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

4 March 2009

Dear Sir David,

Exposure Draft ED/2009/1 *Post-implementation Revisions to IFRIC Interpretations*

Deloitte Touche Tohmatsu is pleased to respond to the Exposure Draft *Post-implementation Revisions to IFRIC Interpretations (Proposed amendments to IFRIC 9 and IFRIC 16)* (the “ED”).

We agree with the proposal to amend IFRIC 9 as set out in the ED and encourage the Board to finalise it as soon as feasible. At this time, we are not ready to support the proposal to amend IFRIC 16 as it is not clear to us what fact pattern the Board has in mind and whether the rationale applies to all situations where the hedging instrument is being held by the foreign operation being hedged. Additionally, we believe that the proposed effective date for the amendment to IFRIC 16 is not appropriate in light of the type of change to the guidance and of the prospective nature of hedge accounting.

Our detailed responses to the invitation to comment questions are included in the Appendix to this letter.

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

Yours sincerely,

Ken Wild
Global IFRS Leader

Appendix: invitation to comment

Proposed amendment to IFRIC 9 *Reassessment of Embedded Derivatives*

Question 1 – Amendment arising from IFRS 3 (as revised in 2008)

The Board proposes to amend paragraph 5 of IFRIC 9 to exclude from its scope embedded derivatives in contracts acquired in combinations of entities or businesses under common control and in the formation of joint ventures.

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

Yes, we agree.

As an editorial comment, we propose to clarify in paragraph 5(a) of the proposed amendment to IFRIC 9 that "a business combination" is a business combination as defined in IFRS 3 (as revised in 2008) *Business Combinations* and suggest the following change (new text underlined):

> "5 This Interpretation does not address embedded derivatives in contracts acquired in:
>
> (a) a business combination <u>as defined in IFRS 3 (as revised in 2008)</u>;
>
> […]"

Question 2 – Effective date

The proposed amendment to IFRIC 9 would be effective for annual periods beginning on or after 1 July 2009 with prospective application, and would require an entity that applies IFRS 3 (revised 2008) for an earlier period to disclose that fact and apply the amendment to IFRIC 9.

Do you agree that this amendment should apply for annual periods beginning on or after 1 July 2009 with prospective application? If not, why?

While we agree with the proposed effective date it is not clear to us why the ED reiterates the requirement to disclose the fact that an entity has applied IFRS 3 (as revised in 2008) *Business Combinations* to transactions with an acquisition date earlier than the annual period beginning on or after 1 July 2009.

Instead, we propose to require disclosing that the earlier application of IFRS 3 (as revised in 2008) led to earlier application of the amendment to IFRIC 9. We therefore propose to amend paragraph 11 of the proposed amendment to IFRIC 9 as follows (new text underlined, deleted text struck through):

“11 Paragraph 5 was amended by *Post-implementation Revisions to IFRIC Interpretations* issued in [date]. An entity shall apply that amendment prospectively for annual periods beginning on or after 1 July 2009. If an entity applies IFRS 3 <u>(as revised in 2008)</u> for an earlier period, it shall ~~disclose that fact and~~ apply this amendment for that earlier period <u>and disclose the fact that it has applied the amendment</u>.”

<u>Proposed amendment to IFRIC 16 *Hedges of a Net Investment in a Foreign Operation*</u>

Question 1 – Removal of the restriction on the entity that can hold hedging instruments

The Board proposes to amend paragraph 14 of IFRIC 16 to remove the restriction on the entity that can hold hedging instruments.

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

At this point in time we are not in a position to fully support the proposal. We believe the Board should clarify what fact pattern it had in mind when it developed its conclusions. We note that the fact pattern submitted to the Board and the calculations done by the staff to prove that, under the current guidance in IFRIC 16, the results would be different with or without hedge accounting were not publicly available. This makes it difficult for constituents to assess the appropriateness of the Board’s conclusions, particularly as the proposal would allow any designation of a hedging instrument held by the hedged foreign operation as a net investment hedge of the same foreign operation in all circumstances as long as all other criteria for applying hedge accounting in IAS 39 are met. However, neither from the publicly available agenda papers nor from the draft Basis for Conclusions it is obvious whether the Board considered all other possible fact patterns involving hedging instruments held by the foreign operation being hedged.

We encourage the Board to undertake further research on this issue and make the results of this research publicly available to enable constituents to assess the appropriateness of the amendment.

Question 2 – Effective date

IFRIC 16 is effective for annual periods beginning on or after 1 October 2008 with prospective application. The Board concluded that this amendment should apply in the same way.

Do you agree that this amendment should apply for annual periods beginning on or after 1 October 2008 with prospective application? If not, why?

While we agree with the IASB’s intention to introduce the change as fast as possible it is unclear how the proposed back-dated effective date should be applied in practice.

Hedge accounting can only ever be applied prospectively once all requirements for hedge accounting in IAS 39 *Financial Instruments: Recognition and Measurement* including appropriate documentation are met. As the designation of a hedging instrument that is held by the foreign operation being hedged is currently prohibited, an entity applying the amendment would have not been permitted to document such a designation prior to the amendment as this would be contrary to existing guidance. It is unclear whether the Board intended for entities to be permitted to backdate their hedge documentation as from 1 October 2008 under the proposed amendment. We do not believe that hedge accounting should be available retrospectively.

Therefore, we believe the Board has at least two alternatives of making the amendment effective:

1. Amend IFRIC 16 effective at the date of issue of the finalised amendments.
2. Amend IFRIC 16 effective 90 days after issue of the finalised amendments (the usual effective date as per paragraph 45 of the *Due Process Handbook for the IFRIC*) to allow jurisdictions with an endorsement process to incorporate the changes into their local law. Earlier application should be permitted so to allow entities in jurisdictions without endorsement to adopt the amendments instantaneously.

In our view, alternative 2 would meet the requirements of constituents around the world best and encourage the Board to adopt that alternative. If the Board decides to follow alternative 2, we suggest adding the following paragraph after the original effective date paragraph in IFRIC 16:

> "18A Paragraph 14 was amended by *Post-implementation Revisions to IFRIC Interpretations* issued in [INSERT MONTH OF ISSUE] 2009. An entity shall apply that amendment for annual periods beginning on or after [90 DAYS AFTER ISSUE]. Earlier application is permitted. If an entity applies the amendment for an earlier period it shall disclose that fact."