
Project	Agenda Decisions
Topic	IFRS 2 <i>Share-based Payment</i> – Share-based payment awards settled net of tax withholdings

Background

1. In September 2010 the IFRS Interpretations Committee (the Committee) published a tentative agenda decision not to add to its agenda a request to consider the classification of a share-based payment transaction in which the entity is required by law to withhold a specified portion of the shares that would otherwise be issued to the counterparty upon exercise (or vesting) of the share-based payment award. The situation considered was one where the shares were withheld by the entity in return for settling in cash (part of) the counterparty's tax obligation associated with the share-based payment.

Summary of comments from respondents

2. Six comment letters¹ were received.
3. Two of them are supportive of the Committee's tentative decision with the following caveats:
 - (a) In the respondents' views, the accounting is affected by the assessment of whether the entity is acting
 - (i) as a principal in settling the tax obligation, or

¹ Canadian Accounting Standards Board (AcSB), Deloitte Touche Tohmatsu, German Accounting Interpretations Committee, Financial Executives International, KPMG, SwissHoldings,

This paper has been prepared by the technical staff of the IASCF for discussion at a public meeting of the IFRS Interpretations Committee.

The views expressed in this paper are those of the staff preparing the paper. They do not purport to represent the views of any individual members of the IFRS Interpretations Committee or the IASB. Comments made in relation to the application of an IFRS do not purport to be acceptable or unacceptable application of that IFRS—only the IFRS Interpretations Committee or the IASB can make such a determination.

Decisions made by the IFRS Interpretations Committee are reported in *IFRIC Update*.

Interpretations are published only after the IFRS Interpretations Committee and the Board have each completed their full due process, including appropriate public consultation and formal voting procedures. The approval of an Interpretation by the Board is reported in *IASB Update*.

IASB Staff paper

- (ii) as an agent for the counterparty in selling shares on its behalf to settle its tax obligation;
 - (b) The respondents note that there are diverse views in practice on the issue in contrast to the Committee's expectation; and
 - (c) The reference to US GAAP in the agenda decision is inappropriate for the purpose of interpretation of IFRSs.
4. One respondent suggested that the Committee should make clear whether it considered a share-based payment transaction with 'broker-assisted cashless exercise' or 'net settlement'.
5. The other three respondents disagree with the Committee's tentative decision for the following reasons:
- (a) In their view it is not clear that the transaction is a cash-settled share-based payment transaction because the definition in IFRS 2 refers to payments between the employer and the counterparty instead of payments required by a third party, such as tax authorities;
 - (b) The net-settlement mechanisms which facilitate the settlement of counterparty's tax obligation should be seen to constitute an agency agreement rather than the entity being viewed as the principal obligor to the tax authorities, and thus the transaction should be viewed as the repurchase of a portion of a vested award to which paragraph 29² of IFRS 2 applies: and
 - (c) the tentative agenda decision causes IFRS 2 to diverge from US GAAP.

Staff analysis

Analysis of the caveats of the supportive comment letters

Analysis as principal/agent

6. The staff notes that there may be a variety of share-based payment transactions involving tax withholding. As contrasting examples, the staff had presented
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² Paragraph 29 of IFRS 2 states:

If an entity repurchases vested equity instruments, the payment made to the employee shall be accounted for as a deduction from equity, except to the extent that the payment exceeds the fair value of the equity instruments repurchased, measured at the repurchase date. Any such excess shall be recognised as an expense.

‘broker-assisted cashless exercise’ and ‘net-settlement for tax withholding requirements’ to the Committee at the September 2010 meeting. In the staff’s opinion:

- (a) ‘broker-assisted cashless exercise’ represents share-based payment transactions involving tax withholding in which the entity is *acting as an agent* for the counterparty in selling shares on its behalf to settle its tax obligation. In this circumstance, all of the shares that are to be issued in accordance with the share-based payment transaction are issued and the entity sells some of these shares to the market on behalf of the counterparty and pays the cash received to the tax authority to settle the counterparty’s tax obligation; and
- (b) ‘net-settlement for tax withholding requirements’, whose example is the transaction in issue, represents share-based payment transactions involving tax withholding in which the entity is *acting as a principal* in settling the tax obligation. In this circumstance the entity issues a reduced number of shares to the counterparty and uses its own cash reserves to settle the counterparty’s tax obligation.

