

**Documents published to accompany**

**IFRIC 21**

# Levies

The text of the unaccompanied Interpretation, IFRIC 21, is contained in Part A of this edition. Its effective date when issued was 1 January 2014. The text of the Accompanying Guidance on IFRIC 21 is contained in Part B of this edition. This part presents the following document:

**BASIS FOR CONCLUSIONS**

## Basis for Conclusions on IFRIC Interpretation 21 *Levies*

*This Basis for Conclusions accompanies, but is not part of, IFRIC 21.*

### Introduction

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- BC1 This Basis for Conclusions summarises the considerations of the IFRS Interpretations Committee (the Interpretations Committee) in reaching its consensus. The Interpretations Committee received a request to clarify whether, under certain circumstances, IFRIC 6 *Liabilities arising from Participating in a Specific Market—Waste Electrical and Electronic Equipment* should be applied by analogy to identify the obligating event that gives rise to the recognition of a liability for other levies imposed by governments on entities. The question relates to when to recognise a liability to pay a levy that is accounted for in accordance with IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*.
- BC2 In particular, the request was for the Interpretations Committee to clarify how an entity should account for levies when the calculation for the levies is based on financial data that relates to a period before the period that contains the activity that triggers the payment of the levy. This is the case if, for example, the activity that triggers the payment of the levy, as identified by the legislation, occurs in 20X1 and the calculation of the levy is based on financial data for 20X0 (see Illustrative Example 2).
- BC3 The Interpretations Committee was informed that there was diversity in practice in how entities account for the obligation to pay such a levy.

### Scope

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- BC4 One of the questions that was submitted was how to account for levies whose calculation basis uses data such as the gross amount of revenue, assets or liabilities. The Interpretations Committee noted that those levies do not meet the definition of income taxes provided in IAS 12 *Income Taxes* because they are not based on taxable profit. In two Agenda Decisions (published in March 2006 and May 2009), the Interpretations Committee (then called the IFRIC) noted that the term ‘taxable profit’ implies a notion of a net rather than a gross amount. In those Agenda Decisions, the Interpretations Committee also observed that any taxes that are not within the scope of other Standards (such as IAS 12) are within the scope of IAS 37. The Interpretations Committee further observed that IAS 37 contains a definition of a liability and that a provision is defined in IAS 37 as a liability of uncertain timing or amount. The Interpretations Committee noted that the same recognition requirements should apply to provisions to pay a levy and to liabilities to pay a levy whose timing and amount is certain. Consequently, this Interpretation also addresses the accounting for a liability to pay a levy whose timing and amount is certain.

- BC5 The Interpretations Committee noted that IAS 37 does not apply to executory contracts unless they are onerous, so the Interpretations Committee decided that this Interpretation should therefore not apply to executory contracts unless they are onerous.
- BC6 The Interpretations Committee decided that, for the purposes of this Interpretation, a levy is an outflow of resources embodying economic benefits that is imposed by governments on entities in accordance with legislation (ie laws and/or regulations), other than those outflows of resources that are within the scope of other Standards (such as income taxes that are within the scope of IAS 12). Amounts that are collected by entities on behalf of governments (such as value added taxes) and remitted to governments are not outflows of resources embodying economic benefits for the entities that collect and remit those amounts. The Interpretations Committee decided to use the definition of the term 'government' provided in IAS 20 *Accounting for Government Grants and Disclosure of Government Assistance* and IAS 24 *Related Party Disclosures*.
- BC7 The Interpretations Committee noted that a payment made by an entity for the acquisition of an asset, or for the rendering of services under a contractual agreement with a government, does not meet the definition of a levy. For the purposes of this Interpretation, levies are imposed by governments and therefore do not arise from contractual agreements. Similarly, the Interpretations Committee noted that this Interpretation does not apply to the accounting for trade discounts and volume rebates agreed between a seller and a purchaser under a contractual agreement.
- BC8 The Interpretations Committee decided that this Interpretation should not address the accounting for fines and other penalties. Fines and penalties are paid as a consequence of the breach of laws and/or regulations, whereas levies are paid as a consequence of complying with laws and/or regulations.
- BC9 The Interpretations Committee decided that an entity should not be required to apply this Interpretation to liabilities that arise from emissions trading schemes. The IASB decided in 2011 to add a project on this topic to its research agenda. The Interpretations Committee thinks that it would be better to address the accounting for liabilities that arise from emissions trading schemes in a comprehensive project on all recognition and measurement issues related to emissions trading schemes.
- BC10 The Interpretations Committee decided not to withdraw IFRIC 6 because it provides useful information on the accounting for liabilities within its scope. The Interpretations Committee noted that the consensus in IFRIC 6 is consistent with the consensus in this Interpretation, and concluded that a scope exclusion for liabilities for waste management within the scope of IFRIC 6 is not necessary.
- BC11 The Interpretations Committee decided that this Interpretation should provide guidance on applying IAS 37 to a liability to pay a levy and should not address the accounting for the costs arising from recognising the liability to pay a levy. The Interpretations Committee observed that other Standards

