

REVISED MINUTES



Financial Accounting
Standards Board

To: Board Members

From: Short-Term Convergence—Income Tax Team (Kispert, Ext. 310)

Subject: Revised Minutes of the June 15, 2005 Board Meeting (Short-Term Convergence—Income Taxes) **Date:** June 23, 2005

cc: Bielstein, Smith, Petrone, Leisenring, IASB (McGeachin, Upton, Buchanan) Project Team (Cassel, J. Johnson, Posta, Thomas, Duke), Golden, McBride, Geary, Mahoney, Vincent, Sutay, Gabriele, Swift, Polley, FASB Intranet (e-mail), Getz

Topic: Income Tax Disclosures

Basis for Discussion: FASB Memorandum 14, dated June 2, 2005

Length of Discussion: 9:00am to 10:15am (EST)

Attendance:

Board members present: FASB: Herz, Schipper, Batavick, Crooch, Seidman, Young, and Trott
IASB: Leisenring

Board members absent: None

Staff in charge of topic: Kispert

Other staff at Board table: Thomas, Cassel, Posta, Bielstein, and Duke

Outside participants: None

Summary of Decisions Reached:

The Board considered certain differences between the disclosure requirements in FASB Statement No. 109, *Accounting for Income Taxes*, and IAS 12, *Income Taxes*.

The Board decided to amend the disclosure requirements in Statement 109 to:

1. Add “any adjustments recognized in the period for current tax of prior periods” to the list of examples of significant components of income tax expense in paragraph 45 of Statement 109.
2. Add to and expand upon the disclosure requirements in Statement 109 for the tax effects of intercompany asset transfers. The Board will consider alternative disclosure requirements at a future meeting.
3. Include the guidance in paragraphs 82A and 87A–87C of IAS 12 regarding disclosure of the potential income tax consequences of dividend payments.
4. Add to Statement 109 a required disclosure of the tax effects of dividends, if any, whenever entities voluntarily disclose dividends declared subsequent to the balance sheet date in the notes to financial statements.

The Board also considered but decided not to require additional disclosures regarding the nature and amount of undistributed earnings of foreign subsidiaries.

Objective of Meeting:

The objective of this meeting was to consider income tax disclosure requirements in the context of the short-term income tax convergence project. The objective of this project is to reduce or eliminate noncomparability that could result from the application of Statement 109 and IAS 12. The FASB and IASB staffs (the staffs) considered disclosures from the standpoint of convergence rather than performing a comprehensive review of ways to improve either IAS 12’s or Statement 109’s guidance. However, there is one exception to this approach that is a specific request from Board members to consider potential improvements to the disclosure requirements of unremitted earnings of foreign subsidiaries.

Matters Discussed and Decisions Reached:

1. Ms. Kispert stated that the staffs have had discussions with users regarding this topic and it was discussed at the October 2004 User Advisory Council meeting. During these discussions, users have not asked for any specific additional disclosures.
2. Ms. Kispert noted that the Board handout lists the disclosure topics for which the staffs have identified differences that may be resolved by either adding or eliminating guidance in Statement 109 or IAS 12. For purposes of the Board discussion, topics 4 through 8 were grouped together. The topics are:
 1. Components of Income Tax Expense
 2. Contingent Assets and Liabilities
 3. Intercompany Asset Transfers
 4. The Nature of Deferred Tax Assets
 5. Public Enterprises Not Subject to Income Tax
 6. Reconciliation between Tax Expense and Pretax Accounting Profit
 7. Amounts and Expiry Dates for Operating Loss and Tax Credit Carryforwards and Deductible Temporary Differences
 8. Consolidated Tax Returns
 9. Disclosures of Dividends:
 - a. Potential Income Tax Consequences of the Payment of Dividends
 - b. Post-Balance-Sheet Dividend Declarations
 - c. Convergence in Foreign Unremitted Earnings Disclosures
 - d. Improvements in Foreign Unremitted Earnings Disclosures.

