

STAFF PAPER

July 2016

IFRS® Interpretations Committee Meeting

Project	IFRIC 12 <i>Service Concession Arrangements</i>
Paper topic	Payments made by an operator to a grantor in a service concession arrangement
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This paper has been prepared for discussion at a public meeting of the IFRS Interpretations Committee. Comments made in relation to the application of an IFRS Standard do not purport to be acceptable or unacceptable application of that IFRS Standard—only the IFRS Interpretations Committee or the International Accounting Standards Board (the Board) can make such a determination. Decisions made by the IFRS Interpretations Committee are reported in IFRIC® *Update*. The approval of a final Interpretation by the Board is reported in IASB® *Update*.

Introduction

1. The IFRS Interpretations Committee (the Interpretations Committee) received a request to clarify how an operator accounts for contractual payments that it makes to a grantor in a service concession arrangement (SCA) within the scope of IFRIC 12 *Service Concession Arrangements*.
2. In circumstances other than those in which the operator is collecting payments on behalf of, and remitting them to, the grantor, the Interpretations Committee observed the following:
 - (a) if the contract gives the operator the right to a good or service that is separate from the SCA in exchange for the contractual payments, then the operator accounts for the contractual payments applying the applicable IFRS Standard(s).
 - (b) if the contract gives the operator the right to use an asset that is separate from the infrastructure in exchange for the contractual payments, then the operator assesses whether the SCA contains a lease. If the SCA contains a lease, the operator accounts for the contractual payments applying IFRS 16 *Leases* (IAS 17 *Leases*).

(c) if the contract does not give the operator the right to a separate good or service or a separate right-of-use that meets the definition of a lease, the operator accounts for the contractual payments as follows:

- (i) if the SCA results in the operator having only a contractual right to receive cash from the grantor (ie the financial asset model described in paragraph 16 of IFRIC 12 applies), then the grantor is no different from a customer in a revenue contract. Consequently, the operator accounts for the contractual payments as a reduction of the transaction price, applying the requirements on consideration payable to a customer in paragraphs 70-72 of IFRS 15 *Revenue from Contracts with Customers*;
- (ii) if the SCA results in the operator having only a right to charge users of the public service (ie the intangible asset model described in paragraph 17 of IFRIC 12 applies), then the operator has received an intangible asset (ie the right to charge the users of the public service) in exchange for construction/upgrade services and the contractual payments to be made to the grantor. Consequently, the Interpretations Committee noted that the contractual payments represent additional consideration for the intangible asset (ie part of the cost of the intangible asset recognised applying IAS 38 *Intangible Assets*); and
- (iii) if the operator has both a right to charge users of the public service and a contractual right to receive cash from the grantor (ie both the intangible asset model and the financial asset model described in paragraph 18 of IFRIC 12 apply), the operator considers the substance of the contractual payments to determine whether the contractual payments represent consideration for the intangible asset (ie the right to charge the users of the public service), consideration payable to a customer, or both.

3. The Interpretations Committee noted that when the intangible asset model described in IFRIC 12 applies, the accounting for variable payments to be made by the operator in a SCA is linked to the broader issue of accounting for variable payments for asset

- purchases (the Broader Issue). The Interpretations Committee noted that it was unable to reach a consensus on the Broader Issue.
4. Some members of the Interpretations Committee thought that SCAs represent a unique type of arrangement because the operator typically has an ongoing contractual obligation to provide services. These members thought that the Interpretations Committee could develop a solution to address the accounting for variable payments to be made by an operator to a grantor, without the need to address the Broader Issue.
 5. The purpose of this paper is:
 - (a) to provide the Interpretations Committee with an analysis of the comments received on the tentative agenda decision; and
 - (b) to ask the Interpretations Committee if it agrees with the staff recommendation to finalise the agenda decision.

Comment letter summary and staff analysis

6. We received four comment letters, which are included in Appendix B to this paper.
7. Ernst & Young Global Limited (EY), the Accounting Standards Committee of Germany (ASCG) and Deloitte generally support the tentative agenda decision. Nonetheless, all respondents raised concerns about particular aspects of it. These concerns, together with our analyses of them, are summarised below.

