Association pour la participation des entreprises françaises à l'harmonisation comptable internationale

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ED IAS 12 International Tax Reform—Pillar Two Model Rules

Dear Chair,

ACTEO, Afep and MEDEF welcome the opportunity to comment on this new exposure draft dealing with income tax and the effect of the international tax reform (Pillar Two).

We welcome the exception the IASB is considering to adopt regarding the accounting for deferred taxes and appreciate that the Board has worked as effectively and rapidly as possible to provide relief for preparers. However, we are concerned by the additional disclosures that would be required. Pillar Two is a major tax reform. Of unprecedented complexity, it will require significant investments from companies and will therefore come at a heavy cost for preparers even though the potential amounts of tax concerned are not anticipated to be significant in most cases.

Our members are therefore strongly opposed to new disclosure requirements that could be misleading, generate additional costs and raise confidentiality and liability issues for preparers.

In this regard, Pillar Two should not be treated differently from and more specifically than other pieces of legislation that may have an even greater impact on financial statements, since companies must communicate on any significant event that may have a material impact on their financial situation. As a way forward, the Board could require companies to be transparent about work in progress and only disclose information about expected impacts where reliable and probable estimates exist.

You will find in appendix 1 our detailed comments on the exposure draft published by the Board.

Should you need any further clarification, please do not hesitate to contact us.

Yours sincerely,

ACTEO	**Afep**	**MEDEF**
Lise Chorques	Jean-Luc Matt	Christine Lepage
Director General	Director General	Deputy Director General

Appendix 1

ACTEO, Afep and MEDEF's comments on ED IAS 12 International Tax Reform—Pillar Two Model Rules

Question 1—Temporary exception to the accounting for deferred taxes (paragraphs 4A and 88A)

IAS 12 applies to income taxes arising from tax law enacted or substantively enacted to implement the Pillar Two model rules published by the OECD, including tax law that implements qualified domestic minimum top-up taxes described in those rules.

The IASB proposes that, as an exception to the requirements in IAS 12, an entity neither recognize nor disclose information about deferred tax assets and liabilities related to Pillar Two income taxes.

The IASB also proposes that an entity disclose that it has applied the exception.

Paragraphs BC13–BC17 of the Basis for Conclusions explain the IASB's rationale for this proposal.

Do you agree with this proposal? Why or why not? If you disagree with the proposal, please explain what you would suggest instead and why.

Regarding the first proposal to provide a temporary exception to the accounting for deferred taxes, we fully agree with the arguments developed in the Basis for Conclusions and we therefore support the exception. Pillar Two is a very complex mechanism which needs to be examined very closely to understand whether, and how, deferred tax should be recognized and/or measured by incorporating these new provisions. Companies, auditors and tax authorities, in particular, need sufficient time to assess the full impact of this unprecedented reform. We support the exception and appreciate the efforts made by the Board to provide relief to preparers in this regard.

Question 2—Disclosure (paragraphs 88B–88C)

The IASB proposes that, in periods in which Pillar Two legislation is enacted or substantively enacted, but not yet in effect, an entity disclose for the current period only:

(a) information about such legislation enacted or substantively enacted in jurisdictions in which the entity operates.

(b) the jurisdictions in which the entity's average effective tax rate (calculated as specified in paragraph 86 of IAS 12) for the current period is below 15%. The entity would also disclose the accounting profit and tax expense (income) for these jurisdictions in aggregate, as well as the resulting weighted average effective tax rate.

(c) whether assessments the entity has made in preparing to comply with Pillar Two legislation indicate that there are jurisdictions: (i) identified in applying the proposed requirement in (b) but in relation to which the entity might not be exposed to paying Pillar Two income taxes; or (ii) not identified in applying the proposed requirement in (b) but in relation to which the entity might be exposed to paying Pillar Two income taxes.

The IASB also proposes that, in periods in which Pillar Two legislation is in effect, an entity disclose separately its current tax expense (income) related to Pillar Two income taxes.