Topic 1: Components of Income Tax Expense

3. Ms. Kispert stated that both Statement 109 and IAS 12 require an entity to disclose significant components of income tax expense. Both standards also provide a list of examples. Paragraph 80(b) of IAS 12 states that an entity should disclose any adjustments recognized in the period for current tax of prior periods. Although

Statement 109 does not list this as an example, presumably, if the adjustment was significant, it would be disclosed under Statement 109. However, the staffs believe that having similar examples in Statement 109 and IAS 12 will promote comparability. Therefore, the staffs recommend that this example be added to Statement 109.

4. Mr. Trott stated that the example in paragraph 80(b) of IAS 12 is helpful and important in regard to the guidance that the Board is proposing in the uncertain tax positions project. All Board members agreed to add this example to Statement 109.
5. Ms. Kispert noted that the staffs will recommend to the IASB that the examples in paragraphs 45(f) and 45(g) of Statement 109 be added to IAS 12. All Board members agreed to retain those examples in Statement 109.

Topic 2: Contingent Assets and Liabilities

6. Ms. Kispert stated that IAS 12's requirements related to disclosure of contingent assets and liabilities are proposed to be amended as a consequence of the forthcoming amendment to IAS 37, *Provisions, Contingent Liabilities and Contingent Assets*. She noted that the guidance in proposed paragraphs 88, 88A, and 88B is included in the Board handout. She noted that paragraphs 88 and 88A will require an entity to disclose information about estimation uncertainties relating to taxes. The staffs will be discussing the uncertain tax positions project with the IASB at their June 2005 meeting, and, at that time, the IASB will be asked to discuss its proposed disclosure requirements in paragraphs 88 and 88A. Therefore, the staffs recommend that the Board take no action at this time.
7. Mr. Trott stated that he agrees with the staffs' recommendation based on the Board's selection of recognition criteria in the uncertain tax positions project. However, if in the redeliberations of uncertain tax positions, the Board decides to change the confidence level for recognition, Mr. Trott stated that the issue of disclosures related to uncertain tax positions should also be reconsidered.

8. Ms. Seidman stated that she agrees with Mr. Trott. If the Board does reconsider disclosures, she stated that the IASB's proposed change to IAS 37 does provide useful guidance.
9. Mr. Young asked whether the staffs would have recommended that the disclosures in paragraphs 88 and 88A be added to Statement 109 if the uncertain tax positions project was not proceeding at this point in time. Mr. Thomas agreed that the staffs' recommendation would have been different if the uncertain tax positions project was not proceeding. The Board agreed not to add any incremental disclosures about uncertain tax positions at this time.
10. Ms. Kispert stated that Statement 109 does not include guidance similar to that in paragraph 88B of IAS 12¹ regarding disclosure of the effect of changes in tax rates or tax laws that are substantively enacted after the balance sheet date on current and deferred taxes. The staffs believe that this disclosure is either (a) not likely to be relevant or (b) not likely to be cost-beneficial to prepare in the short time frame that would exist in a pre-filing timeline if the disclosure is relevant. Thus, the staffs are recommending that the IASB eliminate this disclosure requirement. If the IASB determines that this disclosure is necessary, the staffs will ask the IASB to add a practicability exception. Ms. Kispert asked the Board whether they believe that the guidance in paragraph 88B is a necessary disclosure to add to Statement 109.
11. Mr. Batavick stated that the disclosure should not be added to Statement 109 because the short time frame means that an entity would most likely not be able to come out with anything meaningful. Also, to the extent that something can be calculated that is meaningful, that disclosure would fall under the subsequent events literature. Mr. Crooch agreed with Mr. Batavick. All Board members agreed with the staffs' recommendation not to amend Statement 109.
12. Mr. Leisenring stated the IASB may not agree with the staffs' recommendation to eliminate the disclosure in paragraph 88B of IAS 12 and that he personally would not mind adding a practicability exception.

¹ As proposed to be amended as a consequence of the forthcoming amendment to IAS 37.

