



committee on corporate reporting

March 28, 2007

Director—Technical Application and Implementation Activities Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Reference: Proposed FSP FIN 48-a

Dear Sir:

The Committee on Corporate Reporting ("CCR") of Financial Executives International ("FEI") wishes to share its views on the Financial Accounting Standards Board's ("FASB") Proposed FASB Staff Position No. FIN 48-a, Definition of Settlement in FASB Interpretation No. 48 (the "proposed FSP"). FEI is a leading international organization of 15,000 members, including Chief Financial Officers, Controllers, Treasurers, Tax Executives and other senior financial executives. CCR is a technical committee of FEI, which reviews and responds to research studies, statements, pronouncements, pending legislation, proposals and other documents issued by domestic and international agencies and organizations. This document represents the views of CCR and not necessarily those of FEI.

We strongly support the conclusions in the proposed FSP and believe that it succeeds in providing reasonable guidance on the definition of settlement as that term is used in FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes ("FIN 48"), consistent with the decision the FASB reached at its February 7, 2007 meeting. We believe that the proposed FSP will result in more accurate financial statement presentation that is more representationally faithful than other potential models of determining when an issue is settled through negotiation and therefore will better serve the users of financial statements than would other models.

We have considered the Alternative View in the proposed FSP and have the following observations:

• We agree that the actions of the tax authority in the examination may provide new information that should be considered and that the list in paragraph 7(b) of FIN 48 is illustrative rather than exhaustive. We note that the proposed FSP includes paragraph 10C, which provides specific guidance to ensure that such a reevaluation would occur under paragraph 10(a) of FIN 48 if new information is obtained during the course of the examination.

- In our experience, the information obtained during the examination process varies based on the tax position and the specific facts and circumstances related to that year. A taxing authority is not obligated to provide a basis for accepting part or all of a particular tax position in a given year and it would be imprudent in many cases to impute a motive or rationale for such an action. In cases where the tax authority does not provide a basis for accepting part or all of a particular tax position, the only conclusion that can be reached from the allowance or negotiation of a particular tax position is the position will be allowed in full or in part for the particular audit year or years.
- Our experience makes clear that many times the settlement may be the result of a negotiated trade-off or it may not be clear to what extent a position has been examined. It also may be explicitly stated during the audit that the settlement reached for one cycle will not apply for future years. In such cases, no new information may be provided that will enable the entity to change its judgment under paragraph 10(a). In these situations, we do not believe it would serve users of financial statements not to recognize the impact of the allowance of all or a part of the tax position for the earlier year or years when agreement has clearly been reached with the tax authority, despite having no new information to recognize the position for subsequent years.
- We also observe that paragraphs 10(a) and 10(b) are separate provisions of FIN 48. Paragraph 12 further clarifies that a "tax position need not be legally extinguished and its resolution need not be certain to subsequently recognize...the position." This sentence of paragraph 12 seems, by its placement, to refer to recognition in the context of paragraph 10(b). The Alternative View, if adopted, would effectively eliminate paragraph 10(b), at least as it applies to settlements that do not result in the legal extinguishment of the liability. We do not believe it is consistent with the original deliberations on FIN 48 to eliminate 10(b) as read in light of paragraph 12.

Specific Comments on the Proposed FSP

We believe that paragraphs 4 and 5 of the proposed FSP make essentially the same points, the latter in somewhat more detail than the former. We therefore recommend that they be combined.

In addition, we note that the sentence "A tax position need not be legally extinguished and its resolution need not be certain to subsequently recognize, derecognize or measure the position" has been moved from paragraph 12 to paragraph 10 in FIN 48, in addition to being modified to add derecognition. Since the sentence deals with derecognition (as amended) and measurement as well as recognition, while paragraph 10 otherwise deals only with recognition, we believe it would be better to leave this sentence in paragraph 12 which otherwise deals with recognition, derecognition and measurement.

We found Example 2 to be somewhat confusing. It was not clear to us whether, in the example, the taxing authority revised its policy on reopening audits prior to the completion of the audit. If so, it seems unnecessary to detail that there was a change in policy since it seems clear that the policy at the time of the completion of the audit would be the applicable one. If, on the other hand, the change in policy occurred in 2007 after the completion of the audit, then the conclusion of the example should reference newly added paragraph 10B to state that the tax position should no longer be considered effectively settled. We also believe that the Fact Pattern of Example 2 should be clarified to indicate that the taxing authority's revised policy in how it would evaluate the specific conditions may mean a reopening of the examination of Positions A, B, and C rather than stating that it "would routinely result in more examinations being reopened." In Example 3,

we would add that "Position C was not examined by the taxing authority" to the third bullet in the fact pattern section, consistent with the approach followed in the prior two examples.

In conclusion, we strongly support the approach of the proposed FSP to clarify when a tax position is effectively settled, with the minor clarifications noted above. We are appreciative of the action of the FASB to resolve this issue in time to address the transition difficulties it presented. We also believe that this proposed FSP improves financial reporting by ensuring that such tax benefits are reflected in the period in which they are effectively settled rather than delaying recognition to the reporting period in which expiration of the statute of limitations erases all doubt.

Sincerely,

Lawrence J. Salva

Chair, Committee on Corporate Reporting

Laurence & Lalva

Financial Executives International