Mr. Lawrence Smith  
Technical Director  
Financial Accounting Standards Board  
Of the Financial Accounting Foundation  
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Dear Mr. Smith:


Thank you for the opportunity given to the Canadian Bankers Association (CBA) to comment on the Financial Accounting Standards Board’s ("Board") proposed interpretation, Accounting for Uncertain Tax Positions, an interpretation of FASB Statement No. 109" ("FSP 109").

The CBA is the main banking industry association representing over 60 of Canada’s domestic and foreign-owned chartered banks in Canada and it is a principal contributor to the development of accounting standards and public policies on issues affecting banks. As several of our members are SEC registrants, they are impacted by the accounting standards that are being proposed by the Board, since their financial statements must be prepared in accordance with U.S. GAAP for U.S. filings.

Our members appreciate the staff’s ongoing effort in providing proposed clarification of the accounting for uncertain tax positions when applying Statement 109 as well as providing proposed guidance on measurement, derecognition of tax benefits, classification, interim period accounting, disclosure and transition requirements.

We would, however, like to take this opportunity to make the following comments.
A. The Two-Step Process

There is an overriding concern that the proposals are unduly complex and will likely result in an overstatement of tax expense. As the proposals currently read, when tax positions are ultimately settled in whole or in part in a company's favour or when the statute of limitations expires, this would result in periodic and potentially large tax benefits being recorded.

We believe that the individual and separate consideration of recognition and measurement for each tax position results in an overly complex standard and volatility in tax expense that does not reflect the economics. Instead of considering whether each significant tax position is probable of being sustained, the uncertainty associated with each tax position should be treated as a measurement issue in determining a company's overall liability for tax in a particular jurisdiction.

The example in paragraphs A2 to A11 of the ED illustrates the difficulties with the "two-step" approach relating to recognition and measurement. Overall, Enterprise A has a liability for tax in its jurisdiction. The amount of this liability is affected by the outcome of its claims relating to research and experimentation credits on four projects. Simply because projects three and four are considered to have more costs (approximately 90%) that have historically been disallowed, no benefit for the projects can be recognized, even though paragraph A9 indicates that it is "probable" that Enterprise A will be able to claim about 10% of the costs.

We see no basis for not recognizing the benefit related to the 10% of costs that will be allowed since this is management's best estimate. We find it difficult to understand the principle here. If a company expects to receive only a small percentage of the benefit of a filed tax position, say less than 50 cents on the dollar, does that make the position improbable and therefore unrecognizable? If this is the case, the company's tax provisions would be missing significant elements of management's best estimate when there are tax positions where lower benefits are expected to be realized.

Given the impact and outcomes that could result from the proposals, we disagree with the two-step process. We believe that the different tax positions should be evaluated in terms of the amount of the benefit that is estimated to be realizable.

- Recommendation: We recommend that the Board provide additional guidance on using management's best estimate to measure the expected benefit associated with uncertain tax positions.

In the event the "Two-step Process" approach is to be applied we believe a lower threshold than "probable" is required. We make this recommendation for the following reasons.

1. Accounting Recognition Threshold Versus The Threshold Used When Filing an Uncertain Tax Position in Tax Returns

The ED establishes an accounting recognition threshold that uses the term "probable", which is a fairly high standard. Paragraph 6 of the ED states that "The probable recognition threshold is a positive assertion that a tax position is valid under the tax law and the enterprise is entitled to the economic benefits associated with that position. This probable level is consistent with the perceived level of confidence of an unqualified "should prevail" tax opinion. Based on the dual threshold definition, "probable" is a much higher threshold than "more likely than not". This is consistent with current GAAP literature. [See further discussion in section below].
The current industry practice is to file a tax benefit when it meets the threshold under applicable tax law where penalties would not be incurred for underpayment of taxes. Even though the reporting entity would record an additional liability for an amount representing the best estimate of anticipated additional payments (including interest), application of the ED’s proposal could potentially result in an overstatement of liabilities as the accounting threshold is much greater than the tax threshold. This is consistent with the alternative views expressed in the ED (reference: B40). This is also consistent with industry practice to file an uncertain tax position based on “more likely than not”, or at a threshold that is much lower than “probable”.

- **Recommendation:** We recommend that the Board reconsider the recognition threshold proposed by the ED and that it adopt a recognition threshold that is consistent with applicable tax laws.

2. **Measurement**

We do not agree with the measurement methodology proposed by the ED on recognition/de-recognition. We refer the Board to our comments above regarding the accounting and tax thresholds and dual threshold approach. We agree with using management’s *best estimate* rather than any prescribed formulas. We caution in your use of specific examples where formula solutions may replace this *best estimate* and lead to results other than management’s *best estimate*. The ED recommends that the measurement of a tax benefit that has met the probable criteria use the “single most-likely amount” [reference: paragraph 11]. This may be a sound definition in theory, but would be difficult to implement in practice. All estimates come within a range of possibilities; some amounts may have equal probability of prevailing. In addition, not taking into account of the overall range of possibilities may create misleading results. For example, a certain amount within a narrow range should be the most appropriate estimate if there is a 75% likelihood that the tax outcome will fall within such range. However, if each of the outcomes falling within this range has less than 25% likelihood of occurrence, and if there is a single outlier falling outside of that range with a 25% likelihood of occurrence on its own, this outlier will be taken as the “single most-likely amount” instead. Taking the outlier, which is the “single most-likely amount” in this case, and ignoring the more representative narrow range representing 75% of possible outcome, could be misleading. Therefore, significant judgment is still required as individual opinions could vary. We do not believe the current definitions of measurement would achieve the Board’s objective of improving comparability.