Accounting for variable payments when the intangible asset model described in IFRIC 12 applies

Concerns raised by respondents

8. Two respondents (PricewaterhouseCoopers (PwC) and the ASCG) think that the Interpretations Committee could develop a solution to address how an operator accounts for variable payments to be made in a SCA when the intangible asset model described in IFRIC 12 applies, without addressing the Broader Issue.
9. PwC agrees with some members of the Interpretations Committee who stated that SCAs are different from other arrangements because the operator, typically, has a

contractual obligation to provide services. Consequently, in its view, the principal reason that the Interpretations Committee was unable to conclude on the Broader Issue (ie because, in some cases, the buyer could avoid making the variable payments by not carrying out the activity) does not apply.

10. The ASCG also thinks that the Interpretations Committee could develop a solution to address the accounting for such payments. It suggests doing so by limiting the scope to variable payments for which the events that trigger those variable payments are outside the control of the operator.
11. In contrast, EY supports the Interpretations Committee's conclusion and thinks that it would not be appropriate to develop a solution for these variable payments, without considering the Broader Issue.
12. Deloitte recommends that the International Accounting Standards Board (the Board) address the accounting for these variable payments, together with the Broader Issue. Deloitte also recommends that the operator's accounting for variable payments that do not depend on the operator's future activity (eg that depend on an index or a rate) be addressed as part of the agenda decision.

Staff analysis and conclusion

13. The concerns raised by PwC and the ASCG are similar to those raised by some members of the Interpretations Committee. The feedback received from respondents is also mixed (two think that the Interpretations Committee could develop a solution for such payments without addressing the Broader Issue, while two do not).
14. Despite the mixed views within the Interpretations Committee, it ultimately decided not to address the accounting for such variable payments.
15. Given the mixed views of respondents and the absence of any new arguments presented to the Interpretations Committee, we support the Interpretations Committee's previous conclusion that addressing the operator's accounting for variable payments in a SCA when the intangible asset model applies is too broad to be addressed by the Interpretations Committee.
16. In addition, we think it is not appropriate to address the operator's accounting for variable payments that do not depend on the operator's future activity in isolation of a

wider consideration of variable payments. We think it would be more appropriate to consider the accounting for all such variable payments comprehensively.

References to the Broader Issue

Concerns raised by respondents

17. Two respondents (EY and the ASCG) have concerns about the reference made in the tentative agenda decision to the Broader Issue.
18. EY notes that the discussion in the third paragraph on the treatment of variable payments appears to be incomplete. The respondent says that the questions on which the Interpretations Committee reached a consensus and the questions on which it did not remains unclear. In particular, the wording appears to introduce concepts that are inconsistent with the Broader Issue. The tentative agenda decision makes reference to the notion of an obligation being within or outside the *control* of the purchaser, while the agenda decision on the Broader Issue considered variable payments that are dependent on the purchaser's *future activity*.
19. The ASCG agrees with the Interpretations Committee that, in some cases, the events that trigger variable payments may be within the operator's control, and in others they may be outside the operator's control. However, that respondent notes that the basis of the tentative decision remains unclear, ie whether the decision not to address variable payments in an intangible asset model in IFRIC 12 applies is derived from the fact that the triggering events are within the control of the operator, or if the same arguments would hold if those factors are outside the control of the operator.

Staff analysis and conclusion

20. We agree with the respondents' concerns regarding the wording in the tentative agenda decision. At its meeting in March 2016, the Interpretations Committee finalised the [agenda decision](#) for the Broader Issue. In that agenda decision, the Interpretations Committee noted that the issue was too broad for it to address within the confines of existing IFRS Standards. It also concluded that the Board should address the Broader Issue comprehensively.

21. Consequently, we recommend revising the wording of the agenda decision to make it consistent with the wording of the final agenda decision on the Broader Issue. We think our revised wording (see Appendix A for proposed wording of the final agenda decision) removes the inconsistencies referred to by respondents and addresses the concerns raised.

Assessment of what is a ‘separate’ good, service or right-of-use

Concerns raised by respondents

22. Two respondents (Deloitte and PwC) ask the Interpretations Committee to further explain how an operator assesses whether a right to a good or service, or a right to use an asset, is separate from the SCA.
23. One respondent (Deloitte) notes that it is not uncommon for the land, upon which the infrastructure is constructed, to be the subject of a lease from the grantor to the operator. Nonetheless, the respondent does not think that in these cases (or others for which an asset is integral to the construction of the infrastructure) it is appropriate to account for the lease of the land separately from the SCA itself. This is because the right to use the land is typically not independent from the operation of the infrastructure in a SCA. The respondent further notes that such payments can also arise in respect of the use of intangible assets.

