Record of Meeting

Meeting	TALC BEPS Sub-Committee		
Location	Revenue Offices, Dublin Castle	Meeting Date	29 January 2025
ITI	Anne Gunnell; David Fennell^; Gareth Bryan; Paul McKenna; Emma Arlow		
CCAB_I	Enda Faughnan; Gearóid O'Sullivan; Paschal Comerford^		
Law Society	Andrew Quinn; Fintan Clancy; Amelia O'Beirne^; Aidan Fahy^; Philip Tully^		
Dept. of Finance	Gary Hynds^		
Revenue	Jeanette Doonan (Chairperson); John Quigley; Keith Noonan; Alan Carey, Áine Hollingsworth^, Deirdre Ní Alluráin^, Maresa Hempenstall^, Catherine Duffy^; Máirín Barron^; Diarmúid Kelly^; Michael Cantwell^; George Prizeman^, Rory Noone (Secretary)		
^Attended remotely via Dial-in			

Minutes

The Chairperson welcomed attendees.

1. **Minutes of the Meeting of 16 October 2024**

The Chairperson noted that the minutes had been circulated for comments and that the only comments received were from the ITI with the updated draft circulated in advance of this meeting. The Chairperson asked if the minutes are now agreed, it was confirmed that the minutes of 16 October 2024 are agreed. [Update: The minutes have been published on the Revenue website.]

2. **TALC BEPS Work-Programme 2025**

The Chairperson set out the work programme for 2025, reiterating that the Sub-Committee does not deal with matters of policy. The work programme is to include:

- Pillar Two guidance;
- Participation Exemption (for foreign dividends) guidance;
- International Tax Updates; and
- Other Matters (appropriate to the work of the Sub-Committee).

3. **Outbound Payment Defensive Measures**

The Chairperson introduced Gary Hynds (GH) from the Department of Finance who gave a brief presentation on an issue that had been raised by the EU Commission on its preliminary review of the Outbound Payments legislation. GH noted that Ireland's National Recovery and Resilience Plan set out a series of commitments to be delivered in relation to tackling aggressive tax planning. Implementing an outbound payment defensive measure was the last legal commitment to address aggressive tax planning. The relevant legislation is contained in Chapter 5 of Part 33 TCA1997. He outlined that an amendment to the legislation is required following preliminary feedback from the Commission, specifically in relation to the definition of "*associated entity*". GH noted that he would consult with stakeholders as policy considerations are progressed.

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4. International Tax Updates

The following updates were provided on behalf of International Tax Division by the Secretary to the Sub-Committee:

i. DAC9

EU Member States remain committed to the swift adoption of DAC9, the proposed directive to enhance tax transparency by implementing the Top-Up Tax Information Return under Pillar Two and are broadly supportive of its objectives and direction. Two meetings have been held and a further meeting is scheduled for mid-February. Current discussions indicate strong desire to reach an agreement by the March ECOFIN meeting. The proposal largely aligns with the OECD's Multilateral Competent Authority Agreement (MCAA).

ii. Pillar Two – Ireland's Transitional Qualified Status

The OECD Inclusive Framework developed a transitional qualification mechanism. This was a simplified process that temporarily recognises a jurisdiction's legislation as being in line with the Global Minimum Tax rules, pending full legislative review and ongoing monitoring process to take place in the future. Ireland's Pillar Two legislation has received a transitional qualified status for its income inclusion rule, domestic minimum to-up tax and qualified domestic minimum top-up tax safe harbour with the effective date of 31 December 2023.

iii. FASTER

Following speedy work by the Spanish and Belgian Presidencies on the FASTER proposal, ECOFIN Council reached a political agreement on a compromise text in May 2024. The file was sent back to the European Parliament for consultation, due to the extent of the changes agreed during the Council negotiations compared to the original proposal. The file was approved by the European Parliament in November 2024 followed by formal adoption at ECOFIN in December 2024. The Commission has already commenced work in preparation for implementation of FASTER, where much of the detail of the operation of FASTER from a practical perspective will be worked out.

iv. Head Office Taxation ('HOT') Proposal

Since the previous update provided to the Sub-Committee in October, this proposal has been discussed at one technical Working Party and one High-Level Working Party meeting. Due to the number of fundamental concerns, the proposal could not be supported by Member States.

