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VIA ELECTRONIC TRANSMISSION

Ms. Susan Cospers
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

**RE: Proposed Accounting Standards Update, Government Assistance
(Topic 832)—Disclosure by Business Entities about Government
Assistance (File Reference Number: 2015-340)**

Dear Ms. Cospers:

The Silicon Valley Tax Directors Group¹ appreciates the opportunity to comment on the FASB's proposed accounting standards update (ASU) on disclosure of government assistance. The input provided within this comment letter is based on our collective experience as preparers of financial statements, responsible for administering and accounting for taxes in an increasingly complex global tax and business environment.

The proposed ASU would require disclosures about the accounting for government assistance and its effect on an entity's financial statements. Specifically, the following disclosures would be required:

- Nature and significant terms and conditions of assistance, including a general description of the significant categories of assistance;
- The form in which the assistance was received;
- If government assistance has been recognized in the financial statements, the accounting policies used, including the timing of recognition;

¹ The Silicon Valley Tax Directors Group ("SVTDG") is composed of 82 high-technology companies with significant presence in the Silicon Valley (California). The SVTDG includes public and private companies, from smaller start-up companies to large multi-national companies, with sales ranging from \$100m/yr to over \$250b/yr. The SVTDG supports sound tax and accounting policies that allow the U.S. high-technology industry to continue to innovate and compete in the global marketplace.

- The line items on the balance sheet and income statement affected, and the amount of assistance recorded to each line item; and
- Unless impracticable, the amount of government assistance received but not recognized directly in the financial statements.

While we support improvements to financial reporting where the cost and complexity in financial reporting can be reduced while maintaining or enhancing decision-useful information for investors, we do not believe the proposed ASU as drafted meets this criterion.

RECOGNITION AND MEASUREMENT

The proposed ASU requires disclosure of government assistance, but does not provide guidance on recognition and measurement of government assistance. The comparable international accounting standard, IAS 20, provides guidance on recognition, measurement, and disclosure for government assistance. We believe that requiring disclosure without providing guidance on recognition and measurement impairs operability and auditability, and will lead to diversity of practice and inconsistent disclosures among similarly situated companies. We recommend the Board not proceed with the disclosure requirement until recognition and measurement guidance on government assistance is provided.

SCOPE

The scope of the proposed ASU includes any “legally enforceable agreement with a government to receive value.” The proposed ASU does not apply to transactions in which the government is “[l]egally required to provide a nondiscretionary level of assistance to an entity because the entity meets the applicable eligibility requirements that are broadly available without specific agreement between the entity and the government. In these arrangements, the government does not have discretion over whether an entity will receive assistance and how much assistance an entity will receive.”

We recommend the scope of the proposed ASU be clarified and modified. First, we recommend the scope of the proposed ASU be clarified to specify that it does not include interpretive agreements between taxpayers and governments. Interpretive agreements are all agreements between taxpayers and governments that apply the tax law to particular fact patterns (including contemplated or future transactions).² While such interpretive agreements provide certainty to taxpayers, a taxpayer does not “receive value” in such agreements. Such interpretive agreements should be contrasted with negotiated tax holiday agreements, in which the taxpayer does “receive value”.

Second, we recommend the scope of the proposed ASU be modified to exclude income taxes. The international accounting standard for government assistance (IAS 20) does not

² Examples of interpretive agreements include audit settlement agreements, closing agreements, interpretive tax rulings (e.g., pre-filing agreements, letter rulings, etc.), advance pricing agreements (APAs), competent authority resolutions, treaty application agreements, and qualification under incentive tax regimes (e.g., qualification for patent/innovation box regimes, R&D incentives, special economic zones, etc.).

include income taxes,³ and inclusion of income taxes in the proposed ASU's scope would create divergence and lack of comparability with international accounting standards. Because our member companies negotiate with governments worldwide and face strong foreign competitors, this divergence concerns us from a competitiveness and cost standpoint (as discussed below). Further, Topic 740, Income Taxes, already provides substantial guidance on recognition, measurement, and disclosure for income taxes. In addition, the impact of tax holiday agreements is already required to be disclosed for public entities pursuant to Staff Accounting Bulletin (SAB) Topic 11.C.⁴ Further, the disclosures for income taxes are currently being reviewed as part of the Board's disclosure framework project. Accordingly, we believe the inclusion of income taxes in the proposed ASU's scope is unnecessary, duplicative, and will increase cost and complexity in financial reporting while not increasing the usefulness of the information provided to users of the financial statements.

