Record of Meeting

Meeting	TALC BEPS Sub-Committee		
Location	Teams Meeting	**Meeting Date**	17 July 2026
ITI	Anne Gunnell; David Fennell; Gareth Bryan; Paul McKenna; Sybil O'Malley		
Accounting Bodies	Gearóid O'Sullivan; Paschal Comerford; Joe Walsh; Noreen Lehane		
Law Society	Philip Tully; Elaine Mooney		
Revenue	Jeanette Doonan (Chairperson); Lauren Carroll; John Quigley; Keith Noonan; David Macauley; Shane Daly; Michael Cantwell; Amy Brophy; Catherine Duffy; Irene Clancy; Niamh Dolan; Rory Noone (Secretary)		

Minutes

The Chairperson welcomed attendees.

1. **Minutes**

The draft minutes of the meeting of 27 February 2026 were agreed without amendment.

2. **International Tax Updates**

Tax Simplification Omnibus (Tax Omnibus)

This proposal seeks to simplify and amend several of the EU's corporate tax directives, and these are:

- Interest and Royalties Directive (IRD);
- Parent-Subsidiary Directive (PSD),
- Tax Mergers Directive (TMD),
- Dispute Resolution Mechanism Directive (DRMD),
- The Anti-Tax Avoidance Directives I and II (ATAD I and ATAD II);
- and the FASTER Directive.

Some of the key proposals include:

- Removing all withholding tax (WHT) on intra EU payments relating to interest, royalties and distributions. In the case of interest and royalties, the exemption from WHT is accompanied by a proposed defensive measure for outbound payments from the EU to certain jurisdictions.
- Measures to amend the Tax Mergers Directive to reflect recent amendments to the Company Law Mergers Directive.
- New R&D provisions to provide a standardised R&D incentive framework to act as a minimum standard across all Member States.
- Various amendments to the Interest Limitation Rule (ILR) to standardise certain provisions including the EBITDA threshold, the de minimis safe harbour and carry forward rules. A new proposal is included within the ILR to carve out third party loans from the rules.
- Amendment to the GAAR clarifying that it covers all direct taxes that a company is subject to, including withholding taxes.

- Measures to remove SMEs and Pillar Two companies from the scope of the CFC rules. There is also a proposal to make Model A CFC rules mandatory for all Member States.
- There is also Amendment to the anti-hybrid rules to remove the imported mismatch rule.
- Various amendments to the Dispute Resolution Mechanism Directive to address divergent interpretations, streamline procedures, and improve taxpayers' access to dispute resolution mechanisms.

Most of these measures are proposed to take effect from 2029, with certain provisions (including the WHT changes) deferred until 2037 to allow Member States and taxpayers time to adapt.

In terms of negotiating the file, the first council meeting on the proposal took place under the Irish presidency Monday 13th July and the next meeting on the file is on the 3rd of September. It is expected that there will be one meeting per month on the file. The Commission have indicated that they are aiming for adoption by the end of 2027, therefore it is not expected that Council negotiations on the file will be concluded during the Irish Presidency.

Recast of the Directive on Administrative Cooperation (DAC Recast)

- The DAC is the main piece of EU legislation governing administrative cooperation in direct taxation and it provides for automatic exchange of information (AEOI) that enables Member States' tax authorities to cooperate efficiently in combating tax fraud, evasion and avoidance.

- The scope of AEOI under the DAC has been expanded several times over recent years, to respond to emerging challenges and evolving economic realities. The frequent amendments to the DAC since 2011 and the absence of a codified legal text have made the framework more complex and less user-friendly.

- The Recast proposal consolidates the nine iterations of the DAC into a single, coherent legal instrument, with a view to strengthening legal certainty and improving interpretation and usability for all stakeholders across the Union.

- As with the Tax Omnibus, the stated objective of the proposal is to reduce the administrative burden for businesses and tax administrations and to streamline, simplify and clarify the legislation. Some of the proposals include:

    - Proposals around removing duplicative reporting obligations (i.e., (i) removing the obligation under DAC1 to report income from Life Insurance Products as this information is also reported under DAC2, (ii) merging the DAC4/DAC9 notifications into a single notification, and (iii) removing MNEs within the scope of Pillar Two reporting from the scope of DAC6 reporting);
    - Proposals to remove reporting requirements with limited added value for tax administrations (i.e., deleting the DAC6 "A" hallmarks that result in large scale reporting but provide little evidence of aggressive tax planning);
    - Proposals to increase reporting thresholds (i.e., increasing the monetary threshold in DAC7 to support the circular economy and remove occasional/private sellers from the scope of reporting); and

  - Proposals aimed at maintaining alignment with the OECD to avoid parallel reporting frameworks (i.e., incorporating measures agreed at OECD in respect of Model Reporting Rules for Digital Platforms (DAC7), and Pillar Two/Side-by-Side (DAC9)).