Topic 3: Intercompany Asset Transfers

13. Ms. Kispert stated that at a prior Board meeting, the Board tentatively decided to eliminate the exception in paragraph 9(e) of Statement 109 that prohibits recognition of a deferred tax asset for the difference between the tax basis of an asset in the buyer's tax jurisdiction and the asset cost as reported in the consolidated financial statements for intercompany asset transfers.
14. Ms. Kispert acknowledged that an FASB staff member favors adding a requirement to Statement 109 that would require specific disclosures of the financial statement impact of intercompany asset transfers.
15. Ms. Kispert noted that the Board has decided to eliminate an exception in Statement 109 that does not exist in IAS 12, and IAS 12 does not have a related disclosure. Additionally, the staffs reviewed FASB Statement No. 96, *Accounting for Income Taxes*, and found that such disclosure requirements were not included even though Statement 96 required recognition of a deferred tax asset for intercompany asset transfers. The staffs have also considered current disclosure requirements in U.S. GAAP on related party transactions to determine if this disclosure would be otherwise required. Since the Board's tentative decision would require accounting for the tax effect of an intercompany transaction, some staff members believe that this will become a standard disclosure under FASB Statement No. 57, *Related Party Disclosures*, if the amounts are significant. Ms. Kispert stated that for those reasons, the staffs have rejected recommending adding a disclosure requirement to Statement 109 for intercompany asset transfers.
16. Ms. Schipper agreed with the staffs' recommendation, understanding that that decision would put pressure on Statement 57. To the extent that constituents rigorously implement Statement 57, she believes that intercompany asset transfers would be disclosed.
17. Mr. Trott stated that he would add a disclosure requirement for intercompany asset transfers to Statement 109. The accounting result of intercompany asset transfers is based on the application of the tax rates, not the carryover of the different value to

the asset or to the liability. He stated that he does not believe that it is clear that intercompany asset transfers would be disclosed under Statement 57.

18. Mr. Leisenring asked why the staffs believed that intercompany asset transfers would be disclosed under Statement 57.

19. Mr. Thomas responded that they are not being disclosed now because there is no financial statement impact due to the recognition exception; however, once a financial impact occurs, it should be disclosed.

20. Mr. Cassel stated that whether Statement 57 applies is debatable. At the moment, there is an impact on the financial statements that is not disclosed. The financial balance sheet reflects the deferral of the tax paid in the seller's jurisdiction. However, he stated that he is not aware of entities currently disclosing that impact as a result of a related party transaction. Once the exception is eliminated, there will be temporary differences that will have tax effects. Paragraph 43 of Statement 109 already requires disclosure of those elements that are significant. Mr. Cassel stated that the disclosure he was suggesting would really be a modification of the applicability of paragraph 43 to this new set of temporary differences. He noted that it would be more useful to users to know the differential, that is, the difference between what would be recognized now vs. what would have been recognized had the tax in the selling jurisdiction been deferred. The other disclosures he was suggesting would only be applicable if something out of the ordinary was happening, for example, the volume or the timing of the transaction with related parties was unusual, or the transactions were unwound after the balance sheet date.

21. Ms. Schipper asked Mr. Thomas why he did not find Mr. Cassel's argument compelling.

22. Mr. Thomas responded that there are three reasons: (a) this project is based on convergence rather than improvement, (b) IAS 12 and Statement 96 do not include the exception nor the disclosure, and (c) the documentation requirements in the U.S. tax code regarding transfer pricing and validation that an arm's-length price was paid

for intercompany transfers are very detailed and require extensive preparation and analysis.

23. Mr. Trott stated that he understands the scope issue but does not understand why the documentation of transfer pricing has any impact on this issue.

24. Mr. Thomas stated that a question arose during the research of this topic about whether an anti-abuse disclosure requirement was necessary. Mr. Trott stated that he did not view this disclosure as an anti-abuse provision but instead looked at it as a disclosure of an event.

25. Ms. Seidman stated that she views this issue as a significant change to consolidation procedures and she expects a healthy debate on this issue. She acknowledged that it would be an improvement to include a specific disclosure requirement provided that the accounting stays as the Board is proposing it. She stated that she does not believe that constituents will intuitively look to Statement 57, and, therefore, the disclosure requirement should be added to Statement 109.

26. Mr. Leisenring stated that this issue does not deal solely with consolidation. It could also affect a single entity that participates in multiple tax jurisdictions.