Staff analysis and conclusion

24. The concerns raised by respondents relate to assessing whether particular assets or infrastructure are within the scope of IFRIC 12. We do not think these concerns relate to how an operator accounts for the contractual payments that it makes to a grantor in a SCA, which is the subject of the submission.
25. Paragraph 11 of IFRIC 12 outlines how an operator accounts for infrastructure within the scope of IFRIC 12. Accordingly, we think that the requirement to assess whether an asset is separate from that infrastructure exists in IFRIC 12; it is not a requirement that arises as a consequence of this agenda decision. In addition, paragraphs AG7 and AG8 of IFRIC 12 provide application guidance to help an operator assess when it analyses infrastructure separately.

26. On the basis of our analysis, we recommend that the Interpretations Committee does not address this concern.

Use of the term ‘agent’

Concern raised by respondent

27. EY notes that the reference to ‘agent’ in the tentative agenda decision (second paragraph) could potentially cause confusion. It thinks that the Interpretations Committee is referring to amounts included in contractual cash flows (such as sales tax or levies) that are collected from users of the services and paid to a public sector body in its capacity as a government. It is not referring to payments made to a public sector body as the grantor of the SCA. The respondent thinks that the Interpretations Committee should clarify this in the final agenda decision.

Staff analysis and conclusion

28. We agree with the respondent’s concern regarding the use of the word ‘agent’ in the tentative agenda decision, and have revised the proposed wording for the agenda decision as outlined in Appendix A to this paper.

Interaction of IFRIC 12 and the principal-agent requirements in IFRS 15

Concern raised by respondent

29. EY has identified the status of the operator, as agent or principal, as a potential issue arising from the interaction between IFRIC 12 and IFRS 15. That respondent notes that the operator provides services on behalf of the grantor but the presentation of revenue is that of a principal. The respondent thinks that the indicators set out in paragraph B37 of IFRS 15 are inconclusive. The operator in a SCA is primarily responsible for fulfilling the contract, which indicates that the operator is a principal applying IFRS 15. However, paragraph 5 of IFRIC 12 requires that the grantor controls or regulates what services the operator must provide, to whom and at what price, which indicates that the operator is an agent applying IFRS 15.

30. The respondent requests that the Interpretations Committee undertake a more detailed analysis of the interaction between IFRIC 12 and IFRS 15, and explore this potential conflict regarding the operator's recognition of revenue.

Staff analysis and conclusion

31. The concern raised by the respondent relates to the interaction of the requirements in IFRIC 12 with those in IFRS 15 on principal versus agent considerations. We do not think there is a conflict because IFRIC 12 does not contain any requirements on the recognition of revenue. Rather, paragraph 13 of IFRIC 12 states:

The operator shall recognise and measure revenue in accordance with IFRS 15 for the services it performs.

32. We are not aware of any practical difficulties in applying the requirements of IFRIC 12 in this regard. In addition, we note that the Board has recently issued 'Clarifications to IFRS 15 *Revenue from Contracts with Customers*', which clarifies how an entity determines whether it is a principal or an agent in a revenue contract with a customer.
33. We do not think this concern relates to how an operator accounts for contractual payments that it makes to a grantor in a SCA and, on the basis of our analysis, we do not recommend the Interpretations Committee address this concern or undertake any further analysis at this stage. We also think that replacing the word 'agent' in the agenda decision (see paragraph 28) removes the confusion that arose in reading the tentative agenda decision.

Other concerns

34. One respondent (Deloitte) understands that paragraph (c) (iii) of the tentative agenda decision refers to the 'bifurcated model' (ie the financial asset and the intangible asset model) described in paragraph 18 of IFRIC 12. The respondent recommends that the bifurcated model should be referred to directly. We agree with that respondent's concern and have included the reference in the proposed wording for the final agenda decision (see Appendix A).