Paragraphs BC18–BC25 of the Basis for Conclusions explain the IASB's rationale for this proposal.

Do you agree with this proposal? Why or why not? If you disagree with the proposal, please explain what you would suggest instead and why.

The Board is considering requiring disclosure of an aggregate effective tax rate for countries where the effective tax rate is below 15 %. **We strongly disagree with this proposal for the reasons detailed below:**

- Such disclosure might seem to be quite simple to provide, based on the presumption that the information is already available in the existing IFRS reporting without further calculation. However, disclosure of such information will require the reporting entity to provide additional information to accompany these figures, to explain and to rationalise them and to make the link with the potential impacts of additional tax. Although not directly required by the draft amendment, this very complex and sensitive additional information will therefore implicitly be requested and will generate additional costs and burden while Pillar Two is a major tax reform. Of unprecedented complexity, it will require significant IT development as well as new human resources and will therefore come at a heavy cost for preparers even though the potential amounts of tax concerned are not anticipated to be significant in most cases.
- As we believe that the company must communicate on any significant event that may have a material impact on its accounts, we think that Pillar Two should not be treated differently from and more specifically than other pieces of legislation that may have an even greater impact on some companies. IAS 1 already requires these items to be disclosed. It does not therefore seem appropriate that the IASB finalise this particular proposal, especially since the information required and the objective pursued are not directly related to the exception granted for deferred taxes. We do not believe that the general purpose of the financial statements is to replace dedicated tax reporting, such as Country-by-country Reporting (CBCR). Mandating such disclosures would constitute a fundamental overhaul of IAS 12, well beyond a simple amendment. In this regard, we think that if the Board considers that amendments to IAS 12 are necessary, it should have added this project to its workplan.
- As regards disclosure required under **Paragraph 88 C (a)** ("*information about such legislation enacted or substantively enacted in jurisdictions in which the entity operates"*), the Board should have in mind that the OECD is considering implementing a validation procedure for Pillar Two domestic legislation to ensure uniform implementation of GLoBE as well as the design of the qualified domestic top-up tax (most countries should implement this mechanism to avoid the payment of the top-up tax to the state of the parent company of the group). The modalities for monitoring the uniformity of the standard will be determined by the OECD. A consultation on *Tax Certainty for the GloBE Rules* is currently underway. Therefore, companies should not be responsible to list the countries of implementation of GLoBE. It is expected that the OECD will communicate publicly on the list of jurisdictions that are enacting Pillar Two rules. We are also concerned that the requirement of paragraph 88C(a) would burden the notes to the financial statements with a list which, in the case of certain groups, could be very extensive. On the issue of materiality, we are aware, since this is a fundamental principle of IFRS, that the IASB does not wish to make a specific reference to it in every published standard. However, we think that it might be useful to refer to this in the Basis for Conclusions so that it would be clear that only information about material matters is required in respect of the proposed amendments.