- Other proposed measures, not related to any particular DAC, include a Taxpayer Identification Number (TIN) Validation Tool and a commitment by Member States to refrain from introducing or maintaining any domestic reporting obligations which substantially duplicate information under the DAC.

Ireland's role in the DAC Recast process

- The aim is that Ireland will achieve political agreement in respect of the Recast proposal during its Presidency. From the Revenue side, our Automatic exchange of information area will chair the negotiations through EU Council *Working Party on Tax Questions* (WPTQ) meetings.

- There is an ambitious schedule and it is intended to hold nine WPTQ meetings. Two meetings have been held to date, at which the EU Commission has presented its proposal and the associated impact assessment in detail.

There will be opportunity for stakeholder engagement throughout the process via the Business Tax Stakeholders Forum (BTSF), and should stakeholders wish to provide feedback separately they may wish to contact the Department of Finance.

3. Loss-making Branches and Double-deduction Rules (Hybrid Rules)

In advance of the meeting both the ITI and Chartered Accountants Ireland (CAI) provided submissions.

CAI Submission

Background

At the TALC BEPS subcommittee meeting on 22 October 2025, CCAB-I agreed to provide feedback on the issue of loss-making branches and the double deduction rules in the context of non-trapped loss situations .

Loss-making branches and double deduction rules (hybrid mismatches)

The following example builds on example 5 (paragraph 5.1.5) in the guidance on the anti hybrid rules. B UK is a UK branch of AB IRE and incurs a loss in year one and has taxable profits in year two as outlined below. There are no plans to close the branch in the foreseeable future.

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Year 1

AB IRE has third party income of €3,000 and third-party expenses of €1,000 arising in head office in Ireland.

B UK, the UK branch of AB IRE, has third party income of €1,000 and third-party expenses of €1,500, giving rise to a loss in the branch of €500.

AB IRE is taxable on both its thirty-party income and the third-party income of B UK.

The guidance implies that as the branch loss is not a trapped loss (there are no plans to discontinue the trade of the branch) AB IRE is denied a deduction for the third-party branch expenses of €1,500 due to the double deduction rules. This appears to be the interpretation, notwithstanding that B UK did not take a deduction for expenses of €1,500 in year one due to a carried forward tax loss arising.

AB IRE –Taxable income €4,000. Deductible expenses €2,000. Taxable profits €2,000

B UK – Taxable Income €1,000. Deductible expenses €1,500.

Tax loss carried forward €500

Year 2

AB IRE has third party income of €4,000 and third-party expenses of €1,500 arising in head office in Ireland.

B UK has branch third party income of €1,500 and third-party expenses of €1,000.

AB IRE takes a tax deduction in respect of its expense and the third-party expenses of the UK branch and is taxable on both its third-party income and the third -party income of B UK. B UK's third-party income is dual inclusion income and no mismatch arises.

AB IRE –Taxable Income €5,500. Deductible expenses €2,500

B UK – Taxable Income – €1,500. Deductible expenses €1,000. Tax loss carried forward €500. Taxable profits €0.

When considering the two years together, the total third-party income of the branch is dual inclusion income and therefore no mismatch arises. However, a deduction for third party branch expenses in year one of €500 has been denied to AB IRE.

Request

CCAB-I seeks confirmation on how AB IRE can claim a deduction for the branch's disallowed year-one expenses of €500, given that no mismatch existed by the end of year two.

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Revenue made the following comments on the example provided in the CAI submission:

- In line with the existing interpretation, in year 1, the amount of the branch loss of €500 is denied in the Irish head office due to the insufficiency of dual inclusion income. This amount is carried forward under section 835AV TCA 1997.

- In year 2, the Irish head office can utilise the €500 carried forward against the branch profit of €500 on the basis that this constitutes dual inclusion income.

