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Technical Director  
Financial Accounting Standards Board  
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**File reference: Proposed FSP FIN 48-d**

PricewaterhouseCoopers LLP appreciates the opportunity to comment on proposed FASB Staff Position No. FIN 48-d, *Application Guidance for Pass-through Entities and Tax-Exempt Not-for-Profit Entities and Disclosure Modifications for Nonpublic Entities* (the "proposed FSP"). We support the Board's objective to provide further clarification and promote consistency in the implementation of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* (FIN 48). We agree with the principles-based approach described in the proposed FSP.

Overall, we believe that the proposed FSP will help achieve the Board's objective. While we agree with the Board's decision to exclude consideration of whether a tax is an income tax from the scope of the proposed FSP, we believe this topic continues to present challenges in practice and warrants further consideration by the Board at a later date.

While we support the basic approach of the proposed FSP, there are certain aspects of the proposal that we believe should be clarified or revised. As further discussed below, our specific recommendations are as follows:

- We do not believe the scope of the guidance should be limited to pass-through and not-for-profit entities,
- We believe the disclosure requirements for nonpublic entities should be reconsidered and the disclosure requirements for all entities should be clarified,
- We believe the guidance for determining attribution of tax to the entity or its owners should be clarified, and
- We believe the effective date of the FSP should be delayed.

We have included other editorial suggestions for your consideration in the Appendix.

**Scope**

We do not believe that the scope of the guidance should be limited to pass-through entities and not-for-profit entities. While the issues addressed in the proposed FSP may arise more frequently for pass-through entities and not-for-profit entities, many of the same concepts would be applicable to other types of entities. For example, there are instances where a for-profit entity might withhold and remit taxes on behalf of a shareholder.



If the FASB continues to believe that a limited scope is appropriate, we believe the scope should nevertheless be expanded to include entities that function similar to pass-through entities. This would include, for example, certain real estate investment trusts ("REITs"), regulated investment companies ("RICs") and cooperatives. Although technically *taxable* entities, these entities are taxed in a manner similar to a pass-through or other tax-exempt organizations.

### **Disclosure**

Paragraph 12 of the proposed FSP would eliminate the disclosure requirements in paragraphs 21(a) and 21(b) of FIN 48 for nonpublic entities, but would leave in place the requirements in the remainder of paragraph 21, as well as those in paragraph 24 related to the transition period. Those remaining disclosures include: (1) the amount of interest and penalties recognized in the income statement and the statement of financial position, (2) a description of positions for which it is reasonably possible that amounts will change in the next 12 months, and (3) a description of open tax years by major jurisdiction.

As proposed, we do not believe that the remaining required disclosures would be relevant in the absence of the context otherwise provided as a result of the disclosures in paragraphs 21(a) and 21(b). We suggest that the Board either require nonpublic entities to disclose the total unrecognized tax benefits at the balance sheet date(s) or consider eliminating, for nonpublic entities, the remaining disclosures under paragraphs 21(c), (d) and (e).

We believe that the proposed FSP should also clarify existing guidance, as written in the introduction to paragraph 21 of FIN 48, which applies to both nonpublic and public entities. The introduction to paragraph 21 would seem to require that *all* of the disclosures be provided for each annual reporting period presented in the financial statements. We believe that this may have been unintended as the paragraph relates only to the disclosures that are primarily forward looking in nature. These potentially include the disclosures in paragraphs 21(b), (c), (d) and (e). There is currently significant confusion in practice about these disclosures. We believe the guidance in paragraph 21 should be clarified to indicate which disclosures are to be presented for all periods and which should be presented only as of the most recent balance sheet date. We note that this would be consistent with other areas of GAAP such as pensions, where in accordance with FAS 132 (R), *Employer Disclosures about Pensions and Other Postretirement Benefits*, forward-looking information is only required as of the date of the latest balance sheet.

### **Attribution of Income Taxes to the Entity or its Owners**

We agree with the principle set out in the proposed FSP that whether income taxes are attributable to the entity or its owners should be based on the relevant laws and regulations of the taxing authority as opposed to who pays the tax. However, the guidance goes on to suggest that whether the shareholder is allowed to take credit for such payments may be determinative as to whether the tax relates to the owner or the company.

In particular, the penultimate sentence in paragraph 25 indicates that "[s]ome jurisdictions allow the owners to utilize payments made by the entity if they choose to file an income tax return." The last sentence in that paragraph suggests that such a situation points to attribution to the owner even though the entity is making the payments. Further, the second sentence in the example in paragraph 26(a) refers to the fact that the partners are entitled to a nonrefundable "credit" for their pro rata share of Entity A's income tax payment.



