



July 31, 2009

Technical Director
International Accounting Standards Board
30 Cannon Street, 1st Floor
London, EC4M 6XH
United Kingdom

Dear Technical Director:

Re: Exposure Draft – Income Tax

FEI Canada is the all-industry professional membership association for senior financial executives. With eleven chapters across Canada and more than 2,000 members, FEI Canada provides professional development, thought leadership and advocacy services to its members. The association membership, which consists of Chief Financial Officers, Audit Committee Directors and senior executives in the Finance, Controller, Treasury and Taxation functions, represents a significant number of Canada's leading and most influential corporations.

The Committee on Corporate Reporting (CCR) is one of two national advocacy committees of FEI Canada. CCR comprises more than 20 senior financial executives representing a broad cross section of the FEI Canada membership and of the Canadian economy who have volunteered their time, experience and knowledge to consider and recommend action on a range of issues related to accounting, corporate reporting and disclosure. In addition to advocacy, CCR is devoted to improving the awareness and educational implications of the issues it addresses, and is focused on continually improving the standards and regulations impacting corporate reporting.

The body of this letter includes our general comments and observations on the Exposure Draft. Appendix A to this letter includes our responses to the specific questions raised.

Overall, we are in general agreement with the basic recommendations set out in the Exposure Draft. However, there are a number of areas where we remain concerned.

1) Convergence with U.S. GAAP

The introduction to the Exposure Draft highlights that this project was undertaken by the IASB (the Board) in part to reduce the differences between IFRS and U.S. GAAP. We concur with this objective. We acknowledge that there are a number of areas where the Board has reduced the differences between IFRS and U.S. GAAP. We believe that there are areas where the Exposure Draft fails to meet this objective and, given the current U.S. sentiment to delay transition to IFRS, we encourage the Board to eliminate the remaining differences in the final standard. Accounting for income taxes in the US, which is largely harmonized with Canada, is well-understood, relatively easy to apply in practice and requires few estimates.

2) Uncertain tax positions

This is a specific area where the rules proposed by the Exposure Draft do not harmonize with U.S. GAAP and will result in different reporting amounts for the same uncertain tax position (further details in Appendix A). We believe further guidance is required in this area.

3) Timing of implementation

While it is not explicit in the exposure draft, our expectation is that these recommendations will be effective at the beginning of fiscal 2011. We encourage the Board to proceed as quickly as possible with the finalization of these recommendations so that those countries adopting IFRS on January 1, 2011, including Canada, have the most time possible to deal with implementation and avoid a situation where countries must adopt the current IAS12 Standards and then quickly change to adopt these recommendations. Failing that, the effective date should be pushed to 2013 and that delay should be publicized as early as possible. It is our understanding that many Canadian companies are focusing their implementation efforts on the Exposure Draft, not IAS 12, and a change in that plan would need to be made as early as possible.

FEI Canada is pleased to have the opportunity to provide our views on this topic and trusts that you find our comments constructive. We would be happy to discuss our comments with you at any time.

Yours truly,



Victor Wells
Chair
Committee on Corporate Reporting
FEI Canada

APPENDIX A

Question 1 – Definitions of tax basis and temporary difference

The exposure draft proposes changes to the definition of tax basis so that the tax basis does not depend on management's intentions relating to the recovery or settlement of an asset or liability. It also proposes changes to the definition of a temporary difference to exclude differences that are not expected to affect taxable profit. (See paragraphs BC17-BC23 of the Basis for Conclusions.)

Do you agree with the proposals? Why or why not?

FEI Canada agrees with the definition of tax basis, with one exception, because the definition generally converges with Canadian and US GAAP. We believe the calculation of deferred income taxes under US GAAP is well-understood and, reflects the underlying substance of the liability.

Our exception to the definition is the requirement that the tax basis of the asset be based on its selling price at the financial reporting date. In our view, the tax basis of the asset should be measured assuming it will continue to be used after the reporting date, unless there are specific, documented and approved plans to sell the asset. Using the selling price to determine the tax basis at the financial reporting date will introduce unnecessary complexity into the deferred tax calculation and will base the tax calculation on the notion of liquidation value of the entity, rather than the going concern concept. We believe that an explicit statement in the standard as to the tax basis to be used will resolve the issues in practice.

Question 2 – Definitions of tax credit and investment tax credit

The exposure draft would introduce definitions of tax credit and investment tax credit. (See paragraph BC24 of the Basis for Conclusions.)