would determine whether the recognition of a liability to pay a levy gives rise to an asset or an expense.

### **What is the obligating event that gives rise to the recognition of a liability to pay a levy?**

- BC12 According to the definition in paragraph 10 of IAS 37, an obligating event is an event that creates a legal or constructive obligation that results in an entity having no realistic alternative to settling the obligation. According to paragraph 14(a) of IAS 37, a provision should be recognised only when an entity has a present obligation as a result of a past event. The Interpretations Committee noted that the main consequence of these requirements is that there can be only one single obligating event. The Interpretations Committee acknowledged that, in some circumstances, an obligating event can occur only if other events have occurred previously. For example, for some levies, the entity paying the levy must have undertaken an activity both in the previous and in the current periods in order to be obliged to pay the levy. The Interpretations Committee noted that the activity undertaken in the previous period is necessary, but not sufficient, to create a present obligation.
- BC13 Consequently, the Interpretations Committee concluded that the obligating event that gives rise to a liability to pay a levy is the activity that triggers the payment of the levy, as identified by the legislation. In other words, the liability to pay a levy is recognised when the activity that triggers the payment of the levy occurs, as identified by the legislation. For example, if the activity that triggers the payment of the levy is the generation of revenue in 20X1 and the calculation of that levy is based on the revenue generated in 20X0, the obligating event for that levy is the generation of revenue in 20X1 (see Illustrative Example 2). The date on which the levy is paid does not affect the timing of recognition of the liability to pay a levy, because the obligating event is the activity that triggers the payment of the levy (and not the payment of the levy itself).
- BC14 The Interpretations Committee noted that some respondents to the draft Interpretation think that the result of the proposed accounting does not provide a fair representation of the economic effects of recurring levies when the liability is recognised at a point in time and gives rise to an expense, although these respondents acknowledged that the proposed accounting in the draft Interpretation is a technically correct interpretation of the requirements in IAS 37. Those respondents think that the substance of a recurring levy is that it is an expense associated with a specific period (and not an expense triggered on a specific date). The Interpretations Committee concluded that this Interpretation is needed to address the diversity in practice and that it provides consistent information about an entity's obligations to pay levies. The Interpretations Committee also observed that this Interpretation does not address the accounting for the costs arising from recognising a liability to pay a levy and that other Standards would determine whether the recognition of the liability to pay a levy gives rise to an asset or an expense. Some respondents to the draft Interpretation asked the Interpretations Committee to consider the effect of economic compulsion to

continue to operate in a future period and of going concern assumption on the accounting for levies. The Interpretations Committee's conclusions are set out below.

