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CANADA

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Dear Mr Smith,

We thank the IPSASB for the opportunity to provide input on Exposure Draft 88, Arrangements Conveying Rights over Assets (Amendments to IPSAS 47 and IPSAS 48). Our comments for the Exposure Draft are set forth below and are supported by Exhibits A – C to this letter. Please do not hesitate to contact us if you have any questions regarding our comments.

Amendments to IPSAS 47, Revenue

- 1. We do not agree with the IPSASB's self-imposed limitations on the proposed additional guidance as described in the Basis for Conclusion paragraphs. Given the prevalence of various forms of donated rights over assets across jurisdictions, it would better serve the public interest if the IPSASB:*
 - i. Does not limit the authoritative guidance on arrangements conveying rights over assets to lease-type arrangements, including concessionary leases and right of use assets in-kind. Other arrangements in the IPSASB's Feedback Statement such*

as those that can be identified as donated intangible assets or donated services should also be covered.

- ii. Adds scoping examples on the arrangements suggested in (i).*
 - iii. Adds accounting examples on the situations already covered by the scoping examples as well as those suggested in (i).*
- 2. The requirements for determining whether a right of use asset in kind arises from an arrangement are established by reference to paragraphs 10–12 and AG10–AG34 of IPSAS 43 for identifying a lease except for the requirements relating to consideration. Apart from the consideration component of the definition of a “lease,” the referenced paragraphs require that the arrangement must first meet IPSAS 43’s definition of a “contract,” which differs from IPSAS 47’s definition of a “binding arrangement” in that it is enforceable only within the legal system and does not necessarily have at least one compliance obligation as defined in IPSAS 47. Since IPSAS 47 deals with binding arrangements and non-binding arrangements (see paragraphs AG202B and AG202C), both of which are different concepts than a “contract,” the IPSASB should explain how, in the context of IPSAS 47, an entity should apply the concept of a “contract” as it relates to the identification of right of use assets in kind (See Exhibit A).*

Amendments to IPSAS 48, Transfer Expenses

- 3. Paragraphs 8, 10, 18, 20, 22, and AG 30 of IPSAS 48 imply that IPSAS 48 applies to situations involving transfer providers losing control of the transferred resources. The IPSASB should be cautious about introducing guidance proposing that arrangements not resulting in loss of control of the underlying asset are within the scope of IPSAS 48. In most cases, such arrangements will be carried out in the ordinary course of the resource provider’s operations as part of pursuing its service delivery objectives. As a result, suggesting that they fall within IPSAS 48 has the potential of confusing the scope of IPSAS 48 with those of other IPSAS standards (See Exhibit B and comments #4 and 5).*

4. *Put together, Exposure Drafts 84 and 88 seem to be proposing that a resource provider is not required to treat the concession in a concessionary lease as a transfer expense in accordance with IPSAS 48 but is required to treat as such the concession in other arrangements conveying rights over assets (for example, transfers of right of use assets in kind), leading to a different expense classification and probably a different expense recognition profile depending on whether the arrangement is a binding arrangement and, if not a binding arrangement, whether or not the arrangement results in the recognition of an asset representing the resource provider's enforceable rights over the transferred resources¹. It is advisable to relieve the resource provider from treating the concession as a transfer expense in both cases, as this would ensure a consistent approach is applied by resource providers in accounting for the concession regardless of whether the concession is provided in a concessionary loan, a concessionary lease or another arrangement conveying rights over assets, while requiring otherwise would complicate the accounting and result in different accounting outcomes for similar transactions. However, if the IPSASB decides that a resource provider must treat the concession in other arrangements conveying rights over assets as a transfer expense by applying the principles in IPSAS 48, the IPSASB should adopt the same approach for concessionary leases or explain why a different approach is warranted.*
5. *The illustrative example in Case B suggests that IPSAS 48 applies to using an asset to provide social housing and, therefore, serves to blur the line between transfer expenses and individual services even further (See Exhibit D). It is advisable to remove this example. However, if the IPSASB decides that IPSAS 48 should be applied to social benefits in-kind, the IPSASB should develop guidance to assist constituents in distinguishing benefits to which IPSAS 48 is applicable from those to which the guidance in IPSAS 19 on individual services is applicable.*

