Record of Meeting

Meeting	TALC BEPS Sub-Committee		
Location	Revenue Offices, Dublin Castle	**Meeting Date**	29 April 2025
ITI	Anne Gunnell; David Fennell; Gareth Bryan; Emma Arlow; Stephen Ruane^		
CCAB_I	Enda Faughnan; Gearóid O'Sullivan^; Paschal Comerford^		
Law Society	Andrew Quinn^; Fintan Clancy; Amelia O'Beirne^; Aidan Fahy^; Philip Tully^		
Revenue	Jeanette Doonan (Chairperson); John Quigley; Keith Noonan; Alan Carey; Áine Hollingsworth^; Deirdre Ní Alluráin; Maresa Hempenstall; Máirín Barron^; Diarmúid Kelly^; Michael Cantwell^; Irene Clancy^; Sarah Murphy^; Rory Noone (Secretary)		
^Attended remotely via Dial-in			

Minutes

The Chairperson welcomed attendees.

1. **<u>Minutes of the Meeting of 29 January 2025</u>**

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 reflective of those changes circulated in advance of this meeting.

A brief discussion was had regarding one of the draft action points arising from the Anti-Hybrid agenda item from the meeting of 29 January and it was clarified that in order to consider the matter it was intended to request examples from practitioners.

The Chairperson asked if the minutes are now agreed, it was confirmed that the minutes of 29 January are agreed. [Update: The minutes have been published on the Revenue website.]

2. **<u>International Tax Updates</u>**

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

i. **FASTER**
The FASTER Directive was formally adopted 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. To date there have been two Working Party IV meetings where the Commission has provided updates on this work and we expect further meetings in 2025. There was also a FISCALIS meeting in March where Member States discussed the different reporting systems provided for under FASTER. A further FISCALIS meeting has been scheduled for May.

ii. **Query – ATAD 3 (Unshell Directive)**
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. There has been no further working party meetings since November 2024 but we expect discussions on the file will recommence at some point in 2025.

iii. **Transfer Pricing Proposal**
The BEFIT proposal, launched by the Commission on 12 September 2023, also included a Transfer Pricing proposal aimed at harmonising the implementation and application of such rules within the EU and ensuring a common approach to transfer pricing. It quickly became apparent that Member States did not support the proposal. Discussions at Council shifted away from a Directive to harmonize transfer pricing rules, instead favouring the establishment of a group to discuss transfer pricing issues, referred to as a Transfer Pricing Platform. However there has been little progress on the establishment of such a Platform due to divergent views on its fundamental elements. The potential viability of a Transfer Pricing Platform will be discussed at a High-Level Working Party meeting on 29 April.

iv. **DAC9**
Member States successfully finalised the final legislative text of the DAC9 proposal, with the Directive being tabled for adoption at the Foreign Affairs Council on 14 April 2025. The Directive aims to enhance tax transparency by implementing the Top-up tax information return under Pillar Two and largely aligns with the OECD's Multilateral Competent Authority Agreement (MCAA). The Directive was formally adopted on April 14th. Member states will have to adopt and publish, by 31 December 2025, the laws, regulations and administrative provisions necessary to comply with this directive. The first top-up tax reporting is due by 30 June 2026. Countries opting to delay the implementation of the Pillar Two Directive are still required to transpose DAC 9 by the same deadline.

v. **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 a 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 (IIR), Domestic Minimum Top-up Tax (DMTT) and QDMTT Safe Harbour with the effective date of 31st December 2023.

3. Participation Exemption (for foreign dividends)

The draft Tax and Duty Manual (TDM) on the participation exemption for foreign dividends was circulated in advance of the meeting.

Revenue went through the draft, highlighting certain parts of the guidance which address points previously raised by practitioners. For example, section 5 of the TDM clarifies that the section 626B TCA 1997 test does not apply to distributions made out of profits when determining if a distribution is a "relevant distribution".

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Action Point: Law Society to send further information to Revenue in relation to a point on the requirement to hold 'ordinary share capital' for the qualifying participation test and economically equivalent concepts that exist under company law in other EU jurisdictions.

A discussion took place regarding certain elements of the guidance in section 3 on the conditions to be met for a company to be regarded as a "relevant subsidiary".

- **Action Point:** Revenue will modify the explanation in section 3.2 of the TDM to clarify the application of the 'not generally exempt from tax' test.

- Revenue confirmed that for section 3.3 – 'Residence in a relevant territory', that a country that has signed a double taxation treaty (DTT) with Ireland, that does not yet have the force of law, will be a relevant territory from the date the DTT is signed.

- Section 3.3.4 – 'Company reorganisations and mergers': A discussion took place on the five-year lookback rule for acquisitions of a business or business assets from a company that is not resident in a relevant territory. Practitioners outlined various challenges to applying this test in practice. These challenges include the level of information available for third-party acquisitions and cases where a company acquires a shareholding in another company. Revenue outlined the policy rationale for the five-year lookback rule and noted that any changes to this rule would be a policy matter for the Department of Finance.

Regarding section 5.3 – 'Exclusion for deductible amounts' – Stakeholders raised a concern over distributions that are deductible in computing an equivalent close company surcharge. Revenue enquired as to how other jurisdictions have treated such distributions and whether they have allowed exceptions in their participation exemption regimes.

- **Action Point**: Stakeholders to provide feedback on their international experience with distributions that are deductible for corresponding close company surcharge purposes.