**Does economic compulsion to continue to operate in a future period create a constructive obligation to pay a levy that will be triggered by operating in that future period?**

- BC15 The Interpretations Committee considered an argument that, if it would be necessary for an entity to take unrealistic action in order to avoid an obligation to pay a levy that would otherwise be triggered by operating in the future, then a constructive obligation to pay the levy exists and a liability should be recognised. For example, if the activity that triggers the payment of the levy occurs in 20X1 and the calculation of the levy is based on financial data for 20X0 (as in Illustrative Example 2), some argue that a liability should be recognised in 20X0. Supporters of this argument point to the definition of a constructive obligation in paragraph 10 of IAS 37 and conclude that an entity might have no realistic alternative other than to continue to operate in the next period (ie 20X1). For example, they note that an entity may operate in a regulated market and may not be able to stop operating without a long period of run-off.
- BC16 The Interpretations Committee rejected this argument, noting that if this rationale were applied, many types of future expenditure within the scope of IAS 37 would be recognised as liabilities. Indeed, in many cases, entities have no realistic alternative but to pay expenditures to be incurred in the future. The Interpretations Committee noted that, in accordance with paragraphs 18–19 of IAS 37:
- (a) no provision is recognised for costs that need to be incurred to operate in the future; and
  - (b) it is only those obligations arising from past events existing independently of an entity's future conduct of its business that are recognised as provisions.
- BC17 As a result, the Interpretations Committee concluded that, when an entity is economically compelled to incur operating costs that relate to the future conduct of the business, that compulsion does not create a constructive obligation and thus does not lead to the entity recognising a liability. This point is illustrated in the examples accompanying IAS 37.
- BC18 The Interpretations Committee noted that a levy is triggered as a result of undertaking an activity in a specified period, as identified by the legislation. As a result, the Interpretations Committee concluded that there is no constructive obligation to pay a levy that relates to the future conduct of the business, even if:
- (a) it is economically unrealistic for the entity to avoid the levy if it has the intention of continuing in business;

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- (b) there is a legal requirement to incur the levy if the entity does continue in business;
- (c) it would be necessary for an entity to take unrealistic action to avoid paying the levy, such as to sell, or stop operating, property, plant and equipment;
- (d) the entity made a statement of intent (and has the ability) to operate in the future period(s); or
- (e) the entity has a legal, regulatory or contractual requirement to operate in the future period(s).

BC19 Consequently, the Interpretations Committee concluded that an entity does not have a constructive obligation at a reporting date to pay a levy that will be triggered by operating in a future period as a result of the entity being economically compelled to continue to operate in that future period.

### **Does the going concern assumption imply that an entity has a present obligation to pay a levy that will be triggered by operating in a future period?**

BC20 The Interpretations Committee noted that this issue is related to the basis of preparation of financial statements. Some question whether the going concern assumption affects the timing of the recognition of the liability to pay a levy.

BC21 The Interpretations Committee observed that IAS 1 *Presentation of Financial Statements* sets out general features for the financial statements, including the accrual basis of accounting and the going concern assumption. The Interpretations Committee noted that, when an entity prepares financial statements on a going concern basis, it shall also comply with all the recognition and measurement requirements of IFRS. Consequently, the Interpretations Committee concluded that the going concern assumption cannot lead to the recognition of a liability that does not meet the definitions and recognition criteria set out in IAS 37.

BC22 Specifically, the Interpretations Committee concluded that the preparation of financial statements under the going concern assumption does not imply that an entity has a present obligation to pay a levy that will be triggered by operating in a future period. Paragraphs 18–19 of IAS 37 specify that no provision is recognised in that case.

### **Does the recognition of a liability to pay a levy arise at a point in time or does it, in some circumstances, arise progressively over time?**

BC23 The Interpretations Committee observed that most of the liabilities in IAS 37 and in the Illustrative Examples accompanying IAS 37 are recognised at a point in time, that is, when the obligating event occurs. Nevertheless, they noted that, in one example accompanying IAS 37, the liability is recognised progressively over time.