¹ *By contrast, Exposure Drafts 84 and 88 are clear that a resource recipient is required to treat the concession in both concessionary leases and right of use assets in kind as revenue in accordance with IPSAS 47.*

6. *If, despite comments #3 – 5, the IPSASB decides that arrangements conveying rights over assets fall within the scope of IPSAS 48, the IPSASB should add authoritative guidance and accounting examples rather than limit the guidance to scoping examples.*

Sincerely,

For Spot On Chartered Accountants

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Exhibit A

Extracts from IPSAS 43, Leases, IPSAS 47, Revenue, and Exposure Drafts 84 and 88

IPSAS 43	IPSAS 47	
Contract	Transactions with a binding arrangement	Transactions without a binding arrangement
<p>5. A contract, for the purpose of this Standard, is an agreement between two or more parties that creates enforceable rights and obligations.</p> <p>AG3. An entity considers the substance rather than the legal form of an arrangement in determining whether it is a "contract" for the purposes of this Standard. Contracts, for the purposes of this Standard, are generally evidenced by the following (although this may differ from jurisdiction to jurisdiction):</p> <ul style="list-style-type: none"> • Contracts involve willing parties entering into an arrangement; • The terms of the contract create rights and obligations for the parties to the contract, and those rights and obligations need not result in equal performance by each party; and • The remedy for non-performance is enforceable by law. <p>BC57. In developing ED 75, the IPSASB had noted that, in certain jurisdictions, public sector entities are precluded from entering into formal contracts but do enter into arrangements that have the substance of contracts. These arrangements may be known by another term, e.g., a "government order." To assist entities in identifying contracts, which either have the</p>	<p>4. For the purposes of this Standard, a binding arrangement is an arrangement that confers both rights and obligations, enforceable through legal or equivalent means, on the parties to the arrangement. (Paragraphs AG10–AG31 provide additional guidance.)</p> <p>4. A compliance obligation is an entity's promise in a binding arrangement to either use resources internally for distinct goods or services or transfer distinct goods or services to a purchaser or third-party beneficiary.</p> <p>69. A binding arrangement has at least one compliance obligation because its enforceability holds the entity accountable for satisfying its obligations of the arrangement, for which the entity has little or no realistic alternative to avoid.</p> <p>AG18. Enforceability arises from the compulsion by a legal system, including through legal means (enforced in the courts in a jurisdiction, as well as judicial rulings and case law precedence to comply with the terms of the arrangement) or compliance through equivalent means (laws and regulations, including legislation, executive authority, cabinet or ministerial directives).</p> <p><u>Exposure Draft 88</u></p>	<p><u>IPSAS 47, Revenue at a Glance, page 4</u></p> <p>A significant volume of revenue transactions in the public sector are expected to be without binding arrangements, such as taxes.</p> <p>In a transaction without binding arrangements, the entity does not have both an enforceable right and an enforceable obligation, but may have an:</p> <ul style="list-style-type: none"> • Unenforceable right, and unenforceable obligation – e.g., a donation, where an entity (aid organization) is not able to enforce payment from a resource provider (donor), and is not required to use the donation in a specific way; • Enforceable right, but unenforceable obligation – e.g., income taxes, where an entity (national government) is able to enforce payment from a taxpayer, but is not required to use the tax revenue to provide specific services to the taxpayer; or • Unenforceable right, but enforceable obligation – e.g., an education grant, where an entity (university) is not able to enforce payment from the resource provider (national government), but is required to provide the grant

