

Record of Meeting

Meeting	TALC BEPS Sub-Committee – Implementation of Pillar Two, Meeting 3		
Location	DFIN Offices, 7-9 Merrion Row	Meeting Date	27/06/2023
D/Finance Attendees	Michael Cantwell; Rafal Saniternik; Ian Kavanagh		
Revenue	Jeanette Doonan; Keith Noonan; John Quigley; Catherine Duffy; Rory Noone; Aine Hollingsworth^; Lynda O’Keeffe^		
ITI	Anne Gunnell; Peter Reilly; David Fennell; Tom Maguire; Gareth Bryan		
CCAB_I	Enda Faughnan; Gearoid O’Sullivan; Derek Henry; Paschal Comerford^;		
Irish Law Society	Andrew Quinn^; Philip Tully^		
^ Attended remotely via WebEx			

<p>Purpose</p> <p>To discuss FX issues and the impact of the implementation of Pillar Two on particular pre-existing tax provisions relating to financial services.</p>
<p>Minutes</p> <p>The Department of Finance opened the meeting.</p> <p>Minutes of Meetings on 30 May & 13 June</p> <p>The ITI had identified one change which was to the list of attendees as per the draft minutes of 13 June. No further amendments were proposed. The minutes were therefore taken as approved subject to the change identified by the ITI.</p> <p>_____</p> <p>Agenda item 1: Lookback opportunity to address any outstanding items discussed at meetings one and two (30 May and 13 June respectively).</p> <p>Further to the meeting on administrative matters on 30 May, the ITI made points as to how the existing tax penalty regime could, using parameters already established within the Code of Practice, be applied to Pillar Two.</p> <p>An update was sought from the CCAB-I in relation on the Qualified Domestic Top-up Tax (QDTT) and the next Feedback Statement. It was confirmed by Finance that there is no set timeframe at present due to uncertainty with regard to the publication of administrative guidance by the OECD. It was noted that a meeting of the Inclusive Framework is set for 10-12 July and it is hoped that a feedback statement would issue thereafter.</p> <p>_____</p>

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The ITI had made a written submission outlining issues identified in respect of the subsequent items on the agenda.

Agenda item 2: FX Issues – Functional Currency & Asymmetry

The discussion covered possible effects of the implementation of Pillar Two on the taxation of foreign exchange gains and losses in particular scenarios. The ITI noting in particular, an issue for non-trading companies whose functional currency for tax and accounting is the same (i.e. the rules regarding asymmetry would not apply). It was noted that addressing the identified issue is a complex task and could involve more fundamental review of the taxation of foreign exchange gains and losses under domestic provisions. Revenue asked practitioners to give further consideration to the FX issue raised (asymmetric FX income/gains) and any possible solutions.

Agenda item 3: Financial Services

(i) Insurance

Topics covered were:

- The application of the Pillar Two rules to insurance companies re allocation of income and losses between a head office and branch and deferred tax assets relating to pre-implementation foreign branch losses would be available in the head office location for Pillar Two purposes. The ITI noting the rules introduced in the UK.

Practitioners agreed to send in more information / examples regarding these issues. Revenue agreed to consider the issue further on receipt of the examples.

- The definition of ‘insurance investment entity’ under Pillar Two.

Revenue asked if the relevant OECD guidance on insurance investment entities been considered and if there was a particular concern with the guidance?

Practitioners agreed to check this and revert to confirm.

(ii) Banking

- Practitioners suggested postponing a discussion on banking to the next meeting as it relates to accounting matters which are on the next agenda. Revenue and D/FIN agreed.

(iii) Asset Management

The discussion covered:

- Treatment of investment funds (ICAVs, etc.) under Pillar Two, including the definition of ‘entity’.
- Non-connected investor test.
- Investment fund definition under Pillar Two.

Revenue to further consider the points raised.

Practitioners to provide further information/examples with regard to their concerns with the 95%/85% investment entity test.

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(iv) Real Estate (REITS)

The discussion covered whether confirmation could be received that an entity that is a REIT in accordance with s705A TCA could be considered a “real estate investment vehicle” under the Pillar Two rules. Revenue indicated that such a confirmation could not be provided.

(v) S.110 companies

The discussion covered the application of the arm’s length principle in the Pillar Two rules and its interaction with the provisions of section 110 TCA 1997. Revenue to further consider the points raised.

(vi) Leasing

The discussion covered the Substance Based Income Exclusion (SBIE) as provided for under Pillar Two, including how it relates to mobile assets. It was noted that further OECD guidance is expected to issue soon on the SBIE. A similar point was made in relation to the GloBE Information Return – that further OECD guidance is awaited.

Agenda item 4: Article 3 (Model Rules) adjustments

The discussion covered:

- the definition of ‘tax consolidation group’ under Pillar Two (further clarification on this point was submitted by the ITI on 28 June).
- Intra-group financing.
- Related-party debts.

Revenue will further consider the points raised on Article 3 adjustments and revert.

It was agreed that some time will be given over at the next meeting to further consider some of the above items.

The ITI noted that its submission also included further points in relation to the discussion on accounting issues in meeting 2. It was noted that in many instances it was felt that the accounting issues identified would be best addressed by way of Revenue guidance. Additionally, as requested, the submission contains further clarification on the point made at the last meeting regarding the collection of tax via the existing domestic CT system or via a domestic top-up tax.

Action points

In respect of the accounting matters to be discussed at the 11 July meeting, practitioners to provide as soon as possible, issues for discussion where not already submitted. As previously advised, submissions to identify for each issue:

1. No actions are proposed (as it is part of the international Pillar Two agreement)
2. can possibly be addressed in Irish legislation; and
3. can possibly be resolved through multi-lateral engagement.

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Practitioners also to submit (where not already done) their views on the preferred approach regarding the accounting standards that should be used for the purposes of the Irish QDTP.

Practitioners to submit further information on:

- pre-implementation foreign branch losses
- concerns with regard to insurance investment entity definition
- concerns with 95%/85% investment entity test

Practitioners to give further consideration to the FX issue raised (asymmetric FX income/gains) and any possible solutions.

Next Meeting

The Department of Finance confirmed that the next meeting (11 July) would take place in Dublin Castle (Revenue offices).

Signed

Rory Noone