- BC24 In Illustrative Example 3 accompanying IAS 37, an entity operates an offshore oilfield and is required to restore the seabed because of damage caused by the extraction of oil. According to this example, the restoration costs that arise through the extraction of oil are recognised as a liability when the oil is extracted. The Interpretations Committee noted that in this example, the damage is directly caused by the extraction of oil, and that more damage occurs when more oil is extracted. Thus, the outcome is that the liability for damage caused over time is recognised progressively over time as the entity extracts oil and causes damage to the environment.
- BC25 The Interpretations Committee discussed whether this outcome is linked to a recognition issue or to a measurement issue and concluded that this is a recognition issue, because the obligating event (ie the damage caused by the extraction of oil) occurs progressively over a period of time. In accordance with paragraph 19 of IAS 37, the Interpretations Committee noted that a present obligation exists only to the extent of the damage caused to date to the environment, because the entity has no present obligation to rectify the damage that will result from the extraction of oil in the future (ie the future conduct of its business).
- BC26 Consequently, the Interpretations Committee concluded that the liability to pay a levy is recognised progressively if the obligating event (ie the activity that triggers the payment of the levy, as identified by the legislation) occurs over a period of time. For example, if the obligating event is the generation of revenue over a period of time, the corresponding liability is recognised as the entity generates that revenue (see Illustrative Example 1).

**What is the obligating event that gives rise to the recognition of a liability to pay a levy that is triggered if a minimum threshold is reached?**

- BC27 The draft Interpretation did not address the accounting for levies that are triggered if a minimum revenue threshold is reached. However, many respondents to the draft Interpretation emphasised the importance of providing guidance on this issue. The Interpretations Committee agreed with the respondents' comments and concluded that this Interpretation should provide guidance on the accounting for levies with minimum thresholds. The Interpretations Committee decided that the accounting for the liability to pay such levies should be consistent with the principles established in paragraphs 8 and 11 of this Interpretation.
- BC28 For example, if a levy is triggered when a minimum activity threshold is reached (such as a minimum amount of revenue or sales generated or outputs produced), the obligating event is the reaching of that activity threshold. If a levy is triggered as the entity undertakes an activity above a minimum level of activity (such as revenue or sales generated or outputs produced in excess of the minimum amount specified in the legislation), the obligating event is the activity that is undertaken after the threshold is reached (see Illustrative Example 4). If a levy is triggered if an entity operates on a specified date, as identified by the legislation, provided that a minimum threshold is reached in a previous period (such as a minimum amount of revenue, a minimum

number of employees, or a minimum amount of assets and liabilities), the obligating event is the entity operating on the specified date as identified by the legislation after having reached the threshold in the previous period. In that case, the reaching of the threshold in the previous period is necessary, but not sufficient, to create a present obligation.

**Are the principles for recognising a liability to pay a levy in the annual financial statements and in the interim financial report the same?**

- BC29 IAS 34 *Interim Financial Reporting* (paragraph 29) states that the same recognition principles should be applied in the annual financial statements and in the interim financial report. By applying the requirements of IAS 34 (paragraphs 31–32 and 39, as illustrated by paragraphs B2, B4 and B11 of the Illustrative Examples accompanying IAS 34), no liability would be recognised at the end of an interim reporting period if the obligating event has not yet occurred. For example, an entity does not have an obligation at the end of an interim reporting period if the present obligation arises only at the end of the annual reporting period. Similarly, if a present obligation to pay a levy exists at the end of an interim reporting period, the liability should be recognised.
- BC30 The Interpretations Committee observed that paragraph 16A of IAS 34 requires the disclosure of explanatory comments about the nature and amount of items affecting liabilities that are unusual because of their nature, size or incidence and about the events after the interim period that have not been reflected in the financial statements for the interim period. If necessary, an entity would therefore provide disclosures about levies that are recognised in the interim financial report or that will be recognised in future interim financial reports.