35. One respondent (PwC) agrees that an operator applies the requirements for consideration payable to a customer in paragraphs 70-72 of IFRS 15 when the financial asset model in IFRIC 12 applies. However, that respondent suggests that the Interpretations Committee clarifies that the operator accounts for such payments as a reduction of revenue, on the grounds that it has already been established that the operator does not receive any distinct goods or services. We agree with the respondent's concern and have included this clarification in the proposed wording for the final agenda decision (see Appendix A).
36. One respondent (ASCG) suggests clarifying the scope of the fact pattern in paragraph (c) of the agenda decision and clearly separating it from (b) as follows (suggested new text is underlined): 'if the contractual payments give the operator a right to use a tangible asset that is not separate from the infrastructure (thus does not meet the definition of a lease)'. We do not agree with the respondent's suggestion, because (c) is intended to capture payments that are neither for a distinct good or service nor for the right to use an asset. We think the wording as currently drafted (see Appendix A) appropriately reflects the Interpretations Committee's conclusions.
37. One respondent (ASCG) notes that they have made a separate submission on the operator's accounting for a SCA for which the infrastructure is leased and the operator is not required to provide any construction/upgrade services with respect to the infrastructure. We note that this is a separate issue that has been discussed by the Interpretations Committee, most recently at the Interpretations Committee's meeting in May 2016. At that meeting, the Interpretations Committee tentatively decided not to add this issue to its agenda and issued a [tentative agenda decision](#).
38. We have also made some drafting amendments to the wording of the agenda decision to improve the flow and readability of the agenda decision. These amendments are outlined in Appendix A.

Staff recommendation

39. On the basis of our analysis, we recommend confirming the tentative agenda decision as published in the [IFRIC Update](#) in January 2016. Appendix A of this paper sets out the draft wording for the final agenda decision.

Question for the Interpretations Committee

Does the Interpretations Committee agree with the staff recommendation to finalise the agenda decision set out in Appendix A to this paper?

Appendix A—Proposed wording for final agenda decision

- A1. We propose the following wording to finalise the agenda decision (new text is underlined and deleted text is struck through).

IFRIC 12 *Service Concession Arrangements* —Payments made by an operator to a grantor in a service concession arrangement

The Interpretations Committee received a request to clarify how an operator accounts for contractual payments that it makes ~~the accounting for contractual payments that are to be made by an operator~~ to a grantor ~~under~~ in a service concession arrangement within the scope of IFRIC 12 *Service Concession Arrangements*.

~~The Interpretations Committee discussed this issue at several meetings. The Interpretations Committee observed the following that in some cases, the operator may be acting as an agent with respect to the contractual payments. For example, in circumstances other than those in which the operator is may collecting payments on behalf of, and remitting them to, the grantor. The Interpretations Committee observed that in cases in which the operator is acting as a principal with respect to the contractual payments:~~

- (a) if the ~~contractual payments~~ gives the operator a right to a good or service that is separate from the service concession arrangement in exchange for the contractual payments, then the operator would ~~accounts for that~~ the contractual payments separate good or service in accordance with applying the applicable IFRS Standard(s).
- (b) if the ~~contractual payments are linked to~~ gives the operator the right to use an ~~tangible~~ asset that is separate from the infrastructure in exchange for the contractual payments, then the operator would ~~assesses~~ whether the arrangement contains a lease. If the arrangement contains a lease, the operator accounts for the contractual payments applying IFRS 16 Leases (IAS 17 Leases). ~~that portion of the arrangement would be considered to be within the scope of the applicable Standard on leases.~~
- (c) if the ~~contractual payments~~ does not give the operator the a right to a

separate good or service or a separate right-of-use that meets the definition of a lease, ~~the contractual terms of the service concession arrangement would determine the accounting~~ then the operator accounts for the contractual payments as follows ~~to be made by the operator to the grantor:~~

- (i) if the service concession arrangement results in the operator having only a contractual right to receive cash from the grantor (ie the financial asset model described in paragraph 16 of IFRIC 12 applies), ~~the Interpretations Committee observed that~~ the grantor is no different from a customer in a revenue contract arrangement. Consequently, the operator accounts for the contractual payments ~~would be accounted for in accordance with the guidance~~ as a reduction of the transaction price, applying the requirements on consideration payable to a customer in paragraphs 70-72 of IFRS 15 Revenue from Contracts with Customers;
- (ii) if the service concession arrangement results in the operator having only a right to charge users of the public service (ie the intangible asset model described in paragraph 17 of IFRIC 12 applies), ~~the Interpretations Committee observed that~~ the operator has received an intangible asset (ie the right to charge the users of the public service) in exchange for construction/upgrade services and the contractual payments to be made to the grantor. Consequently, the Interpretations Committee noted that the contractual payments represent additional consideration for the intangible asset (ie part of the cost of the intangible asset recognised ~~in accordance with~~ applying IAS 38 Intangible Assets); and
- (iii) if the operator has both a right to charge users of the public service and a contractual right to receive cash from the grantor (ie both the intangible asset model and the financial asset model described in paragraph 18 of IFRIC 12 apply), the entity operator should consider the substance of the contractual payments ~~to determine whether it~~ the contractual payments represents consideration for the ~~concession right~~ intangible asset, or ~~if it should be accounted for as~~

consideration payable to ~~the~~ a customer, or both.