Regarding section 5.4 - 'Exclusion for distributions from offshore funds', Revenue clarified that section 743 sets out the meaning of an offshore fund, which exists where a person has a 'material interest'. Whether an offshore fund is an 'equivalent' or 'non-equivalent' fund is not relevant in construing the meaning of an offshore fund in accordance with section 743. A discussion took place on certain exclusions from being considered an offshore fund with regards to trading companies and where a minority interest is held.

Action Point: ITI may follow up with a submission to Revenue regarding circumstances where a minority interest includes a discount.

[ITI confirmed at the meeting of 24 July 2025 that it does not intend to make a submission on this point.]

Regarding section 6 – ‘Anti-Avoidance’: Revenue outlined that the approach taken in guidance was not to provide examples. Any specific avoidance concerns identified were addressed with specific provisions in legislation whereas the section 831B(7) anti-avoidance rule applies as a general protection.

CCAB_I asked whether there had been any comments on the legislation at EU level. Revenue said that no concerns were raised by the Code of Conduct Group and this is a matter of Irish tax policy.

Revenue noted that separate Revenue guidance on the taxation of partnerships is under consideration and that as such, guidance on the treatment of partnerships in the context of the participation exemption would be deferred until a later time.

[Update – The TDM on the participation exemption was published on 6 May.]

4. (i) Pillar Two – TDMs

In advance of the meeting the relevant updates to the TDMs were circulated. Practitioners were asked whether they had any further comments regarding the updates and no further comments were received. [Update: Both TDMs updated and published in May.]

4. (ii) Pillar Two – Systems Update

A member of the Large Corporates Division Pillar Two Branch gave an update on the progress made on both systems development and the website.

The functionality to register for Pillar Two taxes is scheduled to go-live in mid-2025 (aiming for July but still not confirmed). The normal agent functionality for registrations will also apply to Pillar Two. The process will require the information provided for in legislation. There will be a requirement to register for one or more taxes, and a reporting taxhead for the Top-up tax information return (TIR). It is proposed to contact potential in-scope entities advising of the registration requirements and providing contact details.

The functionality for return filing and payments will go live in early 2026. The returns will effectively be a payment notice with very little other details requested. It is intended to use the standard GIR notification of filer as issued by the OECD.

The website will also be updated. There is a proposal to host a section on the website page to facilitate key updates such as important dates.

The functionality to submit incoming queries will be supported through My Enquiries. This will go live at the same time as the updated website. More complex or technical queries will be dealt with in a similar manner to the pre-existing process in place for LCD cases.

4. (iii) Pillar Two – Other Technical Issues Arising

The ITI had raised a number of Pillar Two related points in a submission in advance of the meeting.

i. ***Registration and GloBE tax filings***

ITI would welcome an update from Revenue on the following:
• When will the Pillar Two registration portal will be available on ROS?
• Update on the data points that will be required in order to complete the registration.
• Does Revenue intend to make use of the standard GloBE Information Return notification template in Annex B of the OECD January 2025 GloBE Information Return guidance or will a different notification format would be needed?
• When the GloBE tax return (IIR/UTPR/QDTT) templates are expected to be available?

Taxpayers are regularly asking our members when this information will be available to allow them to readily prepare to meet their compliance obligations. An indication on expected timings would be welcome.

These points were addressed as part of the discussion on the systems and website development. See agenda item 4 (ii) above.

ii. ***Pay and filing obligations in the event a merger, winding-up or dissolution***

Liquidation/ strike-off

Can Revenue provide clarification on how practically the liquidation/ strike off of a company that is a constituent entity can be completed given the rolling nature of its administrative obligations under Part 4A? It is unclear how such an entity can achieve a position where it ceases to have any further obligations at the time it is to be dissolved.

Take for example, a constituent entity located in Ireland which is placed into voluntary liquidation in April 2025. The entity is a member of an in-scope group with a calendar fiscal year. Therefore, the constituent entity has itself been in-scope of Part 4A since 1 January 2024. The liquidation is otherwise finalised by September 2025, such that the entity may be formally dissolved subject to bringing its tax affairs up to date.

In such circumstances, various administrative obligations may yet fall on the constituent entity, including:
• Obligation to register as a qualifying entity / relevant parent entity (s111AAH(1))
• Obligation to file a GIR (s111AAI(1) or (5))
• Obligation to appoint a designated local entity (s111AAI(2)(a))
• Obligation to provide a notification of filer (s111AAI(2)(c))
• Obligation to file an IIR or QDTT return and self-assessment (s111AAJ, s111AAN)
• Obligation to pay any GloBE tax (s111AAS)

Many of the above obligations are likely to be difficult or impossible to meet in the near to medium term. This is due to the fact that calculation of the GloBE tax liability and preparation of GloBE returns requires information from other group entities in Ireland (for the QDTT) and abroad (for the IIR) for the MNE Group's full fiscal year period, and therefore can only be completed after the end of the present fiscal year (with groups provided a further period of greater than one year to complete them thereafter).

In addition, to the extent that the constituent entity in the example above continues to be consolidated into the MNE Group and has not been formally wound up by the time that a new fiscal year commences (i.e., 1 January 2026), many of these same issues will also be repeated with respect to that fiscal year.

This challenge is even more pronounced for entities in liquidation, as a liquidator would not ordinarily have access to the necessary information regarding entities in respect of which they have not been appointed liquidator, particularly in cases of involuntary liquidation enforced by creditors.

Even in cases where there is a single Irish constituent entity which is in liquidation or ready for strike-off, as the relevant GloBE notification/ registration/ returns are not yet available, the entity cannot complete its tax obligations in the short term. This will result in prolonged liquidation/ strike-off processes and additional costs for entities.

