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Insights into MFRS 16

Definition of a lease

MFRS 16 'Leases' is a standard that impacts most reporting entities that apply MFRS Accounting Standards and are involved in leasing assets, and can have a substantial impact on the financial statements of lessees of property and high-value equipment. Although MFRS 16 has been in effect since 2019, there are still a number of areas that can be challenging in practice.

Our 'Insights into MFRS 16' series summaries key areas of the Standard and aims to demystify those key requirements that are challenging to apply in practice. This article considers the definition of a lease when applying MFRS 16.

Since accounting for leases under MFRS 16 results in substantially all leases being recognised on a lessee's statement of financial position, the evaluation of whether a contract is (or contains) a lease is critical. And this evaluation must be made at the inception of a contract. In practice, a key area of judgement relates to contracts that are not in the legal form of a lease but involve the use of a specific asset and therefore might contain a lease – such as outsourcing, contract manufacturing, transportation and power supply agreements. Such contracts are often structured to provide a product or a service and include various components, amongst which include the use of a specific asset that might need to be separated from the other components. MFRS 16 contains guidance to help reporting entities make this assessment.

Under MFRS 16 a lease is defined as 'a contract, or part of a contract, that conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration'.

A contract can be (or contain) a lease only if the underlying asset is 'identified'. Having the right to control the use of an identified asset means having the right to direct, and obtain substantially all of the economic benefits from, the use of that asset. These rights must be in place for a period of time, which may also be determined by a specified amount of use. Put simply, if the customer controls the use of an identified asset for a period of time, then the contract contains a lease. This is the case if the customer can make the important decisions about the use of the asset in a similar way it makes decisions about the use of assets it owns outright. In such cases, the customer (ie the lessee) is required to recognise these rights on its statement of financial position as a 'right-of-use asset'. In contrast, in a service contract, the supplier controls the use of any assets used to deliver the service and so there is no right-of-use asset to recognise.

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Applying this definition involves three key evaluations, all of which must be met in order to conclude that a contract is or contains a lease. These evaluations are summarised in the following flowchart:



Let's examine each of these in more detail.

Is there an identified asset?

An identified asset is an asset that is either:

- explicitly identified in the contract, or
- implicitly specified by being identified at the time that the asset is made available for use by the customer.

Example 1 – Groups of assets

Entity A enters into a five-year contract with a supplier for the use of 100 similar new assets: batteries for a fleet of electric buses (which Entity A either owns or leases from a party unrelated to the supplier). The supplier has no substantive right to substitute the batteries.

At what level should Entity A evaluate whether the contract contains a lease, considering each asset individually or all of the assets together?

Analysis

Entity A is able to benefit from each individual battery together with other resources available, each battery powers one bus and each bus can operate independently. This means that each battery is neither highly dependent on, nor highly interrelated with the other batteries in the contract.

We would therefore conclude that in this case Entity A assesses whether the contract contains a lease for each potential separate lease component ie for each individual battery. Even if each battery was not explicitly specified in the contract, a battery would be implicitly specified at the time it was made available for use, once the battery is installed on the bus.

Even if an asset is explicitly specified, a customer does not have the right to use an identified asset if the supplier has a **substantive substitution right** throughout the period of use.

What is a substantive substitution right?

A substantive substitution right exists if the supplier has the practical ability to substitute alternative assets throughout the period of use and the economic benefits of substituting the asset would exceed the cost (or in other words, the supplier would benefit economically from substituting the asset). When the asset is located at the customer's premises, the costs associated with substituting the asset are likely to be higher, making it less likely that the supplier would economically benefit from making a substitution.

The assessment of whether a supplier's substitution right is substantive is based on facts and circumstances present at inception of the contract. This means that the customer ignores events that are not likely to occur in future such as:

- an agreement by a future customer to pay an above-market rate for use of the asset
- the introduction of new technology that is not substantially developed at inception of the contract
- a substantial difference between the performance or customer's use of an asset, and the use or performance considered likely at inception of the contract, and
- a substantial difference between the actual market price of the asset during the period of use, and the market price considered likely at inception of the contract.