~~The Interpretations Committee noted that the payments to be made by an operator may be variable payments, and that the events that trigger those variable payments may in some cases be within the control of the operator and in other cases may be outside the control of the operator. The Interpretations Committee noted~~ observed that, when the intangible asset model in IFRIC 12 applies, the accounting for variable payments to be made by the operator in a service concession arrangement, when the intangible asset model in IFRIC 12 applies, is linked to the broader issue of accounting for variable payments for asset purchases. The Interpretations Committee determined in March 2016 that the issue of accounting for variable payments for asset purchases is too broad for it to address within the confines of existing IFRS Standards and, consequently, decided not to add the issue to its agenda. In its discussions on that broader issue, the Interpretations Committee could not reach a consensus on whether the variable payments that depend on the purchaser's future activity should be recognised as a liability before that activity is performed or on what the initial measurement of this liability should be. In the case of the broader issuer on variable payments for asset purchases, the Interpretations Committee concluded that the issue was too broad for it to address.

~~Some members of the Interpretations Committee were of the view that service concession arrangements represent a unique type of arrangement, because the operator typically has an ongoing contractual obligation to provide the service. These members thought that a solution could be developed to address the accounting for payments to be made by an operator to a grantor without the need to address the broader issue of variable payments for asset purchases.~~

~~However, on balance, the~~ The Interpretations Committee concluded that the requirements in existing IFRS Standards are sufficient to address particular aspects of how an operator accounts for contractual payments that it makes to a grantor as described above. However, the Interpretations Committee determined that addressing how an operator accounts for variable payments that it makes to a grantor when the intangible asset model in IFRIC 12 applies is too broad for the Interpretations Committee to address within the confines of existing IFRS

Standards. ~~service concession arrangements, which include such variable payments, would be too broad for it to address.~~ Consequently, the Interpretations Committee ~~decided~~ not to ~~take the~~ add this issue of accounting for payments by an operator to a grantor in a service concession arrangement ~~onto~~ its agenda.

Appendix B—Copies of comment letters



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Wayne Upton
Chairman
IFRS Interpretations Committee
30 Cannon Street
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24 March 2016

Dear Mr Upton

Tentative agenda decision – IFRIC 12 *Service Concession Arrangements: Payments made by an operator to a grantor in a service concession arrangement*

Deloitte Touche Tohmatsu Limited is pleased to respond to the IFRS Interpretations Committee's publication in the January IFRIC Update of the tentative decision not to take onto the Committee's agenda the accounting for contractual payments that are to be made by an operator to a grantor under a service concession arrangement.

In respect of fixed contractual payments made by an operator to a grantor, we agree with the IFRS Interpretations Committee's decision not to add this item onto its agenda and, for the most part, with the analysis included in the tentative agenda decision. As a point of detail, however, we recommend that additional explanation be provided of the term "tangible asset that is separate from the infrastructure". It is not uncommon for the land upon which infrastructure is constructed to be the subject of a lease from the grantor to the operator, but we do not believe that in these cases (or others where an asset that is integral to the construction of infrastructure) it is appropriate to account for this as separate from the service concession arrangement itself as usually the right of use of the land is not independent from operation of the infrastructure in a concession agreement. We also note that such payments can also arise in respect of the use of intangible assets.

In respect of variable payments made by an operator to a grantor, consistently with our responses to the Committee's tentative agenda decision on variable payments for asset purchases included in the November IFRIC Update and to the IASB's Request for Views on its 2015 Agenda Consultation (which identified issues around variable consideration as a high priority), we believe that this issue should be referred to the IASB for comprehensive consideration. We would expect variable payments made in the context of service concession arrangements to form part of such a consideration as these arrangements frequently involve payments that vary based on a variety of factors either during the construction or operation phase of the service concession. We also suggest that the treatment of variable payments that do not depend on the purchaser (operator)'s future activity (for example, depending on an index or rate) be addressed.

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Finally, we understand paragraph (c)(iii) of the tentative agenda decision as referring to the 'bifurcated model' described in paragraph 18 of IFRIC 12 and recommend that this should be referred to directly.