IPSAS 43	IPSAS 47	
Contract	Transactions with a binding arrangement	Transactions without a binding arrangement
<p>substance or legal form of a contract, the IPSASB had considered it appropriate to issue additional Application Guidance explaining the factors an entity should consider in assessing whether an arrangement is contractual or non-contractual.</p> <p>BC58. Consideration was given to whether the term “binding arrangement” should be used to describe the arrangements highlighted in paragraph AG3. The term “binding arrangement” is defined in IPSAS 32, Service Concession Arrangements: Grantor as contracts and other arrangements that confer similar rights and obligations on the parties to it as if they were in the form of a contract. For example, an arrangement between two government departments that do not have the power to contract may be a binding arrangement. The IPSASB had concluded that the term “binding arrangements,” as used in IPSASs, embraces a wider set of arrangements than those identified in paragraph AG3 and therefore concluded that it should not be used in this Standard. Entities in a binding arrangement would enforce their rights and obligations through legal (enforceable through judicial system) or equivalent means (enforceable through cabinet and ministerial directives, executive authority, or other means that are similar). However, entities in a contract would enforce their rights and obligations only through legal means (i.e., by law, through judicial system).</p>	<p>AG202A. Right-of-use assets in-kind are right-of-use assets received without consideration. An entity identifies a right-of-use asset in-kind in accordance with the requirements of paragraphs 10– 12 and AG10–AG34 of IPSAS 43, Leases for identifying a lease, with the necessary adaptations in the absence of payments.</p> <p>AG202B. Right-of-use assets in-kind are transfers of assets that one entity makes to another, either free from requirements or may be subject to certain obligations. The resource provider may be an entity or an individual. For right-of-use assets in-kind, the past event giving rise to the control of resources embodying future economic benefits or service potential is normally the receipt of the right-of-use asset in-kind.</p> <p>AG202C. Right-of-use assets in-kind are recognized as assets in accordance with paragraphs 18–25 and the recognition of revenue depends on whether they arise from a transaction with a binding arrangement.</p>	<p>to students that meet predetermined eligibility criteria.</p> <p>An entity determines whether any of its rights in the arrangement meet the definition and recognition criteria of an asset, and whether any of its obligations meet the definition and recognition criteria of a liability.</p> <p>The existence of a liability associated with the inflow or right to an inflow of resources impact the timing of revenue recognition.</p> <p>This accounting model is consistent with the core principles presented in IPSAS 23, and addresses issues raised by constituents in the application of the existing Standard for non-exchange revenues.</p> <p><u>Exposure Draft 88</u> AG202A. Right-of-use assets in-kind are right-of-use assets received without consideration. An entity identifies a right-of-use asset in-kind in accordance with the requirements of paragraphs 10– 12 and AG10–AG34 of IPSAS 43, Leases for identifying a lease, with the necessary adaptations in the absence of payments.</p> <p>AG202B. Right-of-use assets in-kind are transfers of assets that one entity makes to another, either free from requirements or may be subject to certain obligations. The resource provider may be an entity or an individual. For right-of-use assets in-kind, the past event giving</p>

IPSAS 43	IPSAS 47	
Contract	Transactions with a binding arrangement	Transactions without a binding arrangement
<p>BC59. ED 75 specifically referred to contracts in the definition of a lease. Although the majority of respondents agreed with the ED 75 proposals, some respondents disagreed with limiting the definition of a lease to contracts because it would scope out from the final IPSAS on Leases types of arrangements that are not contracts, but are prevalent in the public sector because:</p> <p>(a) There might not be willing parties to the arrangement; or</p> <p>(b) Many public sector entities do not have the power to enter into contracts but enter into binding arrangements that confer similar rights and obligations on the parties as if they were a form of contract.</p> <p>BC60. As a result of these concerns, the IPSASB decided to clarify that IPSAS 43 is designed only for transactions that have the three elements identified in paragraph AG3.</p> <p>BC61. As noted in BC58, the IPSASB differentiated contracts as enforced by legal means whereas binding arrangements are enforced by legal or equivalent means. A transaction that does not have willing parties is neither a contract nor a binding arrangement.</p> <p>BC62. As a result, the IPSASB decided to retain the term “contract” in the definition of a lease in IPSAS 43.</p> <p><u>Exposure Draft 84</u></p>		<p>rise to the control of resources embodying future economic benefits or service potential is normally the receipt of the right-of-use asset in-kind.</p> <p>AG202C. Right-of-use assets in-kind are recognized as assets in accordance with paragraphs 18–25 and the recognition of revenue depends on whether they arise from a transaction with a binding arrangement.</p>

