



April 18, 2013

Ms. Susan Cospers  
Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

Reference: EITF Issue 13-C

Dear Ms. Cospers:

The Committee on Corporate Reporting ("CCR") and the Committee on Taxation ("COT") of Financial Executives International ("FEI") wishes to share their views on the Proposed Accounting Standards Update, *Presentation of an Unrecognized Tax Benefit When a Net Operating Loss Carryforward or Tax Credit Carryforward Exists* (EITF-13C).

FEI is a leading international organization of 15,000 members, including Chief Financial Officers, Controllers, Treasurers, Tax Executives and other senior financial executives. CCR and COT are technical committees of FEI, which review and respond to research studies, statements, pronouncements, pending legislation, proposals and other documents issued by domestic and international agencies and organizations. This document represents the views of CCR and COT and not necessarily those of FEI.

In general, we support the approach taken in the proposed update to clarify the conditions for netting of uncertain tax liabilities against deferred tax assets associated with carryforwards. We believe this change will result in a more faithful representation of a company's financial situation as it will no longer reflect a liability that would not result in an incremental outflow of cash.

While we support the general approach of the proposal, we question the benefit of applying this change retrospectively in consideration of the potential costs. We believe a retrospective adoption approach will produce only a modest benefit to users but require significant time and expense to implement. Further, we believe retrospective application could result in changes to current and deferred tax expense for prior periods that would

be confusing to users. Because we believe the cost of implementation on a retrospective basis is more than the benefit, we support a prospective adoption approach.

We also note that there are loss carryforwards that are not the result of net operating losses. For example, capital losses and excess interest deductions can also be carried forward. Accordingly, we believe that the Board should revise the proposed ASU to refer to a "tax loss" rather than a "net operating loss" in order to avoid confusion about whether provisions apply to all types of losses that can be carried forward.

In addition, as discussed below, we believe that the tax provision amounts for prior years may need to be revised to reflect changes to the current and deferred tax provisions as a result of a change on the statement of financial position from uncertain taxes payable to a reduction of deferred tax asset. We believe it is important to clarify this aspect of the proposal in order to ensure consistency in practice.

In response to the specific questions posed in the proposal:

**Question 1: Do you agree with the proposed approach for the presentation in the statement of financial position of unrecognized tax benefits when net operating loss carryforwards or tax credit carryforwards exist? If not, what approach do you prefer and why?**

We agree with the proposed approach for presentation in the statement of financial position. When, by law, a tax liability will be satisfied not through an outflow of cash but with a reduction of an available carryforward, we agree it is more representationally faithful to record the items on a net basis.

While we agree with the general approach, we believe there is some ambiguity that should be clarified in the proposed guidance where the utilization of the carryforward is elective rather than mandatory.

In the proposed amendment, paragraph 740-10-45-10A states that "(a)n unrecognized tax benefit, or a portion of an unrecognized tax benefit, shall be presented in the statement of financial position as a reduction to a deferred tax asset for a net operating loss carryforward or a tax credit carryforward, except as follows. To the extent a net operating loss carryforward or tax credit carryforward at the reporting date is not available under the tax law of the applicable jurisdiction to settle any additional income taxes that would result from the disallowance of a tax position, the unrecognized tax benefit shall be presented in the statement of financial position as a liability." This proposed requirement means that if a carryover is available, even if application is optional and requires election by the taxpayer, the liability should be netted against the asset.

However, paragraph BC5 states that "(i)f under the tax law for the applicable jurisdiction, the net operating loss carryforward or tax credit carryforward would be applied to the additional liability that would arise in the event that the uncertain tax position is not sustained and the settlement related to the uncertain tax position will not result in a payment of taxes, but instead would reduce the net operating loss carryforward or tax

credit carryforward, then the deferred tax asset presented in the statement of financial position would be reduced for the unrecognized tax benefit accordingly.” This sentence suggests that the netting may not occur if the offset is elective but only if the offset “would” occur. We believe this ambiguity should be clarified through a change to one of the paragraphs.

In addition, we believe it would be worthwhile to incorporate guidance regarding short-term and long-term positions for both the deferred asset and unrecognized tax benefit to ensure appropriate classification when netting the positions.

**Question 2: Do you agree that no new recurring disclosures about the presentation of unrecognized tax benefits should be required? If not, what disclosures would be appropriate?**

We agree no new recurring disclosure is required. As the existing disclosure shows uncertain tax positions on a gross basis regardless of whether they would be settled in cash or directly offset a deferred tax asset (netted under existing informal guidance), we do not believe that increased clarity concerning appropriate netting should require additional disclosure.

However, we believe there should be clarification related to the year-end deferred tax balance disclosure to specify whether deferred tax assets are presented gross or net of the unrecognized tax benefit (see ASC 740-10-30-5 and ASC 740-10-50-2).