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



Mr Henry Rees
Director of Implementation and Adoption Activities
International Accounting Standards Board
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23 March 2016

Dear Mr Rees

Tentative agenda decision: IFRIC 12 *Service Concession Arrangements* – Payments made by an operator to a grantor in a service concession arrangement

We are commenting on the above tentative agenda decision, published in the January 2016 edition of IFRIC Update, on behalf of PricewaterhouseCoopers. Following consultation with members of the PricewaterhouseCoopers network of firms, this response summarises the views of member firms who commented on the tentative agenda decision. 'PricewaterhouseCoopers' refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

We disagree with the Committee's conclusion that it should not address the accounting for variable payments to be made by the operator in a service concession arrangement when the intangible asset model in IFRIC 12 is applied. We agree with the statements by some members of the Interpretations Committee that service concession arrangements are different from other arrangements, because the operator typically has a contractual obligation to provide the service. We therefore believe that a solution could be developed to address the accounting for variable payments to be made by an operator to a grantor without addressing the broader issue of variable payments for asset purchases.

We note that the Interpretations Committee could not reach a consensus on whether the variable payments for other assets that depend on the purchaser's future activity should be recognised as a liability until that activity is performed. We also understand that the principal reason why the Committee was unable to reach a consensus on the broader issue is that the buyer, in some cases, could avoid making the variable payments by not carrying out the activity. However, this does not apply in a service concession arrangement because the operator is contractually obliged to perform the service and is therefore unable to avoid the payments.

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We suggest that the Committee reconsiders this question because the operator cannot avoid making the payments. The Committee should consider the implications for the recognition and measurement of any liability and the recognition of changes in measurement. There is guidance in IFRS that is relevant to these questions and we suggest that the Committee focuses on:

- IAS 16 *Property, Plant and equipment* - the definition of cost (paragraph 6) and the recognition criteria (paragraph 8.)
- IAS 38 *Intangible assets* - the definition of cost (paragraph 8) and the recognition criteria (paragraph 21.)
- IAS 32 *Financial Instruments: Presentation* - definitions (para ii) and contingent settlement provisions (paragraph 25.)
- IFRIC 1 *Changes in existing decommissioning, restoration and similar liabilities*
- IAS 39 *Financial instruments* - revisions to estimates of payments (paragraph AG8)

We have two further comments on the agenda decision.

We agree that contractual payments which give the operator a right to a good or service that is separate from the service concession arrangement or a right to use a tangible asset separate from the infrastructure should be accounted for in accordance with the relevant standard. However, we suggest that the Committee clarifies which guidance might be applied to determine whether a right to a good or service or a right to use a tangible asset is separate from the service concession arrangement.

We also agree that payments to the grantor in a financial asset model should be accounted for in accordance with the guidance for consideration payable to a customer in paragraphs 70-72 of IFRS 15. However, we suggest the Committee clarifies that such payments would be a reduction of revenue, since it has already been established that the operator does not receive any distinct goods or services.

If you have any questions in relation to this letter please do not hesitate to contact Paul Fitzsimon (+1 416 869 2322).

Yours sincerely

A handwritten signature in black ink that reads 'PricewaterhouseCoopers' in a cursive script.

PricewaterhouseCoopers



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Berlin, 25 February 2016

Dear Wayne,

IFRS IC's (tentative) agenda decisions in its January 2016 meeting

On behalf of the Accounting Standards Committee of Germany (ASCG), I am writing to comment on the tentative agenda decision and several (final) agenda decisions, taken by the IFRS IC and as published in the January 2016 *IFRIC Update*. Please find our detailed comments in the appendix to this letter.

If you would like to discuss our views further, please do not hesitate to contact Jan-Velten Große or me.

Yours sincerely,

Andreas Barckow

President

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Peter Missler (Vice-President)

Appendix A – Comments on tentative agenda decisions

IFRIC 12 – Payments made by an operator to a grantor

We generally support the IFRS IC's tentative agenda decision (TAD) to clarify the accounting for payments made by an operator to a grantor in a service concession arrangement (SCA) in cases in which the operator is acting as a principal with respect to the contractual payments:

- With respect to lit. (a) and (b) of the TAD, we agree with the proposed wording and the accounting consequence that, if the contractual payments give the operator a right to a good or service or a tangible asset that is separate from the SCA, the operator would account for that separate good or service in accordance with the applicable Standard.
- We also agree that the contractual terms of the SCA would determine the accounting for the contractual payments to be made by the operator to the grantor as described in lit. (c) of the TAD. However, we suggest clarifying the scope of the fact pattern under lit. (c) – and therefore clearly separating it from (b) – by amending the introductory condition of (c) as follows: "If the contractual payments **give the operator a right to use a tangible asset that is not separate from the infrastructure (thus, does not meet the definition of a lease)**..."

