

Agenda Paper 3.1
DRAFT AASB Exposure Draft
AASB October 2017 (M160)

ED 28X
December 2017

Amendments to Australian Accounting Standards – Australian Implementation Guidance for Not-for-Profit Public Sector Entities that issue Licences

Proposed amendments to AASB 15

Comments to the AASB by 31 March 2018



Australian Government

**Australian Accounting
Standards Board**

Commenting on this AASB Exposure Draft

Comments on this Exposure Draft are requested by

Formal Submissions

Submissions should be lodged online via the “Work in Progress – Open for Comment” page of the AASB website (www.aasb.gov.au/comment) as a PDF document and, if possible, a Word document (for internal use only).

Other Feedback

Other feedback is welcomed and may be provided via the following methods:

E-mail: standard@aaab.gov.au

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All submissions on possible, proposed or existing financial reporting requirements, or on the standard-setting process, will be placed on the public record unless the Chair of the AASB agrees to submissions being treated as confidential. The latter will occur only if the public interest warrants such treatment.

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Contents

PREFACE

[DRAFT] ACCOUNTING STANDARD

AASB 2018-X Amendments to Australian Accounting Standards – Australian Implementation Guidance for Not-for-Profit Public Sector Entities

	<i>from paragraph</i>
OBJECTIVE	1
APPLICATION	2
AMENDMENTS TO AASB 15	6
COMMENCEMENT OF THE LEGISLATIVE INSTRUMENT	10
APPENDICES	
A. Defined Terms	X
B. Application Guidance	X
C. Illustrative Examples	X
BASIS FOR CONCLUSIONS	X

[Draft] Australian Accounting Standard AASB 2018-X is set out in paragraphs ... and Appendix ... All the paragraphs have equal authority. Paragraphs in **bold type** state the main principles. AASB 2018-X is to be read in the context of other Australian Accounting Standards, including AASB 1048 *Interpretation of Standards*, which identifies the Australian Accounting Interpretations. In the absence of explicit guidance, AASB 108 *Accounting Policies, Changes in Accounting Estimates and Errors* provides a basis for selecting and applying accounting policies.

Preface

Introduction

Australian Accounting Standards

The Australian Accounting Standards Board (AASB) develops, issues and maintains Australian Accounting Standards.

The AASB is an Australian Government agency under the Australian Securities and Investment Commission Act 2001. AASB 1053 *Application of Tiers of Australian Accounting Standards* explains the two tiers of Australian Accounting Standards.

The approach the AASB takes in setting standards, including requirements specific to not-for-profit and public sector entities, is outlined in [AASB Policies and Processes](#).

Exposure Drafts

The publication of an Exposure Draft is part of the due process that the AASB follows before making a new Australian Accounting Standard or amending an existing one. Exposure Drafts are designed to seek public comment on the AASB's proposals for new Australian Accounting Standards or amendments to existing Standards.

Reasons for Issuing this Exposure Draft

... to do ...

This Exposure Draft proposes:

...to do ...

Main features of this Exposure Draft

Main requirements

This Exposure Draft proposes amendments to AASB 15 *Revenue from Contracts with Customers* (December 2014) to add requirements and authoritative implementation guidance for application by not-for-profit public sector entities to transactions involving the issue of licences.

The proposed amendments to AASB 15 in this Exposure Draft for non-IP licences include:

(a) ... to do ...

Application date

It is proposed that the amendments be applicable to annual reporting periods beginning on or after 1 January 2019, with early adoption permitted.

Request for Comment

Comments are invited on any of the proposals in this Exposure Draft by ... 2018. Submissions play an important role in the decisions that the AASB will make in regard to a Standard. The AASB would prefer that respondents express a clear overall opinion on whether the proposals, as a whole, are supported and that this opinion be supplemented by detailed comments, whether supportive or otherwise, on the major issues. The AASB regards supportive and non-supportive comments as essential to a balanced review of the issues and will consider all submissions, whether they address some or all specific matters, additional issues or only one issue (whether an issue specifically identified below or another issue)..

Specific Matters for Comment

The AASB would particularly value comments on the following:

- 1 to do ...

General matters for comment

The AASB would also particularly value comments on the following:

- 2 Whether there are any regulatory issues or other issues arising in the Australian environment that may affect the implementation of the proposals, including Government Financial Statistics (GFS) implications.
- 3 Whether, overall, the proposals would result in financial statements that would be useful to users.
- 4 Whether the proposals are in the best interests of the Australian economy.
- 5 Unless already provided in response to specific matters for comment... above, the costs and benefits of the proposals relative to the current requirements, whether quantitative (financial or non-financial) or qualitative. In relation to quantitative financial costs, the AASB is particularly seeking to know the nature(s) and estimated amount(s) of any expected incremental costs, or cost savings, of the proposals relative to the existing requirements.