If the supplier has the right or obligation to substitute the asset for repair purposes or to provide routine maintenance services (eg to allow it to install a technical upgrade that has become available), a customer is not precluded from having the right to use an identified asset. A customer is also not required to perform an exhaustive search to determine if a supplier has a substantive substitution right. If a customer cannot readily determine whether a supplier has such a right, it may conclude that a right does not exist.

Example 2 – Rail cars

In a contract between a customer and a supplier, the customer needs to transport goods using a particular type of rail car in line with a specified timetable over a three-year period. The timetable and quantity of goods stipulated are equivalent to the customer having the use of six rail cars for three years. The supplier makes available the cars, driver and engines as part of the arrangement. The supplier has a large supply of similar cars and engines that are available to fulfil the obligations of the arrangement. The rail cars and engines are kept at the supplier's premises when they are not being used to transport the goods.

Analysis

The contract does not contain a lease of either rail cars or engines.

The rail cars and engines used to transport the customer's goods are not identified assets. The supplier has a substantive substitution right to replace the rail cars and engines as a result of:

- the supplier having the practical ability to substitute each car and engine throughout the period of use. Alternative cars and engines are readily available to the supplier and these can be substituted without the customer's approval, and
- the supplier has proven to economically benefit from substituting each car and engine. There would be very little cost associated with substituting these assets as the cars and engines are stored at the supplier's premises and the supplier has a large pool of similar cars and engines that make substitution economically beneficial throughout the period of use.

Therefore, the customer does not have the right to obtain substantially all of the economic benefits from the use of an identified rail car or an engine or directs their use. The supplier chooses which rail cars and engines are used for each delivery and therefore directs them. It has substantially all of the economic benefits from use of the rail cars and engines.

Can a portion of an asset be an identified asset?

A portion of an asset is an identified asset if it is physically distinct (eg a single floor of an apartment building). Where a portion of an asset is not physically distinct (eg 20% of the capacity of an oil pipeline), the portion of the asset is not an identified asset unless it represents substantially all of the capacity of the asset. If neither of these situations exist, the customer is not provided with the right to obtain substantially all the economic benefits from use of the asset and an identified asset does not exist.

Example 3 – Fibre-optic cable

An entity enters into a 10-year contract with a utilities company (the supplier) for the right to use five individually specified, physically distinct fibre-optic strands (fibres) within a larger cable running between New York and London. The entity makes all relevant decisions concerning the use of the individual fibres by connecting them to its own electronic equipment (ie the customer 'lights' the fibres) and deciding what data and how much data each strand will carry. If any of the strands are damaged, the supplier is responsible for effecting any necessary repairs. The supplier owns additional fibres both within the same cable and in adjacent cables but can only substitute those for the entity's strands when performing ongoing maintenance or effecting necessary repairs.

Analysis

The contract represents a lease of unlit fibre-optic strands (the identified assets).

The fibre optic strands are identified assets because they are explicitly specified in the contract and are physically distinct from other fibres within the cable and the customer controls their use. The supplier cannot substitute the fibres for reasons other than repair, maintenance or malfunction, which means the supplier's substitution rights are not substantive.

Conversely, if the entity was entitled only to use an amount of capacity equivalent to five fibres within a cable made up of 15 strands, but not five specific strands, the contract would contain neither an identified asset nor a lease because the capacity represented by five fibres does not represent substantially all the capacity of the 15-strand cable and could be used alternatively amongst the 15 fibres comprising the cable. In this case, the supplier would only be providing data capacity (ie a service).

Example 4 – Subsurface rights

An entity enters into a contract to place an oil pipeline under ground for a specified period of time of 20 years in exchange for consideration payable to the landowner. The contract specifies the location and dimensions (path, width and depth) of the underground space and the landowner has no right to change the use of the designated underground space. The landowner retains the right to use the land above the specified underground space. The entity has the right to operate the pipeline, inspect and repair it when necessary.