The December ECOFIN report to the European Council noted that there are alternative ways of supporting SMEs to scale up and expand across border, and that a broader analysis is needed to shed light on actions which may be taken to facilitate cross-border activities of SMEs. There is no further work anticipated on the HOT proposal in its current form.

v. Query – ATAD 3 (Unshell Directive)

The CCAB-I queried the status of ATAD 3 – Unshell Directive. The Secretary said that no update had been provided in advance of the meeting but that an update would be sought from International Tax Division and included in the minutes.

Update/Response: The technical discussions on the Unshell proposal are continuing at European Council. The last Working Party on Tax Questions (WPTQ) meeting on the proposal took place in November 2024 and we would expect that the negotiations continue in 2025.

5. Participation Exemption (for foreign dividends)

There was a brief update from Revenue as to the status of the draft guidance in relation to the participation exemption.

It was explained that good progress had been made on the initial draft of the guidance and that it would be helpful in order to advance same if practitioners could identify and inform the Sub-Committee of additional areas (including real working examples), they wish to have addressed in the guidance.

Action: Practitioners to provide submissions on any additional areas of concern and examples relating to same that they wish to have considered for inclusion in the TDM.

6. Hybrids Query

ITI

The recently issued TDM includes clarification on the treatment of loss-making branches and how these are to be treated in the context of the double deduction mismatch rules (see example 5.1.5 in the TDM in this regard). The example suggests that a double deduction mismatch outcome can arise on payments made by a branch which is loss making but notes that no remedial action/neutralising of the mismatch needs to happen where there are "trapped losses" (i.e., where the branch trade is discontinued).

We consider it unclear, based on the text in the guidance, whether Revenue intends to permit a deduction for previously disallowed amounts in situations where the foreign branch trade is discontinued, or whether the concessionary treatment is expected to only apply to current year situations (i.e. in assessing the treatment of double deductions in the year in which a branch trade is discontinued such that prior year carried amounts are effectively lost).

Indeed, the new example inserted into the TDM would appear to imply that in situations where there are losses that are not trapped losses that a mismatch will arise. However, it would seem that there would certainly be circumstances where economically no mismatch would arise even where a loss is not trapped. One example would be a situation where a foreign branch (e.g.UK branch) is loss making for a number of years and the Irish parent uses those losses against other sources of income. If, in future years the branch becomes profitable, the UK branch would use those losses forward to shelter that income. The Irish company would also tax the income but without any loss (as it is used). In these circumstances, where the deduction is effectively utilised by the UK branch at the later date against income that is dual, there should not be an economic mismatch even if, strictly speaking, the deduction is used by the head office and the branch against different income.

We consider this update to the guidance will have a significant impact on many foreign branches and request clarification from Revenue.

Revenue confirmed that the example in the TDM specifically refers to trapped losses. It was suggested that possibly there was a double deduction outcome where losses are used at both a branch and Head Office level.

ITI suggested that unused carried forward losses / stranded losses (as addressed in BEPS Action 2 report) should be clarified.

CCAB-I asked what the position would be where losses were carried forward for a long time and whether there was any time restriction.

Revenue stated that it would be necessary to review the legislation but that usually it is determined on the basis of 'reasonable to consider'.

Action: Revenue to consider the matter further and the guidance.

7. Pillar Two – TDM – Part 04A-01-02

ITI [comments by the ITI were provided on the soft copy of the TDM circulated in advance of the meeting and summarised below]

i. Pg 16 – Section 5.2 – Section 111B – Principles for construing rules in accordance with OECD Pillar Two Guidance

The ITI express serious concern regarding the wording and impact of such an approach on businesses. The wording suggests where newly released OECD Administrative Guidance does not amount to a supplemental rule, it should be read as a clarification of an existing rule applying from the effective date of the existing rule (i.e., from 31 December 2023 for the vast majority of rules), while supplemental rules will be reflected in Part 4A with a commencement date specified.

