



## Manufacturers Alliance/MAPI Tax Councils Comments on Delaying Implementation of FIN 48

The Manufacturers Alliance/MAPI Tax Councils represent more that 225 companies that issue financial reports. Members have supplied background information, digested below, in support of the recommendation that the implementation of FIN 48 be deferred for at least one year. A much less desirable alternative is to defer implementation of requirements, specifically those related to disclosures, that rules were not "exposed" and subjected to public commentary. Member comments have been aggregated and summarized in bullet points that are organized according to the main themes of the comments. They provide excellent examples of the issues and problems companies confront in implementing FIN 48.

Inconsistent and changing guidance from the audit firms.—A greater number of members expressed concerns about the lack of guidance from the major firms—or inconsistencies in guidance—than about any other single impediment to implementation.

• We have requested but have not received from our audit firm, PwC, examples of FIN 48 disclosure language to be included in our upcoming 2006 10-K, the year prior to the year of adoption. Our year end is December 31. We know that we do not have to include the tabular schedule, but I believe we are required to disclose the expected effect of FIN 48 on the January 1, 2007 balance sheet. Our firm has not given us guidance on the expected disclosure.

We understand that FASB has agreed with an interpretation of the application of FIN
48 to temporary differences, under which such differences should only be subject to
the measurement standard. However, without official communication, companies
may implement the interpretation incorrectly and have disagreements with their firms.

- A significant issue is the ever-changing guidance from the accounting firms. The six largest accounting firms have been meeting and determining how they will collectively interpret ambiguous portions of this standard. Over a month ago, we provided position papers on two major issues to our audit team, which agrees that our position papers appear to be correct. Unfortunately, they believe that they will have to follow interpretation guidelines from their National Office, which does not want to change its earlier position until all six firms agree. We have been unable to get any answers for the last month because this "six-firm ship" is rudderless!!
- Our biggest concern with implementation of FIN 48 is the inconsistency among attest firms in determining the application of FIN 48. Even within the same firm, there clearly is inconsistency.
- We cannot get two of the "Big 4" accounting firms in the same US city to agree on FIN 48 application.
- Try getting the same firm in 2 different countries to agree is impossible, e.g., the U.S. and London branches.
- The FIN 48 checklists circulated by each of the Big 4 accounting firms reveal considerable inconsistency on what the firms are asking their clients to do in preparation for implementing FIN 48. They show that there is still a lot of confusion amongst the Big 4. This will cause inconsistency in reporting. In addition, the scope of work the firms expect their clients to do is probably not what FASB intended.

- Representatives of our firm commented that it was good we are not a calendar year company, as the firm was still determining its position with respect to application of FIN 48.
- We have received inconsistent guidance on whether an uncertain position should be analyzed on a year-by-year basis or aggregated for all years affected by the issue.
- Our firm has provided background documents, but is unwilling to commit to resolutions for certain issues. They refer to the need for the company to determine whether the analysis is correction or the language is suitable.
- We do not know and have no guidance on what constitutes "clear guidance" when nothing is published.
- We have a difficult time determining what we actually have to disclose. More guidance and time are needed.

Materiality.—Members report that they do not know how to apply materiality standards to difficult issues such as transfer pricing, state tax nexus, and the presence or absence of permanent establishment in foreign jurisdictions. Materiality is a key factor determining the scope, burden, cost, and timing of implementation.

- Nexus and permanent establishment are difficult issues for us. We have exposures, generally from acquisitions, which we do not really expect to have to pay. Nonetheless, we will have to accrue interest for years. The exposure was set up under purchase accounting (no, there is P&L effect), but the imputed interest each year appears to be a P&L charge. Trying to find what the "custom and practice" is for any particular jurisdiction is difficult, and we have a couple hundred to consider. This will take longer than six months. We actually have to engage to a professional in each country to find out the custom and practice. That is time-consuming and expensive.
- Our attest firm is requiring us to show that we have addressed all uncertain positions by proving all highly certain positions and providing extensive documentation.
- In the past we have applied a "risk-based" approach to transfer pricing and have determined where to do arm's-length studies based on the magnitude of international flows, as well as local tax requirements. The audit firm has asked us to analyze each and every trade flow, without regard to materiality.
- Do we have to prove we have addressed every possible uncertain position?
- With respect to state tax nexus and unitary taxation, we are being asked to demonstrate that a business is not unitary and that the provision of certain services could not create nexus issues in open years.
- We are concerned that we must book reserves for state tax exposures related to agency nexus with respect to third-party warranty work.
- There is some confusion as to the number of years to consider for nexus exposure, in the absence of a statute of limitations. Continuing to add one year's worth of exposure each year would cause the liability to be "highly" inflated.

