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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, Disclosure Framework –
Changes to the Disclosure Requirements for Income Taxes (File Reference
Number: 2016-270)**

Dear Ms. Cospers:

The Silicon Valley Tax Directors Group¹ appreciates the opportunity to comment on the FASB's proposed Accounting Standards Update (ASU) on Changes to the Disclosure Requirements for Income Taxes. The input provided within this comment letter is based on our collective experience as preparers of financial statements, responsible for administering accounting for income taxes in an increasingly complex global tax and business environment.

The proposed ASU would require certain changes to the income tax disclosures in the notes to financial statements. The objective and primary focus of the disclosure framework project is to improve the effectiveness of disclosures required by GAAP in the notes to financial statements by facilitating clear communication of information that is most important to financial statement users. We believe many of the proposed disclosures meet this criterion. There are,

¹ The Silicon Valley Tax Directors Group ("SVTDG") is composed of 84 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.

however, three proposed disclosures that we recommend the Board not adopt (as explained in the attached Appendix A):

- income taxes paid to any country that is significant to total income taxes paid (contained in proposed paragraph 740-10-50-25);
- the description of a legally enforceable agreement with a government, including the duration of the agreement and the commitments made with the government under that agreement, and the amount of benefit that reduces, or may reduce, an entity's income tax burden (proposed paragraph 740-10-50-23); and
- amounts of federal, state, and foreign carryforwards (not tax effected) by time period of expiration for each of the first five years after the reporting date and a total for any remaining years (proposed paragraph 740-10-50-6A(a)); and disaggregation by time period of expiration for tax effected carryforwards (contained in proposed paragraph 740-10-50-6A(b)).

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: *Would the proposed amendments result in more effective, decision-useful information about income taxes? Please explain why or why not. Would the proposed amendments result in the elimination of decision-useful information about income taxes? If yes, please explain why.*

With three exceptions, we believe the proposed amendments would result in more effective, decision-useful information about income taxes. We believe the following three proposed disclosures would not result in more-effective, decision-useful information about income taxes, and we recommend the Board not adopt these three proposed disclosures:

1. INCOME TAXES PAID TO SIGNIFICANT COUNTRIES

In the Board's outreach, users of financial statements expressed a desire to have tax information related to foreign income taxes at a more granular level. They said that such information would further their understanding of exposures to various countries and whether their current tax rate is sustainable (see paragraph BC21 of the proposed Update). However, disclosure of the amount of taxes paid to any particular country does not provide any information about the risk or exposure to additional tax, nor does it provide information on whether the current tax rate is sustainable.

We believe such proposed disclosure would not be more effective, decision-useful disclosure, and could lead to confusion. The amount of taxes paid to a particular jurisdiction in the current year commonly includes the impact of items that are unrelated to current year profit/loss (e.g., audit settlements, refunds, prepayments, carrybacks or carryforwards of net operating losses/credits/other attributes, etc.). In addition, the timing of tax payments for current year profits varies from jurisdiction to jurisdiction. Some jurisdictions require all (or a specified percentage) of estimated taxes to be paid within the current year, while others don't require or permit tax payments to be made within the current year and instead require payment after the current year.

Further, such proposed disclosure would be inconsistent with the international consensus agreed as a result of the OECD/ Base Erosion and Profit Shifting Project (BEPS). In the October 2015 OECD BEPS Final Report on Action Item 13, *Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*, all participating countries (including the United States) agreed that country-specific tax information would not be disclosed to the public.

2. GOVERNMENT ASSISTANCE

We believe the proposed disclosure of government assistance would not provide more effective, decision-useful information about income taxes for a number of reasons.

First, Topic 740, Income Taxes, already provides substantial 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.² This SEC rule provides useful information on whether the effective tax rate is sustainable. We recommend modifying the proposed standard to be consistent with SAB Topic 11.C.

Second, the proposed ASU requires disclosure of government assistance, but does not provide guidance on recognition and measurement of government assistance. We believe that requiring disclosure without providing guidance on recognition and measurement impairs operability and auditability, and would 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.

Third, 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.). It is unclear whether such normal-course agreements would be covered under the proposed disclosure. It is also unclear how to determine the scope of government assistance and how to measure the amounts of assistance related to such agreements. Because the scope and measurement of government assistance is unclear, we do not believe the proposed disclosure would be an improvement in financial reporting, or provide more effective, decision-useful information to users.

Fourth, 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 would 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.

² 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.

3. CARRYFORWARD DISCLOSURES

We believe disclosure of non-tax effected carryforward information would not be effective or decision-useful disclosure because most users do not have specialized knowledge to compute the tax effect of each attribute (e.g., what tax rates and apportionment factors to apply and how to determine the tax effects of such carryforwards). We believe providing non-tax effected and tax-effected information will be confusing to users and may lead to misunderstanding of the value of carryforward attributes. We believe disclosure of carryforward information that has not been reduced for realization (i.e., valuation allowance) would be misleading to users. We further believe that disclosure of carryforward information disaggregated by time period of expiration is not more effective, decision-useful information to readers. We believe that the impact of expiration dates of carryforwards is already incorporated in the current requirement to evaluate all carryforwards for realization, and establish valuation allowances where the carryforwards do not meet the realization threshold (e.g., due to expiration of carryforwards, or insufficient expected future taxable income, etc.).

We believe the respective federal, state, and foreign carryforwards should be disclosed on an aggregate (not disaggregated by time period of expiration) tax-effected basis, net of valuation allowance to inform the users of the actual expected economic value of the respective federal, state, and foreign carryforwards. Accordingly, we recommend the Board clarify that all carryforward disclosures be made on an aggregate (not disaggregated by time period of expiration) tax-effected basis, net of valuation allowance for the respective federal, state, and foreign carryforwards.