Diversity of views in practice

- 7. The submitter referring to the diversity of views in practice explains that they think this arises from diversity in judging whether the entity is acting as principal or agent. The staff accepts that judgment must be applied to make this determination, but having done so, the staff thinks that the guidance in IFRS 2 on how to account for the transaction is sufficient. Accordingly the staff thinks that the Committee’s reference to not expecting diversity in practice remains appropriate.

Reference to US GAAP in the agenda decision

- 8. The staff agrees that reference to US GAAP is inappropriate for the purpose of interpretation of IFRSs and thinks that it should be removed in the wording of agenda decision.

Analysis of the suggestion to clarify the situation in issue

- 9. The staff agrees that the Committee should make clear whether it considered a share-based payment transaction with ‘broker-assisted cashless exercise’ or ‘net

settlement' by specifying that the entity has paid cash from its own cash resource.

Analysis of the reasons for disagreement

Definition of cash-settled share based payments

10. Some respondents stated that in their view it is not clear that the transaction is a cash-settled share based payment
11. The staff thinks that the circumstances set out in the submission do not meet the definition of equity-settled share-based, but do meet the definition of a cash-settled share-based payment transaction, both of which defined as [emphasis added]:

Equity-settled share-based payment:

A share-based payment transaction in which the entity

- (a) receives goods or services as consideration for **its own equity instruments (including shares or share options)**, or
- (b) receives goods or services but **has no obligation to settle the transaction with the supplier**.

Cash-settled share-based payment:

A share-based payment transaction in which the entity acquires goods or services by **incurring a liability to transfer cash** or other assets to the supplier of those goods or services for amounts that are based on the price (or value) of equity instruments (including shares or share options) of the entity or another group entity.

12. The entity transfers cash to the tax authorities rather than the counterparty, but this does not mean that the entity 'has no obligation to settle the transaction with the supplier'. The requirement to pay cash to the tax authorities arises from the interaction of the share-based payment transaction and the tax law. Thus in return for receiving/acquiring services from the counterparty, the entity has 'incurred a liability to transfer cash'. Although the obligation on the entity is to pay cash to the tax authority rather than to the counterparty, the staff understands that the tax obligation remains that of the counterparty and that the entity is acting as agent and is settling the tax obligation on behalf of the

counterparty. Thus, in making the cash payment to the tax authorities, two obligations are being fulfilled:

- (a) The entity is fulfilling its obligation to pay for the services received from the counterparty. It is acting as a principal in this respect; and
- (b) It is acting as agent on behalf of the counterparty in transferring cash to the tax authority.

13. The staff therefore thinks that in discharging its obligations in which it is acting as a principal, the entity is required to transfer cash in return for the services received from the counterparty. The staff think that this consistent with the definition of cash-settled share-based payment and inconsistent with the definition of equity-settled share-based payment.

Repurchase of the vested award

14. One respondent believes that, in substance, the entity has repurchased part of the vested equity-settled share-based payment award through net-settlement with the tax authority, consistent with the guidance in paragraph 29 of IFRS 2.

15. Paragraph 29 of IFRS 2 states:

If an entity repurchases vested equity instruments, the payment made to the employee shall be accounted for as a deduction from equity, except to the extent that the payment exceeds the fair value of the equity instruments repurchased, measured at the repurchase date. Any such excess shall be recognised as an expense.

16. The guidance in paragraph 29 addresses two matters:
- (a) The purchase of vested equity instruments is similar to the purchase of treasury shares, in that the payment made to purchase the equity instruments is deducted from equity; but
 - (b) To the extent that the amount paid exceeds fair value at the repurchase date, that excess amount is not deducted from equity but is instead recognised as an expense in profit or loss.
17. The staff thinks that the principal objective of paragraph 29 is to address a risk of abuse from an entity compensating an employee through repurchasing the

IASB Staff paper

equity instruments for more than fair value and avoiding an expense in profit or loss for the excess.