IPSAS 43	IPSAS 47	
Contract	Transactions with a binding arrangement	Transactions without a binding arrangement
<p>BC106. The IPSASB reconsidered whether to modify the definition of a lease to include other types of arrangements that are not contracts.</p> <p>BC107. The IPSASB decided not to extend the definition of a lease to non-binding arrangements because a lease includes enforceable rights and enforceable obligations for the lessor and lessee; a non-binding arrangement does not.</p> <p>BC108. Regarding binding arrangements that are not contracts, the IPSASB, when developing IPSAS 43, decided to expand the types of arrangements within the scope of the definition of a contract by adding paragraph AG3 and clarifying that IPSAS 43 is designed only for arrangements that:</p> <p>(a) Are in substance a contract rather than having the legal form of a contract; and (b) Have the following three elements:</p> <p>(i) Willing parties;</p> <p>(ii) Rights and obligations for the parties to the contract; and (iii) The remedy for non-performance is enforceable by law.</p> <p>BC109. The fundamental difference between the definition of a contract in IPSAS 43 and the definition of a binding arrangement is that in the latter one the enforceability is broader and includes “equivalent means”. In other words, binding arrangements are enforceable both within and outside the legal system, whereas contracts are enforceable only within the legal system.</p>		

IPSAS 43	IPSAS 47	
Contract	Transactions with a binding arrangement	Transactions without a binding arrangement
<p><i>Compliance through equivalent means includes laws and regulations, including legislation, executive authority, cabinet, or ministerial directives.</i></p> <p><i>BC110. The IPSASB’s Conceptual Framework acknowledges that there are jurisdictions where government and public sector entities cannot enter into legal obligations, because, for example, they are not permitted to contract in their own name, but where there are alternative processes with equivalent effect to enforce the rights and obligations in those arrangements.</i></p> <p><i>BC111. Sometimes in the public sector, there are binding arrangements, although conveying the right to use an underlying asset, are not, in substance, contracts. For example:</i></p> <p><i>(a) One or both parties to the arrangement is not a willing party (for example: a government conveys to another party the right to use an underlying asset on a unilateral basis);</i></p> <p><i>(b) The enforceable rights and obligations did not arise from a contract (for example: the rights and obligations are stipulated by a government unilaterally); and</i></p> <p><i>(c) Binding arrangements with enforceability mechanisms outside of the legal system (for example: compliance is achieved through executive authority, cabinet, or ministerial directives).</i></p>		

IPSAS 43	IPSAS 47	
Contract	Transactions with a binding arrangement	Transactions without a binding arrangement
<p><i>BC112. By extension, when entities do have arrangements as described in paragraph BC111, the IPSASB noted that they should not apply IPSAS 43 because:</i></p> <p><i>(a) Those arrangements are not, in substance, contracts, as leases are contractual arrangements by nature; and</i></p> <p><i>(b) It was designed to be applicable to arrangements that are in substance lease contracts, provided that the arrangement conveys the right to obtain substantially all of the economic benefits or service potential from the use of the identified asset and the right to direct the use of the identified asset.</i></p> <p><i>BC113. Therefore, the IPSASB decided to retain the definition of a lease to contractual arrangements in IPSAS 43 because:</i></p> <p><i>(a) IPSAS 43 is designed to be applicable only to leases that are, in substance, contracts; and</i></p> <p><i>(b) It is consistent with IPSAS 41, Financial Instruments, which is only applicable to contracts.</i></p> <p><i>BC114. The IPSASB also considered whether to provide a definition or a description of a concessionary lease. The IPSASB noted that concessionary leases may vary depending on the level of consideration being exchanged, which may make them at below-market terms. In these cases, professional judgment may be required to assess whether, in substance, the transaction meets the definition of a lease or whether it is,</i></p>		