This is a live issue for in-scope groups. Similar concerns arise with respect to entities that are due to be voluntarily struck-off. Guidance confirming how such entities (and their liquidators, where appropriate) can meet their obligations under Part 4A prior to winding-up / dissolution would be greatly appreciated.

Revenue confirmed that the above questions relating to liquidation/strike off are being considered by LCD P2 implementation team. Revenue also enquired from practitioners as to whether they were aware of any other jurisdictions having dealt with this matter in guidance.

iii. Dissolution on merger

A separate but related issue arises on the dissolution of an Irish constituent entity on merger with another company. This could arise, for example, in the context of an Irish domestic merger or a cross-border merger involving the dissolution of an Irish constituent entity. Guidance confirming how affected groups can meet their Part 4A obligations in such circumstances would also be appreciated.

Revenue stated that with regard to the dissolution of an Irish CE on merger; Article 6.2.1(a) of the Model Rules provides that where an entity leaves a group, the entity will be treated as a member of the group for the purposes of the GloBE Rules if any portion of its assets, liabilities, income, expenses or cash flows are included on a line-by-line basis in the consolidated financial statements of the ultimate parent entity in the fiscal year.

Where an entity is dissolved by operation of law in a merger/cross-border merger, it is likely that the income/expenses of the pre-merged entities would be consolidated on a line-by-line basis in the consolidated financial statements with the merged entity consolidated thereafter. Therefore, for the period up until the merger, the entity which is subsequently dissolved would appear to be in-scope of top-up taxes in respect of its low-taxed income in the jurisdiction in which it is located.

However, Revenue is not aware of specific guidance in the OECD Commentary on this issue. The Model Rules and guidance deal with asset values on the transfer of assets as part of a GloBE reorganisation, but there does not appear to be any confirmation on the application of top-up taxes to an entity that is dissolved without going into liquidation during a fiscal year. Accordingly, this query may need to be dealt with at WP11 of the inclusive framework as it impacts on taxing rights where the merger is cross border.

With regard to domestic mergers, Revenue will raise this issue with the Department of Finance and consideration may be given as to whether the provisions of section 638A TCA 1997 should be extended to Part 4A TCA 1997.

iv. Compensation payments for QDTT, UTPR, IIR

At present, the Irish legislation provides for the non-taxation of payments made between members of a QDTT filing group (Section 111AAO) or a UTPR filing group (Section 111AAL) such that where a group filer makes a payment on behalf of another constituent entity, that other constituent entity may compensate (on a tax-free basis) the filer in respect of the QDTT liability paid on its behalf.

While this is helpful, it does not address the fact that there may be a commercial desire or need to have other forms of compensation in respect of Pillar Two tax liabilities be made between group members.

For instance, it may be the case that because of the jurisdictional blending rules, the amount of QDTT allocated between entities in a jurisdiction is different to the amount that would have been allocated had the computation of top-up tax been done on a standalone basis rather than a jurisdiction basis.

For example, two entities in Ireland might have identical amounts of GloBE income and identical amount of adjusted covered taxes. In such a scenario, one would not expect the jurisdictional blending to have any impact on the QDTT between the entities. However, if one of those entities were entitled to a material reduction under the SBIE rules then the effect of the jurisdictional blending would mean that the benefit from that deduction would be shared between the two entities rather than allocated solely to the entity which gave rise to the benefit.

There may well be important commercial reasons why it would be necessary for the company that gave rise to the benefit to be compensated by the other company to the tax value of that benefit. This could be the case where, for example, the two entities are located in Ireland and owned by the same MNE group but they are operated entirely independently of one another, and, therefore, there is a commercial necessity not to mix tax (or other) costs between them.

A similar issue can rise where there are minority investors in one entity in Ireland whereby the socialisation of QDTT liabilities relevant to the other entities in Ireland (or, indeed, the allocation of a UTPR top-up amount with respect to non-Irish entities owned by the majority investor but not by the minority investor) could arise. In these circumstances, there may be a commercial necessity to "true up" for any socialisation impact that might arise as a consequence of the jurisdictional blending rules.

For these reasons, we would recommend that the law is amended to treat compensation payments of this type between members of the same MNE group as disregarded for the purposes of corporation tax and dividend withholding tax (whether the payments are made by or to group located in Ireland or elsewhere). If this is not implemented, we would request guidance to be issued on how these payments should be treated for these purposes.

Revenue advised that this request would require legislative amendment; it would not be appropriate to deal with it through guidance. It should be noted that there is no provision in the Model Rules or Directive that would disregard such payments for the purposes of calculating top-up taxes where those payments form part of qualifying income. Therefore, even if the Minister made a decision to implement this request for CT purposes, any payment could have an impact for P2 purposes if there were payments made between entities that are not aggregated (i.e. investment entities, MOCEs).

v. Article 4.6.1 – Reductions and refunds of taxes

Article 4.6.1 of the GloBE rules requires that, where there is a material decrease in the Covered Taxes of an entity that relates to a prior fiscal year, the ETR of that previous fiscal year should be redetermined. The Consolidated Commentary to the GloBE rules further states (page 141 – 142) that:

…the ETR and Top-up Tax for the prior year must be re-determined based on the re-determined Taxes and GloBE Income or Loss (if also adjusted) in order to determine if there is any Additional Top-up Tax for the jurisdiction pursuant to Article 5.4.1. If that re-determination results in Additional Top-up Tax, such tax is included in the jurisdictional Top-up Tax computation pursuant to Article 5.2 in the Fiscal Year of the re-determination; the MNE Group does not amend its GloBE Information Return or any tax returns filed in association with the GloBE Rules for the year to which the adjustment relates…
…a re-determination may only be carried back to the extent it does not result in a refund of Top-up Tax. To the extent a re-determination would otherwise result in a refund of Top-up Tax, such re-determination is taken into account in the re-determination year (i.e. the current Fiscal Year).