Accounting Standard AASB 2018-X Amendments to Australian Accounting Standards – Australian Implementation Guidance for Not-for-Profit Public Sector Entities that issue Licences

Objective

- 1 The objective of this Standard is to amend AASB 15 *Revenue from Contracts with Customers* with respect to revenue from licences issued by not-for-profit public sector entities to:
 - (a) expand its scope to include non-contractual licences; and
 - (b) clarify the application of its principles to licences that are not within the scope of other Australian Accounting Standards.

Comment [rk1]: STAFF NOTE TO BOARD: legal advice we have received is that some statutory licensing arrangements may be non-contractual in nature (see draft para BC39 below). To expand the scope of AASB 15 and thereby keep all guidance on licences in one place, we have drafted para Aus5.2 below. NOTE this is consistent with what we are doing for AASB 17 Insurance

Application

- 2 The amendments proposed in this Exposure Draft apply to entities and financial statements in accordance with the application of AASB 15 as set out in AASB 1057 *Application of Australian Accounting Standards* (as amended).
- 3 This Standard applies to annual periods beginning on or after 1 January 2019. This Standard may be applied to annual periods beginning before 1 January 2019, provided that AASB 15 is also applied to the same period. If an entity applies this Standard to such an annual period, it shall disclose that fact.
- 4 This Standard uses underlining, striking out and other typographical material to identify some of the amendments to a Standard, in order to make the amendments more understandable. However, the amendments made by this Standard do not include that underlining, striking out or other typographical material.

Comment [KR2]: STAFF NOTE TO BOARD: this objective might change, depending on the option the Board decides to adopt (see Agenda Paper 3.2). This is because not all the possible options clarify application of the principles – some of them override the principles for practical expediency.

Amendments to AASB 15

- 5 Paragraph Aus5.2 is added:

Aus5.2 Notwithstanding paragraph 5, in respect of not-for-profit public sector entities, this Standard applies to all licences issued, including those arising from statute or legislative requirements as if those licences are contracts with customers. Guidance on distinguishing between a licence and a tax is set out in paragraphs X to X.
- 6 Appendix G *Australian implementation guidance for public sector not-for-profit licensors* is added as set out on pages X-Y. ...
- 7 *Australian illustrative examples for public sector not-for-profit licensors* is attached to accompany AASB 15 as set out on pages Y-Z.

Comment [PK3]: STAFF NOTE TO BOARD: depending on the approach the Board adopts (see agenda paper 3.2) other amendments to the body and application guidance of AASB 15 through Aus paragraphs might be warranted. Also: need to check whether the scoping achieves what is required

Commencement of the legislative instrument

- 8 For legal purposes, this legislative instrument commences on

Appendix A

Defined Terms

This appendix is an integral part of the [draft] Standard.

... to do, if necessary ...

Comment [PK4]: STAFF NOTE TO BOARD: at this stage, we're not aware of any terms that would need to be defined. We've kept Appendix A as a place marker

Appendix G [FOR AASB 15] Australian implementation guidance for not-for-profit public sector licensors

This appendix is an integral part of AASB 15 and has the same authority as other parts of the Standard. The appendix applies only to not-for-profit public sector entities.

Introduction

- G1. AASB 15 *Revenue from Contracts with Customers* incorporates International Financial Reporting Standard IFRS 15 *Revenue from Contracts with Customers*, issued by the International Accounting Standards Board. Consequently, the text of AASB 15 is generally expressed from the perspective of for-profit entities in the private sector. AASB 15 provides explicit Application Guidance for intellectual property (IP) licences. It does not explicitly provide guidance for non-IP licences. The AASB has prepared this appendix to explain and illustrate the principles in the Standard from the perspective of not-for-profit public sector entities, particularly with respect to non-IP licences. The appendix does not apply to for-profit entities or affect their application of AASB 15.

Comment [KR5]: STAFF NOTE TO BOARD: as noted above, depending on the approach the Board decides to adopt after discussing the options in Agenda Paper 3.2, it might be necessary for this appendix to go beyond merely explaining and illustrating the principles –some of the options would modify the principles.

Distinguishing a licence from a tax

- G2. In determining whether a transaction is a licence subject to this Standard, as distinct from a tax¹ subject to AASB 1058 *Income of Not-for-Profit Entities*, the following features are relevant. These features are not an exhaustive list and not all features need to be present for an arrangement to be a licence:

Feature	Licence	Tax
(a) Is the arrangement discretionary rather than compulsory?	Discretionary	Compulsory
(b) What is the primary purpose?	Non-financial purpose (e.g. equitable allocation of a public resource)	Generating income for the public sector entity
(c) Does the arrangement create direct rights to use or access an asset for a payer, or perform an activity, and, depending on the type of arrangement, direct obligations of a payee?	Creates direct rights of a licensee, and could create direct obligations for a licensor	No specific rights for a payer or obligations for a payee
(d) Does the arrangement give the payer specific permission that must be obtained prior to performing an activity or using or accessing an asset of the payee that would otherwise be unlawful?	Yes	No
(e) Does the arrangement transfer control of a payee's underlying asset?	No	Not relevant