- Regarding information required under **Paragraph 88 C (b)** ("*the jurisdictions in which the entity's average effective tax rate (calculated as specified in paragraph 86 of IAS 12) for the current period is below 15%. The entity would also disclose the accounting profit and tax expense (income) for these jurisdictions in aggregate, as well as the resulting weighted average effective tax rate*"), this information is not usually available and providing such information would generate additional work in a context where the implementation of the reform already requires considerable costs and work for companies. The listing of the jurisdictions in which the entity's average effective rate (ETR) for the current period is below 15% fails to accomplish its goal since the ETR is based on the IFRS financial statements (reference to paragraph 86 of IAS 12) whereas any Pillar Two income tax is based on the ETR computed on specific ad hoc rules. In respect of the requirement for entities to also "*disclose the accounting profit and tax expense (income) for these jurisdictions in aggregate",* we wonder whether this means that the entity would disclose the names of the individual jurisdictions in which the effective tax rate is below 15%, and then provide a total accounting profit and tax expense for all of these taken as a group, along with the weighted average tax rate for this group. In our view, this information is at best of little use and at worst misleading and would certainly lead to further requirements to provide more useful information as mentioned above. It may, however, be the Board's intention that the aggregate profit, tax expense and effective tax rate be provided for each individual jurisdiction. In both case, we think that it would be very intrusive and onerous, and goes far beyond what is required to be published by companies in application of the legislation in force. In particular, it would go far beyond the sensitive political agreement that was reached at EU Council for the upcoming public CBCR in the EU. In other words, the Board's proposals may overrun the careful balance that was found for this major EU political deal. Indeed, the European directive that introduces the obligation to publish country-by-country information only imposes this disclosure for European countries and non-cooperative states and territories, taking into account that for European countries, companies have a safeguard clause allowing them to defer the publication of information for 5 years (information related to third countries would be disclosed on a consolidated basis). Therefore, the disclosure of information regarding low tax rate jurisdictions (<15 %), even on a consolidated basis, would go further than the obligation resulting from the country-by-country information directive. Only the data transmitted by companies to the tax authorities in application of the tax CBCR goes beyond that and is covered by tax secrecy. Consequently, companies are strongly opposed to any publication going beyond the requirements of the country-by-country information directive in view of the confidential nature of such information.

  Beyond the opposition of companies to publish data that go beyond existing obligations, they consider that it is appropriate to wait until the end of the negotiations on the current reform. Indeed, many aspects of the reform are still open to discussion (reporting obligations, transmission of information between States, the latest comments published last February provide further clarification on the tax calculation). In particular, the implementation of the qualified domestic top-up tax and its validation by the OECD are still under discussion and are aspects that could profoundly modify the impacts of the reform. In addition, the proposed amendments of the Board may run counter to the simplification proposals which have recently been agreed at the OECD and which are the result of intense negotiations : countries have allowed companies to rely on simplified calculations based on the country-by-country reports during an interim period, in order to focus their efforts on the calculation of the ETR in countries where there is top-up tax at stake. Requiring companies to calculate an ETR based on paragraph 86 of IAS 12 only for an interim period will simply undermine all the efforts carried out these last months within the OECD and will mean that companies will not be benefiting from any simplification at all. This will also distract resources while companies need to focus on the implementation of Pillar Two.

- As for **Paragraph 88 C (c)** ("*whether assessments the entity has made in preparing to comply with Pillar Two legislation indicate that there are jurisdictions: (i) identified in applying the proposed requirement in (b) but in relation to which the entity might not be exposed to paying Pillar Two income taxes; or (ii) not identified in applying the proposed requirement in (b) but in relation to which the entity might be exposed to paying Pillar Two income taxes"),* companies do not understand why they should disclose more specific information on Pillar Two than is required for income tax purposes by IAS 12. The information required by 88C(c) could actually be summed up in a single word ("yes" or "no"). This would clearly not be very useful and would inevitably lead to further demands for more specific information.

Finally, as regards the Board's proposal that *"in periods in which Pillar Two legislation is in effect, an entity disclose separately its current tax expense (income) related to Pillar Two income taxes."***,** top-up taxes have the nature of a minimum corporate tax. Indeed, the effective tax rate which triggers the top-up tax is calculated with reference to the existing corporate tax charge of the company (deferred and current). If such information is to be disclosed for each jurisdiction in which a company operates, we have the same concerns as expressed above regarding the public disclosure of sensitive information which is covered by tax secrecy.

Moreover, as part of the simplification measures planned for the first three years of application of the reform, safe harbours are calculated based on the CBCR, which also takes into account the corporate tax burden. Thus, unless we want to create controversy with companies that have operational reasons for operating in countries whose tax policy they are not responsible for, companies consider that the top-up tax should be aggregated with the current or deferred corporate tax charge according to IAS 12.