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A number of questions arise in relation to how the Commentary should be applied in practice, as follows:

Tax reductions relating to pre-GloBE periods

Where a reduction of Covered Taxes is booked in a GloBE period (i.e. FY24 or a later fiscal year) but relates to a pre-GloBE period, do Revenue agree that such a reduction in tax, and any related adjustment to income, should be excluded from the GloBE calculation (both qualifying income and covered tax)? It is important that the impact of the GloBE rules does not apply to periods that were not in scope of the GloBE rules.

In support of this position, we note the following:

• It should not be necessary to apply Article 4.6.1 to redetermine the ETR and Top-up Tax for a pre-GloBE year (any alternative approach would create administrative complexity) as Article 4.6.1 only relates to adjustments made after a GloBE Information Return has been filed for the relevant period.

• We note that Article 4.1.3(a) provides that current tax expenses should be removed from the calculation of Adjusted Covered Taxes where the tax expense relates to an item of income excluded from the calculation of GloBE Income. There are a number of references throughout the GloBE rules that suggest that the term expense should also include negative expenses (e.g., refunds of previous tax expenses).

• In addition, Article 4.2.1(a) defines a Covered Tax as meaning taxes recorded in the financial statements with respect to income or profits of a Constituent Entity. Where a refund relates to pre-GloBE periods, the refund should be removed from the computation of Adjusted Covered Taxes, as the tax previously paid relates to profits/income of a period that was not subject to the GloBE rules.

Given that the Irish jurisdictional ETR will often be c.12.5%, requiring a refund relating to a pre-GloBE period (e.g., FY22) to be taken into account in a GloBE year (e.g., FY24) would mean that the refund is effectively recaptured through the Irish QDTT calculation. Confirmation is sought that this outcome is not intended and should not apply.

We understand that the Austrian tax authorities have issued a set of FAQs and have provided confirmation that reductions in covered taxes relating to pre-GloBE periods should be removed from the GloBE calculations. An informal translation of the Austrian FAQ on Article 4.6.1 is provided below for reference:

> *Question 3.6: To what extent do current tax revenues recorded during the application period of MinBestG, but relating to current tax expenses recorded in pre-MinBestG periods, affect adjusted recorded taxes and thus the calculation of the effective tax rate (e.g. credits from the elimination of double taxation in relation to transfer pricing adjustments relating to pre-MinBestG periods, etc.)?*

According to Section 45 (2) MinBestG, current tax revenues (e.g. corporation tax credits due to an external audit relating to assessment periods prior to the entry into force of MinBestG) for a preceding fiscal year are to be recorded as a reduction in the adjusted recorded taxes of this preceding fiscal year, provided that a non-insignificant reduction (option) applies. <u>If the credit thus relates to periods prior to the entry into force of MinBestG, the corresponding amounts are not to be considered as a reduction in the adjusted recorded taxes of the current fiscal year. Similarly, due to the non-applicability of MinBestG, consideration in prior years is omitted</u>. Current tax credits relating to current tax expenses booked in pre-MinBestG periods thus have no impact on the calculation of the effective tax rate. An additional current tax expense relating to a preceding fiscal year is, however, to be considered as a recorded tax in the current fiscal year in accordance with the provisions of Section 45. (emphasis added)

References to MinBestG above relate to Austria's minimum tax act. We understand that similar approaches have also been adopted by the Finnish and German tax authorities.

Revenue stated that Article 4.6.1 provides that:

> *"An adjustment to a Constituent Entity's liability for Covered Taxes for a previous Fiscal Year recorded in the financial accounts shall be treated as an adjustment to Covered Taxes in the Fiscal Year in which the adjustment is made, unless the adjustment relates to a Fiscal Year in which there is a decrease in Covered Taxes for the jurisdiction. In the case of a decrease in Covered Taxes included in the Constituent Entity's Adjusted Covered Taxes for a previous Fiscal Year, the Effective Tax Rate and Top-up Tax for such Fiscal Year must be recalculated under Article 5.4.1."*

Where the decrease in covered taxes in a fiscal year relates to a refund of taxes for a pre-transition period, it is agreed that such a decrease should be excluded from the calculation of the ETR in the fiscal year in which the adjustment arises on the basis that it relates to a period to which Part 4A does not apply.

vi. Tax reductions relating to pre- and post-GloBE periods

Where a reduction of Covered Taxes is booked in, say, FY28 and relates to pre-GloBE and GloBE periods (e.g., FY22 – FY24), can Revenue confirm that the redetermination is only required in respect of the ETR and Top-up Tax calculated for the GloBE periods (e.g., FY24)?

Revenue: Agreed.

ITI also requests confirmation from Revenue that the reduction of taxes relating to pre-GloBE periods should be removed from the FY28 ETR calculation.

Revenue: Agreed.

vii. Tax reductions arising from a MAP process (downward TP income adjustments)

A reduction of Covered Taxes is booked in, say, FY28 (due to the conclusion of a MAP process for FY24 and FY25). The ETR and Top-up Tax for FY24 is redetermined in accordance with Article 4.6.1 and a refund of Irish QDTT is due. The Commentary (extract above) clarifies that it is not possible to receive a refund of QDTT in respect of the FY24 fiscal year. It states that "such re-determination is taken into account in the re-determination year".