18. The respondent has identified that the net settlement occurs only after the share-based payment has vested, and therefore the respondent believes that paragraph 29 applies irrespective of when the decision to repurchase was made. The staff disagrees. The staff notes that in the circumstances reviewed by the Committee, the shares were never issued and therefore could not be repurchased, and consequently paragraph 29 does not apply. The staff thinks is different from issuing and subsequently repurchasing the shares.

Divergence from US GAAP

19. In paragraph 21 of Agenda paper 14 for the September 2010 Committee meeting, the staff had noted that the FASB acknowledged that there is a conceptual difference that ordinarily would result in different classifications between the situations in which:
 - (a) an entity permits the employee to exercise the equity-settled share-based award, the entity issues all related equity instruments and simultaneously the employee sells the shares through a broker (ie broker-assisted cashless exercise) and requests the broker to withhold some of the proceeds and forward those proceeds to the entity to satisfy the entity's minimum statutory withholding requirements (which should not result in cash-settled classification); and
 - (b) an entity promises to 'automatically repurchase' (through the payment of cash or other assets) some of shares to be delivered upon exercise to the employee (ie net settlement) to satisfy the entity's minimum statutory withholding requirements (which should result in cash-settled classification).
20. Despite acknowledging the conceptual differences, the FASB brought forward a previously existing exception in US GAAP so that net settlement from the exercise of the SBP award to meet the entity's minimum statutory withholding requirements does not, by itself, result in liability classification.

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21. The staff notes that IFRS 2 does not diverge from US GAAP ‘in conceptual terms’ on the issue, however, because IFRS 2 does not include the same exception as US GAAP, there exists a difference in the requirements at present. In the staff’s view the agenda decision highlights a difference between IFRS and US GAAP, but it does not create the difference.

Staff conclusion and recommendation

22. The staff thinks that amendments are needed to the wording of the agenda decision in response to:
- (a) the caveats made in the comment letters agreeing with the Committee’s tentative decision; and
 - (b) the suggestion to clarify the situation considered by the Committee.
23. The staff disagrees with the arguments made against the Committee’s tentative decision for the reasons given above.

Recommendation and question for the Committee

The staff recommends that the Committee finalise the agenda decision as published with some edits indicated in paragraphs 8, 9 and 11. Wording is included in the Appendix A.

Does the Committee agree?

Appendix A – proposed wording for agenda decision

- A1. The staff proposes the following wording for the final agenda decision (*new text is underlined and deleted text is struck through*):

The Committee received a request to consider the classification of a share-based payment transaction in which the entity withholds a specified portion of the shares that would otherwise be issued to the counterparty upon exercise (or vesting) of the share-based payment award. The shares are withheld by the entity in return for settling the counterparty's tax withholding obligation associated with the share-based payment. The request received by the Committee asked whether the portion of the share-based payment that is withheld should be classified as cash-settled or equity-settled. ~~Under US GAAP, such arrangements do not require liability classification for any portion of the share-based payment award.~~

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 from the entity's own cash resources is transferred to the tax authority, in settlement of the counterparty's tax obligation, in respect of the shares withheld, rather than the entity transferring to the tax authority cash generated by the sale of the withheld shares on behalf of the counterparty.

The Committee noted that IFRS 2 provides sufficient guidance to address this issue and that it does not expect diversity in practice. Consequently, the Committee [decided] not to add the issue to its agenda. Additionally, the Committee recommended that the issue should be reconsidered by the Board as part of its post-implementation review of IFRS 2 ~~to determine if the introduction of an exception in IFRS 2, to permit equity-settled classification of the portion of the share-based payment withheld, would be appropriate.~~

October 8, 2010

(by e-mail to ifric@ifrs.org)

IFRS Interpretations Committee

30 Cannon Street,

London EC4M 6XH

United Kingdom

Dear Sirs,

Re: Tentative agenda decision on IFRS 2 *Share-based Payment* – Share-based payment awards settled net of tax withholdings

This letter is the response of the staff of the Canadian Accounting Standards Board to the IFRS Interpretation Committee's tentative agenda decision on accounting for share-based payment awards settled net of tax withholdings under IFRS 2 *Share-based Payment*. This tentative agenda decision was published in the September 2010 IFRIC Update.