We are concerned that leaving this factor in the guidance, together with the example in paragraph 26(a), will lead to unintended results. For example, U.S. corporations may receive a credit for income taxes paid by their foreign subsidiaries. The fact that such amounts are creditable to the U.S. parent company does not change the fact that the amounts paid by the subsidiary represent income taxes and should be reported as such, for example, in the stand-alone financial statements of the subsidiary.

At a minimum, we encourage the Board to avoid using the term "credit" in paragraph 26(a). That term has a broader meaning than as used in this sentence which could create confusion in applying the concept in this example. Our recommendation is that the second and third sentences in paragraph 26(a) be modified as follows:

Jurisdiction J assesses an income tax on Entity A and allows Partners 1 and 2 to file a tax return and use their pro rata share of Entity A's income tax payment as a ~~nonrefundable credit~~ payment against the tax liability of the owners. Because the owners may file a tax return and utilize Entity A's payment as a ~~credit against their personal income tax~~ direct reduction against their personal income tax liability (or obtain a refund, if no amounts are due), the income tax would be attributed to the owners by Jurisdiction J's laws whether or not the owners file an income tax return.

We believe these changes will eliminate confusion in applying the concepts of this example.

#### **Effective Date and Transition**

The FASB has proposed that the FSP be effective for all entities currently applying the provisions of FIN 48 upon its issuance. It is unclear how significant of an impact the guidance may have on entities already applying FIN 48. Given the expected issuance of the FSP in June 2009, we recommend that it be effective for periods ending after September 15, 2009 to allow entities time to appropriately consider and apply the guidance.

We would be pleased to discuss our comments with the Board members or the FASB staff at your convenience. If you have questions regarding our comments, please contact William Schramm at (973) 236-4586 or Cheryl Canfield at (973) 236-5533.

Sincerely,

A handwritten signature in cursive script that reads "PricewaterhouseCoopers LLP".



APPENDIX

***Application Guidance for Pass-through Entities and Tax-Exempt  
Not-for-Profit Entities and Disclosure Modifications for Nonpublic Entities***

- The wording in the first sentence of paragraph 7 may imply that the payments are for income taxes attributable to the entities. We suggest the following revisions: "The comments and questions identified specific facts and circumstances relating to ~~income taxes~~ payments that might be ~~paid~~ made by pass-through entities..."
- We believe that the first sentence of paragraph 11 should be modified to improve clarity as follows. "The guidance provided by this FSP is a principles-based approach to addressing the following issues: ~~indicates how the general principles on definition of tax positions, tax attribution, and scope of financial statements of a group of related entities apply to pass-through entities and tax-exempt not-for-profit entities.~~"
- The last sentence in paragraph 21 addresses the recognition requirement of Interpretation 48 but does not mention measurement and disclosure. We suggest changing the sentence to "In applying the ~~recognition~~ requirements of Interpretation 48..."
- We suggest replacing the example in paragraph 22(b) with the following:

Entity S converted to an S Corporation from a C Corporation effective January 1, 20X0. Whether Entity S is subject to the built-in gains tax is a tax position subject to the provisions of Interpretation 48. Assuming Entity S is subject to built-in gains tax and disposed of assets subject to the tax in 20X7, the following are tax positions to consider related to the built-in gains tax: (1) whether the allocation of appreciation that existed at the time of the S Corporation election to the assets sold is correct and (2) whether the tax basis associated with the assets sold is correct. These examples of tax positions are not all inclusive.
- The example in paragraph 22(c) appears to be adding a second tax position to the end of the example. We suggest incorporating whether Entity N qualifies as a tax-exempt not-for-profit as a tax position in the beginning of the example.
- We recommend that the last sentence of paragraph 23 be modified as follows: "If the taxing jurisdiction's laws and regulations attribute income taxes to the owners, any amounts paid or received by the entity on behalf of such owner(s) due to or from the taxing jurisdiction shall be classified as a transaction with owners." Our recommended change is intended to clarify that not *all* amounts due to/from the taxing jurisdiction are recorded as transactions with owners; rather, only that subset that represent transactions on behalf of the shareholders/owners.
- The second sentence in the example in paragraph 28 should be revised as follows:

Entity B is a taxable entity that has ~~unrecognized~~ uncertain tax positions and a related liability for unrecognized tax benefits.
- In regards to the amendments, please note the addition of paragraph 4(e) appears to be duplicative of existing guidance in paragraph 4(d). Also, we question the placement of the examples shown in A34-A40. Rather than inserting these examples as a group after the illustrative disclosure in FIN 48, the guidance may be clearer if they are placed within the section of Appendix A that includes examples.