

GENERAL INFORMATION AND QUESTIONS FOR THE ROUNDTABLE ON UNCERTAIN TAX POSITIONS

General Information

Use of the term "probable" in the definition of an asset and liability in FASB Concepts Statement No.6, *Elements of Financial Statements*, is very different from the use of the term in FASB Statement No.5, *Accounting for Contingencies*. Concepts Statement 6 was developed a number of years after Statement 5 was issued and uses probable to acknowledge that business and other economic activities occur in an environment characterized by uncertainties in which few outcomes are certain.

Statement 5 was one of the earlier statements issued by the FASB and well before the development of the conceptual framework. Its guidance relates to when a contingent loss, contingent gain, or an impairment of a previously reported asset should be reported and at what amount. Statement 5 does not define an asset or a liability.

FASB Statement No. 109, *Accounting for Income Taxes*, does not address the recognition or measurement of tax positions, but does use the criterion of "more likely than not" for reporting a valuation allowance related to the realizability of a deferred tax position. This criterion, however, is limited to the projected sufficiency of future taxable income and not the validity of a tax position.

Questions to be Discussed at the Roundtable

1. *Detection Risk*

Most income tax systems are founded on the principles of compliance, self assessment, and self-reporting. That is, taxpayers compute their taxable income based on tax law and report that amount to the taxing authority. The taxing authority has the enforcement power to assess a taxpayer's compliance with the applicable laws and Interpretations, but due to many factors, the taxing authority generally does not have full enforcement capabilities and is unable to assess full compliance by all taxpayers.

The Board has concluded that the likelihood the taxing authority will detect a taxpayer's position is not a relevant factor in recognizing or measuring a tax position. Do you agree or disagree? Why or why not?

2. *Approaches*

The Board considered many different approaches that either discretely considered recognition and measurement or combined recognition and measurement into a single methodology.

a. *Benefit Recognition-Probable*

The tax position is recognized when it is probable (as defined in Statement 5 when the future event or events are likely to occur) of being sustained on audit by the taxing authorities and measured at the taxpayer's best estimate of the amount that is probable of being sustained upon audit.

b. Benefit Recognition-More Likely than Not

The tax position is recognized when it is more likely than not (as defined in Statement 109) of being sustained on audit by the taxing authorities and measured at the taxpayer's best estimate of the amount that is probable of being sustained upon audit.

c. Benefit Recognition-Alternative View

The tax position is recognized when the tax position would meet the threshold under the applicable tax laws to avoid statutory penalties for underpayment of taxes. These benefits would be reduced by recording a liability for an amount representing the best estimate of anticipated payments to the taxing authority.

d. Loss Recognition

The tax position is recorded based on the entity's tax return, and a liability is recorded based on the provisions of paragraph 8 in Statement 5. That is, when it is probable that an additional payment will be made and that payment can be reasonably estimated, then the liability would be recorded at the taxpayer's best estimate of the probable payment.

e. Measurement Approach

Some have suggested an approach that does not reflect a recognition threshold, but requires measurement of the tax position based on an undiscounted probability weighted approach without regard to detection. This approach is currently being considered by the IASB.

The Board has concluded that the recognition and measurement of a tax position should be based on the probable benefit recognition model. Two Board members have objected to this view and have voted for the alternative view noted above. Do you agree with the Board's approach? Why or why not? Do you agree with the alternative view? Why or why not? Do you prefer one of the other approaches? Why or why not? Do you believe the best estimate measurement approach should be used for the benefit recognition approaches? Why or why not? Do you believe the best estimate measurement approach should be used for the loss recognition approach? Why or why not?

3. Unit of Account

The unit of account for applying this Interpretation is not the tax return or a specific line item on the tax return, but rather the individual positions that make up the tax return. The Board believes the unit of account for a tax position is based on facts and circumstances and should be evaluated in light of all available evidence.

Do you think the unit of account is articulately appropriately? If not, what changes would you make?

4. Disclosure

The Board believes that disclosure should be based on those disclosures of a gain contingency within Statement 5. This conclusion is predicated on the probable benefit recognition approach discussed above.

Do you agree with the disclosure requirement? If not, then why? Do you believe the disclosure requirement should change if the Board selects a different recognition or measurement model? If so, what disclosures should be required?

5. Complexity

Many have discussed the recent increase in complexity of financial reporting requirements. This complexity is often inherent in reporting on increasing diverse and complicated business transactions and arrangements, but also is a result of the different approaches and the volume of authoritative literature present in GAAP today.

What information needs and judgments will preparers and auditors need to make under the various approaches? Will information be readily available? What specialized resources will preparers need to employ? What specialized resources will auditors need to employ? Is one recognition approach less complex than the others? Is one measurement approach less complex than the others?

6. Classification of the Liability

For an enterprise that presents a classified statement of financial position, the liability created by the Interpretation that is not a temporary difference shall be classified as a current liability to the extent that the enterprise anticipates the payment of cash within one year or the operating cycle, if longer. The Board initially expressed a view that the liability should be recorded as a current liability regardless of the anticipated settlement date because the liability was similar to a "due on demand" note.

Do you agree the liability should be recorded based on the anticipated settlement date? If not, do you believe the liability is similar to a due on demand note? If not, then why?

7. The Nexus Issue

The Interpretation defines a tax position to encompass a decision to not file a tax return. Many comments were made that the tax position, to not file a tax return, is different from others actually reflected on a tax return. These constituents are concerned that the position on whether a particular state has the right to tax an entity will not be resolved since the statute of limitations does not begin until the tax return is filed.

Should the nexus issue be treated differently from other tax positions? If so, then why and what other tax positions should be treated differently? Would this increase complexity in applying the Interpretation?

8. Other Relevant Topics

If time permits, other relevant questions or alternatives may be discussed.