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Sir David Tweedie
Chairman
International Accounting Standards Board
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Email: commentletters@iasb.org

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Our Ref: KW/JB

Dear Sir David,

Exposure Draft of Proposed Amendments to IFRS 2 Share-based Payment and IFRIC 11 IFRS 2 – Group and Treasury Share Transactions – Group Cash-settled Share-based Payment Transactions

Deloitte Touche Tohmatsu is pleased to respond to the International Accounting Standards Board's (the IASB's) *Exposure Draft of Proposed Amendments to IFRS 2 Share-based Payment and IFRIC 11 IFRS 2 – Group and Treasury Share Transactions – Group Cash-settled Share-based Payment Transactions* (referred to as the 'exposure draft').

We welcome the IASB's proposed amendments to clarify the accounting for cash-settled share-based payment schemes in the financial statements of a subsidiary where the entity's shareholders or another entity in the same group has incurred a liability to transfer cash or other assets on settlement.

Scope

Whilst we support the proposed amendments, we believe that the amendments provide the IASB with an opportunity to develop a principle for the accounting for all types of share-based payment arrangements involving group entities and owners of the entity as a whole. Such an approach would help to avoid issuing interpretations and amendments on the accounting for share-based payment transactions on a piecemeal basis by the Board.

To establish such a principle, we believe that the definition of a 'share-based payment transaction' in Appendix A of IFRS 2 should be amended to clarify that share-based payments involving group entities meet that definition.

We also encourage the Board to consider addressing situations where linkage of separate transactions may be appropriate in share-based payment transactions involving group entities.

We believe that all permutations of share-based payment transactions within a group should be within the scope of IFRS 2 from the perspective of the consolidated, separate or individual financial statements of the entity concerned. It is our view that any revision should also clarify the initial and subsequent accounting treatment within the consolidated, separate or individual financial statements of the entity concerned.

If addressed, we would also encourage the Board to consider whether the principle required to be applied would increase divergence with US GAAP. We understand that due to the absence of relevant guidance in SFAS 123R *Share-Based Payment,* the guidance provided in FIN 44 *Accounting for Certain Transactions involving Stock Compensation* for such transactions is applied by analogy in practice.

<u>Alignment of Terminology</u>

We believe that the amendments should align the terminology in IFRS 2, IFRIC 8 *Scope of IFRS 2* and IFRIC 11. Whilst IFRS 2.3 scopes in 'transfers of an entity's equity instruments by *its shareholders* to parties that have supplied goods or services' [emphasis added], amended paragraph 3A makes reference to an 'entity's parent or another group entity'. In our opinion, reference should be made to 'shareholders or another entity in the same group' where appropriate throughout IFRS 2, IFRIC 8 and IFRIC 11 to avoid confusion, misinterpretation and structuring opportunities.

Our detailed comments and answers to your questions on the exposure draft along with other editorial comments are included in the Appendix to this letter.

If you have any questions concerning our comments, please contact Ken Wild in London at +44 (0)20 7007 0907.

Yours sincerely,

Ken Wild
Global IFRS Leader

Appendix

Response to questions on Exposure Draft of Proposed Amendments to IFRS 2 Share-based Payment and IFRIC 11 IFRS 2 – Group and Treasury Share Transaction – Group Cash-settled Share-based Payment Transactions

Question 1—Specifying how a subsidiary that receives goods or services from its suppliers (including employees) should account for cash-settled share-based payment arrangements described in new paragraph 3A of IFRIC 11

The proposed amendments specify that:

(a) in the financial statements of a subsidiary that receives goods or services from its suppliers under the arrangements described in new paragraph 3A of IFRIC 11, the subsidiary should apply IFRS 2 to account for the transactions with its suppliers. In other words, in the financial statements of the subsidiary, such cash-settled share-based payments are within the scope of IFRS 2 (see new paragraph 3A of IFRS 2 and new paragraph 11A of IFRIC 11).

(b) the subsidiary should measure the goods or services received from its suppliers in accordance with the requirements applicable to cash-settled share-based payment transactions, as set out in IFRS 2 (see new paragraph 11B of IFRIC 11).

Do you agree with the proposals? If not, why?

In principle, we agree with the proposed treatment for cash-settled share-based payment transactions within a group. However, we have some specific concerns with the amendments which are outlined below.

<u>Scope</u>

As outlined in our cover letter, we believe that the Board should widen its reconsideration of the accounting for share-based payment transactions to include arrangements involving group entities and owners of the entity as a whole.

For example, the proposed amendments do not provide clarity in the situation in which a subsidiary is required to issue shares to the providers of goods or services (e.g. the subsidiary's employees) and the shareholders of the entity are simultaneously required to repurchase the issued shares in exchange for cash. Such schemes are commonly encountered in practice in certain jurisdictions.

Given that the subsidiary has an obligation to issue shares and that proposed paragraph IFRIC 11.3A indicates that the requirements apply only if the "subsidiary itself does not have any obligation to make the required cash payments to its employees or provide them with *its equity instruments*" [emphasis added], it is not clear to us whether the subsidiary receiving the goods or services would be required to recognise the effects of the repurchase agreement in its financial statements by measuring the employee benefit costs based on the requirements applicable to cash-settled share-based payments, or account for the arrangement as equity-settled.

We are concerned that this lack of clarity may result in structuring opportunities to avoid subsequent remeasurement in the financial statements of the subsidiary receiving the goods or services by accounting for the plan as equity-settled while it is in substance cash-settled.