The application of the GloBE rules in the above example is not clear. While a refund of previously paid QDTT is not allowed, we believe in order to ensure that double taxation does not arise, and while remaining within the policy intent of the GloBE rules, such overpayment of QDTT should be available to reduce future QDTT. We request clarity as to how this will operate in practice.

Can Revenue clarify that this means that the FY24 QDTT refund should be available in FY28 as a credit against FY28 top-up taxes of the Irish entity, with any excess carried forward to future years?

We believe the above approach represents the most appropriate mechanism to affect the re-determination. Where it is not possible to provide this clarification, we assume that the reduction to Covered Taxes and GloBE Income arising from the MAP downward adjustment should both be reflected in the FY28 fiscal year.

Otherwise, it should be noted that the application of Article 4.6.1 could give rise to adverse double taxation outcomes for Irish taxpayers. For example, where there is a downward adjustment Irish income arising from the conclusion of a MAP process, significant concerns would arise if the downward adjustment to income was not included in or needed to be re-allocated from FY28 GloBE Income.

If the reduction in the tax expense related to the tax refund remained in the calculation of FY28 Adjusted Covered Taxes, double taxation outcomes would arise as:

- *increased corporate tax would be payable in the MAP counterparty jurisdiction.*
- *the refund of corporate tax in Ireland would give rise to a reduction in Covered Taxes and would therefore reduce the Irish jurisdictional ETR; and*
- *the refund of corporate tax would therefore effectively be recaptured as QDTT in Ireland.*

Where it is determined that the MAP downward adjustment (GloBE Income and Covered Taxes) needs to be reflected in the current fiscal year, we note that circumstances may arise where the inclusion of this redetermination amount in the current year results in an entity being in a net GloBE Loss position. This could mean that overpayments of QDMTT in prior periods are not relieved in the current year and as a result fall as a final cost on the Irish entity.

To maintain the principle that double taxation should not arise under MAP procedures, we believe that guidance is required to ensure the QDMTT should only operate on the entity's Irish profits as agreed under MAP.

Revenue stated that the Consolidated OECD Commentary to Article 4.6.1 generally provides at page 166 (version published in May 2025) that when the correction of an error in the determination of a liability for taxes in a particular jurisdiction results in a material decrease in the tax liability, the MNE Group must determine if the error in the tax computation was due to an error in the computation of taxable income and whether there was a corresponding error in the computation of the relevant constituent entity's financial accounting net income or loss (FANIL). If so, both the taxes and the GloBE income or loss for the prior year are re-determined. Then, the ETR and Top-up Tax for the prior year must be re-determined based on the re-determined taxes and GloBE income or loss (if also adjusted) in order to determine if there is any Additional Top-up Tax for the jurisdiction.

However, the guidance provides that a 're-determination' may only be carried back to the extent it does not result in a refund of Top-up Tax.

To the extent a 're-determination' would otherwise result in a refund of Top-up Tax, such 're-determination' is taken into account in the re-determination year (i.e. the current Fiscal Year).

It is unclear whether the use of the word 're-determination' refers to the taxes and GLoBE income or the ETR and top-up taxes of the period in question. If one views the Commentary as relating to taxes and GloBE income this means that the reduction in taxes and reduction in GloBE income arising from the MAP downward adjustment is taken into account in the calculation of the ETR and top-up taxes for the current fiscal year, i.e. FY28 (rather than a reduction in Top-up tax for FY28 upon re-determination of the ETR and Top-up Tax of FY24 being treated as a credit). It appears that the intention is for the reduction to Covered Taxes and GloBE Income arising from the MAP downward adjustment to be reflected in the FY28 fiscal year in the example provided.

viii. QDTT – local accounting standard

ITI note that follow-up queries were raised at the February 2025 BEPS TALC sub-committee meeting as to whether or not there has been progress at the OECD regarding the ability to apply the local accounting standard for QDTT purposes where not all entities in a jurisdiction have the same year as the UPE of the group, due to circumstances such as the liquidation of an entity pre-year-end or the formation of a new company during the year.

At this meeting, practitioners noted that the Dutch authorities have issued guidance that clarifies that the formation of a new company, a merger of two companies or the liquidation of a company should not transgress this requirement in their view. We request that a similar confirmation is provided by Revenue.

Revenue has committed to providing guidance where it is not expected that OECD guidance will issue in the near term and where Revenue consider the provision of such guidance would not be problematic from an OECD perspective. While we appreciate that Revenue has raised this issue with the OECD and we understand that OECD guidance was being discussed by Inclusive Framework members, recent international tax developments mean it is less likely that OECD Administrative Guidance will be released in the coming months. We would therefore request that consideration be given to apply the approach taken by the Dutch authorities for Irish QDTT purposes (at least until further guidance is released by the OECD).

Revenue confirmed that it is seeking confirmation as to the details on the approach taken by the Dutch tax authorities. In the interim, in the absence of further information or guidance on this point from the OECD, Revenue is not in a position to provide further guidance on this matter at this time.

ix. Loss utilization for non-Irish group members

ITI Request for legislative amendment

The recent legislative change imposing a loss utilsation ordering rule (Section 111AW(2)) was necessary due to the absence of an ordering rule for Irish corporation tax purposes. However, the rule applies for all Pillar Two calculations including in respect of non-Irish group entities (e.g., under IIR) and does not take account of the fact that other countries may have rules or practices governing loss utilsation.

We suggest a legislative change to account for situations where foreign countries have ordering rules for the use of losses forward. For example, the following words could be added as an opening line to Section 111AW (2):

"Where the position in relation to the ordering of the use of losses in a jurisdiction is unclear," We suggest that the wording needs to be "position", and not "legislation", as countries may have practices or guidance on such matters rather than legislation.