Third, we recommend the scope of the proposed ASU be modified to not require disclosure of information that is confidential by law or agreement. The existence and details of government assistance agreements are commonly agreed to be confidential between the parties (particularly so with foreign jurisdictions). Requiring disclosure of the existence or key terms of such agreements would violate such agreements and could also violate the law in some jurisdictions. In many cases, companies will not have a way to comply with the proposed ASU without breaching the agreement with the government and suffering damages (including potential revocation of the government assistance agreement in some cases).

COST, COMPLEXITY, COMPETITIVENESS

We believe the proposed ASU will substantially increase cost and complexity in financial statement reporting. Preparers would need to determine which legal agreements provide government assistance within the scope of the proposed ASU, determine the value received in such agreements, and prepare the required disclosures (including allocating the government assistance amounts so determined to individual financial statement line items). We believe it will be costly and difficult to determine which agreements are in-scope and to gather the required information, given the diversity and number of legal agreements that entities typically have with governments. Preparers do not currently track, trace, and value the information required to be disclosed under the proposed ASU. We believe preparers would incur significant costs to establish, maintain, and document the necessary systems, processes, and controls to track, trace, and value the information required to be disclosed under the proposed ASU. In many cases, we believe it will be costly and/or impracticable to determine the value received under government assistance agreements due to a lack of comparable third-party transactions or reference values.

³ IAS 20 does not deal with "government assistance that is provided for an entity in the form of benefits that are available in determining taxable profit or tax loss or are determined or limited on the basis of income tax liability." IAS 20 further provides that "[e]xamples of such benefits are income tax holidays, investment tax credits, accelerated depreciation allowances and reduced income tax rates."

⁴ SAB Topic 11.C. requires a public entity to: (1) disclose the aggregate dollar and per share effects of the tax holiday and (2) briefly describe the factual circumstances including the date on which the special tax status will terminate.

We believe the proposed ASU requirement to provide detailed disclosure of government assistance agreements can reasonably be expected to adversely impact the competitiveness of entities subject to the requirement. Our member companies negotiate with governments worldwide and face strong foreign competitors. We believe governments will modify their negotiations with U.S. companies in response to public disclosure. We anticipate the proposed ASU may result in some governments no longer entering into legally enforceable agreements with U.S. companies because of the proposed ASU's disclosure requirement. The proposed ASU may result in the loss of opportunity for U.S. companies to tax-efficiently expand their business, and the loss of opportunity for U.S. companies to enter into negotiations with governments. U.S. businesses will suffer as our foreign competitors understand the details of our negotiations and perhaps negotiate for themselves similar or better arrangements (that can remain undisclosed and confidential).

TRANSITION AND EFFECTIVE DATE

We believe the proposed ASU should only apply to agreements entered into after the effective date, and should not apply to agreements existing at the effective date. Companies do not have systems, processes, or controls to track, trace, and value government assistance agreements entered into prior to the effective date. In addition, for many government assistance agreements it will be impracticable or costly for companies to determine the value of government assistance received and to track and trace each government assistance transaction that would be covered under the proposed ASU at the effective date. We recommend the effective date be at least one year after finalization of the proposed ASU and that the proposed ASU only apply to agreements entered into after the effective date in order to allow companies time to put in place systems, processes, and controls to track, trace, and value government assistance agreements.

CONCLUSION

While we support the Board's objective to improve financial reporting where the cost and complexity in financial reporting can be reduced while maintaining or enhancing decision-useful information for investors, we recommend the Board not adopt the proposed ASU as drafted. We believe the proposed ASU as drafted will lead to significant costs and complexity for preparers while not meaningfully increasing the usefulness of the information provided to users of the financial statements.