- **Recommendation:** We recommend that the Board clarify its position that management’s *best estimate* should be used, rather than any prescribed formula that may lead to a result other than management’s *best estimate*.

3. **Dual Threshold Approach**

The ED establishes an accounting recognition threshold at “probable” and a de-recognition threshold at “more likely than not”. As expressed above, “probable” is a higher level of likelihood than “more likely than not” as per EITF D-80 Q&A #8, which is quoted below:

*Q:* What does probable mean?

**A:** The term probable is used with the same meaning in both Statements. Statement 5 defines probable as a condition where the future event is “likely to occur.” As part of the project that led to Statement 114, the Board considered whether the loss threshold for recognition of loan impairment should be changed from the Statement 5 definition of probable to some other
threshold. Some suggested that probable had come to mean virtually certain and that the loss threshold should be changed to more likely than not. The Board recognized that application of the term probable in practice requires judgment, and to clarify its intent the Board reiterated the guidance in Statement 5 that probable does not mean virtually certain. Probable is a higher level of likelihood than "more likely than not."

Significant judgment is required (a) when determining whether a tax position is probable, (b) when to recognize an uncertain tax position, and (c) in a subsequent reporting period and for the purpose of de-recognizing a previously recognized position, when it is "more likely than not" that the tax position would not be sustained on audit. Using different recognition and de-recognition thresholds adds to the complexity of the standard, and will result in inconsistent results. As such, we do not believe the proposed dual threshold would necessarily achieve the Board's original objective of improving "comparability."

- **Recommendation:** We recommend that a single recognition/de-recognition threshold apply that is consistent with the threshold acceptable by the tax laws of applicable jurisdictions. This alternative would eliminate the ambiguity caused by the dual threshold approach.

### B. Complexity of the Standard

Our members have identified a number of areas that are inordinately complex, difficult to understand and implement. These include:

1. **Unit of Account**

   The term "Unit of Account" is not defined. As per paragraph 8 of the ED,

   "The appropriate unit of account for a tax position, and whether the probable recognition threshold is met for a tax position, is a matter of the individual facts and circumstances of that position evaluated in light of all available evidence."

   Footnote 6 provides an example of "unit of account", but fails to provide an exact definition. Footnote 6 reads,

   "In this example, the unit of account is the research project. The appropriate unit of account may be different based on facts and circumstances."

   Choices on the "unit of account" will have significant impact when making recognition assessments. An overall tax position may not qualify for recognition if it does not meet the "probable" threshold. For example, if a certain tax position is only 80% likely to be deducted for the full amount, the "probable" criteria is not satisfied and recognition will not be possible. However, the "probable" criteria may be circumvented if various facts and circumstances support the overall tax position to be subdivided into 2 "units of account". Grouping together the 60% portion that is very likely to be deductible as one unit, will make it easier for this unit to satisfy the "probable" threshold and gain recognition treatment. The other 40% portion that is "less than probable" to be deductible may simply be grouped as a separate unit. These concerns further illustrate how the two-step approach can be manipulated. As discussed above, we believe that enterprises should not be required to follow the two-step approach.

- **Recommendation:** Given that it is an important concept in this ED, we recommend that the Board provide a concise definition of the term "unit of account" and provide more
examples to clarify what constitutes a unit of account. The absence of a proper
definition would directly impact the comparability of financial statements. We also note
that the "unit of account" concept is not as important as suggested above, the issue of
uncertain tax positions is treated primarily as a measurement not a recognition issue.

2. Differences Related to Timing

The interplay between the proposals of the EC with defined tax asset/liability is not clear. The
example provided in paragraphs A22 and A23 is not straightforward. It would appear thatany
timing difference must be split between recognition of a defined tax asset/liability and an
additional liability for the difference between the reported tax return and the benefit that is
considered probable of being sustained. Determination of the defined tax asset/liability is also
based on whether the tax benefit is probable of being sustained. The logic in this example
appears to be circular and would be difficult to apply in real life situations.

- **Recommendation:** We recommend the Board provide clarification to assist
  implementors.

3. Disclosures

We have significant concerns about the proposed disclosure requirements. We believe that
different interpretations of the requirements would be possible.

When uncertainty raises likelihood possible, the management's best estimate of the benefit will not be realistic. We understand that Paragraph 7 of the EC includes "shall be presumed that the tax position will be examined by the relevant
taxing authority." However, until a tax position is examined, it is not clear whether it would
even be challenged by tax authorities. Companies will understandably be reluctant to disclose
the nature of the exposure at loss and to provide estimates of possible losses for tax positions
that have not yet been challenged. Yet it would seem that this sort of disclosure may be
required by paragraph 10 of PAR 5 from the moment the benefit of an uncertain tax position is
recorded.

- **Recommendation:** We recommend that the proposals should make clear that loss
  contingencies should generally be disclosed until there is evidence that they will be
  challenged. Until a position is challenged, the accounting for the tax position affects
  management's best estimate of the benefit. Only when a position is challenged is there
  a quantifiable risk that additional losses are reasonably possible.

4. Effective Date

Companies take many tax positions over the years and often operate in a number of tax
jurisdictions. Therefore, a company's overall filing position can be quite complex. The proposed
effective date which would be as of the end of the first fiscal year ending after December 16,
2005 will not allow sufficient time for companies to analyze their tax positions and adopt the
new standards.

- **Recommendation:** We recommend that the implementation date should be delayed a
  full year so that companies are able to analyze their tax positions under these new rules in
  conjunction with completing their 2006 tax returns.
Thank you for considering our comments. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

RKS