Do you agree with the proposed definitions? Why or why not?

We agree with the definitions. However, the usefulness of the standard would be enhanced if it also included the classification of each credit in the statement of profit and loss. Possibilities include a reduction of the related expense which could be tax expense or some other operating expense. This will eliminate diversity in practice.

Question 3 – Initial recognition exception

The exposure draft proposes eliminating the initial recognition exception in IAS 12. Instead, it introduces proposals for the initial measurement of assets and liabilities that have tax bases different from their initial carrying amounts. Such assets and liabilities are disaggregated into (a) an asset or liability excluding entity-specific tax effects and (b) any entity-specific tax advantage or disadvantage. The former is recognized in accordance with applicable standards and a deferred tax asset or liability is recognized for any temporary difference between the resulting carrying amount and the tax basis. Outside a

business combination or a transaction that affects accounting or taxable profit, any difference between the consideration paid or received and the total amount of the acquired assets and liabilities (including deferred tax) would be classified as an allowance or premium and recognized in comprehensive income in proportion to changes in the related deferred tax asset or liability. In a business combination, any such difference would affect goodwill. (See paragraph BC25-BC35 of the Basis for Conclusions.)

Do you agree with the proposals? Why or why not?

FEI Canada believes that these proposals introduce far too much complexity into accounting for deferred income taxes due to the requirement to split the asset or liability into one excluding entity-specific tax effects and another that reflects the entity-specific tax advantage or liability.

In addition, FEI Canada does not agree with including a discount or premium in this specific circumstance of deferred tax accounting. Absent a proposal to discount the deferred tax balance in its entirety, using the discount or premium approach in one isolated circumstance is unusual.

While we acknowledge the issues in practice under US GAAP, FEI Canada prefers the approach advocated in EITF 98-11.

Question 4 – Investments in subsidiaries, branches, associates and joint ventures

IAS 12 includes an exception to the temporary difference approach for some investments in subsidiaries, branches, associates and joint ventures based on whether an entity controls the timing of the reversal of the temporary difference and the probability of it reversing in the foreseeable future. The exposure draft would replace these requirements with the requirements in SFAS 109 and APB Opinion 23 *Accounting for Income Taxes-Special Areas* pertaining to the difference between the tax basis and the financial reporting carrying amount for an investment in a foreign subsidiary or joint venture that is essentially permanent in duration. Deferred tax assets and liabilities for temporary differences related to such investments are not recognized. Temporary differences associated with branches would be treated in the same way as temporary differences associated with investments in subsidiaries. The exception in IAS 12 relating to investments in associates would be removed.

The Board proposes this exception from the temporary difference approach because the Board understands that it would often not be possible to measure reliably the deferred tax asset or liability arising from such temporary differences. (See paragraphs BC39-BC44 of the Basis for Conclusions.)

Do you agree with the proposals? Why or why not? Do you agree that it is often not possible to measure reliably the deferred tax asset or liability arising from temporary differences relating to an investment in a foreign subsidiary or joint venture that is essentially permanent in duration? Should the Board select a different way to define the type of investments for which this is the case? If so, how should it define them?

FEI Canada believes that the proposals are appropriate because they reflect the actual tax liability that will be paid. We also support the partial convergence with Canadian and US GAAP.

The Board also should consider extending the exception to domestic, equity-accounted for investees because those investments also may have permanently reinvested earnings which will never be taxable unless the investment is sold. If those investees represent an integral part of the investor's business operations, which is the case in many such situations in Canada, it is highly likely that the equity investments will never be sold and the temporary difference is essentially permanent in nature. The Exposure Draft also notes that if temporary differences never are expected to affect taxable profit and loss, no deferred tax should be recognized. If this statement is intended to cover domestic equity investees, the standard should explicitly so state.

Question 5 – Valuation allowances

The exposure draft proposes a change to the approach to the recognition of deferred tax assets. IAS 12 requires a one-step recognition approach to recognizing a deferred tax asset to the extent that its realization is probable. The exposure draft proposes instead that deferred tax assets should be recognized in full and an offsetting valuation allowance recognized so that the net carrying amount equals the highest amount that is more likely than not to be realizable against taxable profit. (See paragraphs BC52-BC55 of the Basis for Conclusions.)

Question 5A

Do you agree with the recognition of a deferred tax asset in full and an offsetting valuation allowance? Why or why not?

