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Mr Kevin Stevenson
The Chairman
Australian Accounting Standards Board
PO Box 204
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19 November 2012

Dear Kevin

Exposure Draft 226 Withdrawal of Australian Interpretation 1039 Substantive Enactment of Major Tax Bills in Australia

We are pleased to have the opportunity to comment on Exposure Draft 226 *Withdrawal of Australian Interpretation 1039 Substantive Enactment of Major Tax Bills in Australia* (“ED 226”) issued by the Australian Accounting Standards Board.

Specific comments

Our comments on the specific matters raised for comment and on other issues are set out below:

1. Withdrawal of Interpretation 1039

We agree with the proposed withdrawal of Australian Interpretation 1039 *Substantive Enactment of Major Tax Bills in Australia* (AI 1039 or the Interpretation) from 1 July 2013 on the basis the withdrawal:

- removes an Australian specific interpretation on an issue that is not unique to Australia
- reduces perceived or actual differences with practice internationally in relation to when substantive enactment is considered to occur.

The challenge of determining when substantive enactment occurs is not an Australian specific issue. The withdrawal will result in differences between IFRS and Australian Accounting Standards on this issue being eliminated. This is consistent with the Board’s policy of only issuing a domestic Interpretation of an IFRS in rare and exceptional circumstances.

“Substantive enactment” is generally interpreted internationally to occur when the signing into law of the new legislation is a “mere formality”, such as when a president cannot override decisions passed formally by government. This may differ from an application of AI 1039 in the Australian context which defines substantive enactment to have occurred once a non-linked Bill has been tabled in Parliament and there is majority support for the passage of the Bill through both Houses of Parliament. The withdrawal of AI 1039 may therefore reduce differences with practice internationally in relation to when substantive enactment is considered to occur.

2. The AASB's basis for withdrawing AI 1039

We agree with the Board's overall basis for withdrawing AI 1039, as it assists in achieving consistency with the manner in which IAS 12 *Income Taxes* is applied internationally and reduces the risk that diversity in the interpretation of substantive enactment will arise after the withdrawal of AI 1039.

However, we note that in providing a basis for withdrawing AI 1039, the Board has amended the requirements in Australia for considering when a tax Bill is considered substantively enacted. This amendment does not have "transition" requirements; consequently the question could arise as to whether this amendment should be applied prospectively or retrospectively from 1 July 2013. In our view, the amendment should be applied prospectively and suggest that the Board consider whether any transitional requirements should be included in the final basis for withdrawal of the Interpretation. Without specific transitional requirements, under IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*, this new policy would need to be applied retrospectively.

If the withdrawal of the Interpretation was applied retrospectively, depending on whether "majority support" for a bill in both Houses of Parliament was considered to exist at the time, there may be consequences on the timing of substantive enactment in comparative periods. Examples of recent bills in which there have been delays between the introduction of bills and passage through parliament which could result in a significant impact include:

- Tax Laws Amendment (2012 Measures No. 2) Bill 2012 (Introduced to the House of Representatives on 24 May 2012, Bill passed by both Houses on 27 June 2012)
- Minerals Resource Rent Tax Bill 2011 (Introduced to the House of Representatives on 2 November 2011, Bill passed by both Houses on 19 March 2012).

We would be pleased to discuss our comments with members of the AASB or its staff. If you wish to do so, please contact me on 02 9335 7630 or Kim Heng on 02 9455 9120.

Yours sincerely



Martin McGrath
Partner