IPSAS 43	IPSAS 47	
Contract	Transactions with a binding arrangement	Transactions without a binding arrangement
<p><i>in substance, a concession of the whole transaction.</i></p> <p><i>BC115. The IPSASB decided to provide a description rather than a definition of a concessionary lease because:</i></p> <p><i>(a) It prevents an apparent contradiction of labeling as a lease an arrangement that conveys the right to use an underlying asset without the exchange of consideration;</i></p> <p><i>(b) It is consistent with the approach in IPSAS 41, Financial Instruments, where concessionary loans are not defined, but only described; and</i></p> <p><i>(c) The accounting for arrangements that convey the right to use an underlying asset without consideration is the same as arrangements that convey the right to use an underlying asset with consideration at below-market terms.</i></p> <p><i>BC116. The IPSASB noted that there are transactions that convey the right to use an underlying asset without consideration (right-of-use asset in-kind). The IPSASB is of the view that transactions that convey the right to use an underlying asset without consideration do not meet the definition of a lease as defined in IPSAS 43.</i></p>		

Exhibit B

Other IPSAS standards applicable to arrangements conveying rights over assets

The following is a list of IPSAS standards that are normally applicable to arrangements conveying rights over assets without loss of control of the asset, including the treatment of the expenses associated with the assets:

- *IPSAS 45, Property, Plant, and Equipment*
- *IPSAS 31, Intangible Assets*
- *IPSAS 32, Service Concession Arrangements (Grantor)*
- *IPSAS 43, Leases*
- *Appendix A to IPSAS 19, Provisions, Contingent Liabilities, and Contingent Assets*

Exhibit C

Examples to illustrate differences between IPSAS 43 and IPSAS 48 in terms of treating a concession

Example 1 – A concessionary operating lease

Modifying and expanding on the facts presented in paragraphs IE12A-IE12D from Exposure Draft 88:

- *The underlying asset is a sports facility.*
- *The contract requires the Agency to make the sports facility available to Entity Z for 5 years and to provide for the day-to-day maintenance of the facility.*
- *The contract requires Entity Z to pay in advance each year to the Agency over the 5-year term an annual rent of CU 200,000. This CU 100,000 below the market rate of CU 300,000.*
- *The contract does not include any compliance obligations for Entity Z as defined in IPSAS 48.*
- *The Agency contracts a third party to provide day-to-day maintenance services over the same period.*
- *The annual depreciation charge and annual maintenance cost of the facility are CU 100,000 and 25,000 respectively.*

Applying paragraphs 81-85 of IPSAS 43 as proposed to be amended by Exposure Draft 84 would result in the following:

Dr Cash *200,000*

Cr Liability *200,000*

Annually to recognize advance receipt of rent payment

Dr Liability *200,000*

Cr Rent revenue *200,000*

Annually to recognize lease revenue earned

Dr Depreciation expense *100,000*

Cr Accumulated depreciation *100,000*

Dr Maintenance expense *25,000*

Cr Cash/Liability *25,000*

Annually to recognize costs associated with the underlying asset

Example 2 – A transfer expense arrangement

Modifying and expanding on the facts presented in paragraphs IE12A-IE12D from Exposure Draft 88:

- *The asset is a sports facility.*

- *The arrangement is not a binding arrangement as defined in IPSAS 48. It does not include any compliance obligations for Entity Z but creates enforceable obligations for the Agency to make the sports facility available to Entity Z for 5 years and to provide for the day-to-day maintenance of the facility.*
- *The Agency contracts a third party to provide day-to-day maintenance services over the same period.*
- *The annual depreciation charge and annual maintenance cost of the facility are CU 100,000 and 25,000 respectively.*
- *To simplify, the effect of discounting is assumed immaterial.*

