



March 28, 2007

LETTER OF COMMENT NO. 4

Mr. Lawrence W. Smith
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

RE: Proposed FSP No. FIN 48-a, Definition of *Settlement* in FASB Interpretation No. 48

Dear Mr. Smith:

PricewaterhouseCoopers LLP appreciates the opportunity to respond to the proposed FASB Staff Position No. FIN 48-a, "Definition of *Settlement* in FASB Interpretation No. 48" (the "proposed FSP").

We support the issuance of the proposed FSP because by clarifying the term "settlement," it should assist preparers in determining whether previously unrecognized tax benefits should be recognized upon completion of an examination or audit by a taxing authority. Currently there is significant uncertainty as to how the term "ultimate settlement" (as used in paragraph 10(b) of FIN 48) could be reconciled with the statement in paragraph 12 of FIN 48 that, "A tax position need not be legally extinguished and its resolution need not be certain to subsequently recognize or measure the position." We believe that the framework established in the proposed FSP provides sufficient guidance to resolve this uncertainty while at the same time allowing for significant professional judgment to be exercised by preparers and auditors. While we acknowledge that many tax positions will still not be considered to be "effectively settled" upon completion of an examination or audit by the taxing authority, we commend the Board for promoting the ability to apply judgment in this area of accounting.

We suggest the following changes to enhance clarity and promote consistent application of the final FSP.

- We believe the threshold "highly unlikely," used in paragraphs 4, 5(c), and A1 of the proposed FSP, was intended to be consistent with the term "remote." If the Board did indeed intend the term "highly unlikely" to be equivalent in meaning to the term "remote," we recommend using "remote" instead of "highly unlikely." The term "highly unlikely" is not defined in authoritative literature and therefore is not commonly understood. Conversely, the term "remote" is used throughout the accounting literature and is defined in FASB Statement No. 5, as relating to conditions under which "the chance of the future event or events occurring is slight."
- Paragraphs 4 and 5 of the proposed FSP are largely duplicative. We suggest combining them as follows:

4. For purposes of applying paragraph 10(b) of Interpretation 48, ~~settlement has effectively occurred if the taxing authority has completed all of its required or expected examination procedures, the enterprise does not intend~~

~~to appeal or litigate any aspect of the tax position, and it is considered highly unlikely that the taxing authority would reexamine the tax position.~~

~~5. When all of the following conditions have been satisfied, a tax position shall be considered effectively settled through examination: when all of the following conditions have been satisfied:~~

- a. The taxing authority has completed its examination procedures including all appeals and administrative reviews that the taxing authority is required or expected to perform for the tax position.
- b. The enterprise does not intend to appeal or litigate any aspect of the tax position for the completed examination.
- c. Based on the taxing authority's widely understood policy, the enterprise considers it highly unlikely [~~remote~~] that the taxing authority would subsequently examine or reexamine any aspect of the tax position included in the completed examination, presuming the taxing authority has full knowledge of all relevant information.

- All of the examples included within the proposed FSP describe scenarios in which three positions are assessed on their technical merits, each of which fails to meet the recognition criteria prior to the examination by the taxing authority. This, combined with the text of the proposed FSP and proposed amendments to FIN 48, could be read to imply that the guidance in the FSP is only relevant to positions for which the recognition criteria has not been met. We recommend that the FSP be clarified to indicate whether the guidance in the FSP was intended to be relevant to positions that meet the recognition threshold in FIN 48 and for which a partial benefit was recognized in measurement, and recommend that the final FSP include a clarifying statement or provide an example illustrating the Board's intent.
- In Example 2, the model for considering whether the positions are effectively settled is presumed to be the same for all three positions. However, in most jurisdictions, we would expect that a review by an oversight committee would result in an enterprise appropriately concluding that because of the scrutiny of the oversight committee, it is highly unlikely [~~remote~~] that a taxing authority would reexamine the tax position. Therefore, we recommend that the Board modify the fact pattern to state that it is highly unlikely [~~remote~~] that the taxing authority would reexamine a position if it has been previously reviewed by an oversight committee, and we suggest the following changes to the narrative evaluation of Example 2:

Based on how the taxing authority would ~~now evaluate~~ apply the specific conditions in its policy, Enterprise Y could not assert that it is highly unlikely [~~remote~~] that the taxing authority will not reexamine the Positions B and C. Accordingly, Enterprise Y must wait until the statute of limitations expires in 20X9 to recognize the tax benefits from Positions B and C unless it can conclude that the Positions B and C would meet the more-likely-than-not recognition criteria based on evidence obtained through the examination process.

Enterprise Y would consider Position A to be effectively settled upon the completion of the oversight committee review in 20X8 because it is highly unlikely [~~remote~~] that the taxing authority would reexamine a tax position that had been approved by the oversight committee.

- In Example 3, we believe that the reasoning for why Positions B and C cannot be considered effectively settled upon the completion of the examination in 20X7 should be clarified. We suggest clarifying the "Fact Pattern" and "Evaluation" sections as follows:

Fact Pattern:

The taxing authority's ~~widely-understood~~ policy is that when an enterprise appeals a taxing position, any other tax position in the examination period can be examined or reexamined during the appeals process. Enterprise Z understands that in the past, when an enterprise appeals a tax position, the taxing authority has at their discretion examined or reexamined (or threatened to examine or reexamine) other positions within the same examination period that were not appealed. ~~in the past the taxing authority has used Positions B and C as leverage for negotiating settlement of Position A.~~

Evaluation:

Because Enterprise Z intends to appeal Position A, and because the taxing authority has had a practice of examining or reexamining (or threatening to examine or reexamine) positions that were not appealed, Enterprise Z is not able to conclude that it is highly unlikely ~~remote~~ that these positions will not be reexamined and thus, Positions A, B and C cannot be considered to be "effectively settled" prior to and it is the taxing authority's widely-understood policy to examine or reexamine other tax positions in negotiating settlements, Enterprise Z could not conclude that Position A, B, or C are effectively settled until the appeals process is being resolved.

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We would be pleased to discuss our comments and to answer any questions that the FASB or FASB Staff may have. Please do not hesitate to contact Jim Geary (973-236-4497) or Brett Cohen (973-236-7201) regarding our submission.

Sincerely,

PriceWaterhouseCoopers LLP