27. Mr. Crooch stated that there should be disclosure requirements for intercompany asset transfers in Statement 109. Mr. Batavick agreed that there should be a specific disclosure requirement in Statement 109. The Board decided to add a disclosure requirement for intercompany asset transfers to Statement 109 (no objections).

Topics 4 through 8 (described above)

28. Ms. Kispert stated that for topics 4 through 8, the staffs were not recommending any changes to Statement 109. Rather, the staffs will be asking the IASB to converge the requirements in IAS 12 with those in Statement 109. She asked the Board whether they preferred to retain the guidance in Statement 109 for each of those topics.

29. All Board members agreed that they preferred to retain the guidance in Statement 109.

Topic 9: Disclosures of Dividends

Topic 9a: Potential Income Tax Consequences of the Payment of Dividends

30. Ms. Kispert stated that topic 9a pertains to disclosure of the potential income tax consequences of the payment of dividends. Paragraphs 82A, 87A, 87B, and 87C of IAS 12 contain the disclosure requirements regarding this topic. In summary, those paragraphs require an entity to disclose, if practicable, the nature and the amount of income tax consequences that would result from the payment of dividends to shareholders when income is taxed at different rates depending on whether that income is distributed to shareholders.

31. Ms. Kispert noted that Statement 109 does not contain similar disclosure requirements because it currently requires an approach that is different than IAS 12 if income is taxed at different rates depending on whether that income is distributed to shareholders. However, the Board decided to adopt the IASB's guidance in this area. Therefore, deferred tax assets or liabilities would be measured based on the undistributed rate. To the extent that there is an obligation to distribute a portion of that income, any deferred tax assets or liabilities related to that portion should be remeasured using the distributed rate.

32. Because the Board has decided to adopt the IASB's approach, the staffs recommend that Statement 109 be amended to:

1. Add the paragraphs 82A and 87A disclosure requirements to Statement 109.
2. Add the paragraph 87B disclosure guidance to Statement 109. However, the disclosure should not be provided if the information would be so fragmented or piecemeal that it is not relevant, or it is misleading.
3. Add the paragraph 87C disclosure guidance to Statement 109.

33. Mr. Batavick asked if the calculation assumes a 100 percent earnings distribution. Ms. Kispert said that it did. He stated that it may be misleading and, therefore, is not in favor of adding these disclosure requirements.
34. Mr. Trott stated that he would add the disclosure requirements to Statement 109 because they provide an indication that there is an exposure to a reduction of net assets.
35. Ms. Schipper stated that an entity is never required to declare a dividend. She noted that this disclosure is a consequence of the Board's decision to converge and use the undistributed rate. Having decided to use the undistributed rate, this disclosure would give some implications of what users would have been able to see had the distributed rate been used. Given the paragraph 87B practicability exception, Ms. Schipper stated that she is not certain that this disclosure would result in giving that type of information. Thus, Ms. Schipper stated that she does not prefer to add these disclosure requirements to Statement 109.
36. Mr. Trott stated that because the Board has converged on the accounting, it should also converge on the disclosures. Also, these subsidiaries are not necessarily wholly-owned, thus, there are other participants in the dividend arrangement.
37. Mr. Crooch stated that he would like to adopt the requirements because they are convergent and follow from the Board's previous decision to require use of the undistributed rate.
38. Ms. Seidman stated that in the spirit of convergence, she supports adding the disclosure requirements. However, she noted that the disclosure should be more explicit to make it clear that this is a hypothetical scenario.
39. Mr. Young agreed with the staff's recommendation. The Board agreed to add the guidance in paragraphs 82A, 87A, 87B, and 87C to Statement 109 (no objections).