We acknowledge that the IFRS IC also considered that payments to be made by an operator may be variable payments, but then concluded that addressing SCAs with variable payments included would be too broad for it to address. We agree with the IFRS IC taking this decision on IFRIC 12 separately from the decision on IASs 16/38 regarding asset purchases, as the events that trigger variable payments may, in some cases, be within the control of the operator and be outside the control of the operator in other cases.

However, we take the view that it remains unclear whether the IFRS IC's tentative decision (i.e. "non-consensus" on whether or not variable payments depending on a future activity lead to recognition of a liability before that activity is performed) is derived from the fact that events triggering the variability are within the control of the operator, or whether the same arguments would also hold if the factors that triggered



the variability were outside the operator's control. We think that a solution could be developed to address the accounting for payments to be made by an operator to a grantor (without the need to address the broader issue of variable payments for asset purchases) by limiting the scope to cases where the operator's future activities are not a relevant factor when assessing how to account for variable payments (i.e. events that trigger those variable payments are outside the control of the operator).

Finally, we like to point to the fact that an answer is still missing for the case in which the operator is, or is deemed, acting as an agent, which might be outside the scope of this submission (and this TAD) but remains an open question that has been raised in our separate submission on IFRIC 12 and awaits a decision.

International Financial Reporting Standards Interpretations
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23 March 2016

Dear IFRS Interpretations Committee members,

Invitation to comment - Tentative Agenda Decision: *IFRIC 12 Service Concession Arrangements - Payments made by an operator to a grantor in a service concession arrangement* (IFRIC Update January 2016 - Agenda Paper 09)

Ernst & Young Global Limited, the central coordinating entity of the global EY organisation, welcomes the opportunity to offer its views on the above Tentative Agenda Decision (TAD) discussed by the IFRS Interpretations Committee (the IFRS IC) in January 2016.

Overall, we support the general direction of the TAD and we believe that it provides helpful guidance for those elements on which the IFRS IC reached consensus. We agree that an operator should determine the extent to which the contractual payments give it a right to a good or service that is separate from the service concession arrangement, and it should assess whether the arrangement contains a lease when the contractual payments are linked to the right to use a tangible asset that is separate from the infrastructure. We also agree that, in the absence of such additional rights, the accounting for contractual payments to the grantor would be determined according to the nature of the consideration received by the operator for the provision of construction or upgrade services. We support the IFRS IC's conclusion that the accounting for variable payments to be made by the operator in a service concession arrangement, when the intangible asset model in IFRIC 12 applies, is linked to the broader issue of accounting for variable payments for asset purchases. Although we understand some IFRS IC members' view that the service concession arrangements represent a unique type of arrangement, we believe that it would not be appropriate to develop a solution for an operator in a service concession arrangement without regard to the broader issue.

However, the draft TAD introduces other elements in respect of the areas that seem to have been agreed and those areas on which it was not possible for the IFRS IC to reach consensus. We believe that the TAD should clarify those areas on which the IFRS IC reached a consensus and those on which it did not, in order to avoid misunderstanding.

Variable payments

An example where clarity is needed is the discussion in the third paragraph on the treatment of variable payments appears to be incomplete: it is unclear where the IFRS IC achieved consensus and where it did not. Moreover, the discussion introduces concepts inconsistent

with the IFRS IC's consideration of the broader issue of accounting for variable payments for asset purchases.

