



IFRIC
International Accounting Standards Board
30 Cannon Street
London EC4M 6XH
United Kingdom

22 October 2010

Dear Sirs,

Re: September 2010 IFRIC Meeting: Tentative Agenda Decision: IFRS 2 Share-based Payment – Share-based payment awards settled net of tax withholdings

We write to express our concerns in connection with the above mentioned tentative agenda decision published in the September 2010 'IFRIC Update'. We refer below to IASB staff paper 14, considered by IFRIC at the September meeting, as "the staff paper".

The decision states: "*The Committee noted that the definitions in Appendix A Defined terms of IFRS 2 of 'cash-settled share-based payment transaction' and 'equity-settled share-based payment transaction' provide that an award is classified as cash-settled if the entity incurs a liability to transfer cash or other assets as a result of acquiring goods or services. In the circumstances considered by the Committee, cash is transferred to the tax authority, in settlement of the counterparty's tax obligation, in respect of the shares withheld. ...The Committee noted that IFRS 2 provides sufficient guidance to address this issue and that it does not expect diversity in practice.*" The following points are not clear from this wording:

- a) Whether the requirement to transfer cash to the tax authority in settlement of the counterparty's tax obligation is considered to be a liability of the entity, leading to cash-settled share based payment accounting, or a duty of the entity acting purely as agent for the counterparty, consistent with equity-settled share based payment accounting.
- b) Which guidance in IFRS 2 the decision refers to as "sufficient guidance". Unlike FASB ASC topic 718, which is quoted in the staff paper, IFRS 2 has no detailed application guidance for the arrangements described as 'broker-assisted cashless exercise' in US GAAP.

If finalised in its current form, the tentative decision could result in auditors and regulators requiring cash settled share based payment accounting for any arrangement in which the entity settles the personal withholding tax liabilities of its employees arising from share based payment awards, notwithstanding that this was clearly not the position taken by the staff paper (paragraph 28, which distinguishes between situations in which the counterparty has or does not have a choice of settlement under the terms of the share based payment plan). In our view, both this position and paragraph 28 of the staff paper would:

- result in share based payment arrangements being accounted for in accordance neither with their economic substance nor, in many cases, with their legal form. This would not represent those arrangements faithfully.
- increase divergence between IFRS and US GAAP and create unnecessary difficulties in the context of convergence.

In our experience, net settlement mechanisms which facilitate the settlement of counterparty withholding tax usually evidence an agency arrangement rather than a liability of the entity granting the awards, consistent with view 'B' set out in the staff paper, paragraphs 12-16. Net settlement occurs only after the employee fully satisfies all vesting conditions and becomes entitled to the full number of equity instruments awarded. We urge IFRIC to consider the 'broker-assisted cashless exercise' concept in this context.

Yours sincerely,



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Director
Legal Affairs Department
Internal Market Department