

11 April 2021

Bruce Mackenzie
Chair
IFRS Interpretations Committee
Columbus Building
7 Westferry Circus
Canary Wharf
London
United Kingdom

Dear Mr Mackenzie

Tentative agenda decision – Negative Low Emission Vehicle Credits

Deloitte Touche Tohmatsu Limited is pleased to respond to the IFRS Interpretations Committee’s publication in the February 2022 IFRIC Update of the tentative agenda decision (TAD) not to take onto the Committee’s agenda the request for clarification on whether particular measures to encourage reductions in vehicle carbon emissions give rise to obligations that meet the definition of a liability in IAS 37.

We agree with the IFRS Interpretations Committee’s decision not to add this item onto its agenda.

We agree that an entity subject to the scheme described in the TAD that has produced or imported vehicles with average fuel emissions higher than the government target has a legal obligation that meets the definition of a liability in IAS 37, if it has no realistic alternative to settling that obligation.

However, we are concerned with the indication in the TAD that “an entity does not have a legal obligation that meets the definition of a liability in IAS 37, because accepting sanctions is a realistic alternative for that entity, meaning that the obligation cannot be enforced by law”. The fact pattern presented in the TAD is insufficiently clear on the nature of the sanctions to conclude whether accepting the sanctions means that the obligation cannot be enforced by law. Further, the term “sanction” can have different meaning in different jurisdictions and, depending on facts and circumstances, sanctions may represent an alternative means of imposing a penalty upon an entity as part of the enforcement of the law. Accordingly, we believe that the TAD should avoid implying that an obligation cannot be enforced by law whenever accepting sanctions is a realistic alternative for an entity. Instead, we suggest that the TAD should highlight that if accepting sanctions represents a realistic alternative, an entity would consider whether this realistic alternative indicates that the obligation cannot be enforced by law, such that the entity does not have a legal obligation (in which case, as indicated in the TAD, the entity would assess whether it has a constructive obligation), or whether accepting the sanctions represents a lower cost of settling the entity’s existing legal obligation, such that the alternative affects the measurement of the legal obligation.

We note that the Committee’s conclusion indicates that “the activity that may give rise to an obligation...is the production or import of vehicles” and that when “an entity has produced or imported vehicles with average fuel emissions higher than the government target by *the end of the reporting period*, that

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obligation has arisen from past events” [emphasis added] whereas the fact pattern refers to the fact that the government’s measures are based on the calendar year. These sentences may be read to indicate that the entity would recognise the provision, if any, over time rather than at a point in time. We do not believe that the fact pattern presented is sufficiently detailed to allow such a conclusion to be reached. Accordingly, we suggest that the reference to “end of the reporting period” should be changed to “end of the calendar year” and that a separate sentence be added to indicate that the entity would assess whether the obligation arises progressively or at a point in time considering the specific terms of the scheme.

If you have any questions concerning our comments, please contact Veronica Poole in London at +44 (0) 20 7007 0884.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'V Poole', with a stylized flourish at the end.

Veronica Poole
Global IFRS and Corporate Reporting Leader