Sir David Tweedie
Chairman
International Accounting Standards Board
30 Cannon Street
London EC4M 6XH

6 July 2009

Dear Sir David,

We welcome the opportunity to comment on your Exposure Draft – *ED/2009/2 Income Tax* (the "exposure draft" or "ED"). This letter has been drafted by the European Insurance CFO Forum, which is a body representing the views of 20 of Europe's largest insurance companies. The letter represents a consensus view from those companies on issues in the exposure draft specifically impacting the European insurance industry.

Overview

We have specific concerns with aspects of the ED which we do not believe represent an improvement over those in the current IAS12. It appears that a project that began as a joint IASB/FASB project to develop an effective basis of tax accounting has now become a one way exercise that proposes selective changes to IFRS. A number of the proposals aim to align IFRS principles with US GAAP rules without providing strong arguments to support the changes. In particular, we are concerned that management expectations would no longer be assessed in some specific cases. We also believe that the proposed principles regarding the allocation of tax to components of comprehensive income and equity are very complex and could result in counter-intuitive impacts. We have focused our responses hereafter on some issues that could specifically affect insurers' financial statements.

Proposed treatment of changes in tax rates

One of the main issues for insurers relates to the proposed treatment of changes in tax rates (Question 13). IAS 12.60 currently requires deferred tax resulting from a change in tax rates to be recognised in other comprehensive income (OCI) or equity to the extent that it relates to items previously recognised outside profit or loss and otherwise in the income statement. Under the exposure draft, this rule would be replaced by a requirement to recognise all effects of tax rate changes through continuing operations, regardless of whether it relates to amounts previously recognised outside profit or loss.

This proposal represents a move towards convergence with US GAAP and is likely to have significant implications for profit from continuing operations, in particular for preparers like insurers that have a large amount of available for sale financial assets. It means that the respective deferred tax liability formed in connection with the unrealised gains from available for sale securities accumulated in OCI would have to be released as a credit or debit in the tax line of continuing operations despite the fact that the gains/losses would still be unrealised since the securities would not yet be sold.

We note that the exposure draft does not deal with the future reversal of the deferred tax that is kept in OCI without adjustment at the date of the tax rate change. If the underlying proposed principle is similar to the FAS 109 rule, the amount would be "stored" in equity until the date of sale of the respective security, i.e. when it has to be reversed through continuing operations. Therefore OCI would reflect after tax unrealised gains / losses under consideration of the former valid tax rates. Further, the accounting for tax rate changes would impact the results of operations in future periods in which these securities are sold.

We strongly disagree with the change proposed in the exposure draft. The accounting would be inconsistent with the prior recognition of deferred tax items in equity. The profit and loss account would reflect counterintuitive onetime effects in the period of tax rate change as well as in the period of sale. In particular:

- The proposals would result in misleading communication to the capital markets. The comparability of different reporting periods would be totally distorted by the tax effect. Key performance indicators relating to income after tax amounts would become meaningless.

- As tax effects would not correspond to the income before taxes of the respective accounting periods the group tax rate would be distorted. This would lead to reconciling items in the tax reconciliation between periods.

- The financial statements would not present a true and fair presentation of the business in this regard and would not provide useful information particularly if significant tax rate changes take place. The resulting volatility in continuing operations would be artificial and not based on the underlying economics. Furthermore, the reversal through continuing operations at the date of the sale would require a line-by-line follow-up that would create significant additional workload and IT developments needs.

For the reasons set out above we would strongly prefer the retention of current IAS 12 accounting in this area.

Deferred tax liabilities on investments in subsidiaries, branches, associates and joint ventures
Another significant issue for insurers relates to the deferred tax liabilities to be recognised on investments in subsidiaries, branches, associates and joint ventures (Question 4). We believe that the proposed change is likely to create a significant number of issues:

- Excluding the expectations of management in the recognition principle as currently proposed (except by exception) may lead to the production of misleading information (see below). When the timing of the reversal of the differences is controlled and it is probable that the temporary difference will not reverse in the foreseeable future, there is no rationale to record a deferred tax liability.

- The proposals would alter the comparability of consolidated financial statements according to the structure and strategy of groups. The exception would be maintained for the differences that relate to foreign subsidiaries, joint ventures and branches to the extent they are essentially permanent in duration. As a result, for instance, a group with many “domestic” subsidiaries would recognise more deferred tax liabilities than a group with similar features but acting through “foreign” subsidiaries. No general accounting principle would support this difference in treatment.

- In practice, as for foreign operations, it would be very difficult to produce a reliable calculation for domestic entities in some jurisdictions. We do not believe that this therefore represents an appropriate rationale for changing the current requirements.

- It is also not clear whether the calculation should be based on the assumption of distributions or the assumption of a sale of the entities, and hence which tax rate would be applicable. The alternatives could lead to different results. Furthermore, it would not be economically relevant to present deferred taxes in consolidated financial statements as if all the domestic consolidated entities would be expected to be sold.

For all these reasons, we would again prefer to retain the current IAS 12 principles.

Furthermore, it should be noted that this proposal is not consistent with the ED proposal that measurement of tax assets and liabilities should include the effect of expected future distributions, based on the entity’s past practices and expectations of future distributions. We agree with this last proposal on the distributed / undistributed rate (Question 10) because it takes into consideration the expectations and intentions of the entity.

Management expectations and intent

More generally, we believe that management expectations and intent should be considered in any aspect of the recognition and measurement of income tax. This approach is consistent with other areas of IFRS, including risk disclosures and segment reporting. Deferred taxes based on how management expects to realise assets or settle liabilities would provide more relevant information on future cash flows than systematically applying a disposal scenario that appears rule-based and without clear rationale. For this reason, we disagree with the proposal that the tax basis would not depend on management's intention (Question 1). We also disagree with using a sale rate (Question 9) when the entity expects to use rather than sell an asset. Management expectations and intent is an important factor in evaluating the impact of potential future tax strategies.

Again, we do not recommend a change in the current IAS 12 principles.

Uncertain tax positions

Despite the Board's apparent objective of converging IFRS with US GAAP it appears that the proposals in relation to uncertain tax positions extend beyond those in FIN 48 under US GAAP by including quantification of remotely possible outcomes. We recognise that an approach that derives a value from a weighted average of possible outcomes is consistent with current thinking in the IAS 37 project. We would question, however, whether such an approach is appropriate for tax balances, particularly one that goes beyond that in US GAAP.

Finally, we believe that there are some areas of confusion in the objective of the approach proposed in the exposure draft, some proposed principles being based on the intentions of management and others requiring the application of quite arbitrary rules that exclude these intentions and would lead in practice to the presentation of misleading information.

We have focused on a small number of specific issues that are of most concern to us in this letter. We would like to stress, however, that a lack of comment on other proposals does not suggest that we support the views expressed in the ED.

If you have any queries or questions that you would like to raise in relation to the matters raised in this letter, please feel free to contact me.

Yours sincerely,

P. G. Scott

Philip G Scott
Chairman – European Insurance CFO Forum