Action Point: CAI to share Revenue's comments with CAI representatives who have been considering the issue.

ITI Submission

Matters arising from the TALC BEPS Sub-committee Meeting on 22 October 2025 Loss-making Branches and Double-Deduction Rules (Hybrid Rules)

At the TALC BEPS meeting last October, an example provided by the Institute was discussed in the context of the Tax and Duty Manual (TDM) 35C-00-01 (Hybrid Mismatches). This example was similar to the example in the TDM where an Irish company has a UK loss making branch.

The branch has income of €50 and expenses of €90 giving a loss of €40. The TDM suggests that where a loss is a trapped loss then there is no need to neutralise any double deduction mismatch, but it does not expand on what should be done where losses have been built up over a number of years.

Example:

• Years 1 to 3: The UK branch incurs a loss in total of €1,000.

• In Year 4, the UK branch activities are shut down and the losses from prior years are effectively trapped. The TDM would suggest that there is economically no mismatch outcome and there is no need to neutralise is. This raises the question of whether the prior year losses themselves, which may have been neutralised, also need to be remedied.

• If this is the case, then there is nothing in legislation to permit this unless Revenue's view is that section 959V TCA 1997 would allow a taxpayer to amend the returns previously filed on the basis that a mistake had been made or to claim relief for the expenses incurred forming part of the prior year loss. We believe this makes sense but we would welcome confirmation from Revenue in this regard.

At the October meeting, Revenue expressed their view that there is no basis to amend a return in these circumstances under section 959V TCA 1997 because there had been neither an error nor mistake in respect of the years filed and there had been a correct denial of a deduction in those circumstances.

Revenue noted their openness to consider the matter further if stakeholders could clarify the interpretation and position that arises generally in practice. We have set out our response below.

ITI Response

In our view, a question of whether or not a double deduction mismatch has arisen in a situation where a company incurs a loss in excess of the income against which it can be offset in the year in which the losses incurred should be assessed with reference to when (and if) the loss is set off against profits in a subsequent tax year.

It should be considered that the right to a deduction for unused losses incurred in prior years is not something available under first principles but rather is a matter which has been legislated for on a case-by-case basis. Section 396 TCA 1997 provides a basis for the carrying forward and utilisation of trading losses and section 399 TCA 1997 provides a basis for the carry forward and utilisation of Case IV and Case V losses. However, absent these legislative provisions, there is no basis to take a deduction for a loss incurred in one period against income arising in the next.

Indeed, this is the situation for Case III losses (other than those relating to a foreign trade). Take the above example and consider that if the income concerned was taxable under Case III (other than as a trading activity) there would still be a loss for Irish tax purposes and it might be capable of being offset against other Case III income in that tax year; however, any excess could not be used to offset against Case III income in future years.

It is possible that the taxation rules in the UK might allow for the utilisation of the equivalent loss arising in the branch in current and future years. In such a situation it would be completely inequitable to suggest that there was a double deduction mismatch in respect of that loss where there was no basis to carry it forward in Ireland.

It follows that the more appropriate way to assess the question of whether a double deduction outcome has arisen is to do so with reference to the tax year of utilisation of the losses rather than the period in which the losses were created. (Clearly, it would be inappropriate to consider a deduction to have been taken in both the period when the loss was created and the period when the loss was used, as the same loss cannot be deducted twice.)

Section 396(1) TCA 1997 dealing with trading losses, and section 399(1) TCA 1997 dealing with Case IV losses, both refer to the "set off" of losses while section 399(2) TCA1997 dealing with Case V losses, uses both "deduction" and "set off". As a general matter, in our view "set off" is synonymous with "deducted" but in any event both with the directive and the Irish legislation use broad definitions of a deduction for the purposes of the anti-hybrid rules. In particular, section 835Z TCA 1997 provides:

"deduction" in respect of a payment, or part thereof, refers to an amount—

> ***(a) which may be taken into account as an expenditure or expense,***
> ***(b) in respect of which an allowance for capital expenditure may be made, or***
> ***(c) which may otherwise be deducted, allowed or relieved,***
>
> ***in computing the profits or gains on which tax falls finally to be borne for the purposes of domestic tax or foreign tax;***

The above references to amounts "deducted, allowed or relieved" is clearly wide enough to capture the use of losses carried forward.