This issue:

- ***impacts businesses that look to have their accounts signed off in advance of the Finance Bill process;***
- ***will be more pronounced in future years where clarifications could impact prior year periods / across multiple periods; and***
- ***raises the question as to who will decide on whether the guidance is a clarification or not and how this will work (incl. guidance that contains a mix of clarification and matters for legislation).***

The ITI position is that the fairest and most practical approach is to have the OECD Administrative Guidance apply for fiscal years commencing after the date the rules are added to section 111B TCA 1997 by Ministerial Order (or some other specific future commencement date set out in the SI), with the option for taxpayers to apply guidance from an earlier date should they wish.

We would also request clarification from Revenue on their position in relation to the four iterations of Admirative Guidance that have issued to date. Are all supplemental rules from these now reflected in Part 4A and therefore, any rules not reflected in the TCA 1997 are just clarifications on the GloBE Rules?

Additionally; It is not always clear whether additional OECD Administrative Guidance introduces a supplementary rule or just expands guidance.
Very often the guidance can change the operation of a rule without necessarily introducing a new rule.

As a result, we believe a process should be put in place where each new set of Administrative Guidance is discussed in this context via the TALC BEPS Sub-committee.

Revenue noted that OECD Administrative guidance, in general, provides certainty to a taxpayer on the interpretation of a model rule. In this regard, it is similar to a tax and duty manual that provides clarity to Revenue caseworkers on how an existing piece of legislation is to be interpreted. However, there are some instances where the existing domestic legislation cannot be interpreted in line with new administrative guidance as the guidance provides for an update to a rule, or for a new rule. In such instances, new domestic legislation may be required and such legislation will have a commencement date. The Minister for Finance will decide what aspects of Administrative Guidance should be legislated for. Revenue noted that it was not appropriate for new Administrative Guidance to be discussed at TALC BEPS with a view to deliberation on what aspects of the guidance should be included in primary legislation. Revenue noted that the paragraphs included in the TDM set out the current legislative framework for dealing with Administrative Guidance. Revenue informed stakeholders that they had discussed the concerns raised by stakeholders with the Department of Finance and the Department was willing to receive submissions on these concerns.

ii. Pg 16 – Section 5.2 – Section 111B – Principles for construing rules in accordance with OECD Pillar Two Guidance

The ITI noted that various amendments (e.g. s115(1)(d), s115(1)(e) etc.) have application dates of 31 December 2024 onwards. However, on the basis that they reflect miscellaneous technical amendments to ensure full alignment with the OECD Model Rules / EU Directive, taxpayers should have the opportunity to apply from 31 December 2023, if preferred.
We request confirmation from Revenue in this regard.

Action: Revenue stated that they will consider this point ahead of issuing the next draft of the TDM to be shared with the subcommittee for consultation.

iii. Pg 50 – Section 8.5 – Section 111X – Total deferred tax adjustment amount

Suggestion to remove the following sentence as the legislation is silent on mandating a proportionate basis:

> ***"Where there is both a qualifying and non-qualifying loss in a fiscal year then utilization of the loss is apportioned between qualifying and non-qualifying on a proportionate basis."***

Similar issue on pg. 88 – Section 12.1 Section 111AW (second sentence of third paragraph).

Action: Revenue agreed to remove the relevant sentences and that this would be brought to the Department of Finance's attention for them to consider possible legislative amendment.

In this regard the Chairperson sought clarity as to whether practitioners were indicating that it was an unacceptable approach and it was confirmed the approach is acceptable but the point is that it is not mandated in law.

iv. Pg 51 – Section 8.5.1 – Deferred tax adjustment and asset values

ITI suggested inclusive of 'credit' as well as 'expense' in paragraph (b) as the movement referred to in the deferred tax asset/liability in paragraph (a) could be an expense or credit.