Burden, cost, and scope.—The third most frequently identified concern centers on the burden and cost of implementation, one key factor of which is the scope of the work to be done.

 Developing processes to meet the FIN 48 requirements in a transparent manner for shareholders within the six-month implementation period allowed for calendar year companies is a significant and costly challenge. Historically, FAS 109 required the tracking of assets and liabilities on two sets of basis—U.S. GAAP and tax basis. This dual tracking in itself is difficult in practice. Now, FIN 48 effectively requires tracking four sets of basis – U.S. GAAP, tax basis "as filed," tax basis under FIN 48 rules, and tax basis according to management expectations of cash outflows. Furthermore, the focus of the tabular rollforward and "early warning" disclosures is on the amount of change in gross unrecognized tax benefits which do not provide any informative value on the expectations regarding cash flows or the effects on the provision for income taxes.

- Additional time is needed to educate shareholders on the new disclosures of tax issues. The disclosure requirements in FAS 109 and FIN 48 seem to conflict in a few areas. Specifically, FAS 109 requires the disclosure of tax carryfowards with expiration dates on an as filed basis (NOL's, foreign tax credit carryovers). FAS 109 also requires the disclosure of significant types of temporary differences. It is very possible that material NOL's and credit carryforwards will be disclosed that will not be recorded in the financial statements (so not disclosed in the significant types of temporary differences disclosure). These are issues that the shareholders/analysts need to understand.
- At least one firm has notified a client that it will expend considerable additional time related to (FIN 48) and expects additional fees for the remainder of the year to range from \$50,000 to \$100,000.
- The attest firms are trying to make a huge deal out of this. As some clients push back, the firms are revising their requirements but not on a consistent basis.
- Implementation of FIN 48 is requiring more time and resources that we have available. We are doing this because we do not want to "flunk" the implementation. A year's delay would allow us to complete the work in an orderly and complete manner.
- Two separate Big 4 accounting firms made presentations to us. Neither could answer the difficult questions. They say they do not know the answer, it is unrealistic, or different clients are going different ways on the issue. We were bombarded with offers of people from the Big 4 to come and work on the project with us and from software vendors who said they had the answer to keep track of things. For the most part, I think the accounting firms are learning from the companies instead of the other way around. By the way, both accounting firms said they thought the FASB needed actual corporate tax people so they do not publish unrealistic standards.
- We have many foreign locations. They are all responsible for taxes at the local level. Gathering the amount of information required for FIN 48 implementation from all those jurisdictions cannot be done well in such a short period of time. Most taxes in local jurisdictions are handled by financial people in the company, not tax people. Companies are properly reluctant to use the attest firm to do the FIN 48 work in foreign locations. We do not have the time to train people and cannot hire people to do it for us.
- In short, it is just too much for such a brief period of time. Accounting firms do not know FIN 48 well enough to be of assistance. The FASB should actually re-examine some of the provisions, as well delaying the effective date.

Lack of public input on disclosure requirements.—Many members believe that the expanded disclosure requirements of FIN 48 should not have been adopted without being exposed for public comment.

- The disclosure requirements are very broad. The firms have not provided guidance on how to implement them.
- Members believe that attest firms will require disclosure in the 10-K, e.g., the 2006 10-K for calendar year companies, of impact of implementing FIN 48. They do not know if the impact may be expressed as a range; some anticipate having to provide a number. This has the effect of accelerating implementation.

• At least one comment letter on the proposed standard recommended that FASB conduct field tests to determine the problems with implementation—prior to issuing the final rule, similar to the process followed with FAS 96, the predecessor to FAS 109. We believe that this is still a good idea.

Lack of convergence with International Financial Reporting Standards.—Foreignowned U.S. subsidiaries are concerned about the lack of guidance IFRS on any possible convergence. The differences/treatments being caused in this area are still being debated. The associated uncertainty adds to the burden of implementation.

**Training.**—A number of members have expressed concern that the short implementation schedule does not allow the firms or the companies to provide appropriate training to personnel.

- The firms have provided little if any training to their personnel worldwide.
- There is not enough time to do adequate worldwide training, particularly in light of the difference in US and international accounting standards.

Relying on the firms to represent the views of their clients.—We understand that FASB believes that the four or six largest firms will represent the views and concerns of their attest clients to the FASB. Members report that their experiences indicate that the firms are not able to provide accurate input on this subject. In at least one case, an audit partner has indicated that the accounting firms will not represent their audit clients before FASB.

Independence.—Where the attest firm does tax compliance work for an attest client, the client/taxpayer cannot go back and ask if there is an uncertain tax position in a return prepared by the firm because then the latter would be auditing its own work.