

**Wayne Upton  
Chair  
IFRS Interpretations Committee  
30 Cannon Street  
London, EC4M 6XH  
United Kingdom**

**Re: The IFRS Interpretations Committee's tentative agenda decision on IAS 12 – *Income Taxes*: threshold of recognition of an asset in the situation in which the tax position is uncertain**

Dear Mr. Upton,

The European Securities and Markets Authority (ESMA) is an independent EU Authority that contributes to enhancing the protection of investors and promoting stable and well-functioning financial markets in the European Union (EU). ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

ESMA has considered the IFRS Interpretations Committee's (IFRS IC) tentative decision not to add to its agenda the request for clarification it received on the recognition of a tax asset in the situation when tax laws require an entity to make an immediate payment when a tax examination results in an additional charge, even if the entity expects, but is not certain, to recover some or all of that cash as it considered that paragraph 12 of IAS 12 – *Income Taxes* provides sufficient guidance on recognition of current tax assets and current tax liabilities.

ESMA agrees with the IFRS IC's decision not to add this specific issue to its active agenda. ESMA is however concerned that the third paragraph of the tentative agenda decision could be interpreted as suggesting that a tax asset can be recognised solely based on management's expectation to recover some or all of the cash without the need to assess whether the recovery is probable. ESMA points out that from a conceptual standpoint the recognition of an asset requires the flow of future economic benefits to be sufficiently certain. Consequently, ESMA would suggest the IFRS IC to clarify the wording of the tentative agenda decision and state that management's expectation should consider that the recovery of some or all of the cash requires is *probable*.



ESMA believes that the IFRS IC's conclusion that the requirements of IAS 12 should be applied raises broader questions about consistency between the requirements of IAS 12 and IAS 37 – *Provisions, Contingent Liabilities and Contingent Assets* with regards to uncertain tax positions. ESMA points out that the asset recognition criteria in IAS 12 and IAS 37 are different: IAS 12 refers to a 'probable' threshold whereas IAS 37 requires inflows of economic benefits to be 'virtually certain'. Nevertheless, IAS 12 does not give any indications on the measurement basis that should be used for uncertain tax positions.

ESMA observed divergent accounting policies and practices in this respect. Many market participants argue that, as IAS 12 is a specific standard for income taxes, its guidance has precedence over the more general guidance when recognising assets arising from uncertain tax positions. On the other hand, some market participants believe that the measurement guidance in IAS 37 is more appropriate for certain situation arising from tax positions, arguing that as the control of the asset is questionable, recognition of an asset is conceptually justified only if inflows of economic benefits are virtually certain.

ESMA notes that the diversity in the recognition and measurement of uncertain income tax assets or liabilities is widespread, and covers a variety of situations related to tax examinations or disputes/court cases. Accordingly, although ESMA believes that the issue is too broad to be addressed by the IFRS IC on a timely basis, we are of the view that additional guidance in this area is needed. Indeed, we believe that the issue on measurement of assets and/or uncertain tax position is sufficiently circumscribed to be included on the IASB's agenda as a narrow scope project. ESMA would therefore encourage the IFRS IC to refer this matter to the International Accounting Standards Board (IASB).

We would be happy to discuss these issues further with you.

A handwritten signature in blue ink, appearing to be 'S Maijoor', written over a light blue horizontal line.

Steven Maijoor  
Chair  
European Securities and Markets Authority

Cc: Hans Hoogervorst, Chairman, International Accounting Standards Board