- G3. A public sector licensor may enter into a licence with a licensee with a dual purpose of providing a licence and imposing a tax (or another amount that does not entail contractually promised goods or services). Consistent with Paragraphs F28 to F32 a public sector licensor shall allocate the transaction price to each licence performance obligation so that the licence performance obligation depicts the amount of consideration to which the licensor expects to be entitled in exchange for transfer of the promised licence to the licensee. This is based on the rebuttable presumption that the transaction price is treated as wholly

¹ AASB 1058 defines taxes as "Economic benefits compulsorily paid or payable to public sector entities in accordance with laws and/or regulations established to provide income to the government. Taxes exclude fines."

related to the transfer of the licence. The tax, or other amount, might be subject to AASB 1058 and/or the general requirements of AASB 15, depending on its nature.²

Comment [KJ6]: [STAFF Question 3.1.1 TO BOARD]: Do Board members agree that the only time the transaction price for a licence should be allocated between a licences and tax, is when the rebuttable presumption in Appendix F of AASB 15 is met, and the licence fee is partially refundable in the event that the licence conditions are not satisfied, indicative that there is an element that is a tax component as it is not refundable?

See also draft paras BC53-BC58 below

Heading to be inserted for chosen option

G4. ... to do ...

² Appendix F of AASB 15 was introduced through AASB 2016-8 *Amendments to Australian Accounting Standards – Australian Implementation Guidance for Not-for-Profit Entities*. Until a compiled version of AASB 15 is available, the Appendix can be found in AASB 2016-8.

Australian illustrative examples for public sector not-for-profit licensors

These [draft] illustrative examples accompany, but are not part of, AASB 15. They illustrate aspects of the Australian guidance for not-for-profit public sector entities in AASB 15, but are not intended to provide interpretative guidance and are only applicable to not-for-profit public sector entities. The AASB will determine which of these examples accompanies AASB 15, after it considers comments received on this Exposure Draft.

The [draft] examples illustrating aspects of the Australian guidance for not-for-profit entities in AASB 15 complement, and have the same status, as the Illustrative Examples accompanying IFRS 15 Revenue from Contracts with Customers, which are available in a separate file on the AASB website. AASB website users in Australia can access those IASB Illustrative Examples at:

http://www.aasb.gov.au/admin/file/content105/c9/IFRS15_IE_5-14.pdf

- IE1 The following examples portray hypothetical situations. They are intended to illustrate how a not-for-profit public sector entity that is a licensor might apply some of the requirements of AASB 15 *Revenue from Contracts with Customers* to particular types of licences, on the basis of the limited facts presented. Although some aspects of the examples might be present in actual fact patterns, all relevant facts and circumstances of a particular fact pattern would need to be evaluated when applying AASB 15. The evaluations in each example are not intended to represent the only manner in which AASB 15 could be applied.
- IE2 **STAFF NOTE TO BOARD:** examples will be drafted once the Board has decided its overall approach, perhaps based on the examples in Agenda Paper 3.2, depending on how the Board reacts to those examples.

Comment [PK7]: G1.STAFF NOTE TO BOARD: remainder of this appendix is dependent on the option the Board decides to adopt – see Agenda Paper 3.2 ...

Basis for Conclusions on ED 28X

This Basis for Conclusions accompanies, but is not part of, AASB 15 Revenue from Contracts with Customers.

Introduction

- BC1 This Basis for Conclusions summarises the Australian Accounting Standards Board's considerations in reaching the conclusions on this Exposure Draft (ED). It sets out the reasons why the Board developed the ED, the approach taken to developing the ED and the key decisions made. In making decisions, individual Board members gave greater weight to some factors than to others.

