



## ICC comments in response to IASB Proposed amendments to IAS 12

The International Chamber of Commerce (ICC), as the world business organization speaking with authority on behalf of enterprises from all sectors in every part of the world, appreciates the opportunity to provide input on the [IASB proposed amendments to IAS 12](#). ICC advocates for a consistent global tax system, founded on the premise that stability, certainty and consistency in global tax principles are essential for business and will foster cross-border trade and investment. ICC is also an established arbitral institution through its International Court of Arbitration and provides other dispute resolution mechanisms through its International Centre for Alternative Dispute Resolution.

ICC appreciates the work undertaken by IASB in responding to stakeholders' concerns about the potential implications of Pillar Two rules for the accounting for income tax in the financial statement.

Indeed, the complexity of Pillar Two requires close examination of whether, and how, deferred tax should be recognized and measured under this new framework. Thus, ICC welcomes the proposed amendments which aim to provide temporary relief from accounting for deferred taxes arising from the imminent implementation of the OECD Pillar Two model rules and ICC fully supports the temporary exception from deferred tax accounting.

However, there are important concerns in relation to the disclosure rules and requirements that we believe should be addressed. Consequently, we are grateful for the opportunity to submit the following comments.

### General Comments on IASB proposed amendments to IAS 12

ICC members would like to raise a general concern on the scope of the exemption. From the wording of the proposal, **it is unclear whether all top up taxes arising from Pillar Two will be falling under the scope of the exemption.**

More specifically, from the wording of paragraph 4 A, it is not clear whether all top-up taxes arising from Pillar Two rules will be within the scope of IAS 12 at other than at a Group consolidated financial statements level.

Moreover, top-up taxes under the IIR and UTPR rules that are paid by an intermediary entity on behalf of the group parent entity or other group entity may not be in scope of IAS 12 in the payer's separate financial statements. If, in preparing separate or subsidiaries' financial statements, preparers judge that top up taxes are outside the scope of IAS 12, amendments would not apply, and could not be used by preparers.

According to ICC members, **information about Pillar Two top-up taxes would be more useful to readers if they are all treated in the same way** – this includes recognition, measurement, presentation and disclosures.

Conversely, if some top-up taxes are instead classified as non-income taxes, they would be accounted for, presented and disclosed in accordance with IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* rather than in accordance with IAS 12. Consequently, the measurement and the presentation will be very different – for instance, they would be included in operating expenses not the tax line.

For the all the above reasons, **ICC members would like to respectfully invite the IASB to revise its amendment in order to clarify that all top-up taxes arising from Pillar 2 are to be accounted for within IAS 12, and consequently subject to the exception from deferred tax accounting.** This would mean that all top-up taxes would be recognised, measured and presented the same way, and subject to the proposed disclosures in paragraphs 88A-88C of the ED.

With respect to **disclosure requirements under 88C** for periods when the legislation is enacted but not yet in effect, ICC members have **major concerns** regarding the proposal and would like to provide the following observations and possible alternative proposals.

- Firstly, the information regarding whether Pillar Two legislation is being (substantively) enacted or not is public information which should therefore be easily accessible to financial statements users. Introducing such an information duty on the concerned entities appears to be an unjustified additional burden on multinational groups operating in several jurisdictions that will have to keep this information up to date with the consequent risk of the information being outdated by the time it is published.
- While we are aligned with IASB on the need for information in financial statements that can support users to assess an entity's exposure to paying a top-up tax, ICC members are of the opinion that **Pillar Two should not be treated differently and more specifically than any other legislation that impacts on companies**, as the impact of this new framework must be communicated in a similar fashion to any other significant event that impacts on a company's accounts.
- **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 the basis of the GloBE Income divided by the amount of Covered Taxes.** Therefore, while jurisdictions with an accounting ETR below 15% may not impose any top-up-tax because the GloBE ETR in these jurisdictions is above 15%, at the same time, entities in a jurisdiction with an accounting ETR above 15% may nevertheless be subject to a top-up tax (due to the GloBE ETR below 15%) without being subject to disclosure under this proposal.

- **The required level of disclosure appears to be too burdensome as well.** A country-by-country reporting by jurisdictions with effective tax rates lower than 15% will require a long table in the Notes. Moreover, in many cases the **disclosure requirements can be misleading** since they are not able to provide meaningful information to the readers of the account. For instance, this would be the case of countries where accounting ETR is below 15% but where no top-up tax is due.
- Such a level of detail might also prompt **flawed assumptions on the low tax rates** which might be due to tax incentives for heavy investments in R&D or production or be the result of deferred tax accounting implications from rate changes.
- According to our members' view, **the general purpose of the financial statements should not be the replacement of tax reporting.** While we agree that some information about fiscal reporting can be helpful, ICC members would like to underscore that **there is already a dedicated reporting requirement through Country-by-country Reporting (CbCR)** under the respective EU Directive for which there are clear rules about disclosure.
- In addition, the proposed amendments of IASB 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 2.
- If the Board's intention is that the aggregate profit, tax expense and effective tax rate be provided for each individual jurisdiction, we believe this creates a very intrusive and onerous requirement which even goes far beyond beyond the sensitive political agreement that was reached at the EU Council for the upcoming public Country-by-Country Reporting in the EU. It is crucial to ensure the protection of sensitive commercial and economic data of companies.
- In the case of other post financial year-end events (e.g. M&A transactions), companies would only be required to give the reader of financial statements a high level overview on expected future impact without requiring a great level of detail. Thus, ICC members would like to kindly recommend that **for such year ends companies should be able to include a comment on the estimate and range of potential Pillar Two top up taxes, which normally companies have already available.** Alternatively, we would like to recommend the possibility for companies to be allowed to just mention the increase of the overall ETR if the top-up tax

were applicable. We believe that this would be the easiest and clearest way to provide needed information for financial statements' readers.

- Furthermore, important concerns arise from the proposals included in paragraph 88 C b and c. In relation to this paragraph, ICC members would like to highlight that it would be hazardous for groups to create expectations (in authorities interested in this information for tax purposes rather than financial reporting) about the potential payment of a surtax without accurately performing the very complicated calculation and on the basis of an effective IFRS tax rate only. Consequently, ICC members would recommend IASB to require companies to **provide information only about expected impacts where reliable and probable estimates exist.**
- Moreover, assuming that a majority of countries will implement Pillar Two in 2024, complying with the proposed disclosure requirements will risk triggering major costs and deployment of resources for a one-time reporting.

With respect to **paragraph 88 B** which requires the separate disclosure of the current tax portion for the top up tax separately, **some ICC members would instead like to propose the inclusion of the top up tax as a regular local tax in the tax rate reconciliation under "benefit/expense from rate differential"**. Other members would **suggest that the split between Pillar Two income taxes and other current taxes should be presented only in the notes to the financial statements** (e.g., as part of the effective tax rate reconciliation).

Finally, even though rules are currently legislated, they are not yet in a final version that could enable businesses to conclude on such matters. Thus, while ICC members support the temporary exception, they think that **characterising it as a temporary exception could be interpreted in a misleading way since it would imply that this is an exception from some requirements provided by the accounting standards.** However, the IASB has not yet concluded whether deferred tax on Pillar 2 should be accounted for under IAS12 while at the same time FASB has already publicly stated that it does not consider that deferred tax should be accounted for because it sees Pillar 2 as an alternative minimum tax. The FASB also does not consider any specific disclosure requirements.

**ICC would kindly welcome the alignment of IASB with the FASB position, allowing accounts to be more easily comparable on a global scale.**

We are grateful for the opportunity to provide feedback to the proposed amendments, and we stay at your full disposal for any further clarifications.