The views expressed in this letter take into account comments from individual members of the staff of the Canadian Accounting Standards Board. They do not necessarily represent the view of the Canadian Accounting Standards Board or a common view of its staff. Views of the Canadian Accounting Standards Board are developed only through due process.

We do not agree with the tentative agenda decision. We do not support the view that IFRS 2 provides sufficient guidance to conclude that a portion of a share-based payment award that is withheld to meet minimum statutory withholding requirements should always be considered a cash-settled share-based payment transaction. We think the definition of a cash-settled share-based payment transaction in IFRS 2 does not clearly apply to this situation because the

definition refers to payments between the employer and the counterparty instead of payments required by a third party, such as tax authorities. Therefore, we think the defined terms in IFRS 2 do not represent sufficient guidance.

We think further analysis is needed on whether equity-settled classification is appropriate if the employer is acting as an agent and bears no price risk. We note that the Committee's staff agenda paper 14 focused on a comparison of a broker-assisted cashless exercise and a net settlement for tax withholding requirements. We think additional analysis is needed on different types of net settlements for tax withholding requirements in order to conclude that all types require cash-settled classification under IFRS 2. For example, we think the Committee might compare transactions when the employer withholds an amount to meet the minimum statutory withholding requirement or an amount in excess of the minimum required withholding. We think these fact patterns are substantially different in nature and further research is needed to demonstrate that IFRS 2 contains sufficient guidance to support one view for all types of net settlement for tax withholding requirements.

Therefore, we recommend that the Committee reconsider its decision. However, if the Committee decides to confirm this agenda decision, we think the wording of the tentative agenda decision should be revised to avoid precluding equity-settled classification. Instead, we think the agenda decision should state that the classification of an award as cash-settled or equity-settled needs to be judged based on the facts and circumstances. Therefore, the Appendix to this letter provides suggested amendments to the tentative agenda decision.

We think the tentative agenda decision should also be revised for the following reasons:

- The Committee's recommendation to the Board is inconsistent with the tentative agenda decision. If IFRS 2 provides sufficient guidance, it should not be necessary for the IASB to consider an amendment to address this issue as part of the post-implementation review.
- The Committee's recommendation to the Board should not imply a solution, such as the need for an exception to permit equity-settled classification.

- The reference in the description to US GAAP should reflect that the exception applies only to the minimum required statutory withholding not “any portion” in excess of that minimum.

We would be pleased to provide more detail if you require. If so, please contact Kathryn Ingram, Principal, Accounting Standards at +1 416 204-3475 (e-mail kathryn.ingram@cica.ca).

Yours truly,



Peter Martin, CA
Director,
Accounting Standards

Appendix

If the Committee decides to confirm the agenda decision, we suggest clarifying the tentative agenda decision as follows:

IFRS 2 Share-based Payment – Share-based payment awards settled net of tax withholdings

The Committee received a request to consider the classification of a share-based payment transaction in which the entity withholds a specified portion of the shares that would otherwise be issued to the counterparty upon exercise (or vesting) of the share-based payment award. The shares are withheld by the entity in return for settling the counterparty's tax withholding obligation associated with the share-based payment. The request received by the Committee asked whether the portion of the share-based payment that is withheld should be classified as cash-settled or equity-settled. Under US GAAP, such arrangements do not require liability classification for anythe portion of the share-based payment award that is withheld to meet the employer's minimum statutory requirements.

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 to the supplier of goods or services received. In the circumstances considered by the Committee, the facts and circumstances of the share-based payment award must be considered to classify a share-based payment transaction as cash-settled or equity-settled~~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. Consequently, the Committee [decided] not to add the issue to its agenda. Additionally, the Committee recommended that the issue should be reconsidered by the Board as part of its post-implementation review of IFRS 2 ~~to determine if the introduction of an exception in IFRS 2, to permit equity-settled classification of the portion of the share-based payment withheld, would be appropriate.~~