Action: Revenue agreed to the update.

v. Pg 52 – Section 8.5.1 – Deferred tax adjustment and asset values

ITI suggested deletion of:

> ***"and detailed guidance with respect to the operation of the rules regarding divergences between GloBE and accounting carrying values is set out in Chapter 2 of the OECD Administrative Guidance June 2024."***

as it was repeating the last line of the previous paragraph.

Action: Revenue agreed to the update.

vi. Pg 54 – Section 8.7.1 – Deferred tax expense election

ITI identified a typo (wording was 'five-ear' instead of 'five-year').

Action: Revenue agreed to the update.

vii. Pg 64 – Section 9.7.1 – Prior period errors and the qualified domestic top-up tax safe harbour

ITI suggested amending the title to read:

"Additional current top-up tax and the qualified domestic top-up tax safe harbour"

Action: Revenue agreed to the update.

ITI also queried whether section 9.7.1 should refer to the CbCR safe harbour.

The QDTT safe harbour turns off the IIR collection mechanism, however there would be an expectation that such adjustments would be required in respect of a QDTT and not required to be made separately.

Perhaps this was meant for the transitional CBCR safe harbour?

Revenue confirmed that the section is correct in its placement. The paragraph refers to instances where section 111AF applies resulting in additional top-up tax. There a qualified domestic top-up tax safe harbour did not apply to a fiscal year in respect of which additional top-up tax arises then the safe harbour does not operate to prevent the collection of the additional top-up tax.

ITI said there was some confusion as it wasn't addressing the Transitional QDTT Safe Harbour and suggested maybe an example would assist here.

[Subsequent to the meeting ITI confirmed no further action is required on this point.].

viii. Pg 97/98 – Section 13.4 – Section 111AD – Determining top-up amounts of qualifying entity

With regards to the first paragraph on pg. 98 referring to sections 111P(6), 111AE(5) and 111AN(3) ITI noted that these sections pre-date the amendments made in Finance Act 2024.

However, if read in the context of the QDTT, Section 111AAD TCA 1997 was amended by Finance Act 2024 to include a new subsection 2A making reference to these sections. Finance Act 2024 itself is clear that this amendment only has effect for accounting periods commencing on or after 31 December 2024.

Therefore, we would welcome further clarity from Revenue on how it is envisaged the three adjustments can apply from either 2023 or 2024 onwards. Is it the case that they apply from 2024 but Revenue will accept if a taxpayer applies the provisions from 2023?

Action: Revenue agreed to clarify that , for fiscal years commencing on or after 31 December 2023 but before 31 December 2024, Revenue will also accept returns filed on the basis that these adjustments applied.

CCAB-I

i. OECD Administrative Guidance – Clarification v Supplemental

Our main concern with the guidance in its current iteration is the lack of clarity regarding newly released OECD Administrative Guidance. The proposed approach in section 5.2 of the draft guidance will create substantial challenges and uncertainty for in-scope MNEs.

The crux of the uncertainty is what taxpayers will consider a clarification or supplemental rules requiring legislative amendment. If the former, then taxpayers can accept this as applying from the effective date of the existing rule. However, where OECD Administrative Guidance creates a supplemental rule, then a substantial uncertainty will be created leaving taxpayers in a lacuna.

On this basis, we have two comments:

- ***The best approach is to apply OECD Administrative Guidance from the date any supplemental rules are added to section 111B TCA 1997. There should also be an option for taxpayers to apply guidance from an earlier date. Such a discretion will ultimately enhance efficiency on the basis that through this forum guidance can be flagged as creating supplemental rules.***

- ***Then in relation to guidance issued to date, Revenue should clarify its understanding of what aspects are clarifications and what aspects may be supplemental rules.***

This matter was dealt with when discussing the ITI comment on the same issue, see ITI issue (i) above.

ii. Impact of Pillar Two Rules on Securitisation Companies

Further to the email of 27 November 2025[1] **[sic]*****, issues were raised following consultation with the Irish Debt Securities Association (IDSA). The contents of that email are set out below but please also refer to the original email:***

