17 April 2012

Our ref: ICAEW Rep 51/12

Richard Carter
Department for Business, Innovation and Skills
Level 3, Spur 2,
1 Victoria Street,
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Dear Richard

PREPARATION OF ACCOUNTS OTHER THAN BY REFERENCE TO UK GAAP OR IFRS

1. ICAEW welcomes the opportunity to respond to the invitation to comment on the *Preparation of Accounts Other than by Reference to UK GAAP or IFRS* issued by BIS on 15 March 2012.

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

4. The Financial Reporting Faculty is recognised internationally as a leading authority on financial reporting. The Faculty's Financial Reporting Committee is responsible for formulating ICAEW policy on financial reporting issues, and makes submissions to standard setters and other external bodies. The faculty also provides an extensive range of services to its members, providing practical assistance in dealing with common financial reporting problems.

5. In summary, generally we do not believe it is appropriate for UK companies to have the option to select a set of generally accepted accounting practices (GAAPs) other than UK GAAP or EU-adopted IFRS, particularly as comparability in the UK is about to be improved by moving non-listed GAAP to a broadly EU-adopted IFRS consistent basis. UK companies already have a choice between these two bases and to introduce other options into the mix is undesirable for a number of reasons. If a particular foreign GAAP is close enough to IFRS, then there should be little difficulty or burden involved in converting to IFRS and hence the proposal appears unnecessary in principle; on the other hand, if a foreign GAAP is not close to IFRS then the proposal appears inappropriate in principle. We understand that in this instance BIS has a specific economic objective in mind and in the context of this wider UK benefit we accept that a limited scope, temporary measure may be acceptable as a practical expedient. It is not clear, however, that the costs of reporting under EU-adopted IFRS (including any disadvantage users may suffer in moving away from the existing basis of preparation) will outweigh the other beneficial reasons companies may have for wishing to

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register in the UK. If the government really believes this should be a temporary measure, the transition period allowed for each company should be just one or two years, which would give sufficient time to convert to EU-adopted IFRS. There are also a number of practical issues to be addressed as set out below:

6. We understand that the exemption has been drafted with US and Japanese companies in mind, but as currently drafted, however, it may inadvertently exclude US GAAP companies if they eventually become foreign private issuers (FPIs) under SEC rules. The invitation to comment suggests that the exemption would be limited to those UK companies listed on 'a market of a country outside the EEA which requires reporting in accordance with a GAAP that had been deemed equivalent under Regulation EC 1569/2007'. Once these companies fall to be categorised as a 'foreign private issuer' the companies would be permitted to use IFRS – they would not be 'required' to use an equivalent GAAP. This may not be an issue if the government intends FPIs to have to switch to IFRS, with only domestic issuers granted this time limited exemption, which would make sense given they would by definition have a limited US shareholder base.

7. It is important that the scope of national GAAPs that would be permitted is made clear. Equivalence does not only encompass US and Japanese GAAP under Regulation 1569/2007; the other bases deemed equivalent are Chinese, Canadian and Korean GAAP and transitional arrangements for Indian GAAP have also been extended recently to December 2014 (see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:103:0013:0014:EN:PDF). It is desirable to keep the scope of the exemption as tightly drawn as possible and therefore BIS may wish to explicitly limit it to US and Japanese GAAP rather than applying equivalence as the arbiter through its proposed changes to s 464CA 2006. However, companies from Canada, South Korea, China and India that wish to move to the UK might justly believe that they are prejudiced by such an approach.

8. There may be elements of these "equivalent" GAAPs that do not conform with UK or EU law. The accounts would need to be adjusted for these items. Not only is this likely to be costly, but the resulting accounts would no longer be compliant with the GAAP upon which they were based. In the case of US GAAP, for example, such accounts are unlikely to be acceptable to the SEC. Consequently, this consideration alone may negate the purpose of the exercise as, unless a solution can be found, it may not be possible for a group to file the same accounts for UK and US regulatory purposes. Each group will need to carry out an analysis to determine whether their current accounting policies complied with UK company law or whether they could switch to other acceptable accounting policies within their GAAP to achieve such compliance. In our view, this is likely to be the only major technical stumbling block to the proposals, but it will vary in its impact from company to company.

9. We understand that in drafting the concession BIS has in mind specifically the consolidated accounts of groups listed outside of the EEA but where the parent company is registered in the UK. The extension to individual entity accounts – including the parent's own accounts as indicated in the letter – would be extremely problematic due to tax and capital maintenance issues. Notwithstanding these difficulties, there is likely to be a much broader category of entities that are likely to be interested in adopting the exemptions were they to be extended to individual company accounts, namely the many UK subsidiaries of overseas groups currently required to follow either UK GAAP or EU-adopted IFRS. Many companies in this category would favour an exemption that allowed them to prepare their UK accounts on the same basis as the parent. Quite aside from the fact that such accounts may be unacceptable for tax purposes, this would represent a significant challenge to users as it would impair comparability and require them to potentially become conversant in multiple accounting bases. BIS should be mindful of this in drafting any exemption, particularly as the availability of a concession in this area may lead to calls for its extension in the future to a wider group of companies, a move we would not support as it ultimately reduces comparability between UK company accounts, particularly as UK GAAP will very shortly become almost entirely IFRS-based.

10. The exemption would be limited to accounting periods beginning before 1 October 2014 and so in most cases would apply to three sets of annual accounts. We agree with a time limitation and believe that the exemption needs to be contained as far as possible. We appreciate that 2014 has been selected in the anticipation that US and Japanese companies might by then be on IFRS anyway, but there is a danger that this assumption becomes a hostage to fortune. These countries might well not have transitioned by then – there are some fundamental doubts as to whether they will - and the question then arises as to what will happen to those entities taking advantage of the exemption. We would not wish to see this date pushed out indefinitely as a result of the failure of the USA and Japan converging fully with IFRS, so instead of including such a 'sunset clause' BIS should merely allow each company a fixed time (say two years) exemption to give the entity time to transition to IFRS.

Question 1. How many companies might take advantage of such provisions? What would be the benefit?

11. We understand that this is a targeted measure and that while it is not expected to be taken up by large numbers of companies, benefits may accrue to the UK economy even by its very selective application. We believe that this targeted approach is the right one; in general it is not desirable to allow bases other than UK GAAP or EU-adopted IFRS to be applied in the UK for the sake of users of accounts, but we agree a narrowly targeted exemption might be acceptable as a practical expedient. Nevertheless, as we note in paragraphs 6 and 7 above the drafting of the exemption could be improved to ensure that it is clear to which national GAAPs it applies. Clearly the benefit to be gained by preparers is a temporary continuation of their existing accounting policies; however, as we also note in paragraph 8 above, legal issues may mean that some accounting policy changes are still necessary. This may frustrate the purpose of the exercise.

Question 2. Would these proposals disadvantage any users of accounts? If so how, and to what extent?

12. Some stakeholders would be disadvantaged by the move if they are predominantly comparing the accounts in question with other UK groups that are following EU-adopted IFRS or UK GAAP. However, if the users of the accounts are predominantly familiar with the GAAP of the country in question, they are unlikely to be disadvantaged. This does mean that the exemption should probably not be given to FPIs under the SEC rules as by definition they will have much reduced numbers of US shareholders.

Question 3. In the definition "securities that had been admitted to trading on a market of a country outside the EEA which requires reporting in accordance with a GAAP that had been deemed equivalent under Regulation EC 1569/2007" do you have a view on how best to define "admitted to trading on a market of a country"?

13. In our opinion the exemption should be drawn as clearly as possible, so the best answer here may be simply to list specific countries and exchanges.

Yours sincerely

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