KPMG IFRG Limited
1-2 Dorset Rise
London EC4Y 8EN
United Kingdom

Tel +44 (0)20 7694 8871
Fax +44 (0)20 7694 8429
mary.tokar@kpmgifrg.com

Mr Robert Garnett
Chairman
IFRS Interpretations Committee
30 Cannon Street
London
EC4M 6XH

Our ref MT/288
Contact Mary Tokar

8 October 2010

Dear Mr Garnett,

Tentative agenda decision: IFRS 2 *Share-based payment* – Share-based payment awards settled net of tax withholdings

We appreciate the opportunity to comment on the IFRS Interpretations Committee's publication in the September 2010 IFRIC Update of the tentative decision relating to share-based payment awards settled net of tax withholdings. We write because we have a concern that the decision wording may be misunderstood as extending beyond the specific fact pattern considered.

We are supportive of the tentative decision not to add this issue to the Committee's agenda since we agree with the Committee's noted view that IFRS 2 provides sufficient guidance to address this issue, such that diversity should not be expected in practice. Further, we agree with the Committee's tentative conclusion implicit in the final paragraph of the Update's text that it would require an amendment to IFRS 2 to align IFRSs with US GAAP by permitting equity-settled classification in *all* cases in which a portion of the share-based payment is withheld.

However, we are concerned that the wording of the tentative decision might be misinterpreted as meaning that IFRS 2 currently requires cash-settled treatment of the portion of the share-based payment withheld in *all* cases in which it is withheld to enable the entity to settle the counterparty's tax withholding obligation, whether the tax is settled directly by the entity (without selling the shares) or from sale of the withheld shares on behalf of the counterparty. This is because of the reference in the second paragraph to cash being transferred to the tax authority (which will occur in both scenarios) and the implication in the final paragraph that an exception would be required in all cases, in order for equity-settled classification to be permitted.

We agree that, under IFRS 2 as currently drafted, cash-settled classification would be appropriate for cases in which the entity is acting as principal in settling the tax obligation and, therefore, in the fact pattern considered by the Committee. However, if the entity is acting simply as an agent for the counterparty in selling shares on its behalf to settle its tax obligation, and therefore bears no risk associated with the shares, then in our view the settlement of the tax



obligation via sale by the entity of a portion of the shares does not mean that the tax portion is a cash-settled share-based payment.

We are concerned that the current wording could lead to confusion and the potential for diversity in practice. We therefore recommend that the drafting be clarified to distinguish clearly between the agent and principal situations; we attach a mark-up showing some suggested wording.

Please contact Mary Tokar +44 (0)20 7694 8871 if you wish to discuss any of the issues raised in this letter.

Yours sincerely

KPMG IFRG Limited

KPMG IFRG Limited



Extract from September 2010 IFRIC Update

Annotated to show suggested changes to wording

IFRS 2 *Share-based Payment* —Share-based payment awards settled net of tax withholdings

The Committee received a request to consider the classification of a share-based payment transaction in which the entity withholds a specified portion of the shares that would otherwise be issued to the counterparty upon exercise (or vesting) of the share-based payment award. The shares are withheld by the entity in return for settling the counterparty's tax withholding obligation associated with the share-based payment. The request received by the Committee asked whether the portion of the share-based payment that is withheld should be classified as cash-settled or equity-settled. Under US GAAP, such arrangements do not require liability classification for any portion of the share-based payment award.

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 from the entity's own cash resources is transferred to the tax authority, in settlement of the counterparty's tax obligation, in respect of the shares withheld, rather than the entity transferring to the tax authority cash generated by the sale of the withheld shares on behalf of the counterparty.

The Committee noted that IFRS 2 provides sufficient guidance to address this issue and that it does not expect diversity in practice. Consequently, the Committee [decided] not to add the issue to its agenda. Additionally, the Committee recommended that the issue should be reconsidered by the Board as part of its post-implementation review of IFRS 2 to determine if the introduction of an exception in IFRS 2, to permit equity-settled classification of the portion of the share-based payment withheld, in a case that currently would be classified as cash-settled, would be appropriate.