Moreover, the directive makes specific reference to losses (emphasis added):

> ***'double deduction' means a deduction of the same payment, expenses <u>or losses</u> in the jurisdiction in which the payment has its source, the expenses are <u>incurred or the losses</u> <u>are suffered</u> (payer jurisdiction) and in another jurisdiction (investor jurisdiction). In the case of a payment by a hybrid entity or permanent establishment the payer jurisdiction is the jurisdiction where the hybrid entity or permanent establishment is established or situated;***

In conclusion, we believe the TDM should be updated to make it clear that where a taxpayer incurs a loss which is, in principle, deductible in two jurisdictions but is an excess of the taxable income in either or both jurisdictions in respect of that particular tax year, then the assessment of whether or not a double deduction mismatch has arisen should be made with reference to the utilisation of those losses in the two jurisdictions concerned (noting that the utilisation may occur in different tax years).

It follows that in a situation where losses carried forward are unused in one jurisdiction (e.g., due to the closure of a foreign branch before it becomes profitable), no mismatch should occur in respect of those unused losses.

It was noted that the ITI interpretation focuses on the timing of the deductibility of a branch loss (i.e. whether a branch loss should be considered deducted at the point of the utilisation of the loss) and it is framed in the context of the issue of trapped losses. Revenue sought to understand whether the ITI had considered how the interpretation would apply in a non-trapped losses scenario. In particular, even where the timing of the deduction of the branch loss is pushed out to its utilisation against future branch profits, would the ITI have a concern that a technical double deduction mismatch outcome may still arise by reference to how the Irish head office has used the amount of the branch losses in the interim period?

A brief discussion then took place regarding the issue and the concern regarding non-trapped losses.

Action Point: It was agreed that the ITI would provide a further submission on the non-trapped losses scenario.

4. <u>Pillar Two</u>

In advance of the meeting the ITI provided two submissions.

The first of which contained a number of items some of which are proper to, and have been responded to by, the Pillar Two Administration Subgroup.

Accordingly, from the submission on 12 June 2026 only question 5 is being addressed at this meeting.

<u>ITI Submission (12 June 2026)</u>

5. Update to guidance in TDM Part 04a-01-02 on Section 111AB TCA 1997

The ITI noted that the updates to TDM Part 04a-01-02 published in January included guidance on section 111AB TCA 1997. The previous version of the guidance noted that a decrease in covered taxes that related to a pre-transition fiscal year should be excluded from the computation of Adjusted Covered Taxes. However, the update made to the TDM now limits the scope of this guidance to a "decrease in current tax expense due to the refund of an overpayment of tax".

The ITI's understanding is that this update was made following engagement at the BEPS TALC Sub-Committee meeting in October 2025; however, the query raised in the October meeting related to Revenue guidance issued in respect of the Transitional CbCR Safe Harbour provisions in section 111AJ TCA 1997 (whereby the previous version of the guidance provided for an equivalent adjustment to the computation of Simplified Covered Taxes).

As previously outlined, while we understand why Revenue's guidance on the Transitional CbCR Safe Harbour (in Section 9.8 of the TDM) was updated, we would question the need for the update to also be made to the guidance on section 111AB (Section 8.9 of the TDM) and also the manner of the update.

Firstly, we consider the language in the TDM is overly narrow even in respect of current taxes as the phrase "decrease in current tax expense due to the refund of an overpayment of tax" would appear to be limited to situations where current tax had actually been paid and was refunded. This would not seem to cover a situation where, for example, a company booked a current tax expense in its financial statements but when it finalised and filed its tax return had a lower liability and, consequently, may not have had to actually make the full payment. Such a company would, in the following year, have a reversal of that prior year over-accrual for current taxes but may not receive a refund where the local rules governing the timing of tax payments were such that the final payment is made after the date the company finalised its financial statements.