FEI Canada agrees with this proposal since on a “net of valuation allowance” basis the net deferred tax asset will have been recorded at the same value as would have recorded under IAS 12 and, in addition, this approach will provide more information to the users of the financial statements.

Question 5B

Do you agree that the net amount to be recognized should be the highest amount that is more likely than not to be realizable against future taxable profit? Why or why not?

FEI Canada agrees with this proposal since the use of the term probable is consistent with the usage of this term elsewhere in other IFRS as noted in paragraph BC 55.

Question 6 – Assessing the need for a valuation allowance

Question 6A

The exposure draft incorporates guidance from SFAS 109 on assessing the need for a valuation allowance (See paragraph BC56 of the Basis for Conclusions.)

Do you agree with the proposed guidance? Why or why not?

FEI Canada agrees with the proposed guidance since it combines very well the guidance on this matter within U.S. GAAP and IAS 12 in a coherent manner.

Question 6B

The exposure draft adds a requirement on the cost of implementing a tax strategy to realize a deferred tax asset. (See paragraph BC56 of the Basis for Conclusions.)

Do you agree with the proposed requirement? Why or why not?

FEI Canada agrees with the proposal that the cost of implementing a tax strategy to realize a deferred tax asset should be included in the measurement of the valuation allowance since such strategies are undertaken for the explicit purpose of realizing the deferred tax asset.

Question 7 – Uncertain tax positions

IAS 12 is silent on how to account for uncertainty over whether the tax authority will accept the amounts reported to it. The exposure draft proposes that current and deferred tax assets and liabilities should be measured at the probability-weighted average of all possible outcomes, assuming that the tax authority examines the amounts reported to it by the entity and has full knowledge of all relevant information. (See paragraphs BC57-BC63 of the Basis for Conclusions.)

Do you agree with the proposals? Why or why not?

FEI Canada does not agree with this proposal for the reasons outlined below.

We believe that the issue of uncertain tax positions is a significant enough matter that it merits more guidance in the proposed standard than is provided currently. As has been acknowledged (within para BC 61), there is need for convergence on this issue and “divergent treatment of the uncertainty could have a significant effect on tax amounts recognized in financial statements”.

Leaving the accounting for uncertain tax positions unharmonized will cause two otherwise comparable entities (one of which follows IFRS and the other that follows U.S. GAAP) to potentially report significantly different amounts in relation to uncertain tax positions. More specifically, there differences will arise in three specific scenarios:

- (i) the entity that follows IFRS could likely record a higher tax benefit using a probability weighted calculation whereas a comparable U.S. GAAP entity would record no tax benefit since the tax position has not met the recognition threshold;*
- (ii) also, the requirement to use a probability weighted average approach versus the “cumulative-probability” approach – prescribed under the Financial Accounting Standard Board’s Interpretation No. 48 Accounting for Uncertainty in Income Taxes (“FIN 48”) – could cause significant differences since IAS 12 would require the tax benefit to be recorded at the probability weighted average of all outcomes whereas FIN 48 requires the entity to recognize the largest amount of the tax benefit that has a likelihood of greater than 50 percent; and*
- (iii) lastly, when new information becomes available, recognition of the revised tax benefit would be required but under FIN 48 such revision would be recorded only if the recognition threshold is met and, if not, the tax benefit is recorded only upon ultimate*

settlement of the tax position. In addition, FIN 48 makes clear that new information that becomes available after the balance sheet date but before the financial statements are issued does not change judgments made as at the balance sheet date. This same notion should be added to the final standard.

*In addition, we believe that the use of a probability weighted average approach of **all** the expected outcomes in all cases could prove to be unduly onerous upon implementation, especially in situations where the possibility of a different outcome is remote.*

In view of the above, we believe that a reasonable approach to this matter would be to value the uncertain elements of tax items based upon the “most likely outcome”.

Lastly, we believe that inclusion of guidance regarding what is encompassed by the term “tax position” (similar to that provided within para 4 of FIN 48) will be useful to both preparers and users of financial statements.

Question 8 – Enacted or substantively enacted rate

IAS 12 requires an entity to measure deferred tax assets and liabilities using the tax rates enacted or substantively enacted by the reporting date. The exposure draft proposes to clarify that substantive enactment is achieved when future events required by the enactment process historically have not affected the outcome and are unlikely to do so.

(See paragraphs BC64-BC66 of the Basis for Conclusions.)

Do you agree with the proposals? Why or why not?