AIC • c/o DRSC e.V. • Zimmerstr. 30 • 10969 Berlin

Telefon +49 (0)30 206412-12

Telefax +49 (0)30 206412-15

E-Mail info@drsc.de

IFRS Interpretations Committee
Mr Robert Garnett
30 Cannon Street
London EC4M 6XH

Berlin, 18. Oktober 2010

United Kingdom

Dear Bob

Comment Letter on IFRIC's Agenda Decision 'IFRS 2 Share-based Payment – Share-based payment awards settled net of tax withholdings' published in September 2010

During its meeting in September 2010 the IFRS Interpretations Committee discussed a request for guidance on the classification of a share-based payment transaction in which the entity withholds a specified portion of the shares that would otherwise be issued to the counterparty upon exercise (or vesting) of the share-based payment award. The shares are withheld by the entity in return for settling the counterparty's tax withholding obligation associated with the share-based payment.

The Committee responded to the question whether the portion of the share-based payment that is withheld should be classified as cash-settled or equity-settled. 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.

While the Committee noted that IFRS 2 provides sufficient guidance to address this issue and that it does not expect diversity in practice, we would like to raise the following concern which we ask the Committee to address.

We understand that the tentative agenda decision is meant to address specific situations as further described in the Staff Paper No. 14 for the September 2010 meeting of the committee. However, the proposed wording of the Tentative Agenda Decisions rather gives the impression that it generally and comprehensively addresses the issue ('share-based payment awards settled net of tax withholdings').



Therefore, we ask the Committee to make specifically clear in its Agenda Decision

- which tax withholding approach (e.g. 'broker-assisted cashless exercise', 'net settlement')
- under which income tax regime (e.g. taxing the fair value of the share-based payment transaction at the grant date or taxing the value of the shares once they have vested or cashed)

the decision relates to.

If you would like further clarification of the issue set out in this letter, please do not hesitate to contact me.

With best regards

Guido Fladt
AIC, Chairman

Mr Robert Garnett
Chairman
IFRS Interpretations Committee
30 Cannon Street
London
United Kingdom
EC4M 6XH

Email: ifric@iasb.org

11 October 2010

Dear Mr Garnett,

Tentative agenda decision: IFRS 2 Share-based Payment —Share-based payment awards settled net of tax withholdings

Deloitte Touche Tohmatsu Limited is pleased to respond to the IFRS Interpretations Committee's publication in the September 2010 IFRIC Update of the tentative decision not to take onto the IFRS Interpretations Committee's agenda a request for an Interpretation of IFRS 2 *Share-based Payment* with respect to the classification of a share-based payment transaction in which the entity withholds a specified portion of the shares that would otherwise be issued to the counterparty upon exercise (or vesting) of the share-based payment award.

We agree with the IFRS Interpretations Committee's decision not to add this item onto its agenda. The issue of accounting for share-based payment awards settled net of tax withholdings is prevalent (indeed in some jurisdictions it is a statutory requirement to withhold tax) and there is widespread diversity in how the requirements in IFRS 2 are applied to this type of settlement arrangement. Therefore, we support the Committee's recommendation that the issue be considered by the IASB as part of its post-implementation review of IFRS 2.

However, we have concerns with the Committee's proposed drafting of the agenda decision. We disagree with the Committee's statement that diversity in practice should not result. There are diverse views in practice on the application of IFRS 2 to a withholding feature which have resulted in entities applying equity-settled accounting, cash-settled accounting, or a bifurcation approach to awards that contain this feature.

We believe that diversity exists as a result of how the agent/principal considerations are applied to such schemes. Whilst guidance such as IAS 18.IE 21 on *Determining whether an entity is acting as a principal or as an agent (the 2009 amendment)* may be seen as relevant, there is no explicit application guidance of this principle to share based payment arrangements.

Further, we believe that reference to US GAAP in a Committee's agenda decision is inappropriate for the purposes of interpretation of IFRSs.

