

Record of Meeting

Meeting	TALC BEPS Sub-Committee – Implementation of Pillar Two, Meeting 4		
Location	Revenue offices, Dublin Castle	Meeting Date	11/07/2023
D/Finance Attendees	Deirdre Donaghy; Michael Cantwell; Rafal Saniternik; Evan Lombard		
Revenue	Jeanette Doonan; Keith Noonan; Aine Hollingsworth^; Catherine Duffy; Diarmuid Kelly; Rory Noone		
ITI	Anne Gunnell; Peter Reilly; David Fennell; Tom Maguire; Gareth Bryan		
CCAB_I	Gearoid O’Sullivan; Cormac Golden; Derek Henry; Enda Faughnan^; Michael O’Halloran^		
Irish Law Society	Trevor Glavey^		
^ Attended remotely via Dial-in			

<p>Purpose</p> <p>To discuss the accounting and FS industry specific issues raised in the submissions received from the ITI & CCAB-I in the context of the implementation of Pillar Two.</p>
<p>Minutes</p> <p>The Department of Finance opened the meeting.</p> <p>Minutes of Meetings on 11 July</p> <p>The minutes of the meeting of 27 June were agreed.</p> <p>_____</p> <p>Finance outlined that new OECD administrative guidance was expected shortly covering a range of issues. On the basis that the guidance issued this week they expect to be in a position to issue a second Feedback Statement by the end of the month and it that it is intended that it will cover the following:</p> <ul style="list-style-type: none"> ▪ CbCR safe harbour; ▪ Possible approach to referencing OECD guidance in legislation; ▪ Further narrative on approaches to administrations; ▪ Elections; and ▪ QDTT safe harbour (if agreed and guidance issued at OECD level). <p>_____</p> <p>Revenue then addressed the issues identified in the submissions by the ITI and CCAB-I:</p> <p>1. Accounting Standards</p> <p>Regarding the questions raised, Revenue confirmed their understanding of the Pillar Two Directive as follows -</p>

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- Deferred tax assets that are not disclosed in financial statements due to materiality may be included in the calculation of the deferred tax adjustment. The taxpayer will need to maintain a schedule of such differences with appropriate linking documents in order to track the deferred tax adjustment back to the underlying records.
- Appropriate records and linking documents will need to be maintained as will enable a true GloBE information return and top-up tax return to be made for Pillar Two purposes. Where there are deferred tax balances which differ from deferred tax balances maintained for accounting purposes due to the application of different rates or unrecognised DTAs etc. then these will need to be tracked through a separate deferred tax balance sheet.
- Article 47(2) of the Directive provides that a deferred tax asset that has been recorded at a tax rate lower than the minimum tax rate may be taken into account at the minimum tax rate if the taxpayer is able to demonstrate that the deferred tax asset is attributable to a qualifying loss. OECD commentary to model rule 9.1.1 refers.
- Article 15(5) of the Directive provides that “*where a **qualified domestic top-up tax is applied by a Member State or a third-country jurisdiction, the financial accounting net income or loss of the constituent entities located in that Member State or third-country jurisdiction may be determined in accordance with an acceptable financial accounting standard or an authorised financial accounting standard that is different from the financial accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity, provided that such financial accounting net income or loss is adjusted to prevent any material competitive distortion**”*. The Directive provides that ‘*material competitive distortion*’ means, in respect of the application of a specific principle or procedure under a set of generally acceptable accounting principles, an application that results in **an aggregate variation** of income or expense of more than EUR 75 000 000 in a fiscal year as compared to the amount that would have been determined by applying the corresponding principle or procedure under International Financial Reporting Standards (IFRS or IFRS as adopted by the Union pursuant to Regulation (EC) No 1606/2002); [emphasis added]
- A top-down or bottom-up approach to calculating qualifying income may be acceptable. However, a top-down approach may be easier to reconcile to the consolidated financial statements of the MNE group.
- Commentary to Article 3.1.2 of the model rules indicates that the materiality threshold to be applied to the calculation of qualifying income is the materiality threshold that applies to the consolidated financial statements of the UPE.
- Where a UPE prepares consolidated financial statements under more than one accounting standard for a fiscal year, it must be consistent in the accounting standard applied for the purposes of the Pillar Two rules for each fiscal year.
- The Commentary to model rule 3.1.3 at para 14 and 16 provides useful guidance regarding the application of Article 15(2) of the Directive.
- The Commentary to model rule 3.2.3 provides useful guidance regarding the application of Article 16(4) of the Directive.

2. Other issues

Regarding the questions raised, Revenue confirmed their understanding of the Pillar Two Directive as follows -

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- There was a discussion regarding the taxation of unrealised foreign exchange gains under Pillar Two but no further progress was made on the issue identified.
- Practitioners were directed to Article 47(2) of the Directive regarding the treatment of deferred tax assets on losses of foreign branches that may be deductible against the profits of an Irish company under domestic rules.
- Revenue confirmed that consideration may be given to clarifying in legislation that a sub fund of an umbrella structure may be considered to be a constituent entity of an MNE group where it prepares separate accounts and is consolidated in the consolidated financial statements of that group.
- Practitioners were directed to paragraph 39 on p200 of the OECD commentary regarding the definition of investment fund and the collective investment condition. Revenue will consider guidance indicating that where there is no beneficial owner (being a 25% capital/profits/voting rights test) of a fund then it would be considered to have met the condition as set out in the Directive.
- Practitioners were directed to paragraph 44 on p201 of the OECD commentary regarding the definition of investment fund and the regulatory condition.
- Revenue confirmed that no general guidance could be provided on the application of Article 16(4) of the Directive as to how it would apply to profit participating notes and that analysis would be required on a case-by-case basis.
- Practitioners were directed to paragraph 44 on p201 of the OECD commentary regarding the tax consolidation group election. Revenue considers that a UPE cannot make an election with respect to Irish companies under Article 16(9) of the Directive as they are not in a tax consolidation group on the basis that domestic intra-group transactions are not in general treated as tax neutral intra-group transactions under Irish law.
- Example 3.2.7 – 2 of the OECD commentary is correct on its facts. Where the example was expanded to show that, overall, the taxable income of the lender increased over the expected duration of the financing arrangement then the relevant conditions to apply the restriction in Article 16(8) of the Directive would not be met.
- Revenue consider that the draft legislative approach included in the March feedback statement with regard to write-off of debts includes all aspects of Section 2.4 of the OECD Administrative Guidance (see sections XXX.(16) and (17) [Determination of the qualifying income or loss]; section XXX(3) [Adjusted covered taxes]; section XXX(5) [Total deferred tax adjustment amount])

Consequential Amendments

Practitioners were asked whether they had identified any further consequential amendments. In this regard the ITI referenced a previous point raised regarding the possible disclaiming of certain deductions.

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Action points	
Next Meeting The Department of Finance confirmed that the next meeting (25 July) would take place in Dublin Castle (Revenue offices). An agenda for the meeting would be circulated shortly, following the expected release of the next tranche of OECD administrative guidance.	
Signed	<i>Rory Noone</i>