FEI Canada agrees with this proposal on the basis that the actual enactment of tax rates, certainly in a parliamentary system of government, is more often than not a formality and, as a result, the announcement of a tax rate has the substantive effect of actual enactment. This may not be true in all systems of government, in which case the rates must be enacted before they could be applied.

Question 9 – Sale rate or use rate

When different rates apply to different ways in which an entity may recover the carrying amount of an asset, IAS 12 requires deferred tax assets and liabilities to be measured using the rate that is consistent with the expected manner of recovery. The exposure draft proposes that the rate should be consistent with the deductions that determine the tax basis, ie the deductions that are available on sale of the asset. If those deductions are available only on sale of the asset, then the entity should use the sale rate. If the same deductions are also available on using the asset, the entity should use the rate consistent with the expected manner of recovery of the asset. (See paragraphs BC67-BC73 of the Basis of Conclusions.)

Do you agree with the proposals? Why or why not?

FEI Canada agrees in principle with these proposals. However, we believe the tax basis should be determined based on using the asset, as noted in Question 1. Therefore deductions available on sale should not be considered unless there is a formal plan of disposal.

Question 10 - Distributed or undistributed rate

IAS 12 prohibits the recognition of tax effects of distributions before the distribution is recognized. The exposure draft proposes that the measurement of tax assets and liabilities should include the effect of expected future distributions, based on the entity's past practices and expectations of future distributions. (See paragraphs BC74-BC81 of the Basis for Conclusions.)

Do you agree with the proposals? Why or why not?

FEI Canada does not agree with this proposal as it could cause significant differences in situations where management expects that a future distribution will take place and eventually it does not or vice versa. Also, as is alluded to in paragraph B 79, there is an argument to be made that the income tax consequence of the distribution is triggered only upon the actual distribution taking place and therefore, in the absence of a present obligation to pay out the distribution, it would not be appropriate to take into account a future expectation of distribution.

We believe that a reasonable approach would be to allow entities to use the higher of the distributed or undistributed rate, which is the practice that has developed under U.S. GAAP. This approach, will not place undue emphasis on management's expectation of the distribution.

Question 11 Deductions that do not form part of a tax basis

An entity may expect to receive tax deductions in the future that do not form part of a tax basis. SFAS 109 gives examples of 'special deductions' available in the US and requires that 'the tax benefit of special deductions ordinarily is recognized no earlier than the year in which those special deductions are deductible on the tax return'. SFAS 109 is silent on the treatment of other deductions that do not form part of a tax basis.

IAS 12 is silent on the treatment of tax deductions that do not form part of a tax basis and the exposure draft proposes no change. (See paragraphs BC82-BC88 of the Basis for Conclusions.)

Do you agree that the exposure draft should be silent on the treatment of tax deductions that do not form part of a tax basis? If not, what requirements do you propose, and why?

FEI Canada recommends consistent treatment between IFRS and US GAAP regarding tax deductions that do not form part of a tax basis. The final standard should clearly outline the position with respect to these deductions.

Question 12 – Tax based on two or more systems

In some jurisdictions, an entity may be required to pay tax based on one of two or more tax systems, for example, when an entity is required to pay the greater of the normal corporate income tax and a minimum amount. The exposure draft proposes that an entity should consider any interaction between tax systems when measuring deferred tax assets and liabilities. (See paragraph BC89 of the Basis for Conclusions.)

Do you agree with the proposals? Why or why not?

FEI Canada agrees with the recommendation. Taking into account the two or more tax systems recognizes the appropriate liability that is expected to be paid/recovered.

Question 13 – Allocation of tax to components of comprehensive income and equity

IAS 12 and SFAS 109 require the tax effects of items recognized outside continuing operations during the current year to be allocated outside continuing operations. IAS 12 and SFAS 109 differ, however, with respect to the allocation of tax related to an item that was recognized outside continuing operations in a prior year. Such items may arise from changes in the effect of uncertainty over the amounts reported to the tax authorities, changes in assessments of recovery of deferred tax assets or changes in tax rates, laws, or the taxable status of the entity. IAS 12 requires the allocation of such tax outside continuing operations, whereas SFAS 109 requires allocation to continuing operations, with specified exceptions. The IAS 12 approach is sometimes described as requiring backwards tracing and the SFAS 109 approach as prohibiting backwards tracing.

The exposure draft proposes adopting the requirements in SFAS 109 on the allocation of tax to components of comprehensive income and equity. (See paragraphs BC90-BC96 of the Basis for Conclusions.)