Analysis

The contract represents a lease of the specified underground space (the identified asset).

This scenario was considered by the IFRS Interpretations Committee (IFRIC) in its June 2019 meeting, and it observed the following:

- The underground space is clearly specified in the contract and is physically distinct from the remainder of the land. The landowner has no substantive right to substitute the underground space.
- The entity has an exclusive right to use the underground space throughout the 20-year period and therefore has the right to obtain substantially all the economic benefits from the specified underground space during that period.
- How, and for what purpose, the underground space is used (the placing of an oil pipeline) is pre-determined in the contract and the entity has the right to operate the pipeline. The entity therefore has the right to direct the use of the underground space.

The IFRIC therefore concluded that the agreement contains a lease of the specified underground portion of the land.



Does the customer have the right to obtain substantially all of the economic benefits from the use of the identified asset throughout the period of use?

The second evaluation involves determining whether a customer has the right to obtain substantially all of the economic benefits from use of the identified asset throughout the period of use. There are many ways that a customer can obtain those economic benefits such as by using, holding or sub-leasing the asset.

When making this evaluation, a customer considers its rights within the defined scope of the contract. For example, if a contract specifies that a customer can only print up to a specified number of pages during the period of use of a printer, the customer considers only the economic benefits arising from use of the printer for those pages. It does not consider beyond those number of pages, even if the printing capacity of the equipment is higher than the printing rights granted to the customer.

Variable lease payments based on the customer's use of the asset (eg variable payments based on sales) do not prevent a customer from obtaining substantially all of the economic benefits from the use of the asset. Although the customer passes on some of the benefits to the supplier through variable payments, the customer is still the party that receives the economic benefits arising from use of the asset (in this case, the cash flows arising from the sales). MFRS 16 is explicit on this point to eliminate the possibility that entities might include variable lease payments solely to avoid the arrangement being classified as a lease and therefore lease accounting.

Example 5 – Renewable electricity produced by a windfarm

Entity A is an electricity retailer, and has entered into a contract with Entity B, the operator of a windfarm, to effectively fix the price of electricity produced by the wind farm for a fixed period of time.

Both the retailer and the supplier are registered participants in an energy market in which customers and suppliers are unable to enter into contracts directly with each other for the purchase and sale of electricity. Rather, suppliers sell electricity to the electricity grid operated by the market, and customers purchase from the grid. Spot prices for these sales and purchases are set by the market operator.

Entity A enters into an agreement with Entity B to swap the spot price of the electricity the windfarm supplies to the grid for a fixed term, for a fixed price. The difference between the spot price and agreed fixed price is settled net in cash between both parties. The agreement also transfers to Entity A all renewable energy credits that accrue from the use of the windfarm.

Does this agreement give Entity A the right to obtain substantially all of the economic benefits from the use of the windfarm?

Analysis

This scenario was considered by the IFRIC in its December 2021 meeting, where it observed the following:

In the fact pattern described, there are two economic benefits from use of the windfarm; the electricity produced (as the primary output) and the renewable energy credits (as a by-product of use of the windfarm).

The agreement obliges Entity A to settle with Entity B the difference between the spot price and the agreed fixed price throughout the term of the contract for electricity produced by the wind farm and sold to the grid by Entity B. However, it does not give Entity A the right or obligation to obtain any of the electricity the windfarm produces.

Although Entity A has the right to obtain all the renewable energy credits related to operation of the windfarm, Entity A must buy electricity from the grid, not from the windfarm and prices are set by the market operator, not by the contract. So even though the contract references the electricity produced, Entity A never receives or controls that electricity. It only receives a cash settlement based on price differences. Therefore, the agreement does not give Entity A the right to obtain substantially all of the economic benefits from use of the windfarm. The right to obtain all the renewable energy credits only constitutes a portion of the outputs expected from the windfarm and not substantially all of the outputs. The IFRIC therefore concluded that the agreement does not contain a lease.