As discussed above, we recommend the proposed ASU scope be clarified to exclude interpretive agreements, and modified to exclude government assistance related to income taxes. We further recommend the proposed ASU not require disclosure of information that is confidential by law or agreement. We recommend the effective date be at least one year after finalization of the proposed ASU and the proposed ASU only apply to agreements entered into after the effective date in order to allow companies time to put in place systems, processes, and controls to track, trace, and value government assistance agreements.

The SVTDG's answers to the Board's questions for respondents are shown in the attached Appendix A.

We very much appreciate the Board's consideration of our comments. We would be pleased to meet with the Board or Staff at your convenience to answer any questions you might have.

Sincerely,



Robert F. Johnson
Co-Chair, Silicon Valley Tax Directors Group

Appendix A

Question 1: *Do you agree that the scope of the amendments in this proposed Update should be limited to legally enforceable agreements in which an entity or entities receive value from a government? Do you also agree that the scope of the proposed amendments should not apply to transactions in which the government is (a) legally required to provide a nondiscretionary level of assistance to an entity simply because the entity meets applicable eligibility requirements that are broadly available without specific agreement between the entity and the government or (b) solely a customer? If not, what other types of arrangements should be included in or excluded from the scope of the amendments in this proposed Update? Explain why.*

We recommend that the Board not adopt the proposed ASU as drafted. If the Board decides to adopt the proposed ASU, we **agree** the scope should be limited to legally enforceable agreements in which an entity or entities receive value from a government, and that the scope should not apply to transactions in which the government is (a) legally required to provide a nondiscretionary level of assistance to an entity simply because the entity meets applicable eligibility requirements that are broadly available without specific agreement between the entity and the government or (b) solely a customer; **provided however**, as more fully detailed in our response to Question 3, we recommend the scope of the proposed ASU be modified to exclude income taxes; as more fully detailed in our response to Question 7, we recommend the scope of the proposed ASU be modified to not require disclosure of information that is confidential by law or agreement; and we further recommend that the scope of the proposed ASU be clarified to specify that it does not include interpretive agreements between taxpayers and governments that apply the tax law to particular fact patterns (including contemplated or future transactions).

The global tax law is complex and application of the tax law is inherently factual, complicated, and subjective. Most countries provide, as part of their common practice, rulings or agreements to taxpayers on the application of the tax law to particular fact patterns (including contemplated or future transactions). Examples of these types of interpretive agreements include audit settlement agreements, closing agreements, interpretive tax rulings (e.g., pre-filing agreements, letter rulings, etc.), advance pricing agreements (APAs), competent authority resolutions, treaty application agreements, and qualification under incentive tax regimes (e.g., qualification for patent/innovation box regimes, R&D incentives, special economic zones, etc.). We believe interpretive agreements are not within, and should not be within, the scope of the proposed ASU because—while such interpretive agreements provide certainty to taxpayers—a taxpayer does not “receive value” in such agreements.

Question 2: *Do you agree that the proposed disclosure requirements should be the same for both domestic assistance and foreign assistance? If not, please explain why and what proposed disclosure requirements you believe should differ. Are there any unique types of foreign assistance that should be considered? If so, explain why and be specific about any unique types of foreign assistance.*

Yes, we agree that the proposed disclosure requirements should be the same for both domestic assistance and foreign assistance.

Question 3: *Do you agree that the scope of the proposed amendments should not exclude government assistance agreements that are within the scope of Topic 740, Income Taxes? If not, explain why.*

No, we do not agree. We recommend the scope of the proposed amendment be modified to exclude income taxes. Topic 740, Income Taxes, already provides substantial guidance on recognition, measurement, and disclosure for income taxes. In addition, the impact of tax holiday agreements is already required to be disclosed for public entities pursuant to Staff Accounting Bulletin (SAB) Topic 11.C. Further, the disclosures for income taxes are currently being reviewed as part of the Board's disclosure framework project. Accordingly, we believe the inclusion of income taxes in the proposed ASU scope is unnecessary, duplicative, and will increase cost and complexity while not increasing the usefulness of the information provided to users of the financial statements.

We believe the proposed ASU requirement to provide detailed disclosure of government assistance agreements can reasonably be expected to increase costs and adversely impact the competitiveness of entities subject to it. The proposed ASU diverges from IAS 20 with respect to income taxes. This divergence concerns us from a competitiveness and cost standpoint (as discussed more fully in our answer below to Question 5).