Reasons for Developing the Exposure Draft

- BC2 As a result of constituent feedback, the Board identified there is a risk that revenue from licences issued by not-for-profit public sector entities is being understated (revenue is deferred when it should be recognised immediately) or overstated (revenue is recognised immediately when it should be recognised over time), which may have a material impact on users of their financial statements.
- BC3 AASB 15 *Revenue from Contracts with Customers* provides specific guidance on accounting for revenue arising from the issuance of an intellectual property (IP) licence. However, as AASB 15 is generally expressed from the perspective of for-profit entities in the private sector, the AASB received feedback from constituents in the not-for-profit public sector that it is unclear whether the guidance in AASB 15 could be applied to account for revenue from licences issued by not-for-profit public sector entities, particularly in the case of non-IP licences and non-contractual licences arising from statute and legislative requirements.
- BC4 The Board noted that there is currently diversity in practice in relation to the accounting for revenue from licences, in particular non-IP licences (e.g. casino and gaming licences), and that the magnitude of the licence transactions is significant to the public sector.
- BC5 The Board has previously considered the accounting for revenue from licences granted by not-for-profit public sector entities as part of its projects relating to:
- Service Concession Arrangements: Grantors; and
 - Income of Not-for-Profit Entities.
- BC6 In past deliberations on the Service Concession Arrangements: Grantors project, the Board considered whether the application guidance in AASB 15 (set out in paragraphs B52 to B63 of AASB 15) could be applied directly or by analogy to licences granted by not-for-profit public sector entities. However, the Board was unable to form a view at that time, primarily due to the guidance being applicable to licences of intellectual property only.
- BC7 In the context of the Income of Not-for-Profit Entities project, the Board deliberated regarding the inclusion of licences in the scope of AASB 1058 *Income of Not-for-Profit Entities*. Feedback from constituents indicated that accounting for licences issued by not-for-profit public sector entities was a significant issue, particularly in determining whether revenue should be recognised over time or at a point in time for licences providing the right to operate in a particular jurisdiction(s) and/or for a particular purpose(s), such as gambling licences. The Board decided to exclude licences (outside the scope of AASB 15) from the scope of AASB 1058, in favour of a broader project on the topic.
- BC8 Therefore, in both instances, the Board deferred its deliberations pending a specific project to research the extent to which these types of licences exist, as well as the current and potential accounting treatment.
- BC9 As part of the Board's 2017-2019 Agenda Consultation, in response to feedback from constituents, the Board considered a broader project plan to address the accounting for intangible assets of public sector entities, including addressing the accounting for revenue from licences issued by not-for-profit public sector entities.
- BC10 In considering the project scope, the Board was cognisant that the accounting for revenue from licences issued by public sector entities would preferably be clarified prior to 1 January 2019, which is the mandatory application date of AASB 15 and AASB 1058 for not-for-profit entities. In the absence of clarification, the Board noted that entities could apply AASB 15 or AASB 1058 by analogy, which could add to the current diversity in practice.
- BC11 The Board decided to limit the scope of the project to considering the accounting for revenue of licences issued by not-for-profit public sector entities and not extend the scope to consider the accounting for the

Comment [PK8]: [STAFF NOTE TO BOARD] This statement is based on feedback received during meetings with various Treasury departments. However, we will need to obtain some data to support this statement further.

underlying assets giving rise to the licences (such as sovereign power) given the feedback from constituents related to the revenue recognition of licence transactions, particularly non-IP licences.

BC12 Consequently, the Board decided to add to its 2017-2019 Work Program a project to clarify the accounting for revenue from the issue of licences by not-for-profit public sector entities. The Board decided that the project should address:

- (a) the nature of the right created by the licence – whether the licence confers the right to use or access an asset, or confers a right to perform an activity where there is no licensor asset involved, and whether different accounting treatments for revenue from such licences are appropriate;
- (b) whether the scope of AASB 15 should be expanded to encompass non-contractual licences issued under statute and/or licenses not relating to intellectual property; and
- (c) whether the guidance in AASB 15 specifically for IP licences is appropriate for all licences issued in the public sector.

Scope

BC13 The Board has determined that the scope of the amendments to AASB 15 for licences issued by the public sector should be restricted to not-for-profit public sector entities. Following its normal considerations of transaction neutrality, the Board did not identify any licences issued by for-profit public sector entities that would require additional guidance to that already provided by AASB 15 for for-profit private sector entities.

BC14 The Board noted that its decisions regarding service concession arrangements in AASB 1058 to apply the all public sector entities were the result of decisions made specifically in connection with that project.

Comment [PK9]: [STAFF QUESTION 3.1.2 TO THE BOARD]: Do you agree the scope should be limited to the NFP public sector?

Features of licences

BC15 AASB 15 provides some examples of IP licences but none of the AASB Standards (including AASB 15) describe what a licence is. The Board considered that it would be helpful for entities in the not-for-profit public sector for the Board to provide guidance in the Standard on identifying the features of a licence. This would help not-for-profit public sector licensors distinguish revenue arising from licences, which would be accounted for in accordance with this Standard, and revenue arising from taxes, which would be accounted for in accordance with AASB 1058.

BC16 In identifying the features of a licence, the Board considered:

- (a) The extent to which the current Australian Accounting Standards define or infer features of licences, in particular AASB 1058;
- (b) The extent to which the International Public Sector Accounting Standards Board (IPSASB) considered features of a licence in its projects; and
- (c) Other resources, including the Australian Bureau of Statistics (ABS) Government Finance Statistics (GFS) Manual, commonly accepted definitions, law and other common features of licences issued by not-for-profit public sector entities.