Accordingly, we recommend that the tentative agenda decision be drafted to refer to diversity in application, such as follows:

“The Committee received a request to consider the classification of a share-based payment transaction in which the entity withholds a specified portion of the shares that would otherwise be issued to the counterparty upon exercise (or vesting) of the share-based payment award. The shares are withheld by the entity in return for settling the counterparty’s tax withholding obligation associated with the share-based payment. The request received by the Committee asked whether the portion of the share-based payment that is withheld should be classified as cash-settled or equity-settled. ~~Under US GAAP, such arrangements do not require liability classification for any portion of the share-based payment award.~~

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 to the supplier of goods or services 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 as a result of the interpretation of the requirements of IFRS 2. However, the Committee noted that diversity may exist as a result of the application of judgement as to whether or not an employer is acting as an agent for the employee. Due to the fact that any guidance on whether an employer is acting as an agent would be in the nature of application guidance. ~~Consequently,~~ the Committee [decided] not to add the issue to its agenda. Additionally, the Committee recommended that the issue should be reconsidered by the Board as part of its post-implementation review of IFRS 2 ~~to determine if the introduction of an exception in IFRS 2, to permit equity-settled classification of the portion of the share-based payment withheld, would be appropriate.~~”

If you have any questions concerning our comments, please contact Veronica Poole in London at +44 (0)20 7007 0884.

Yours sincerely,



Veronica Poole
Global IFRS Leader - Technical



financial executives
international

COMMITTEE ON CORPORATE REPORTING

October 7, 2010

Mr. Robert P. Garnett
Chairman, IFRS Interpretations Committee
30 Cannon Street
London EC4M 6XH
United Kingdom

Re: IFRIC Tentative Agenda Decision on IFRS 2 Share-based Payment – Share-Based payment awards settled net of tax withholding

Dear Mr. Garnett:

The Committee on Corporate Reporting (“CCR”) of Financial Executives International (“FEI”) wishes to comment on the IFRIC’s tentative agenda decision against adding share-based payment awards settled net of tax withholdings to the IFRIC’s agenda.

FEI is a leading international organization of 15,000 members, including Chief Financial Officers, Controllers, Treasurers, Tax Executives and other senior financial executives. CCR is a technical committee of FEI which reviews and responds to research studies, statements, pronouncements, pending legislation, proposals and other documents issued by domestic and international agencies and organizations. This document represents the views of CCR and not necessarily those of FEI or its members individually.

CCR believes the legal terms in the share-based payment arrangement define the final contractual rights and obligations of the parties (i.e. vesting conditions, settlement obligations, etc.). When an employee satisfies all of the vesting conditions, they become legally entitled to the full amount of the equity instrument, which becomes the basis for the employee’s tax obligation. The obligation to pay the government is clearly that of the employee and not of the employer. To ease employee payment as well as minimize transaction costs, a company may, in substance, repurchase a portion of the award. This form of settlement facilitates an employee’s extinguishment of his/her personal tax obligation and may be required by the tax laws of a particular jurisdiction. In CCR’s view, consistent with IFRS 2, the classification of a share-based payment transaction should be based on what the employee is legally entitled to receive from a company and that which the company is obligated to issue to the employee upon vesting. An employee’s discharge of his/her personal tax obligation should not be considered part of the structure of a share-based payment arrangement.

CCR believes that the substantive repurchase of a portion of a vested award through net settlement is consistent with the guidance in paragraph 29 of IFRS 2. In the IFRIC's deliberation of this issue on September 3, 2010, this point was briefly mentioned; however, the staff stated that the guidance in paragraph 29 is intended to cover only ad hoc transactions. CCR disagrees with this view. Paragraph 29 of IFRS 2 states "*if an entity repurchases vested equity instruments, the payment made to the employee shall be accounted for as a deduction from equity...*" [Emphasis added].

Appendix A of IFRS 2 defines "vest" as "*to become an entitlement. Under a share-based payment arrangement, a counterparty's right to receive cash, other assets or equity instruments of the entity vests when the counterparty's entitlement is no longer conditional on the satisfaction of any vesting condition*". Net settlement occurs only after the employee fully satisfies all vesting conditions and after the employee becomes entitled. Consistent with the definition of "vest", a company substantively repurchases the vested equity instrument through a net settlement arrangement. Consequently, CCR believes that the repurchase under a net settlement is within the scope of paragraph 29 of IFRS 2. CCR further believes that the timing of the decision to repurchase is irrelevant in the determination of whether a repurchase is within scope of paragraph 29. That is, the guidance in IFRS 2 does not qualify this principle to only ad hoc repurchases. Suggesting such is tantamount to amending IFRS 2 through an IFRIC agenda decision.

