

**EFRAG
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EFRAG's draft response to the IFRS Interpretations Committee on the tentative agenda decision on IAS 12 – *Income Tax: rebuttable presumption to determine the manner of recovery*

The European Securities and Markets Authority (ESMA) is an independent EU Authority that contributes to safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as by enhancing investor protection.

ESMA has considered through its Standing Committee on Corporate Reporting EFRAG's draft response to the IFRS Interpretations Committee on the tentative agenda decision IAS 12 – *Income Tax: rebuttable presumption to determine the manner of recovery*. We thank you for this opportunity to contribute to EFRAG's due process and to comment on your draft response. We are pleased to provide you with the following comments aimed at improving the decision-usefulness of financial statements and the transparency and enforceability of IFRSs.

ESMA does not agree with EFRAG's position that the IFRS Interpretations Committee provides an interpretation to the amendment to IAS 12 in the wording the Committee uses in its tentative agenda decision.

Moreover we believe that removing the second paragraph of the tentative agenda decision as suggested by EFRAG could result in less decision-useful information (as it might create structuring opportunities and enforceability problems).

We feel supported by the Basis for Conclusions stating in paragraph 23 that the Board reworded the rebuttable presumption so that the term 'clear evidence' would not be required to rebut it as it was too ambiguous and could have led to abuse by entities that choose whether to gather clear evidence to achieve a favourable result. We believe the last sentence of IAS 12 paragraph 51C is clear and states that the presumption is rebutted if the investment property is depreciable *and* is held within a business model whose objective is to consume substantially all of the economic benefits embodied in the investment property over



time, rather than through sale. In substance the expression 'consume substantially all of the economic benefits over time' does not leave room for dual purpose analysis.

Having said that, we would support EFRAG if it would encourage the Interpretations Committee to recommend the Board to clarify the amendment to IAS 12 through the annual improvements project.

I would be happy to discuss all or any of these issues further with you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Julie Galbo'. The signature is written in a cursive style with a long horizontal stroke at the end.

Julie Galbo

Chair of ESMA's Corporate Reporting Standing Committee