Features of licences implicit in current Australian Accounting Standards

AASB 1058

BC17 The Board noted that AASB 1058 defines and prescribes the accounting for taxes. Although AASB 1058 uses the term 'licence', it is not defined. The Board agreed with the inference that licences and taxes should be interpreted differently, and that the distinction between licences and taxes could, as a starting point, be drawn from the AASB 1058 definition of 'taxes', which is:

“Economic benefits compulsorily paid or payable to public sector entities in accordance with laws and/or regulations to provide income to the government. Taxes exclude fines.”

BC18 In interpreting the definition of 'taxes' with the intention of distinguishing it from licences, the Board noted the definition of 'taxes' provides for two points of distinction, being:

- (a) The notion of compulsion; and
- (b) The purpose of the payment.

- BC19 In relation to compulsion, the Board observed that although a licence fee may be compulsorily payable upon issue, a prospective licensee has discretion of whether to seek a licence. The Board observed that in order to be a useful discriminator between a licence and tax, the notion of compulsion should be considered in relation to the consequences of evading a licence fee or tax. For example, if an entity was found to have evaded a licence fee, it would not be compulsory for the entity to retrospectively obtain the licence. Any penalty for undertaking unlicensed activities would be in the nature of a penalty or fine. In contrast, an entity found to have evaded a tax, would be compelled to pay the tax in addition to any penalty or fine. The Board decided that in distinguishing a licence from a tax, the notion of compulsion by reference to the consequences of evasion would be useful as a primary discriminator.
- BC20 In relation to the purpose of the payment, AASB 1058 states that “taxes are established to provide income to the government.” The Board considered whether licences could be differentiated such that the primary purpose of the arrangement would be non-financial, e.g. to regulate social behaviour, or to allocate a public resource equitably. In considering the usefulness of this discriminator, the Board acknowledged some licence arrangements could arguably have multiple purposes (i.e. both financial and non-financial), or could have a primarily financial purpose on an ongoing basis. Consequently, the usefulness of the purpose of establishment as a distinguishing feature between a licence and tax could be of limited use if considered as a primary distinguishing feature or in isolation. Accordingly, the Board decided that although the purpose could be a useful feature to consider dependent on the specific facts and circumstances of a licence arrangement in conjunction with the other features, it should not be used as a primary, or singular point of distinction between a licence and tax.

Other Australian Accounting Standards

- BC21 The Board considered, but did not identify any features of licences implicit in the following Australian Accounting Standards:
- (a) AASB 15;
 - (b) AASB 16 *Leases*;
 - (c) AASB 138 *Intangible Assets*; and
 - (d) AASB 1059 *Service Concession Arrangements: Grantors*.

The IPSASB

- BC22 In identifying other features distinguishing licences from taxes, the Board considered the IPSASB’s project work regarding the accounting for revenue transactions. The Board noted that the IPSASB had not yet specifically considered the accounting for revenue from licences issued by not-for-profit public sector entities, nor defined the term ‘licence’ in any IPSAS.

Other resources

- BC23 The Board also considered the approach adopted in the ABS GFS Manual in respect of distinguishing licences from other arrangements. The Board noted that the ABS GFS Manual defines the term ‘licence’ widely and infers that although a variety of arrangements could be licences, revenue from these arrangements could be taxes or administration fees dependent on the level of work involved for the issuing public sector entity. Additionally, the Board noted the ABS GFS Manual does not identify compulsion or the purpose of establishment as a basis for distinguishing a licence from a tax, and adopts the licensor’s perspective in ascertaining the economic substance of the transaction. This approach is therefore inconsistent with the points of distinction implied by the definition of a tax in AASB 1058. Accordingly, the Board decided the approach adopted by the ABS GFS Manual would not be useful in identifying the features of a licence.
- BC24 The Board noted, based on common law and other commonly accepted definitions of the term ‘licence’, the following features are also useful in distinguishing licence arrangements from taxes:
- (a) whether the arrangement creates direct rights of a payer to use (not within the scope of AASB 16) or access the payee’s asset, or perform an activity, and, depending on the type of arrangement, direct obligations of a payee. The Board noted that licences would generally confer direct rights to a licensee, and could, in some instances, create direct obligations for a licensor. The Board considered whether a tax could confer rights (and create obligations), but concluded that the nexus between any right or obligation as a result of a tax and the tax itself would not be sufficiently direct;
 - (b) based on common law principles, the Board observed that licence arrangements confer a specific permission to perform an activity, or use or access an asset that would otherwise be unlawful; and
 - (c) also based on common law principles, the Board observed that licence arrangements do not transfer control of a payee’s underlying asset. The transfer of control of assets would fall within the scope of other Australian Accounting Standards (eg AASB 116 *Property, Plant and Equipment* and AASB 138 *Intangible Assets*), and therefore would not be within the scope of AASB 15.