**Question 3: Do you agree that the proposed Update should be adopted retrospectively? If not, why not?**

We do not agree that the proposed Update should be adopted retrospectively. While netting of the liability for uncertain tax against a loss or credit carryforward that would offset any liability is an improvement in financial statement presentation, it is only a modest benefit to users and does not justify the time and expense of retrospective application.

In most situations, uncertain tax liabilities are settled over many years. In addition, the liability may be settled for less than the carrying amount as the guidance on uncertain taxes is biased toward a liability in excess of a “fair value” amount (e.g., no benefit recognized for an uncertain tax position if the position doesn’t reach more likely than not under the law, the assumption of full audit and knowledge by tax authorities). Consequently, in most cases, the existing liability wouldn’t be expected to translate into a cash outflow in the near term. Further, to the extent there would be extensive offsetting against carryforwards, preparers may decide to provide qualitative disclosure around the expected method of settlement, even if the liability and asset are presented on a gross basis in the statement of financial position. Therefore, we believe the decision usefulness of a net presentation would be quite small.

In contrast, we believe that for some preparers, there could be extensive time required for retrospective adoption. Retrospective application would require reviewing at least 5

years of financial data to determine if there were a change to total assets presented on the 5 year summary. The tax provision amounts for the last 3 years may need to be revised to reflect changes to the current and deferred tax provisions as a result of a change on the statement of financial position from uncertain taxes payable to a reduction of deferred tax asset. Further, because the available balance of loss or credit carryforward within the 5 year period may be affected by uncertainties in prior years, preparers may be required to go back much further than 5 years in order to adopt retrospectively. Because tax disputes can exist for many years, this may require examining 10 or more years of history.

Many companies operate in numerous tax jurisdictions around the world. Each jurisdiction has specific rules governing the use of loss and credit carryforwards. There may be limitations on the amount of each carryforward that can be used in a particular period and those limitations can interact in ways that vary from year to year and from situation to situation. For example certain amounts of the U.S. general business credit are subject to a limitation on utilization against the regular tax liability and are also limited based on alternative minimum tax liability while other amounts of the general business credit are only subject to the regular tax liability limitation. Extensive computations incorporating uncertain positions at each point in time may be required to determine the available utilization of each of many available credits.

In addition, in a particular jurisdiction, there may be tax losses that would be used automatically against the liability from an uncertain position (losses in the same entity) and losses that would be available but wouldn't automatically offset a liability (optional loss surrender or profit pooling). Because in these jurisdictions companies can surrender losses on a voluntary basis and may be able to change the allocation on examination and may take other factors such as foreign tax credits in another jurisdiction into account, extensive analysis may be required to determine what losses would be available for offset at any point in time.

Finally, given the potential changes to the tax provision and deferred tax balance disclosure as noted in the responses to questions 1 and 2, additional time may be required to implement retrospectively, with modest benefit (and perhaps confusion) to financial statement users.

We would point out that the transition to full implementation of guidance on uncertain tax positions (issued as FASB Interpretation No. 48) was accomplished on a prospective basis. The original implementation of the guidance on uncertain positions required balance sheet changes as previously the tax associated with timing items were generally not recorded as a liability offset by a deferred tax asset. If the full implementation of guidance on tax uncertainties was done prospectively, we believe this modest clarification of that guidance should be done in a similar manner rather than taking resources away from higher value compliance and reporting responsibilities.

**Question 4: For preparers, how much time is necessary to implement the proposed Update? Should the effective date for public and nonpublic entities be the same? If not, why not?**

As noted in the response to question 3, there can be numerous factors (number of jurisdictions with tax loss or credit carry forwards, number of open tax years, specifics of law within the jurisdiction) that will influence the implementation of the proposal. Given the inherent complexity, breadth, and uncertainty of retrospective application, it is difficult to estimate the time required prior to beginning implementation and the number of hours required to implement will vary greatly among preparers. However, we believe there could be extensive time required to implement the proposal for many preparers, if retrospective adoption is required. Given the complexity of retrospective application, we would recommend adoption no earlier than the next full fiscal year beginning more than 1 year from the time the guidance is finalized (e.g., for years beginning after 12/31/14 if finalized in 2013).

If adopted on a prospective rather than retrospective basis, we believe the time involved would be significantly reduced and that implementation could be adopted at the beginning of the first annual period following finalization of the guidance.

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In conclusion, we support the general approach of the update, but oppose retrospective adoption and recommend adoption on a prospective basis, consistent with the adoption of the overall guidance on tax uncertainty. Please feel free to contact Lorraine Malonza at (973) 765-1047 if you would like additional information on any of the issues or recommendations in this letter.

Sincerely,



Loretta Cangialosi  
Chair, Committee on Corporate Reporting  
Financial Executives International



Jim Shea  
Chair, FEI Committee on Taxation  
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