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Comment letter on the Exposure Draft “International Tax Reform – Pillar Two Model Rules” (ED/2023/1)

Dear members of the IASB,

Siemens Aktiengesellschaft (‘Siemens AG’) welcomes the opportunity to comment on the Exposure Draft “International Tax Reform – Pillar Two Model Rules” (ED/2023/1).

Siemens AG particularly appreciates the IASB’s proposal introducing a temporary exception to the requirements in IAS 12 to recognise and disclose information about deferred tax assets and liabilities related to Pillar Two income taxes. We are convinced that entities need time to determine how to apply the principles in IAS 12 to account for deferred taxes related to Pillar Two income taxes. Moreover, further field work is necessary to take into account possible implications on the calculation of Pillar Two income taxes when the Pillar Two Models Rules are fully applied in IFRS financial statements. These requirements need time and further discussions.

In periods before legislation is in effect, we would like to encourage the IASB to reconsider the proposed disclosure information based on IAS 12 calculation. We recommend an option to disclose information based on Pillar Two calculation procedures as they better reflect future exposures and better support users of financial statements to assess further implications of Pillar Two income taxes.

You can find our detailed comments in the Appendix.

If you have questions or wish to discuss any of the issues in more detail, please do not hesitate to contact Dr. Alfred Simlacher (alfred.simlacher@siemens.com, phone +49 (173) 2922574).

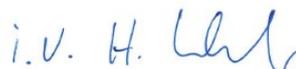
Sincerely yours,

Siemens Aktiengesellschaft



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Appendix – Siemens’ Comment letter on ED “International Tax Reform – Pillar Two Model Rules” (ED/2023/1)

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 recognise 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.

We support the proposal to implement a temporary exception to the accounting for deferred taxes. In our view it is helpful that deferred taxes do not have to be calculated considering the effects of Pillar Two income taxes.

The IASB proposes that the temporary exception is mandatory instead of optional (BC 16). In case of a mandatory rule there is no choice for entities to recognise, value or disclose issues in another way. Despite the binding character of the cited rule, an entity shall disclose that it has applied the exception to recognising and disclosing information about deferred tax assets and liabilities related to Pillar Two income taxes (Par. 88A). This proposed rule seems not necessary and should be deleted. The disclosure requirement in Par. 88A would make sense if the transitional rules allowed an early adoption and an entity applied such an option. The transitional rule of ED/2023/1 does not contain such an option (see Par. 98M).

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.

For periods in which Pillar Two legislation is in effect, we support the proposal to disclose separately the current tax expense (income) related to Pillar Two income taxes.

For periods in which Pillar Two legislation is not yet in effect, we do not support the proposed amendments in IAS 12. In the following sections, we comment on the proposal of the IASB and describe the Siemens proposal.

1. Proposal IASB

The IASB proposes additional disclosures that should support users of financial statements to better understand possible implications of Pillar Two income taxes and enable the assessment of future income tax exposures. Instead of using figures based on Pillar Two Model Rules, entities shall disclose the jurisdictions in which the entity's average effective tax rate (ETR) based on IAS 12 Par. 86 is below 15 %. Moreover, the entity shall disclose the tax expense (income) and the accounting profit for these jurisdictions in aggregate as well as the resulting weighted average ETR (Par 88C (b)). In addition, entities are obliged to disclose information about such legislation enacted or substantively enacted in jurisdiction in which the entity operates (Par. 88C (a)) and whether the entity has made assessments in preparing to comply with Pillar Two legislation indicating that information disclosed in accordance with Par. 88 (b) should be adopted by adjustments.

In our view, the proposed rules will result in the following challenges and problems:

a) Disclosure of information based on IAS 12 calculation procedure (Par. 88C (b))

- The proposed rules require calculation procedures based on IAS 12. We see the effort of the IASB to support entities as they are in the process of assessing their exposures and preparing to comply with the legislation and the application of specific requirements of the Pillar Two legislation (BC 19).

Nevertheless, the proposed rule requires additional reporting procedures. As reporting packages of consolidated entities are designed for consolidation purposes, they may vary from Group to Group and may (or may not) contain jurisdiction specific information. Information required by Par. 88C (b) is not yet available and would have to be calculated separately resulting in additional administrative burden for preparers.

- Disclosed information based on calculation procedures of IAS 12 typically does not reflect current income tax implications when Pillar Two Models Rules are applied in future periods. The calculation of the average ETR of IAS 12 Par. 86 follows the underlying accounting approach of IAS 12, whereas the computation of the ETR and the Top-up Tax for Pillar Two purposes differs significantly. Tax expense (income) presented in the financial statements required by 88C (b) is just the starting point for Pillar Two purposes and has to be adjusted by several issues resulting in the effect, that both numbers differ significantly. Par. 88C (b) requires the disclosure of the accounting profit of the financial statements, whereas the accounting profit has to be reconciled to the GloBE Income or Loss for Pillar Two purposes. For example, dividend income is part of the accounting profit, whereas dividends have to be eliminated for the calculation of the GloBE Income or Loss. The elimination of dividends may have enormous effects on the calculation of the ETR and the Top-up Tax for Pillar Two purposes.