Question 2: *Are the proposed disclosure requirements operable and auditable? If not, which aspects pose operability or auditability issues and why?*

Except for the proposed disclosure on government assistance, the proposed disclosure requirements generally would be operable and auditable. With regard to government assistance, we do not believe the proposed 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 finalizing the disclosure requirement without providing guidance on recognition and measurement would impair operability and auditability, and would lead to diversity of practice and inconsistent disclosures among similarly situated companies.
- The proposed ASU scope is overly broad. It includes interpretive agreements between taxpayers and governments that apply the tax law to a particular fact pattern (including contemplated or future transactions).
- In many cases, we believe it will be costly and/or impracticable to determine the amount of benefits received under government assistance agreements due to a lack of comparable third-party transactions or reference amounts. If the proposed disclosure is

adopted, preparers would incur costs to engage external experts (valuation or other) to determine amounts for government assistance.

- We do not track or trace in our financial statements government assistance received. We recognize government assistance on a net basis in our financial statements and do not track or trace gross government assistance benefits that may be received. Stated differently, we do not track or trace 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.
- 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).

Question 3: *Would any of the proposed disclosures impose significant incremental costs? If so, please describe the nature and extent of the additional costs.*

As noted in the Basis for Conclusions, cost is a pervasive constraint on information that can be provided by financial reporting, and it is important that the benefits of reporting financial information justify the costs.

We believe the proposed ASU requirement to provide detailed disclosure of government assistance agreements reasonably can be expected to significantly increase costs and adversely impact the competitiveness of entities subject to the requirement. Our member companies negotiate with governments worldwide and face strong foreign competitors. We believe costs would increase as governments 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, or entering into less favorable agreements with U.S. companies, because of the proposed ASU's disclosure requirement. The proposed ASU could 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 would 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).

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 as drafted for government assistance would be complex and costly to implement and provides minimal, if any, decision-useful information to users. We recommend the Board not move forward with the proposed disclosure of government assistance.

We also believe the proposed disclosure of carryforwards (determined on a non-tax effected basis, disaggregated by time period of expiration) would increase costs (including external audit fees) and complexity in the financial statements as this information is not currently prepared or maintained in the required format. We believe such proposed disclosure would be of little, if any, utility to users given the volume and complexity of the proposed disclosure, and may be misleading or confusing to users due to disclosure of non-tax effected and tax-effected carryforward information.

Question 4: *The Board is proposing that reporting entities disclose income taxes paid for any foreign country that is significant to total income taxes paid. The Board also considered requiring disclosure by significant country of income (or loss) from continuing operations before income tax expense (or benefit) and income tax expense (or benefit) from continuing operations but decided that this disclosure would be costly and potentially not beneficial in assessing prospects for cash flows related to income taxes (see paragraph BC22 of this proposed Update). Are there other costs or benefits that the Board should consider regarding these potential disclosures? Are there other country-level disclosures that the Board should consider that may be more cost beneficial?*

No. We do not have any recommendations for additional country-level disclosure that the Board should consider.

Question 5: *The Board considered several disclosures on indefinitely reinvested foreign earnings (see paragraphs BC27–BC40 of this proposed Update). Is there other information that the Board should consider regarding these potential disclosures? Are there other disclosures about indefinitely reinvested foreign earnings that would be more cost beneficial?*

No. We do not believe there is any other information the Board should consider regarding these proposed disclosures.

No. We do not have any recommendations for additional disclosures about indefinitely reinvested foreign earnings.

Question 6: *The proposed amendments would apply to all entities, except for the requirements in paragraphs 740-10-50-6A through 50-6B, 740-10-50-12, and 740-10-50-15A for which entities other than public business entities would be exempt. Do you agree with the exemption*

for entities other than public business entities? If not, please describe why and which disclosures should be required for entities other than public business entities.

No. We believe public business entities and other than public business entities should be subject to the same disclosure requirements.

Question 7: *Are there any other disclosures that should be required by Topic 740 on the basis of the proposed Concepts Statement or for other reasons? Please explain why.*

No. We believe the proposed disclosures are adequate, with the exceptions discussed above (income taxes paid to significant countries, government assistance, and carryforwards).

Question 8: *Are there any other disclosure requirements retained following the review of Topic 740 that should be removed on the basis of the proposed Concepts Statement or for other reasons? Please explain why.*

No. We have no recommendations of current tax disclosure requirements that should be removed on the basis of the proposed Concepts Statement or for other reasons.

Question 9: *Should the proposed disclosures be required only for the reporting year in which the requirements are effective and thereafter or should prior periods be restated in the year in which the requirements are effective? Please explain why.*

Yes. We believe the proposed disclosures should only be required on a prospective basis. We agree that prior periods should not be restated in the year in which the requirements are effective. We believe the time and cost of retrospective adoption would outweigh the benefits of such adoption.

With regard to government assistance, 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 or trace 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 amount of benefits conferred and to track and trace each government assistance transaction that would be covered under the proposed ASU at the effective date.

Question 10: *How much time would be needed to implement the proposed amendments? Should the amount of time needed to implement the proposed amendments by entities other than public business entities be different from the amount of time needed by public business entities? Should early adoption be permitted? If the answer is "yes" to either question, please explain why.*

With regard to time needed to implement the proposed amendment, with the exception of government assistance, we recommend the effective date be at least one year after finalization of the proposed ASU. If government assistance is included, the proposed ASU should 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 or trace government assistance agreements.

With regard to government assistance, 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 amount conferred under government assistance agreements covered under the proposed ASU.

No. The amount of time needed to implement the proposed amendments by entities other than public business entities should not be different from the amount of time needed by public business entities.

Yes. Early adoption should be permitted.