I. Secondary Liability – Securitisation entity not secondarily liable for DTT – Section 111AAC(4)(a) [same issue raised by ITI by way of additional query and addressed in response here]

Where the provisions of section 111AAC(4)(a) TCA 1997 apply to an entity located in Ireland for a fiscal year, and top-up tax is chargeable for the group, no domestic top-up tax will be imposed on the securitisation entity and instead the domestic top-up tax liability of the large-scale domestic group or MNE group will be allocated to the other members of the group located in Ireland that are not securitisation entities.

In circumstances where a securitisation entity is not chargeable to domestic top-up tax as outlined above, it is important to confirm that the securitisation entity could not be subject to secondary liability for another member's failure to pay domestic top-up tax under QDTT group recovery provisions. This is a corollary of not being chargeable to domestic top-up tax and should be confirmed in guidance for the avoidance of doubt. This could be addressed in guidance along the following lines:

> ***"QDTT group provisions and securitisation entity***
>
> ***A constituent entity which is a securitisation entity and is exempt from domestic top-up tax in the circumstances outlined above, is nonetheless a qualifying entity for domestic top-up purposes and is required to prepare and deliver a QDTT return for the fiscal year in accordance with section 111AAN. It is also eligible to elect to be a member of a QDTT group and appoint another member of the group as QDTT group filer in accordance with section 111AAO.***

[1] 27 November 2024

However, for the avoidance of doubt, where the provisions of section 111AAC(4)(a) apply and the securitisation entity has made an election pursuant to section 111AAO and there is a default in the payment of domestic top-up tax for the group by the QDTT group filer, the QDTT group recovery provisions in section 111AAP would not apply to the securitisation entity group member. Accordingly, secondary liability for domestic top-up tax should not arise for a securitisation entity where the provisions of section 111AAC(4)(a) apply."

Revenue did not agree with the position put forward from a technical legislative perspective. Where section 111AAC(4)(a) TCA 1997 applies to an entity located in Ireland for a fiscal year it does not mean that the QDTT group recovery provisions in section 111AAP(3) cannot apply if that entity is part of a QDTT group.

A discussion then took place regarding the issue. The Law Society flagged that the application of secondary liability to securitisation entities could give rise to commercial issues and asked whether the matter could be addressed in guidance.

Action: Revenue to consider whether the issue can be addressed in guidance and to bring the issue to the Department of Finance's attention.

II. Minority Owned Constituent Entities

Securitisation arrangements involving Irish issuers are commonly structured involving issuer entities that are bankruptcy remote and have a degree of separation from the originator or manager. In the case of Irish incorporated issuers, the shares in the entity are typically held on trust for charitable purposes (i.e. in an orphan trust structure) and the entity is wholly debt funded through the issuance of debt instruments.

If the conditions set out in section 111AAC(4)(a) are not met, the exemption from the charge to domestic top-up will not apply. In the context of securitisation transactions, for example, this could arise where there is a securitisation arrangement (as defined) but there are no other constituent entities in Ireland, or the only other constituent entities in Ireland are themselves securitisation entities, or the constituent entity does not meet the definition of securitisation entity. An entity may be engaged in a securitisation arrangement (as defined) but may not qualify as a securitisation entity for a fiscal year if, say, the arrangement is unsecured or cash is paid out less frequently than annually as can be the case in certain securitisation transactions.

It is also not uncommon for there to be multiple securitisation entities in Ireland that are engaged in separate securitisation arrangements that are legally segregated from each other contractually and in terms of bankruptcy remoteness but are part of the same MNE group for Pillar Two purposes due to the presence of a common noteholder or originator that does not otherwise have group entities in Ireland (e.g. a non-Irish bank). In these circumstances the provisions of section 111AAC(4)(a) would not apply and the 'normal' rules applicable to constituent entities in Ireland would apply. In the context of securitisation arrangements these rules could include the provisions of section 111AH (Minority owned constituent entities).