Revenue: As this is a request for legislative change it will be necessary to bring this item to the attention of the Department of Finance.

x. Treatment of Joint Ventures

Request for legislative correction
Section 111AO currently defines a joint venture as follows:

> ***"joint venture" means an entity of which at least 50 per cent of its ownership interests are held directly or indirectly by <u>its ultimate parent entity</u> and whose financial results are reported under the <u>equity method</u> in the consolidated financial statements of <u>the ultimate parent entity</u> but shall not include…"***

This definition does not align with the definitions provided in Article 10.1 of the GloBE Model Rules and Article 36(1)(a) of the EU Minimum Tax Directive. In both cases, the relevant criteria are whether the UPE(s) account for the entity via the equity method and whether a 50% ownership relationship exists.

However, in Section 111AO, the test appears to be inverted, requiring the entity to identify its UPE and then to determine whether equity method accounting is applied. By definition, an entity that is a joint venture should not have a UPE of its own, as a UPE is an entity which consolidates constituent entities on a line-by-line basis, whereas a joint venture will be held via the equity method.

The definition in the GloBE Model Rules and EU Minimum Tax Directive both use the term "the" instead of "its". While we believe that it would be best to replace the term "its" with the term "an", it would still be preferable to at least align with the definition provided in the GloBE rules.

We recommend that the following legislative amendment be made as a result:

> ***"joint venture" means an entity of which at least 50 per cent of its ownership interests are held directly or indirectly by its an / the ultimate parent entity and whose financial results are reported under the equity method in the consolidated financial statements of that / the ultimate parent entity but shall not include…"***

Revenue: As this is a request for legislative change it will be necessary to bring this item to the attention of the Department of Finance.

xi. Other issues relating to Joint Ventures

Meaning of "fiscal year" in Section 111AAAE for joint ventures

A fiscal year is defined in Section 111A by reference to the period of the UPE's consolidated financial statements. While Section 111AO deems a joint venture to be a member of its own MNE group, this only applies for the purposes of calculating the entity's top-up tax liability and should not impact the meaning of "fiscal year" for all purposes in Part 4A.

This distinction is made clear in the OECD Model Rules, where the equivalent provision (Article 6.4.1(a)) states that a joint venture should only be treated as a member of its own MNE group for the purposes of Chapters 3-7 and Article 8.2 of the Model Rules.

As a result, can Revenue confirm that for the purposes of interpreting Section 111AAAE, as it applies to joint ventures, it is the fiscal year of the MNE group of which the entity is a joint venture that is relevant?

This can be best illustrated by way of an example:

• A joint venture which is not a member of any group prepares calendar year local statutory accounts.
• The MNE Group, of which it is a joint venture, prepares consolidated financial statements with a 30 June year-end.
• Therefore, the first fiscal year in which the MNE Group is in-scope of Part 4A commenced on 1 July 2024 (Section 111AAAE(1)).

It is our understanding that the first fiscal year in which the joint venture is in-scope of Part 4A is also that commencing on 1 July 2024. Can Revenue clarify that our understanding is correct?

Revenue: Agreed, references to a fiscal year in section 111AAAE are references to the accounting period of the consolidated financial statements (CFS) of the ultimate parent entity (UPE) of the MNE group or large-scale domestic group (LSDG) (or where there are no such CFS, the calendar year).

Model Rule 6.4.1 provides that Chapters 3 to 7, and Article 8.2, of the Model Rules shall apply for purposes of computing any Top-Up Tax of the Joint Venture (JV) and its JV Subsidiaries as if they were Constituent Entities of a separate MNE Group and as if the JV was the Ultimate Parent Entity of that Group. Those chapters include the calculation of qualifying income, covered taxes, ETR etc. and safe harbours. Those chapters do not include Chapters 1 and 2, i.e. scope and charging provisions. Section 111AAAE provides for the application of Part 4A and does so with reference to fiscal years. Therefore, as section 111AAAE is dealing with scope and the charge to tax, it should be interpreted as applying to joint ventures with reference to the fiscal year of the UPE of the MNE group or LSDG rather than the fiscal year of the JV even though for the calculative provisions the JV is deemed to be a UPE of the JV group.

xii. Interaction with pay and file and other administrative deadlines

If our understanding as set out above is correct, can Revenue confirm that other references to "fiscal year" in Chapter 10 of Part 4A are also to that of the MNE Group of which the entity is a joint venture? For example, can Revenue confirm that the first specified return date for the above joint venture will be 31 December 2026?

Revenue: Agreed.

xiii. Accounts to be used

Section 3.2 of the OECD's December 2023 Administrative Guidance states that where a joint venture has a different accounting period to the fiscal year of the MNE Group of which it is a joint venture, the joint venture's accounts that end in the MNE Group's fiscal year should be used for the purposes of calculating the GloBE top-up tax arising in respect of the joint venture for that fiscal year.

As a result, this guidance would suggest that in the above example the joint venture's accounts ending 31 December 2024 should be used to calculate the top-up tax in respect of the entity for the fiscal year ending 30 June 2025. Can Revenue clarify this please?

Revenue: Agreed – The December 2023 OECD Administrative Guidance, at 3.2.6, inserting paragraph 13 of the Commentary to Article 1.1, states that "… a Joint Venture or JV Group of the MNE Group may also maintain its financial accounts on a fiscal year different from the UPE's Fiscal Year…where a Joint Venture or JV Group's financial accounts are maintained on a different fiscal year, the GloBE computations for the Joint Venture or JV Group's Fiscal Year must be made based on the financial accounting period that ends during the UPE's Fiscal Year. This will ensure that the data necessary to determine the MNE Group's Top-up Tax liability, if any, for a Reporting Fiscal Year is available when the GloBE Information Return for that Reporting Fiscal Year is due."