The mentioned arguments demonstrate that the required information could be highly unreliable and is not in line with the objective to provide useful information for users of financial statements.

b) Disclosure of information that is based on Pillar Two assessments (Par. 88C (c))

Entities are required to disclose whether they have made assessments in preparing to comply with Pillar Two legislation indicating that there are jurisdictions

- identified by application of Par. 88C (b) but might not be exposed to paying Pillar Two income taxes (Par. 88C (c) (i)) or
- not identified by application of Par. 88C (b) but might be exposed to paying Pillar Two income taxes.

In both cases, further information should be given to complement and to compensate the lack of information given in accordance with Par. 88C (b). The disclosure of compensating information needs the application of Pillar Two principles, possibly detailed information that is not yet available. In our view, the proposed requirement could create a huge expectation gap between the expected information set out in Par. 88C (c) and the fact that entities are not able to collect the necessary information and make an assessment.

c) Disclosure of information about legislation enacted or substantively enacted (Par. 88C (a))

Entities would be obliged to disclose information about Pillar Two legislation in jurisdictions in which they operate. Pillar Two is applicable and especially designed for large multinational enterprises (MNE). Typically, these entities operate not only in a small, but a big number of jurisdictions. In case of Siemens, we act in all regions in the world and in a huge number of jurisdictions. The disclosure of Pillar Two legislative implementation processes for all jurisdictions where we operate would be burdensome and would extremely widen the extent of information given in the disclosures. Even the grouping of jurisdictions according to the implementation status would be very burdensome and the disclosed information would not be helpful for the users of financial statements.

In contrast, information about the Pillar Two legislation status, even outstanding and ongoing legal implementation steps are not entity specific and therefore publicly available. Information about the countries and regions in which an entity operates are usually presented as integral part of the financial reporting to users of financial statements.

In our view, users of financial statements have the possibility to get the information by alternative ways and with the necessary level of detail.

Moreover, information about legislative implementation procedures of jurisdictions outside the country the Ultimate Parent Entity (UPE) is located are only relevant für those constituent entities of MNE Groups that have to apply the Undertaxed Payment Rule (UTPR). For MNE Groups that are obliged to apply the Income Inclusion Rule (IIR), information about the legislation of the country where the UPE is located, is relevant and determines the details of the applicability of the GloBE rules. In such a case, information about legislation outside that country is generally not relevant. As many jurisdictions announced to implement the GloBE rules and hence a huge number of MNE Groups will apply the IIR, the required disclosure information of Par. 88C (a) is irrelevant and not necessary.

2. Proposal Siemens

We propose an option to disclose information about expected additional current income taxes caused by the Pillar Two Models Rules either by applying calculation procedures based on IAS 12 (see Par. 88C (b)) OR by applying the Pillar Two Model Rules. The application of Pillar Two Model Rules may still be accompanied by inaccuracies as the final calculation processes are not fully implemented yet. Nevertheless, the possibility to apply the Pillar Two Model Rules would have several advantages for both users of financial statements and preparers:

- Compared to the calculation procedures based on IAS 12, users of financial statements would get more reliable information and the possibility to take into account future current income tax implications imposed by the Pillar Two Model Rules. This information would be relevant and important for the users of financial statements and help them make decisions.
- Preparers that are already able to calculate the future current income tax implications of the Pillar Two Model Rules could disclose information already available. No further administrative burden would be necessary. Moreover, the disclosed number already reflects and anticipates future current income tax effects in the right manner. Further information that complements and compensates the lack of information (see Par. 88C (c)) would not be necessary. Additional information about legislation enacted or substantively enacted (Par. 88C (a)) could also be left out as they are not necessary for making decisions.

– In case of implementing an option in IAS 12, the applied calculation method (based on IAS 12 vs. Pillar Two Model Rules) should be disclosed.

We are aware, that financial statements of entities applying the calculation procedures base on IAS 12 and entities applying the Pillar Two Model Rules are not fully comparable. Nevertheless, in our view it seems much more preferable to get reliable information of a certain number of entities instead of compelling all entities to disclose non reliable information.

Question 3—Effective date and transition (paragraph 98M)

The IASB proposes that an entity apply:

(a) the exception—and the requirement to disclose that the entity has applied the exception—immediately upon issue of the amendments and retrospectively in accordance with IAS 8 Accounting Policies, Changes in Accounting Estimates and Errors; and

(b) the disclosure requirements in paragraphs 88B–88C for annual reporting periods beginning on or after 1 January 2023.

Paragraphs BC27–BC28 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.

We fully agree with the IASB’s proposals.