BC25 The Board also noted, but considered the following common characteristics of licence arrangements irrelevant in distinguishing between licences and taxes, but could be useful in determining the accounting treatment of revenue from licences:

- (a) the existence of an underlying asset;
- (b) refundability;
- (c) transferability; and
- (d) the period of the arrangement.

Application of Australian Accounting Standards

BC26 The Board considered the applicability of the existing suite of Australian Accounting Standards to licence arrangements. The Board also considered the suitability of the principles in AASB 15 in the context of whether its application could be extrapolated to appropriately reflect the economic substance of transactions in accounting for revenue from licences issued under statute or legislative requirement.

BC27 In addition to considering the suitability of AASB 15, the Board also identified other Australian Accounting Standards that refer to licences from an issuer's perspective, and considered whether the scope of these other Standards could encompass the accounting for revenue from non-IP licences given that AASB 15 deals specifically with revenue from IP licences. The Board identified the following Australian Accounting Standards as possibly applicable:

- (a) AASB 16;
- (b) AASB 1058; and
- (c) AASB 1059.

BC28 The Board's views with respect to the application of the Australian Accounting Standards identified above are set out as follows.

AASB 16 Leases

BC29 The Board noted that AASB 16 would only apply to licences outside the scope of AASB 15 that satisfy the definition of a lease.

BC30 In considering whether a licence could satisfy the definition of a lease, and therefore be accounted for in accordance with AASB 16, the Board noted that the licence would need to represent a contract (see the discussion in paragraphs BC40 to BC43 below for a discussion of whether all licences are contracts) conveying a 'right to use' an asset for a period of time in exchange for consideration. The asset would also need to be an identified asset with no substantive right of substitution.

BC31 The Board considered the meaning of 'right to use' in the context of the application guidance set out in AASB 16, which requires the contract to convey the right to control the use of the identified asset for a period of time. In doing so, the entity is required to assess whether the customer has:

- (a) the right to obtain substantially all of the economic benefits from the use of the identified asset, such that the customer has rights to direct how and for what purpose the asset is used; and
- (b) the right to direct the use of the identified asset, such that relevant decisions about how and for what purpose the asset is used are predetermined. The customer must also have the right to operate the asset without the supplier having rights to change operating instructions, or the customer designed the asset in a way that predetermines how and for what purpose the asset will be used.

BC32 Accordingly, the Board noted that AASB 16 could only apply to 'right to use' identified assets under contractual licences outside the scope of AASB 15, but that the term 'right to use' in the context of AASB 16, as outlined in the application guidance, is differently defined to the term 'right to use' in the context of the accounting for revenue from the issue of intellectual property licences addressed in AASB 15 (considered further in paragraphs [xx] to [xx] for analysis of 'right to use' in the context of AASB 15).

BC33 In this regard, the Board noted that most non-intellectual property licences issued by not-for-profit public sector entities would likely not constitute 'right to use' identified asset type licences, and therefore would not fall within the scope of AASB 16 because:

Comment [AG10]: STAFF NOTE TO BOARD: Paragraph references to be added when analysis of AASB 15 is added to the BC below.

- (a) in most cases there would not be an underlying licensor's asset involved in the arrangement (for example 'right to perform' type licences); or
- (b) where a licensor's asset is involved, it would be in the nature of 'a capacity portion of an asset that is not physically distinct' i.e. not an identified asset.

BC34 In this regard, the Board concluded that although a licence could satisfy the definition of a lease and therefore fall within the scope of AASB 16, only limited examples could be identified (e.g. spectrum licences.).

AASB 1059 Service Concession Arrangements: Grantors

BC35 AASB 1059 applies to service concession arrangements, and does not intend service concession arrangements to be referred to as licences, on the basis that "...the substance of the transaction appears more akin to financing the construction of the service concession asset, rather than a contract with a customer." (paragraph BC77 of AASB 1059)

BC36 Given the approach in AASB 1059, the Board concluded that it would not be necessary to address any licences that meet the definition of service concession arrangements as part of this Exposure Draft as they are adequately dealt with in AASB 1059. The Board also concluded that, in the context of clarifying the accounting for revenue from licences issued by not-for-profit public sector entities, AASB 1059 should not be applied by analogy to licence arrangements that are not service concession arrangements.

AASB 1058 Income of Not-for-Profit Entities

BC37 The Board concluded that AASB 1058 should not apply to accounting for revenue from licence arrangements within the scope of this project as it is a 'residual' income recognition standard and AASB 15 would be more suitable as it is a 'primary' revenue recognition standard.

AASB 15 Revenue from Contracts with Customers

BC38 AASB 15 applies to the accounting for revenue from contracts with customers, where the customer is a party that has contracted with an entity to obtain goods or services that are an output of the entity's ordinary activities in exchange for consideration. Paragraph 26(i) of AASB 15 explicitly identifies licences as a possible good or service. Although paragraph B52 states that a licence establishes a customer's rights to the intellectual property of an entity, and paragraphs B52 and B62 are written in the context of intellectual property licences, paragraph 26(i)'s reference to 'licences' is not limited to intellectual property licences.