ITI: Can the minutes be linked in the TDM? ITI also raised the point of awareness of the minutes generally notwithstanding that they are published.

Action Point: Revenue to consider how confirmations and explanations contained in the minutes might be made more widely accessible.

xiv. Joint venture of two separate in-scope MNE groups:

An entity may be a joint venture of two separate MNE groups where is it held under the equity method 50:50 by each. Therefore, two separate fiscal years may be relevant to the joint venture where the fiscal years of these MNE groups are not aligned.

While this may operate appropriately (albeit with additional complexity) in the context of collecting top-up tax in respect of the joint venture under the IIR/ UTPR, significant concern arises with respect to the operation of Ireland's QDTT in such circumstances.

Firstly, as top-up tax is operated on 100% of a joint venture's profits under our QDTT, this risks over-taxation of the joint venture where the fiscal years of the two MNE groups are not aligned and therefore overlap. In addition, a doubling of administrative obligations for joint ventures may also arise.

Can Revenue please confirm how the relevant provisions of Chapters 9 and 10 of Part 4A should operate with respect to such joint ventures?

Revenue: A JV is in scope of domestic top-up tax under section 111AAE for fiscal years beginning on or after 31 December 2023. That is the fiscal year of the UPE of the MNE group, but when there are two MNE groups in scope of Pillar Two with different fiscal years then the question arises as to what fiscal year does 111AAE refer.

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Revenue's view is that this refers to the earliest fiscal year, e.g. where there are two MNE groups that are JV partners that are both in scope of Pillar Two, one with fiscal year commencing on 1 January 2024 and the other with a fiscal year commencing on 1 July 2024 , the JV comes in scope of the domestic top-up tax from 1 January 2024 because it is part of an MNE group in scope of Pillar Two from that date. This means that the full amount of top-up tax is chargeable to domestic top-up tax regardless of the differing fiscal years of the MNE groups. This conclusion is supported by the Administrative Guidance on the safe harbour for domestic top-up taxes (December 2023), which provides that the consistency standard would not be met where a JV was not subject to QDMTT on the full amount of its undertaxed profits regardless of the ownership interest in the JV.

xv. Application of Section 111B TCA 1997

The latest Revenue Tax and Duty Manual (TDM) on Part 4A TCA 1997 (released 17 February 2025) includes the following commentary with respect to the impact of the OECD's Administrative Guidance on the application of the GloBE rules in Ireland:

> ***"In general, OECD Administrative Guidance is interpretative in nature, i.e., providing clarity as to the operation of the OECD Pillar Two Model Rules. However, there are instances where the OECD Administrative Guidance introduces a supplementary rule. In these instances, primary legislation is required in order to give effect to the supplementary rule in Irish legislation. This is because the primary legislation cannot be construed in accordance with the Administrative Guidance if the primary legislation does not already contain the supplementary rule. Where that is the case, the primary legislation will commence in accordance with the relevant provisions of the relevant Finance Act. Where primary legislation is not required, and the OECD Administrative Guidance has been adopted either by way of inclusion in the definition of "OECD Pillar Two guidance" in section 111B(1) or by way of order of the Minister for Finance in accordance with section 111B(3), then it should be considered to provide certainty with regard to the application of a rule already in force and therefore a commencement date is not required in respect of that OECD Administrative Guidance (unless the Administrative Guidance provides for a specific commencement date)."***

The new guidance in the TDM will create significant challenges for taxpayers. The guidance leaves taxpayers facing a lack of clarity regarding which aspects of OECD Administrative Guidance currently apply, and the date from which any new OECD guidance will have effect.

As it stands, where OECD Administrative Guidance contains a "supplementary" rule, this rule will need to be added to primary legislation to be given effect (e.g., through a legislative amendment in a Finance Bill). A commencement date will be specified in the Finance Bill for OECD guidance that is considered to be a supplementary rule. All other aspects of OECD Administrative Guidance will be considered to be clarifications, effective for periods commencing on or after 31 December 2023.

Record of Meeting

Practically, this leaves taxpayers in a very unsatisfactory position. The January 2025 OECD Administrative Guidance provides an illustration of the challenges presented to taxpayers by this approach:

• Many taxpayers are currently completing or have already completed Pillar Two effective tax rate and top-up tax calculations as part of the audit provisioning process for FY2024.
• However, it is entirely unclear whether the January 2025 OECD Administrative Guidance contains supplementary rules that apply prospectively (i.e., from FY25 or FY26 onwards) or if the OECD guidance is merely clarificatory in nature.
• Taxpayers are therefore unable to determine whether the guidance (or parts of the guidance) should be applied when completing their FY2024 calculations, creating a risk that tax provisions could be misstated.

Further issues will inevitably arise when future OECD Administrative Guidance is issued. For example:

Scenario 1
• A taxpayer files a GloBE Information Return (GIR) for FY2024 in June 2026.
• New OECD Administrative Guidance is released in July 2026 that contains a clarification applicable to periods commencing on or after 31 December 2023 (i.e., FY2024).
• The GIR filed by the taxpayer in June 2026 could potentially be incorrect due to the clarification outlined in the new OECD guidance.