Topic 9b: Post-Balance-Sheet Dividend Declarations

40. Ms. Kispert stated that paragraph 81(i) of IAS 12 requires an entity to disclose the amount of income tax consequences of dividends to shareholders of the entity that were proposed or declared before the financial statements were authorized for issue, but are not recognized as a liability in the financial statements. Statement 109 does not contain a similar requirement.
41. Ms. Kispert noted that in many jurisdictions, the auditing standards require disclosure of material subsequent events. Accordingly, many entities are likely currently disclosing the declaration of a dividend that occurs after the date of the financial statements but before those financial statements are issued.
42. Ms. Kispert stated that the staffs do not believe adding a requirement to make a post-balance-sheet disclosure of dividends declared is logical for an amendment to Statement 109 because this is not believed to be a significant issue for U.S. GAAP preparers, and, if significant, is likely to be required by the auditing literature. However, the staffs are recommending that Statement 109 be amended to require the disclosure of the *tax effects of dividends*, if any, when those dividends declared subsequent to the balance sheet date are disclosed in the financial statements. Additionally, the staffs will recommend to the IASB that IAS 12 retain its current disclosure requirements for the tax effects of post-balance-sheet dividend declarations because the distributed versus undistributed rate issue is likely to be a more significant issue for IFRS filers, and IFRS requires post-balance-sheet disclosures about dividends.
43. Ms. Kispert then asked the Board whether they agree with the staffs' recommendation that when a preparer makes a post-balance-sheet disclosure of dividends declared, the tax effects, if any, of that dividend also should be disclosed.
44. Mr. Trott stated that he agrees with the staffs' recommendation for the same reasons he mentioned for topic 9a.
45. Ms. Seidman asked whether there is a requirement to disclose the declaration of dividends subsequent to the balance sheet date in IFRS. Ms. Kispert stated that that requirement is included in IAS 1, *First-time Adoption of International Financial*

Reporting Standards, and IAS 10, *Events After the Balance Sheet Date*. The Board agreed to add the guidance in paragraph 81(i) of IAS 12 to Statement 109 (no objections).

Topic 9c: Convergence in Foreign Unremitted Earnings Disclosures

46. Ms. Kispert stated that at a joint Board meeting, the Boards decided to retain the exceptions in Statement 109 and IAS 12 for the recognition of deferred tax liabilities for certain investments in foreign subsidiaries (or foreign corporate joint ventures) for practical reasons. In addition, the IASB decided to amend the language in IAS 12 so that it is the same as that in Statement 109 and APB Opinion No. 23, *Accounting for Income Taxes—Special Areas*, with respect to the recognition requirements of unremitted foreign earnings. Since the IASB has decided to adopt the FASB's approach, the staffs will recommend that the IASB adopt the related disclosure requirements in Statement 109 to the extent there are differences.

47. Ms. Kispert asked the Board whether it prefers to retain the current guidance in Statement 109. The Board agreed to retain the current guidance (no objections).

Topic 9d: Improvements in Foreign Unremitted Earnings Disclosures

48. Ms. Kispert stated that during deliberations, certain Board members expressed interest in improving the disclosure requirements for foreign unremitted earnings. The staffs have constructed a new disclosure requirement, referred to as the foreign earnings table, for consideration by both Boards. This disclosure would require a tabular summary of historical repatriations and current amounts of unremitted earnings by effective foreign tax rates. The amounts of unremitted earnings would be separated by those earnings for which a deferred tax liability has been recognized and those for which no deferred tax liability has been recognized.

49. Ms. Kispert stated that the benefits of the foreign earnings table are that it would provide:

- a. Historical information about an entity's prior repatriations of earnings as well as information about an entity's current unremitted earnings.

- b. Some insight about whether the entity's assertion of permanent reinvestment is accurate and the trend of which earnings are being remitted.
- c. The amount of earnings that are deemed to be permanently reinvested and the foreign tax rates at which those earnings are taxed (without a practicability exception).
- d. Qualitative information on an entity's past behavior.

The foreign earnings table also has some important limitations in that it:

- e. Does not provide the expected cash outflow that would occur if earnings were repatriated.
- f. Requires disclosure of the unremitted foreign earnings on a financial reporting basis (rather than on a tax basis). For example, in the United States, repatriated foreign earnings are based on U.S. taxable earnings and profits (as defined by the U.S. tax code).
- g. Does not give users insight about an entity's foreign tax credit posture (which is an important element in determining whether the entity would incur a liability upon repatriation).

However, all of these limitations are linked to the exception for recognition.