FEI Canada agrees with the principle that backward tracing should be prohibited as this is the equivalent of retroactive restatement which makes comparison of results from period to period very difficult.

Question 13A

Do you agree with the proposed approach? Why or why not?

The exposure draft deals with allocation of tax to components of comprehensive income and equity in paragraphs 29 – 34. The Board intends those paragraphs to be consistent with the requirements expressed in SFAS 109.

FEI Canada agrees that that paragraphs should be consistent with SFAS 109 and encourage the IASB to include the same language as in SFAS 109 to achieve that result.

Question 13B

Would those paragraphs produce results that are materially different from those produced under the SFAS 109 requirements? If so, would the results provide more or less useful information than that produced under SFAS 109? Why?

The exposure draft also sets out an approach based on the IAS 12 requirements with some amendments. (See paragraph BC97 of the Basis for Conclusions.)

See question 13A. FEI Canada has not performed a direct comparison.

Question 14 – Allocation of current and deferred taxes within a group that files a consolidated tax return

IAS 12 is silent on the allocation of income tax to entities within a group that files a consolidated tax return. The exposure draft proposes that a systematic and rational methodology should be used to allocate the portion of the current and deferred income tax expense for the consolidated entity to the separate or individual financial statements of the group members. (See paragraph BC100 of the Basis for Conclusions.)

Do you agree with the proposals? Why or why not?

Consolidated tax returns are not permitted in Canada. In principle, FEI Canada agrees with the proposals outlined as they provide an opportunity to select an appropriate method for the consolidated entity and the members of the group to allocate income tax obligations.

Question 15 – Classification of deferred tax assets and liabilities

The exposure draft proposes the classification of deferred tax assets and liabilities as current or non-current, based on the financial statement classification of the related non-tax asset or liability. (See paragraphs BC101 and BC102 of the Basis for Conclusions.)

Do you agree with the proposals? Why or why not?

We agree with the proposals because the deferred tax asset or liability should be realized in the same operating cycle as the related asset or liability.

Question 16 – Classification of interest and penalties

IAS 12 is silent on the classification of interest penalties. The exposure draft proposes that the classification of interest and penalties should be a matter of accounting policy choice to be applied consistently and that the policy chosen should be disclosed. (See paragraph BC103 of the Basis for Conclusions.)

Do you agree with the proposals? Why or why not?

FEI Canada agrees with the proposals.

Question 17 – Disclosures

The exposure draft proposes additional disclosures to make financial statements more informative. (See paragraphs BC104-BC109 of the Basis for Conclusions.)

Do you agree with the proposals? Why or why not?

The Board also considered possible additional disclosures relating to unremitted foreign earnings. It decided not to propose any additional disclosure requirements. (See paragraph BC110 of the Basis of Conclusions.)

Do you have any specific suggestions for useful incremental disclosures on this matter? If so, please provide them.

FEI Canada agrees with the harmonization of disclosures to those in SFAS 109 and therefore supports removing those requirements currently in IAS12 (BC 105-106) and adding those requirements currently in SFAS109 (BC-107).

With respect to new disclosures, we do not agree that adding a numerical reconciliation of opening and closing amounts of deferred income tax assets and liabilities for each type of temporary difference would be particularly useful for users of financial statements. Income tax is a complex subject and, particularly in large multi-national organizations, is subject to other variables such as changes in foreign exchange rates. Disclosures that are useful for the users should be provided in explaining current year income tax charges.

We also agree that there should be no additional disclosures with respect to unremitted foreign earnings.

Lastly, while we agree that transparent disclosures are critical to financial reporting generally, the required disclosures for uncertain tax positions should strike the appropriate balance between useful information to users and protecting the entity's negotiation positions with tax authorities.

Question 18 – Effective date and transition

Paragraphs 50 -52 of the exposure draft set out the proposed transition for entities that use IFRs, and paragraph C2 sets out the proposed transition for first-time adopters. (See paragraphs BC111-BC120 of the Basis for Conclusions.)

Do you agree with these proposals? Why or why not?

While it is not explicit in the exposure draft it is assumed that these recommendations would be effective at the beginning of 2011. We would like to encourage the Board to proceed as quickly as possible with the implementation of these recommendations so that those countries adopting IFRS on January 1, 2011, including Canada, have the most time possible to deal with implementation and avoid a situation where countries must adopt the current IAS12 Standards and then quickly change to adopt these recommendations. Failing that, we would encourage a delay in implementation until complete harmonization with U.S. GAAP is achieved.