BC39 The Board observed that in assessing whether non-intellectual property licences could fall within the scope of AASB 15, non-intellectual property licence arrangements would need to:

- (a) constitute a contract with a customer;
- (b) constitute goods or services; and
- (c) be an output of the licensor's ordinary activities.

The scope of 'contract'

BC40 The Board noted that AASB 15 applies only to licences resulting from a contract creating enforceable rights and obligations. The Board noted that the **Conceptual Framework** does not distinguish between rights and obligations created by contract and those created by statute or legislation.

Comment [rk11]: STAFF NOTE TO BOARD: this might change given para 4.34 of the new IASB CF.

BC41 Some of the key legal features distinguishing between a right or obligation created in a contract versus a statute include whether the parties enter the arrangement voluntarily and whether there are other providers that a payee could use. The Board noted that for significant licences there is likely to be a specific contract between the payer and payee (e.g. gaming licences), however for other licences it is less clear whether they are contractual or statutory in nature.

Comment [AG12]: STAFF NOTE TO BOARD: Para BC39 is based on legal advice we have received.*** THIS COMMENT MAY NEED TO CHANGE BASED ON FUTURE DISCUSSIONS WITH LAWYERS ***

BC42 The Board considered whether any licences arising as a result of statute that are in substance economically the same as those created by contract would be significant. Although the Board had mixed views in this regard, the Board generally agreed with the approach set out in appendix C of AASB 15 where the scope of AASB 9 *Financial Instruments* was extended to apply to statutory receivables of public sector entities on initial recognition. The Board noted that considerable judgement may be needed to determine whether a licence is contractual or statutory in nature and that if the substance is the same, then similar accounting outcomes would be most consistent with the Conceptual Framework.

BC43 The Board considered that a similar approach should be adopted to apply to non-contractual licences created under statute or legislative requirements. The Board decided that the scope of AASB 15 should be extended to

apply to revenue from non-contractual licences issued by not-for-profit public sector entities arising as a result of statutory requirements.

The scope of 'goods and services'

- BC44 The Board considered the question of whether licences (representing a right to use, right to access or right to perform an activity) issued by a not-for-profit public sector entity could be a good or service. In doing so, the Board noted that paragraph 26(i) of AASB 15 includes, within the ambit of goods and services, the granting of licences. This position is further evidenced by the specific guidance in Appendix B of AASB 15 that applies to the accounting for revenue from intellectual property licences in AASB 15. Therefore, the Board observed that the inclusion of intellectual property licences in the scope of AASB 15 could suggest non-intellectual property licences conferring rights to use or access a licensor's asset (and that is not a lease) would also fall within the scope of AASB 15 (subject to the satisfaction of the other criteria applicable to assessing whether an arrangement is within the scope of AASB 15).
- BC45 The Board also considered, in relation to a licence granting a right to perform an activity, whether the absence of a right to an asset of the licensor could preclude the right to perform an activity from constituting goods or services. In its deliberations, the Board noted the legal meaning of 'goods and services', both under statute and general legal definitions, did not exclude the grant of rights, whether related to an asset or otherwise, from constituting goods or services.
- BC46 The Board also acknowledged the Canadian Public Sector Accounting Standards Board's view that issuing of licences and permits would constitute goods or services, as proposed in Exposure Draft *Revenue, Proposed Section 2400* in May 2017, as they could constitute exchange transactions.
- BC47 In light of these considerations, the Board concluded that the issue of a non-intellectual property licence representing a right to access or use a licensor's asset, or perform an activity, would constitute goods or services for the purposes of AASB 15.

The scope of 'ordinary activities'

- BC48 The Board considered whether the issue of a licence would be an output of the public sector entity's ordinary activities. As AASB 15 does not define the meaning of the term 'ordinary activities', the Board noted its derivation from the revenue definition in the Conceptual Framework, particularly as distinct from other activities an entity may engage in. In the context of licences, the Board regarded the issue of licences within the ambit of ordinary activities carried out by a not-for-profit public sector entity as a key responsibility of the issuing authority. Accordingly, the Board concluded that the issue of licences would be within the ordinary activities of a not-for-profit public sector entity.

The Board's conclusion on AASB 15

- BC49 For the reasons outlined above, the Board considered that all licences outside the scope of AASB 16 and AASB 1059 should fall within the scope of AASB 15, whether contractual or statutory in nature. Despite this decision, the Board acknowledged the following possible alternate views that would mean AASB 15 would not apply,:
- (a) many licences involve rights that are not associated with underlying assets or do not create performance obligations for the licensor, so may not be goods or services; and
 - (b) it is conceivable that some licences are not outputs of ordinary activities.
- BC50 Additionally, the Board acknowledged the possible development of future licencing arrangements that may not have the character of a 'contract', 'goods or services' or 'ordinary activities' in accordance with the Board's current views.
- BC51 In light of the above, the Board decided that AASB 15 should be amended to specifically include revenue from licences issued by not-for-profit public sector entities within its scope (other than those within the scope of AASB 16 and AASB 1059) without clarifying whether such licences would otherwise meet the scope requirement of AASB 15.