50. Ms. Kispert stated that the staffs have discussed this foreign earnings table with several preparers and users in this project's resource group to ascertain their preliminary views. The users agreed that while it is more useful for an entity to disclose the incremental amount of tax that would be assessed if the earnings were remitted, if an entity does not disclose the unrecognized deferred taxes, users will still be able to get some information regarding unremitted earnings from the foreign earnings table. The staffs discussed this table with several preparers as well. Overall, preparers believed currently required disclosures were adequate. Others indicated that the table could provide a "roadmap" that would disclose too much information about the foreign tax posture to competitors.

51. Ms. Kispert noted that if the Board decided to require the foreign earnings table disclosure, there are two possibilities for its application:

- All Entity Approach: Under this approach, all entities that had foreign earnings that were unremitted or remitted in the current or prior period would be required to include the foreign earnings table.

- If Impracticable Approach: Under this approach, only entities that determine that the disclosure of the deferred tax liability for foreign unremitted earnings is impracticable would be required to include the foreign earnings table.

52. Ms. Kispert stated that the staffs were recommending that both Boards require all entities to disclose the foreign earnings table.

53. Ms. Seidman asked for clarification on the interaction between this issue and the requirement to disclose the potential income tax consequences of the payment of dividends.

54. Ms. Kispert stated that topic 9d deals with permanently reinvested earnings and that the proposed foreign earnings table would show the rates at which earnings are being taxed. Mr. Trott added that this disclosure does not deal with the difference between the undistributed and distributed rates.

55. Ms. Seidman stated that the ideal disclosure would be the deferred tax liability itself. The proposed foreign earnings table is a fallback in cases in which an entity cannot practicably determine the deferred tax liability. Thus, her initial preference was to only require entities that do not disclose the deferred tax liability to disclose the foreign earnings table. However, after further consideration, Ms. Seidman stated that she would not require this disclosure because the risk that this table could be misinterpreted is extremely high.

56. Mr. Batavick stated that the limitations of the foreign earnings table that were discussed are significant. In addition, given that constituents will already be asked to make many changes due to this project, he stated that he is opposed to requiring entities to disclose the table.

57. Mr. Thomas stated that a member of the project's resource group prepared the foreign earnings table disclosure with its company's foreign earnings amounts. The total amount of time spent preparing the table and having discussions with the staffs was 20 hours for that particular company.

58. Ms. Schipper stated that she supports requiring the foreign earnings table because the Board decided to retain the practicability exception for recognition due to the computational burden that would be imposed if the exception was removed. She observed that the foreign earnings table takes the pieces of information that are not impracticable and puts them in a tabular format. The information that is excluded from the table is excluded for the same reasons that the exception has been retained. This disclosure is a partial substitute for the amount that would have been recognized had the Board not deemed the calculation of the recognized amount to be impracticable. Ms. Schipper stated that she would require the foreign earnings table for all entities because the table shows information that would not otherwise be disclosed, such as foreign jurisdiction tax rates.
59. Mr. Trott stated that he would not require the foreign earnings table because the key to calculating the deferred tax liability on foreign unremitted earnings is the interaction with foreign tax credits, which the table does not provide.
60. Mr. Crooch stated that he would require this disclosure for all entities.
61. Mr. Young stated that he supports requiring the foreign earnings table because it provides useful information to users. The breaking out of tax rates is particularly valuable in understanding what the cash implications would be if the earnings are repatriated. He acknowledged the limitations but stated that he would require this disclosure.
62. Ms. Schipper clarified that this foreign earnings table does not take into account foreign tax credits. Mr. Trott added that the cash for the taxes paid in these foreign jurisdictions has already been recognized.
63. Mr. Herz stated that he also does not want to require this disclosure. First, the project is based on convergence and it is not a project for which the objective is improvement beyond convergence. Second, the limitations of the foreign earnings table are significant. Third, although there is incremental information included in the table, it does not help users determine what the cash outflow would be if earnings are repatriated.

64. The Board decided not to require the foreign earnings table. Mr. Young and Ms. Schipper objected.

Follow-up Items:

None.

General Announcements:

None.