It is noteworthy to state that net settlement is widespread and the impact of this agenda decision would be pervasive across different industries, regions and countries. Through discussions with a large accounting firm, we understand that they have conducted a global survey related to the application of IFRS 2, which demonstrated that there is already significant diversity in practice whether companies applied equity accounting, liability accounting, or bifurcation when they net settle. We therefore do not share the view of the IFRIC that "*...it does not expect diversity in practice*".

Another concern we have is whether the IFRIC's documentation of this agenda decision suggests that companies that have not previously bifurcated have an error in their financial statements. As noted in the above survey and as noted in the documentation of the big accounting firm's guidance in the Staff Paper, there is currently diversity in views. We understand that some of the big accounting firms believe the method the IFRIC chose to document this agenda item suggests an error, while others believe this should be treated as a change in accounting policy. We believe the IFRIC should take seriously the ramifications the decision, and the documentation of such, has on companies, auditors and users of financial information.

CCR believes that a bifurcation approach would have significant operational impacts on companies and service providers resulting in an increase to implementation costs and raises many questions because of the complexities involved. For example:

- In jurisdictions with variable minimum withholding tax rates (i.e. tax rates based on income levels), the withholding rate could change at any time depending on an employee's income level. Would a change in expected income level and therefore

- a change in the expected net settlement amount create a “modification” of a portion of an award?
- For awards settled in the subsidiary’s foreign currency, the determination of the liability is not limited to only the movement in stock price, but the potential effects of foreign exchange movements.
 - Would employee mobility between jurisdictions (e.g. countries, states, etc.) with different tax rates create a modification?

In 2010 alone, 14 countries¹ have either changed their withholding rate, added a new withholding requirement or changed the employee’s tax basis of the award. We also note that in the United States, the current withholding rate will change without congressional action, raising serious application questions with the bifurcation approach. We question whether the IFRIC has considered the full ramifications of its decision. We are also concerned that the IFRIC would choose to diverge from US GAAP at a time when convergence is a priority.

In our view, the IFRIC’s documentation of its agenda decision on net settlement does not faithfully represent the economics and legality of the arrangement or the original intent of the IASB, but is tantamount to an amendment to IFRS 2 without proper due process. Therefore, we urge the IFRIC to reconsider how it documents its tentative agenda decision or to add this issue to the agenda for proper consideration before guidance is provided.

Sincerely,



Loretta Cangialosi
Chair, Committee on Corporate Reporting
Financial Executives International

¹ Countries include Australia, Canada, Denmark, France, Greece, India, Ireland, Israel, Italy, Russia, Slovakia, Sweden, United Kingdom, and Vietnam

13 October 2010

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

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

Dear Sir / Madam,

SwissHoldings, the Swiss Federation of Industrial and Services Groups in Switzerland, represents 50 Swiss groups, including most of the country's major industrial and commercial enterprises. We very much welcome the opportunity to comment on the above-mentioned Exposure Draft. Our response below has been prepared in conjunction with our member companies.

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.

According to the IFRS 2 Appendix A definition of a cash-settled share-based payment transaction, the entity "...acquires goods or services by incurring a liability to transfer cash or other assets to the supplier of those goods or services..." We note that, as published, the agenda decision omits the words "to the supplier" which, in our opinion, are a significant part of the definition. The tax authorities are not the entity's counterparty in the share based payment arrangement and have not supplied goods or services to the entity. The incurrence of a liability to

the tax authorities does not in itself change the nature of the underlying share based payment arrangement.

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.

We would like to thank you very much for your attention to the above.

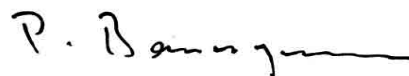
Yours sincerely,

SwissHoldings

Federation of Industrial and Service Groups in Switzerland



Dr. Gottlieb A. Keller
Current Chair of SwissHoldings,
(General Counsel Roche Holding AG)



Dr. Peter Baumgartner
Chair Executive Committee

cc SH Board