Comment [PK13]: STAFF NOTE TO BOARD: Confirm that all licences whether contractual or statutory in nature should be included in 15.

Allocating the transaction price to licences

- BC52 The Board noted that an entity could enter into a single transaction comprising of a licence and other economically different elements that are not contractually promised goods or services (such as a tax). In allocating the transaction price between the licence and other components of a transaction, the Board considered whether the implementation guidance relating to the allocation of the transaction price to performance obligations set out in Appendix F of AASB 15 [which arose from AASB 2016-8] should be applied.

- BC53 Paragraphs F28 to F32 of Appendix F of AASB 15 set out implementation guidance for not-for-profit entities in allocating the transaction price where not-for-profit entities enter into transactions with a dual purpose of:
- obtaining goods or services, which, in the context of this Exposure Draft, could be a licence element (accounted for under AASB 15); and
 - to help the not-for-profit entity achieve its objectives, which, again in the context of this Exposure Draft, could be a tax element (accounted for under AASB 1058).
- BC54 Appendix F of AASB 15 states that the allocation should be based on a rebuttable presumption that the transaction price is treated as wholly related to the transfer of promised goods or service (in the context of this Exposure Draft, the licence), where the rebuttal is premised on the contract being partially refundable in the event the entity does not deliver the promised goods or services (licence).
- BC55 The Board noted the views that:
- if the price of a licence far exceeds the level of work required to satisfy the performance obligation, consistent with GFS accounting for licences, the 'excess' over a reasonable price for the performance obligation may be a tax; and
 - if an arrangement contains variable contingent consideration (eg a sales-based or usage-based royalty to provide the licensor with additional revenue where the licensee makes a 'super-profit'), this component of the transaction price may be considered to be a tax in certain circumstances.
- BC56 The Board considered whether the GFS approach of accounting allocation between licence and tax revenue should be implemented, and concluded that the guidance in paragraphs F28 to F32 of Appendix F of AASB 15 is more appropriate. The Board decided on cost benefit grounds that distinguishing between a tax element, based on excess over a 'reasonable price' for the licence operating costs, would be too subjective. Accordingly transaction prices should only be allocated between licences and tax when the rebuttable presumption in Appendix F of AASB 15 is met, and the licence fee is partially refundable in the event that the licence conditions are not satisfied, indicative that there is an element that is a tax component as it is not refundable. In that instance the licensor should apply the guidance in paragraphs F28 to F32 to disaggregate the transaction price and account for the component that relates to the transfer of licence in accordance with AASB 15 (and any additional guidance contained in this Exposure Draft). The remainder of the transaction price, being the non-refundable component, is accounted for in accordance with AASB 1058.
- BC57 The Board noted that AASB 15 provides specific guidance for variable contingent consideration (ie sales-based or usage-based royalties) for IP licences and accordingly considered there to be no difference in economic substance between a public sector entity or private sector entity undertaking such arrangement as part of the licence agreement that would warrant a different accounting treatment. Therefore, a licence fee that includes, for example a sales-based or usage-based royalty is part of revenue earned from issuing the licence and not a tax.

Comment [KJ14]: STAFF NOTE TO BOARD: the Board has not previously discussed this issue.

REFER TO QUESTION 3.1.1 FOR THE BOARD ON PAGE 9 (repeated below for convenience)

Do Board members agree that the only time the transaction price for a licence should be allocated between a licences and tax, is when the rebuttable presumption in Appendix F of AASB 15 is met, and the licence fee is partially refundable in the event that the licence conditions are not satisfied, indicative that there is an element that is a tax component as it is not refundable?

Comment [KJ15]: STAFF NOTE TO BOARD: the Board has not previously discussed this issue.

QUESTION 3.1.3 FOR THE BOARD

Do Board members agree that specific guidance for variable contingent consideration (ie sales-based or usage-based royalties) in AASB 15 for IP licences, should be equally applicable to public sector entities licences (where applicable) as there is no difference in economic substance between a public sector entity or private sector entity undertaking such an arrangement that would warrant a different accounting treatment?

Alternative Approaches Considered

STAFF NOTE TO BOARD: the remainder of the BC is dependent on the option in Agenda Paper 3.2 (or any other option) the Board decides to adopt. The BC will contain the rationale for the option chosen as well as the rationale for rejecting the alternatives options. It is intended that each option would be discussed in turn and the relative merits noted in the BC...

... to do ...