- ▶ The draft TAD notes that, *“the events that trigger those variable payments may in some cases be within the control of the operator and in other cases may be outside the control of the operator.”* There is no further discussion on this observation in the TAD. In addition, the notion of an obligation being within or outside the control of the entity is inconsistent with the concepts discussed in relation to the broader issue, which considered variable payments that depend on the purchaser's future activity and those variable payments that do not. For example, a service concession arrangement where payments to the grantor are based upon the usage of the infrastructure by the public (e.g., a road or bridge) creates an obligation that clearly depends on the operators' future activity. However, in most cases, that obligation would be outside the control of the operator (assuming that the operator does not have the right to close the infrastructure to the public). If the TAD retains a reference to amounts being within or outside the control of the operator, we believe that the IFRS IC should clarify the role of these concepts (as compared to those considered in the broader issue) and the effect that the IFRS IC believes these criteria should have on the accounting outcome.
- ▶ The same paragraph goes on to state that, *“In its discussions on that broader issue, the Interpretations Committee could not reach a consensus on whether the variable payments that depend on the purchaser's future activity should be recognised as a liability before that activity is performed or on what the initial measurement of this liability should be.”* This text implies that the IFRS IC *did* reach a consensus on the recognition and measurement of variable payments that *do not* depend on the purchaser's future activity, such as payments dependent on an index or a rate. We would encourage the IFRS IC to clarify the specific areas in relation to variable payments on which it could or could not reach consensus and, where agreement was achieved, to describe the accounting treatment that should be applied.

In making the latter point above, we note that we raised a similar observation in our comment letter on ***“TAD: IAS 16 Property, Plant and Equipment and IAS 38 Intangible Assets - Variable payments for asset purchases (IFRIC Update 10 November 2015 - Agenda Paper 02)”***, submitted to IFRS IC on 21 January 2016, in response to the statement also used in this TAD, *“In its discussions on that broader issue...initial measurement of this liability should be.”* It seems that this ambiguity has not been resolved in the agenda paper prepared for the IFRS IC meeting in March 2016 (Agenda Paper 08), as demonstrated by the apparent contradiction between paragraph 3 and paragraph 25 of that document.

Operator acting as an agent

Before explaining the consensus of the IFRS IC in cases where the operator is acting as principal, the TAD refers to “agent” in the second paragraph, stating that *“The Interpretations Committee observed that in some cases, the operator may be acting as an agent with respect to the contractual payments. For example, the operator may collect payments on behalf of, and remit them to, the grantor.”* Without any further explanation, this statement could

potentially cause confusion. Paragraph 3 of IFRIC 12 *Service Concession Arrangements* acknowledges that an operator is contractually obliged “to provide the services on behalf of the public sector entity”, but it is also clear that “the operator is responsible for at least some of the management of the infrastructure and related services and does not merely act as an agent on behalf of the grantor”. However, the IFRS IC could have been referring to amounts included in the contractual cash flows, such as sales taxes or levies, that are collected from the users of the services and paid to a public sector body in its capacity as government rather than acting as the grantor of a service concession arrangement. If that is the case, then we recommend that it is clarified. Otherwise, we believe that the IFRS IC’s conclusions are valid irrespective of whether the operator acts as an agent or as a principal and that it would be appropriate to remove the reference to “agent” from this TAD.

However, we have also identified the status of an operator as agent or principal as a potential issue arising from the interaction between IFRIC 12 and IFRS 15 *Revenue from contracts with Customers*. In particular, under IFRIC 12, the operator provides the services on behalf of the grantor, but still the presentation of revenue is that of a principal. In addition, the idea of an operator having a “right to charge users” under the IFRIC 12 intangible asset model, would only be appropriate under IFRS 15 if the operator is determined to be the principal in the provision of the public service, not an agent. However, the indicators set out in paragraph B37 of IFRS 15 are inconclusive. While the operator in a service concession is primarily responsible for fulfilling the contract, paragraph 5 of IFRIC 12 requires that the grantor controls or regulates what services the operator must provide, to whom and at what price. The first would indicate that the operator is a principal; the latter would indicate the operator is an agent under IFRS 15.

Therefore, we believe that the assertion in this TAD that the operator is an agent, when collecting payments on behalf of grantor, highlights this conflict between IFRS 15 and IFRIC 12 and the need of a more detailed analysis of the interaction between them. We understand that the IFRS IC acknowledges the possibility of an operator acting as agent and that the scope and intention of this TAD is not to further observe the specific situations and circumstances that this may happen. However, the abovementioned wording in this TAD can be read as indicating a reluctance to perform any wide-ranging review of IFRIC 12. Accordingly, we consider that it might be appropriate to remove the reference to “agent” from this TAD and encourage the IFRS IC to explore the potential conflicts between IFRS 15 and IFRIC 12 on the recognition of revenues.

Should you wish to discuss the contents of this letter with us, please contact Leo van der Tas at the above address or on +44 (0)20 7951 3152.

Yours faithfully

Ernst + Young Global Limited