Question 4: *Do you agree that the scope of the proposed amendments should exclude NFP entities? Alternatively, should any proposed disclosure requirement(s) be applied by NFP entities? If so, specify which proposed disclosure requirement(s) and explain why.*

Yes, we agree that the scope of the proposed amendments should exclude NFP entities.

Question 5: *Are the proposed scope and disclosure requirements operable and auditable? Do your existing information sets and systems, internal controls, and so forth capture the information required to be disclosed by the proposed amendments? If not, which aspects of the scope or disclosures pose operability, auditability, and/or cost issues and why?*

We do not believe the proposed scope and disclosure requirements are operable and auditable, for the following reasons:

- The proposed ASU requires disclosure of government assistance, but does not provide guidance on recognition and measurement of government assistance. We believe that proceeding with disclosure without providing guidance on recognition and measurement impairs operability and auditability, and will likely lead to diversity of practice and inconsistent disclosures among similarly situated companies.
- The proposed ASU scope is overly broad. First, we recommend the scope of the proposed ASU be clarified to specify that it does not include interpretive agreements between taxpayers and governments that apply the tax law to particular fact patterns

(including contemplated or future transactions). While such interpretive agreements provide certainty to taxpayers, a taxpayer does not “receive value” in such agreements. Second, we recommend the scope of the proposed ASU be modified to exclude income taxes covered by Topic 740, Income Taxes, to be consistent with IAS 20 (which excludes income taxes). Excluding income taxes from the scope of the proposed ASU will avoid unnecessary and duplicative disclosure that will not increase the usefulness of the information provided to users of the financial statements. Third, we recommend the scope of the proposed ASU be modified to not require disclosure of information that is confidential by law or agreement. The existence and details of government assistance agreements are commonly agreed to be confidential between the parties (particularly so with foreign jurisdictions). Requiring disclosure of the existence or key terms of such agreements would violate such agreements and could also violate the law in some jurisdictions. In many cases, companies will not have a way to comply with the proposed ASU without breaching the agreement with the government and suffering damages (including potential revocation of the government assistance agreement in some cases).

- We do not track, trace, and value government assistance received but not recognized in our financial statements. We recognize government assistance on a net basis in our financial statements and do not track, trace, or value gross government assistance benefits that may be received. Stated differently, we do not track, trace, and value forgone or hypothetical costs not incurred. The proposed ASU would, in effect, require preparers to create and maintain a separate accounting system reflecting unrecognized amounts.
- In many cases, we believe it will be costly and/or impracticable to determine the value received under government assistance agreements due to a lack of comparable third-party transactions or reference values. If the proposed ASU is finalized, preparers would incur costs to engage external experts (valuation or other) to determine a value for the government assistance.

Our existing systems, processes, and controls do not capture the information required to be disclosed under the proposed ASU. We do not track, trace, and value government assistance benefits. If the proposed ASU were adopted, we anticipate that preparers would incur costs to consult external advisors to determine whether an agreement is binding under local law, and/or assess whether the assistance is nondiscretionary. Also, given the decentralized nature of many global companies, we anticipate that costs would be incurred to identify and train the internal owners of this information. Accordingly, we believe preparers would incur significant costs to establish, maintain, and document the necessary systems, processes and controls to track, trace, and value information required under the proposed ASU.

We believe the proposed ASU requirement to provide detailed disclosure of government assistance agreements can reasonably be expected to adversely impact the competitiveness of entities subject to the requirement. Our member companies negotiate with governments worldwide and face strong foreign competitors. We believe governments will modify their negotiations with U.S. companies in response to public disclosure. We anticipate the proposed

ASU may result in some governments no longer entering into legally enforceable agreements with U.S. companies because of the proposed ASU's disclosure requirement. The proposed ASU may result in the loss of opportunity for U.S. companies to tax-efficiently expand their business, and the loss of opportunity for U.S. companies to enter into negotiations with governments. U.S. businesses will suffer as our foreign competitors understand the details of our negotiations and perhaps negotiate for themselves similar or better arrangements (that can remain undisclosed and confidential).