Does the customer have the right to direct the use of the identified asset throughout the period of use?

In evaluating whether the customer has the right to direct the use of an identified asset, a customer must have the right to direct 'how and for what purpose' the asset is used throughout the period of use. In making this evaluation, a customer considers the decisions that most directly impact the economic benefits to be derived from the use of the asset, including:

- rights to decide the type of output to be produced by the asset(s)
- rights to decide when the output is produced
- rights to decide where the output is produced, and
- rights to decide whether the output is produced and the quantity thereof.

In many cases, contracts will include terms and conditions that protect the supplier's interest in the asset, protect its personnel and/or ensure the supplier complies with laws and regulations. These rights are considered to be protective and do not, in isolation, prevent the customer from having the right to direct the use of the asset within the scope of the contract.

Examples of protective rights noted in MFRS 16 include:

- specifying the maximum amount of use of an asset (eg an aircraft lease with a maximum usage allowed of 15,000 engine hours per year)
- limiting where or when the customer can use the asset (eg an automotive lease specifying that the identified vehicle can only be driven in France)
- requiring the customer to follow certain operating practices (eg a lease of retail space where opening hours are limited to specific times of the day or where certain operating activities in the retail space are prohibited to avoid sale of dangerous products)
- requiring the customer to notify the supplier if the customer changes how the asset will be used (eg a warehouse lease where the customer must notify the supplier if they plan to change the use of the space from storing inventory to a retail area).

Lastly, MFRS 16 is clear that rights to operate or maintain an asset do not give a customer the right to direct how and for what purpose the asset is used, except for when the 'how and for what purpose' decisions are predetermined. In this case, the customer will control the asset if the customer has the right to operate the asset throughout the period of use or the customer designed the asset in a way that predetermines how and for what purpose the asset will be used throughout the period of use.

Example 6 – A contract with a shipping supplier

A customer enters into a contract with a shipping company (the supplier) to transport cars from Tokyo to Singapore. The contract specifies the particular ship to be used, the dates of pick-up and delivery, and the cars to be transported (which will occupy the full capacity of the ship). The supplier operates and maintains the ship and is responsible for the safe passage of the cars. The customer is not able to make changes (ie to either the destination or the nature of the cargo) once the contract has been signed.

Analysis

The contract does not contain a lease.

After signing the contract, the customer is not able to direct how and for what purpose the ship is used and does not therefore control the use of the asset. The contract pre-determines how and for what purpose the ship will be used and customer neither operates nor designed the ship. The customer only receives the output (transport service) and in accordance with MFRS 16, receiving the output of an asset is not the same as controlling the asset.

Conversely, if the customer had the rights to make some decisions in relation to how and for what purpose the ship is used throughout the period of use and not all the relevant decisions were pre-determined in the contract, then the contract would have contained a lease. Those customer decision-making rights that could affect the economic benefits from the use of the ship would be relevant for the analysis. This scenario was considered by the IFRIC in its January 2020 meeting, and it observed that it is expected to be relatively rare for the decisions about how and for what purpose an asset is used to be fully pre-determined. The predetermination of certain decisions in the contract defines the scope of the customer's rights of use and within that scope the customer might have the decision-making rights in relation to how and for what purpose the ship is used.

Disclosure of judgements

MFRS 101 'Presentation of Financial Statements' requires an entity to disclose 'material accounting policy information'. Following the adoption of MFRS 18 'Presentation and Disclosure in Financial Statements', this requirement has been moved to MFRS 108 'Basis of Preparation of Financial Statements'. This can include accounting policies where an entity is required to make significant judgements in applying a policy.

As we have discussed in this article, there are a number of considerations when determining whether or not a contract contains a lease that could require significant judgement by management, and as such it is important for management to assess whether this information should be disclosed in the financial statements.

How we can help

We hope you find the information in this article helpful in giving you insight into aspects of MFRS 16. If you would like to discuss any of the points raised, please speak to your usual Grant Thornton contact.

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