Further, without additional guidance, we believe that the amendments may also be difficult to apply to other plans where the obligation to provide shares is held by a different entity than the entity having the repurchase obligation. Such a plan may involve an operating company (Entity C), its immediate parent (Entity B) and its ultimate parent (Entity A). Assume that the employees of Entity C are offered by Entity B options on its equity instruments that are solely equity-settled, with Entity C under no obligation to make any cash payment to its employees or issue its own equity instruments. If Entity A offers the employees the repurchase of the shares issued by Entity B under the compensation scheme, how would the repurchase feature affect the compensation cost to be recognised by Entity B and by Entity C? Would it be a situation where cost is measured as a cash-settled obligation in Entities A and C but as an equity-settled obligation in Entity B?

Alternatively, the employees of Entity C may be offered by Entity B options on the equity instruments of Entity A. While such a plan would be considered equity-settled in the consolidated financial statements of Entity A, as required by IFRIC 11.11, the plan would be considered cash-settled in the financial statements of Entity B. In such a situation, would Entity C, for the purpose of its own financial statements, consider the transaction to be equity-settled or cash-settled?

Furthermore, we believe that any amendments should also clarify the accounting treatment for intra-group share-based payment transactions where either the employer or the employee has the choice over settlement. The amendments as proposed would change the scope of IFRIC 11, which previously only addressed equity-settled share-based payments, to include cash-settled share-based payments, but would still not provide guidance on the accounting for such "hybrid" arrangements.

As noted above, we suggest that it would be useful if the Board articulated the principles that are also applicable to intra-group share-based transactions. Such principles would assist constituents in determining the appropriate accounting for each entity within a group (i.e., the entity directly benefiting from the goods and services, the intermediate and ultimate parent entity and any other entities in the group) whether for the purposes of preparing separate or consolidated financial statements. We believe that any principles should clarify how the nature of the awards, cash-settled or equity-settled, is assessed from the perspective of each entity.

In articulating these principles, the IASB should ensure that the proposed amendments do not introduce inconsistencies within IFRIC 11 unless the Interpretation is superseded by the proposed amendments. We note that IFRIC 11.11 concludes that a subsidiary granting equity instruments of its parent to its employees shall account for the transaction as cash-settled. IFRIC 11.BC16 explains that this conclusion reflects the fact that the nature of the award must be assessed from the perspective of the subsidiary, and not from the perspective of the consolidated financial statements of the parent or of the employees. This conclusion appears partly inconsistent with the treatment required, under the exposure draft, for transactions providing for cash settlement by the parent. Under the exposure draft, the subsidiary appears to assess the nature of the award from the perspective of another entity within the group or the employees rather than from its own perspective.

<u>Alignment of Terminology</u>

As mentioned in the cover letter we believe the terminology within IFRS 2 and its accompanying interpretations IFRIC 8 and IFRIC 11 should be aligned. As it is currently drafted, paragraph 3A of the exposure draft appears to exclude transactions with shareholders outside the consolidated group, whereas paragraph 3 of IFRS 2 includes such transactions within its scope. Unless this difference in scope is intentional, the paragraph could be amended as follows (deleted text struck through, new text underlined):

"Similarly, this IFRS also applies to arrangements in which an entity's ~~parent (or another entity in the group)~~shareholders or another entity in the same group has~~s~~ve incurred a liability to transfer cash or other assets for amounts that are based on the price (or value) of the equity instruments of the entity, its parent, or another entity in the same group to parties that have supplied goods or services to the entity."

However, if this difference in scope is intentional, we believe that it would assist constituents' understanding of the proposed amendments if the Basis for Conclusions explains the reasoning why the difference in scope is required.

Editorial Comments

If the Board decides to proceed with the proposed approach in the exposure draft without the change in wording on the scope as suggested above we recommend that proposed paragraph 3A of IFRIC 11 be amended as follows (new text underlined, deleted text struck through) to reflect the view that other entities within the same group may also have the obligation:

"[…] The amounts of the cash payments are based on the price of the equity instruments of either the parent ~~or~~, the subsidiary or another entity in the same group. Under the arrangements, the parent or another entity in the same group has an obligation to make the required cash payments to the employees of the subsidiary. The subsidiary itself does not have any obligation to make the required cash payments to its employees or provide them with its equity instruments."

We believe that it would be useful if the Board extended the guidance on employee transfers within a group as set out in paragraphs 9 and 10 of IFRIC 11 to also include cash-settled share-based payment transactions.

Additionally, we suggest amending paragraph 11A of the exposure draft as follows (new text underlined, deleted text struck through):

"In accordance with paragraph 3A of IFRS 2, in the financial statements of the subsidiary that receives services from its employees, the arrangements set out in [draft] paragraph 3A of this Interpretation ~~is~~are within the scope of IFRS 2."

Question 2—Transition

The proposed amendments to IFRS 2 and IFRIC 11 would be required to be applied retrospectively, subject to the transitional provisions of IFRS 2.

Do you agree with the proposal? If not, what do you propose and why?

We agree with the proposed retrospective application of the amendments, subject to the transitional provisions of IFRS 2. We believe it would be helpful for constituents if the Board would clarify that the transitional provisions covered by the notion '[…] subject to the transitional provisions of IFRS 2.' are those for cash-settled share-based payment transactions.