Question 6: *Do you agree that an entity should be required to disclose, unless impracticable, the amount of government assistance received but not recognized directly in any financial statement line item? If not, explain why.*

No. For the same reasons articulated in the Alternative View of the proposed ASU, we do not agree that an entity should be required to disclose, unless impracticable, the amount of government assistance received but not recognized directly in any financial statement line item. We believe requiring the disclosure of unrecognized benefits in individual financial statement line items will impose substantial burdens and costs on preparers and auditors for little, if any, benefit to users.

Question 7: *For preparers, are there any restrictions (legal or otherwise) that exist in government assistance agreements that would preclude an entity (for example, confidentiality or proprietary reasons) from disclosing the information required by the amendments in this proposed Update? If so, specify what those restrictions are, whether they relate to foreign or domestic assistance, and which proposed disclosures cause concern and why.*

Yes, there are such restrictions. The existence and details of government assistance agreements are commonly agreed to be confidential between the parties (particularly so with foreign jurisdictions). Requiring disclosure of the existence or key terms of such agreements would violate such agreements and could also violate the law in some jurisdictions. Government agreements are typically governed by the laws of the jurisdiction of the government that is a party to the agreement. In many cases, taxpayers will not have a way to comply with the proposed ASU without breaching the agreement with the government and suffering damages (including potential revocation of the government assistance agreement in some cases). We recommend the proposed ASU not require disclosure of information that is confidential by law or agreement.

Question 8: *For users, do you agree that the information required by the proposed amendments would improve transparency about government assistance agreements? Is the information required by the proposed amendments important for your analysis of an entity? If so, specify which disclosures and why. If not, identify the disclosures and explain why. Is there additional information that should be required to be disclosed in the notes to financial statements? If so, be specific.*

N/A

Question 9: *The proposed amendments would not amend Topic 270, Interim Reporting, to add any specific interim disclosure requirements. Instead, required interim disclosures about government assistance would be limited to material changes occurring since the most recent annual period. Should the proposed amendments include additional interim disclosure requirements? If so, what disclosures do you think should be added and why?*

No, we do not believe there is a need for additional interim disclosures. We believe the existing requirement to disclose material changes occurring since the most recent annual period is sufficient.

Question 10: *Do you agree that the amendments in this proposed Update should be applied to all agreements (a) existing at the effective date and (b) entered into after the effective date with retrospective application permitted? If not, explain why.*

No. We do not agree that the amendments in this proposed ASU should apply to all agreements existing at the effective date, and entered into after the effective date with retrospective application permitted.

Companies do not have systems, processes, or controls to track and trace government assistance agreements entered into prior to the effective date. In addition, for many government assistance agreements, it will be impracticable or cost-prohibitive for companies to determine the value of government assistance received and to track and trace each government assistance transaction that would be covered under the proposed ASU at the effective date. We recommend the effective date be at least one year after finalization of the proposed ASU and the proposed ASU only apply to agreements entered into after the effective date in order to allow companies time to put in place systems, processes, and controls to track, trace, and value government assistance agreements.

Question 11: *The proposed amendments would apply to both public business entities and nonpublic business entities (private companies). Should the proposed amendments be different for nonpublic business entities? If so, describe why and how you think they should be different.*

No. We believe the proposed amendments should be the same for nonpublic business entities and public business entities.

Question 12: *How much time would preparers need to implement the proposed amendments? Should the amount of time needed to implement the proposed amendments by entities that are not public business entities be different from the amount of time needed by public business entities?*

The time that preparers would need to implement the proposed guidance would depend on the volume and type of government assistance arrangements, the time and cost and complexity of systems, processes, and controls that would be required to track and trace such arrangements, and the degree to which valuation and other experts would need to be engaged to estimate the value of government assistance received under agreements covered by the proposed ASU.

Due to U.S. competitiveness impacts, costs, and lack of systems, processes, and controls for past agreements, we recommend that the proposed ASU only apply to government assistance agreements entered into after the effective date. We recommend the effective date be at least one year after finalization of the proposed ASU to enable preparers to establish, maintain, and document the necessary systems, processes, and controls to track, trace, and value information required under the proposed ASU.

We believe the amount of time needed to implement the proposed amendments by entities that are not public business entities should not be different from the amount of time needed by public business entities.