



## Accounting & Auditing Information Letter 08-039

### FASB Meeting - October 15, 2008

October 16, 2008

**THE SUMMARY IN THIS MEMORANDUM IS BASED ON OBSERVATIONS OF THE MEETING AND REPRESENTS AN UNOFFICIAL INTERPRETATION OF THE DISCUSSION.**

The Board discussed the following matters:

- (1) **Applicability of FIN 48 To Non-Public Entities** - the Board discussed the proposed deferral of the effective date of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, for certain nonpublic entities. The Board decided to delay the effective for one year for all nonpublic entities regardless of whether they are pass-through entities. Thus, the Interpretation would be effective date for nonpublic entities for annual financial statements for reporting periods beginning after December 15, 2008.

#### Summary

##### 1. Applicability of FIN 48 To Non-Public Entities

At the October 1, 2008 meeting, the Board decided that nonpublic entities should remain within the scope of Interpretation 48 on accounting for income tax uncertainties, but with reduced disclosure obligations, and agreed to propose deferring the Interpretation's effective date for nonpublic entities with pass-through tax status.

At this meeting, the Board reconsidered the scope of the deferral of Interpretation 48.

##### **ISSUE 1: DEFERRAL OF INTERPRETATION 48**

Based on discussions with constituents, the staff received numerous questions about the scope of the deferral. The most common questions asked were (1) how would the deferral apply if a taxable entity has pass-through subsidiaries, (2) how would the deferral apply if a pass-through entity has taxable subsidiaries, and (3) how would a deferral affect an entity that is a pass-through for federal purposes but is a taxable entity with uncertain tax positions for state, local, or foreign jurisdictions.

To address these questions, the staff identified four alternatives for the Board to consider relating to the scope of the deferral of Interpretation 48: (1) grant the deferral on a jurisdiction-by-jurisdiction basis, (2) grant a deferral on an entity-by-entity basis within the consolidated financial statements, (3) grant a deferral to all entities within a chain of entities if a pass-through entity exists anywhere within the chain, or (4) grant a deferral for all private entities whether or not they are pass-through entities.

*Alternative 1: Jurisdiction-by-Jurisdiction Basis*

The staff believes the benefit of this alternative is that it is the most conceptually correct of the deferrals. In other words, in any jurisdiction where the entity was not a pass-through, it could have material uncertain tax positions and would be required to apply Interpretation 48. In those jurisdictions where it is a pass-through entity, it would not have to apply the Interpretation until it has the necessary guidance to do so. The other benefit of this deferral is that an entity that is a taxable entity in all applicable jurisdictions would be required to apply the Interpretation.

The drawback of this alternative is its complexity. The staff believes it would be difficult to communicate and apply. They believe requiring a single entity to adopt and apply the Interpretation for some jurisdictions but not for others would add significant complexity.

*Alternative 2: Entity-by-Entity Basis*

The staff believes this deferral has a similar conceptual basis as Alternative 1 but is somewhat less difficult. Rather than requiring a single entity to apply the Interpretation in some jurisdictions and not in others, a single entity would have to decide if the entity in its entirety was eligible for the deferral.

However, the staff believes that this would result in complexities where an entity is eligible for the deferral but is (a) required to consolidate an entity that is not eligible or (b) required to be consolidated by an entity that is not eligible. The staff also notes that this alternative could result in an entity being eligible for the deferral, even if it is not a pass-through in certain jurisdictions.

*Alternative 3: All Entities within a Chain of Entities if a Pass-through Entity Exists Anywhere within the Chain*

The staff notes this alternative will avoid the complexities where an entity is eligible for the deferral but is (a) required to consolidate an entity that is not eligible or (b) required to be consolidated by an entity that is not eligible. The staff also notes that this alternative will result in consistent application of generally accepted accounting principles (GAAP) by all members of the consolidated group, rather than having some members of a consolidated group apply Interpretation 48 while others in the group do not. Accordingly, the staff believes that this alternative would avoid complexity by either providing the deferral to all members of the consolidated group or none of the consolidated group.

However, the staff also notes that this alternative would result in inconsistent application of GAAP for similar entities, the only difference being whether they are a member of a consolidated group or not. For example, two C corporations, one that is part of a consolidated group and one that is not, would get different treatment for Interpretation 48 if a member of the consolidated group were a pass-through entity.

*Alternative 4: All Private Entities Whether or Not They are Pass-through Entities*

The staff notes that this alternative is the simplest to apply and is the only alternative that avoids addressing a related issue of how to define and limit the term “pass-through.” The staff also notes that this alternative is consistent with the Board’s previous decision at the

November 7, 2007 meeting, where, for ease of application and to avoid complexity, the Board decided to grant the deferral to all nonpublic entities.

The drawback of this alternative is that private company stand alone C corporations would be entitled to another deferral. The staff believes that the initial deferral gave them enough time to learn about and apply the provisions of the Interpretation. The staff also notes that the Board will have to eventually define “pass-through entity” when it subsequently provides guidance for such entities and that doing so now would ensure a consistent definition.

### *Conclusion*

The Board decided to delay the effective date for one year for all nonpublic entities regardless of whether they are pass-through entities. Thus, the Interpretation 48 would be effective for nonpublic entities for annual financial statements for reporting periods beginning after December 15, 2008.

*The FASB issues a final summary of the Board’s meeting on the Thursday following the meeting. The summary is included in its weekly publication, **Action Alert**, and is available at [www.fasb.org](http://www.fasb.org). Generally accepted accounting principles are not amended, modified, rescinded, or enacted as part of the public meeting deliberations. The Statements in this summary pertain to projects still under consideration by the FASB. Nothing is intended to indicate how to comply with yet-to-be-issued FASB Statements. Companies addressing the provisions of the finally adopted Statements should base their accounting on the requirements applicable at the time they report and consultation with accounting and legal advisors.*