Applying paragraphs 18-20 of IPSAS 48 would result in the following²:

<i>Dr Transfer expense</i>	<i>625,000</i>
<i>Cr Provision</i>	<i>625,000</i>

Initially to recognize the obligation for the transfer of resources

<i>Dr Provision</i>	<i>125,000</i>
<i>Cr Accumulated depreciation</i>	<i>100,000</i>
<i>Cr Bank</i>	<i>25,000</i>

Annually to recognize transfer of resources

Note: In the situation described in example 1, under IPSAS 43, the costs associated with the underlying asset would be recognized over the duration of the arrangement and no part of these costs would be reported as transfer expenses. In the situation described in example 2, under IPSAS 48, the costs associated with the underlying asset would be recognized at the beginning of the arrangement and would be reported as transfer expenses.

² *The obligation to make the land component of the sports facility will not be reflected as an obligation to transfer resources since land is not a depreciable asset.*

Exhibit D

Extracts from IPSAS 19, Provisions, Contingent Liabilities, and Contingent Assets and IPSAS 48, Transfer Expenses

IPSAS 19, Provisions, Contingent Liabilities, and Contingent Assets

18. Individual services are goods and services provided to individuals and/or households by a public sector entity that are intended to address the needs of society as a whole.

AG3. This Standard defines individual services as goods and services provided to individuals and households by a public sector entity and are intended to address the needs of society as a whole. The provision of an individual service to one individual may reduce the amount available to other individuals, or may delay the receipt of those services by some individuals. Consumption of individual services requires the explicit agreement or active participation of those benefiting from the service. Goods or services provided by a public sector entity on commercial terms do not address the needs of society as a whole, and therefore do not satisfy the definition of individual services.

AG4. Social benefits and collective and individual services all address the needs of society as a whole. Addressing the needs of society as a whole does not require that each collective or individual service covers all members of society; such services can cover different segments of society. A collective or individual service that covers a segment of society as part of a wider system of similar services meets the requirement that it addresses the needs of society as a whole.

AG5. Collective services and individual services involve the provision of services by, or on behalf of, a public sector entity.

Consequently, cash transfers are not collective or individual services.

AG6. Public sector entities provide collective and individual services through their employees or by purchasing goods and services from third party providers.

AG7. Examples of collective services include defense and street lighting. Examples of individual services include healthcare and education provided at no or nominal cost. Individual services may or may not have eligibility criteria, such as reaching a certain age or a residential requirement; however, the existence (or otherwise) of eligibility criteria does not change the determination of whether transactions satisfy the definition of individual services.

IPSAS 48, Transfer Expenses

6. A transfer expense is an expense arising from a transaction, other than taxes, in which an entity provides a good, service, or other asset to another entity (which may be an individual) without directly receiving any good, service, or other asset in return (paragraphs 8-9 provide additional guidance).

Amendments to IPSAS 42, Social Benefits

IG2. The following diagram illustrates the scope of IPSAS 42 and the boundaries between social benefits and other transactions.

	Transfer Expenses (IPSAS 48)			Social Benefits (IPSAS 42)	Other IPSAS/IFRS
Category	Transfer Expenses	Collective Services	Individual Services		
Examples	Transfer to other public sector entities Transfer to charities	Defense Street lighting	Education Healthcare		
Exchange or Non-Exchange Type Transactions?	Non-Exchange	Non-Exchange	Non-Exchange		
Provided as cash transfers to specific individuals/households	Sometimes	No	No		
Provided to specific individuals/households who meet eligibility criteria?	Sometimes	No	Sometimes		
Mitigates effect of social risks?	Sometimes	No	Sometimes		
Addresses needs of society as a whole?	Sometimes	Yes	Yes		

Scope of Social Benefits in GFS