Scenario 2
• A taxpayer has prepared top-up tax calculations for audit provisioning purposes for the periods FY2024 – FY 2028 based on the relevant OECD guidance available at that time.
• New OECD Administrative Guidance is released in 2029, and it is determined that this guidance is a clarification of pre-existing guidance and is therefore applicable to periods commencing on or after 31 December 2023.
• The taxpayer needs to review five years of top-up tax calculations to ascertain whether the new clarification could have an impact on the top-up tax calculated for these periods. For most of these periods, GIRs would already be filed and top-up tax liabilities would have been paid.

Scenario 3
• A taxpayer is preparing to submit the GIR for FY2024 in June 2026.
• New OECD Administrative Guidance is published in May 2026. It is not clear what aspects of the new OECD guidance are supplementary rules and what aspects should be treated as clarifications of pre-existing guidance and therefore applicable to FY2024.
• In the absence of timely feedback from the Department of Finance and Revenue, the taxpayer and its advisors are required to determine what aspects of the new OECD guidance might be supplementary rules. With limited time available before the GIR filing deadline, calculations may need to be updated. The GIR filed in June 2026 may still need to be amended subsequently through no fault of the taxpayer.

Each of the scenarios presented above demonstrate how challenging the approach outlined in the TDM could be for taxpayers.

As outlined at the most recent TALC BEPS Sub-committee meeting, we firmly believe that the fairest approach for taxpayers is as follows:

• Supplemental rule: A legislative amendment is required to give effect to the supplementary rule. The supplementary rule should apply prospectively, with an option provided to taxpayers to apply the supplementary rule from an earlier date if so desired.

• Clarification: The clarification should apply for fiscal years commencing after the date the OECD Administrative Guidance is added to Section 111B by Ministerial Order. Taxpayers should be provided with an option to apply the clarification to guidance from an earlier date if so desired.

It is important, in the view of the ITI, that Revenue clearly states in the TDM that this approach will be applied, so that taxpayers receive the clarity needed to manage their compliance obligations going forward.

When new guidance is issued by the OECD, it would also be helpful if the Department of Finance/ Revenue clarifies what aspects of the new guidance will constitute new rules i.e., so that taxpayers have clarity in respect of the intervening period between new OECD guidance issuing and the subsequent Finance Bill.

For completeness, we also request clarification from Revenue on whether all supplemental rules from the four iterations of Administrative Guidance issued up to 31 December 2024 are now reflected in Part 4A TCA 1997?

Revenue: It is Revenue's understanding that all supplemental rules from the four iterations of Administrative Guidance issued up to 31 December 2024 are now reflected in Part 4A TCA 1997.

The above points would need to be submitted directly to the Department of Finance as it is a matter of policy. The TDM outlines the operation of the legislation as drafted. The Department of Finance have no role in the drafting of TDMs.

xvi. Treatment of Minority Owned Constituent Entities

Status of Orphan entities
The question of whether an orphan entity can qualify as a MOCE was raised in previous meetings. Could Revenue please provide a further update on the position?

Revenue: This matter has been brought to the attention of the Department of Finance.

A further submission on this point is currently being considered with respect to the classification of orphan entities as UPEs or POPEs. Clarification of the position by way of legislative amendment is considered to be the best course of action where the Model Rules, EU Directive and OECD Commentary do not provide clear guidance on this issue.

xvii. Allocation of UTPR

Suggested change to allocation methodology
Neither the GloBE rules nor the EU Minimum Tax Directive prescribe a manner for allocating the UTPR top up amount allocated to a jurisdiction between the relevant entities located in that jurisdiction. Therefore, it is within the competence of Ireland to allocate a UTPR top up tax between entities in Ireland in whatever manner it sees fit.

At present, the allocation methodology applies to the equivalent of the jurisdictional allocation key to each entity in Ireland (Section 111N). This approach may cause commercial issues where there are minority investors in an entity that is within scope of a UTPR allocation. This might be in a joint venture arrangement, an MOCE, or just where there is a small minority investor in a group company.

As discussed above, in relation to compensation payments, there may be a commercial desire or necessity to avoid socialising a UTPR cost with such an entity where there are third party investors who may be adversely affected.

One possible approach to this UTPR allocation issue would be to follow a model similar to that used in respect of QDTT for securitisation entities i.e., so long as there is at least one other constituent entity in Ireland that is not part of an orphan subgroup, the UTPR allocation could be made against those entities and not allocated to any of the orphan subgroup entities.

A more general solution would be to give discretion to MNE groups as to how to allocate the UTPR between group members (with the current allocation mechanism retained as a backstop). This would not solve the issue in situations where there were no other entities in Ireland but it would, at least, resolve the problem in many cases.

Where there are no other entities in Ireland to which a UTPR allocation could be made, there would seem to be no other option but to allocate the Irish component of UTPR charge to the orphan sub-group. Such an occurrence may form part of a larger problem with compensation payments, as discussed above and hence a legislative amendment may be preferable so as to make compensation payments of this type tax-free between members of the same MNE group.

Revenue: The above proposal would require legislative amendment; it would not be appropriate to deal with it through guidance. A submission to the Department of Finance would be required to progress the issue.

As noted above, there is no provision in the Model Rules or Directive that would disregard payments to compensate for allocations of UTPR. Therefore, even if the Minister made a decision to implement this request for CT purposes, any payment could have an impact for P2 purposes if there were payments made between entities that are not aggregated for P2 purposes (i.e. investment entities, MOCEs).

<u>Any other business</u>

- ITI raised a further Pillar Two related point on insurance investment entities and the application of section 111AU TCA 1997.

  Action Point: ITI to submit further details [submission subsequently received].

- The date of the next meeting is to be confirmed.