

## DRAFT SUBMISSION

Dr Andreas Barckow  
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International Accounting Standards Board  
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UNITED KINGDOM

[Date]

Dear Andreas,

### **IASB Exposure Draft ED/2023/1 *International Tax Reform—Pillar Two Model Rules***

The Australian Accounting Standards Board (AASB) is pleased to have the opportunity to provide comments on International Accounting Standards Board (IASB) ED/2023/1 *International Tax Reform—Pillar Two Model Rules*, issued in January 2023. The views of Australian stakeholders were sought by issuing the ED in Australia as AASB ED 322, however no submissions have been received to the date of this letter.

Whilst Australia has committed to adopting the Pillar Two model rules, the operationalisation and effective date of the rules are still being considered.

The AASB supports and acknowledges the efforts of the IASB in proposing amendments to IAS 12 *Income Taxes* to introduce a mandatory temporary exception to the accounting for deferred taxes arising from the implementation of the Pillar Two model rules.

In principle, the AASB is concerned that using accounting profit, as measured under accounting standards, as the basis for levying tax is likely to compromise the objective of IFRS Standards. In particular, we are concerned that comparability will be undermined as different jurisdictions come to apply IFRS Standards differently in assessing Pillar Two income taxes.

Our concerns stem from the observation that it is not clear under the Pillar Two model rules, as currently presented, whether adjustments are made for local tax rules that differ from IFRS Standards. An example of such a difference, with important implications for the concerns raised in this submission, is the allowance as a deduction of a loss (as measured under local tax rules) incurred in a previous tax year. Initial discussions with a small number of informed stakeholders have already revealed that there is not a uniform view on this aspect of the Pillar Two model rules.

IFRS Standards provide high-quality, internationally recognised accounting standards that bring transparency, accountability and efficiency to financial markets around the world. IFRS accounting standards enhance the comparability and quality of financial information, enabling investment and other market participants to make informed decisions.

The AASB is concerned that if there is a legal dispute about the amount of minimum (top-up) tax due to be paid by an entity under the Pillar Two model rules, courts will interpret how they

consider the requirements of accounting standards should be applied. In common law jurisdictions, such as Australia, where accounting standards have the force of law, these judicial interpretations are binding upon all participants in that jurisdiction (not only the parties to the litigation). Critically, these interpretations are treated as part of the standards as they stand in that jurisdiction.

Courts in different jurisdictions may have differing views about how the requirements of accounting standards should be applied (which may also be inconsistent with the IASB's intended application). This would lead to divergence in how the standards are applied and undermine the comparability of financial statements across global markets. We emphasise that this goes beyond a mere divergence in practice, which may be rectified through action from the IASB (such as issuing guidance). In common law jurisdictions where accounting standards have the force of law, the only action available to the IASB is to change the wording of the IFRS Standard, which then would need to be adopted by national standard-setters.

The Pillar Two model rules clearly require some (predominantly) uniform basis on which the minimum tax liability needs to be measured. That accounting standards, predominantly the IFRS Standards, have been identified as that uniform basis is testament to the high regard in which world markets (and regulators) hold accounting standards.<sup>1</sup> However, we recommend that an alternative basis on which the proposed minimum tax liability should be calculated be identified in order to prevent common law courts from interpreting IFRS Standards for this purpose.

Such a basis need not be precisely uniform. We note that the current proposal allows for different bases of measurement, even within jurisdictions (see, for example, Article 3.1.3 and the definition of Acceptable Financial Accounting Standard in Chapter 10 of the cited OECD publication). This ability to accommodate some degree of variability within the proposal ought to provide additional scope in identifying an alternative basis on which to calculate the proposed minimum tax.

We suggest the IASB engage with the OECD to discuss the effects of the Pillar Two model rules on IFRS Standards and financial markets worldwide. In particular, an alternative basis on which the minimum tax liability is to be calculated should be a primary focus of such discussions.

If you have any questions regarding this letter, don't hesitate to contact me.

Yours sincerely,

Dr Keith Kendall  
Chair – AASB

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<sup>1</sup> See Organisation for Economic Co-operation and Development (OECD) (2021), *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS*.