved in determining whether a settlement may be reopened because of the existence of unusual circumstances, this is generally at least as clear as other judgments required to apply FIN 48 to initial recognition, best estimate determination and administrative practice. Judgments about the existence of unusual circumstances may need to be made in any event in connection with changes to the best estimate for recognized positions. However, except in unusual circumstances, once an issue is resolved through negotiation, it is virtually certain that the settlement will be sustained and the Committee believes it would be misleading to fail to reflect that settlement in the financial statements through an adjustment to the recorded liability in the period of settlement.

In addition to the ongoing effect of this interpretation of paragraphs 10 and 12, a narrow interpretation of "ultimately settled" presents significant issues in the adoption of FIN 48. Because preparers would be forced to not only consider tax positions for ongoing audits, but to revisit settled audits for which the statute of limitations has not yet run, it would significantly increase the amount of time and effort required to adopt

FIN 48. The statute of limitations may be open due to only a handful of unsettled issues or merely because it was extended beyond the time needed for complete resolution. In many cases, settlements on other issues were reached many years ago and it would be necessary to revisit the issue to make a legal determination of the strength of a long-settled position solely for purposes of adoption. The liability, of course, would be recorded to retained earnings and then reversed as a tax provision benefit once the liability becomes legally extinguished through the expiration of the statute of limitations. Recording liabilities that are virtually certain to be reversed in a subsequent period does not seem to serve the needs of the users of financial statements, although requiring preparers to accumulate and report that information would significantly increase the burden associated with adopting FIN 48.

2. Administrative Practice Exception

Questions have been raised about the applicability of the administrative practice exception to recognition. In our experience the interpretation of the applicability of this provision appears to vary widely from one audit firm to another. We believe that questions around this provision should be addressed prior to adoption to prevent widely divergent practices and to provide accurate and useful information to users of financial statements. For example, to what extent can an administrative practice relating to state tax nexus be considered when it is widely understood that a state will limit its period of assessment of taxes but the exact number of years is not widely understood and will vary based upon a taxpayer's individual facts and circumstances?

3. Disclosures

The disclosure provisions of FIN 48 should be clarified prior to implementation. Specifically, we believe that paragraph 21(d) related to amounts that are reasonably possible to change within 12 months should be clarified to provide that aggregation of positions may be appropriate when the same event will give rise to changes to multiple positions. In addition, we believe that the language of 21(d) could be interpreted in an overly broad manner. For taxpayers under continuous audit, although perhaps unlikely, there is more than a remote chance that almost any position could increase or decrease in the following 12 months as a result of ongoing audit activity. We believe this language should be clarified to indicate that the disclosure would apply only if there is a likely event in the following 12 months and it is reasonably possible that amounts will change as a result of that event. Finally, there appears to be a conflict between paragraph 21 that discusses changes to unrecognized tax benefits and paragraph A33, Illustrative Disclosure, that describes an anticipated cash payment as a result of reasonably possible events. This apparent conflict should be clarified prior to the effective date.