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In circumstances where an orphan entity is consolidated and a constituent entity, the entity may qualify as a minority owned constituent entity ("MOCE"), being a constituent entity of a group where the UPE has a controlling interest in the entity (through consolidation) but holds directly or indirectly 30% or less of its ownership interests. This can arise where the UPE has a less than 30% shareholding interest directly or indirectly in the entity such as a minority shareholding interest, or no shareholding where the entity is an orphan entity. It is also assumed for these purposes that any debt interests in the entity held by the UPE, directly or indirectly, are not accounted for as equity by the UPE.

If these circumstances arise and the Irish entity is a MOCE without any subsidiaries (i.e. is not a member of a minority-owned subgroup) the ETR and top-up tax is calculated on an entity basis. If so, the Irish entity that is a MOCE would not be exposed to a top-up tax charge referrable to any other members of the group. The application of the MOCE provisions in these circumstances to orphan entities in respect of which section 111AAC(4)(a) does not apply is consistent with 6.1.3 of the OECD administrative guidance from June 2024 which noted at paragraph 14:

> ***"14. Securitisation transactions are designed to achieve objectives such as lowering the originator's cost of borrowing or reducing its liquidity risks by transferring assets to a bankruptcy remote entity that is removed from the wider risks of the originator and is thus able to achieve a better credit rating. This could be significantly undermined if the SPV became liable to top-up tax charges under the GloBE Rules because the exposure to a potential top-up tax charge elsewhere in the group would mean the SPV is no longer actually insulated from the originator Group. This could impact the solvency of the SPV and lead credit rating agencies to downgrade its credit rating (even before any tax liability materialises), which could affect the viability of many securitisation transactions."***

It has been suggested that the application of the MOCE provisions to orphan securitisation entities should also be addressed in updated guidance in the manner outlined above.

Revenue noted that the matter was only raised the day before the meeting and accordingly it has not been possible to fully consider. Revenue outlined that it was not clear what the specific request was.

It was clarified by stakeholders that there may be some instances where a group will not have any direct/indirect equity interest in the SPV (i.e. its interest is accounted for as debt only). The question that arises is whether a constituent entity in which the ultimate parent entity has no ownership interest meets the definition of an MOCE (which is a constituent entity in which the ultimate parent entity has a direct or indirect ownership interest of 30 per cent or less of the total ownership interests of the constituent entity). A discussion regarding the issue then took place.

Action: Revenue to consider whether the issue can be addressed in guidance and to bring the issue to the Department of Finance's attention.

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Other Pillar Two Matters:

i. Insurance Investment Entity

Revenue noted the submission received from the ITI which sets out areas of the Model Rules and OECD Commentary/Administrative guidance where they referred to an investment entity but did not refer to an insurance investment entity. It is noted that for the purposes of Part 4A TCA an insurance investment entity is defined as a subset of investment entities. Revenue noted that the issue had been raised with International Tax Division, to consider whether there are instances where certain rules apply to investment entities but not insurance investment entities. It may be necessary to consult more widely on this issue, including with the OECD Secretariat, in which case the matter will be brought to the attention of the Department of Finance.

Action: Revenue to consider the matter further and ITI to set out if there are difficulties arising based on the Irish legislative implementation of the rules. [Subsequent to the meeting ITI confirmed this is not a pressing matter at this time.]

ii. Local Accounting Standard + Fiscal Year

ITI queried whether there was any update on proposed administrative guidance on the application of the local financial accounting standard ('LFAS') rule, which states that the LFAS cannot be applied for the purposes of calculating domestic top-up tax where the accounting period of such accounts is not the same as the fiscal year of the consolidated financial statements of the group. ITI noted that the Dutch tax authorities had issued guidance on this point in the absence of OECD Administrative Guidance.

Revenue stated there had been no update as regards further guidance in this area.

Any other business:

No other matters were raised or discussed.

Chairperson stated regarding the next meeting that it would likely be towards the end of March / beginning of April.