We do not think that the GloBE outcome should be affected by differences in local rules governing the timing of current tax payments and we ask that the guidance is amended so that it is not limited to refunds of current taxes but also covers any decrease in current taxes irrespective of their cause. ***(continued below)***

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Revenue Response:

TDM 04A-01-02, with regard to section 111AB post-filing adjustments and tax rate changes, states:

> *"A decrease in covered taxes, relating to a decrease in current tax expense due to the refund of an overpayment of tax, recorded in the financial accounts of a constituent entity in relation to a pre-transition fiscal year, (i.e. a fiscal year prior to the first fiscal year that the MNE Group of large-scale domestic group comes within the scope of the GloBE Rules in respect of that jurisdiction), should be excluded from the calculation of the ETR and top-up tax in the fiscal year in which the adjustment arises (i.e. the current fiscal year). This is on the basis that the adjustment relates to a fiscal year to which Part 4A Taxes Consolidation Act 1997 does not apply.*
>
> *For example, on the conclusion of a review of Company A's tax affairs in 2024 for the year ended 31 December 2023 it was discovered that corporation tax had been overpaid by €100,000. The amount was recorded in Company A's financial statements for the year ended 31 December 2024 as a reduction to current tax expense. As the reduction to covered tax recorded in the year ended 31 December 2024 relates to a pre-transition fiscal year, the reduction is excluded from the calculation of the ETR and top-up taxes for the fiscal year ended 31 December 2024 for the jurisdiction in which Company A is located."*

The above guidance is based on a confirmation received from the OECD Secretariat that tax payments are excluded from the ETR computation. Specifically, taxes paid on income that accrued for accounting purposes in a pre-transition year are excluded from Adjusted Covered Taxes under Article 4.1.3(a) of the GloBE Model Rules because that income is excluded from the computation of GloBE Income (or Loss).

The above confirmation only deals with refunds and payments of tax in relation to a pre-transition year rather than over/under accruals relating to a pre-transition year that are reversed in a post-transition year. However, Revenue is prepared to accept that similar principles apply, in that increases and decreases of current taxes accrued in a post-transition year on income that accrued for accounting purposes in a pre-transition year are excluded from adjusted covered taxes.

ITI Submission Q5 (continued)

In relation to the question of whether the guidance should also refer to deferred tax, we note the response given at the last meeting, including the reference to the OECD Commentary on Article 9.1.1 (i.e., "When determining the Effective Tax Rate for a jurisdiction in a Transition Year, and for each subsequent year, the MNE Group shall take into account all of the deferred tax assets and deferred tax liabilities reflected or disclosed in the financial accounts of all of the Constituent Entities in a jurisdiction for the Transition Year") and the conclusion that, therefore, it is not appropriate to exclude deferred tax debit or credits in a period subsequent to a transition year, with exceptions only for taxes that are not covered taxes, uncertain tax positions and amounts that are to be restricted related to governmental arrangements etc. that are above the grace period limitation amount.

While we do not disagree with the general point made in the Commentary in relation to Article 9.1.1, we do not think it was intended that it should lead to a situation where a decrease in covered taxes (be they current taxes or deferred taxes) arising from a recalculation of covered taxes pertaining to pre transition year should have a bearing on the computation of the effective tax rate of a company or group under the GloBE rules. Indeed, we do not see any obvious rational basis to differentiate between recalculations of current taxes or deferred taxes.

It is worth noting that whether a particular liability represents a current tax or deferred tax will often be driven by particular local legislative choices such as the timing and spread of tax depreciation, existence of tax losses forward etc. We do not think that the GloBE outcome should be affected by differences in local rules governing the timing of tax reliefs.

In this regard, we note that the Australian Tax Office has published guidance which agrees with our view that exclusions in respect of decreases of pre-transition taxes should apply to all covered tax movements (current and deferred). That guidance specifically clarifies that, if the decrease relates to deferred taxes, a corresponding adjustment needs to be made to the opening deferred tax amount brought in on transition under Article 9.1.1 of the GloBE Rules. We believe this is the better approach and we ask that Revenue reconsider the guidance in this regard.

A link to the Australian guidance is available here: Specific issues for Pillar Two | Australian Taxation Office - https://www.ato.gov.au/

An extract of the relevant sections is included below:

> *Decrease to prior year covered taxes*
>
> *The treatment of adjustments which lead to a decrease, other than an immaterial decrease, in covered tax liabilities for a prior fiscal year depends on whether the prior fiscal year in question is a pre- or post-GloBE fiscal year.*
>
> *Prior fiscal year is a pre-GloBE fiscal year*
>
> *Where a decrease in covered taxes relates to a fiscal year prior to the application of the global and domestic minimum tax, no adjustments in the prior year are required. This means that there should not be any additional current top-up tax arising from recalculations of effective tax rates of pre-GloBE fiscal years.*
>
> *However, relevant adjustments must still be made to the current year adjusted covered taxes. For instance, where the sum of the adjustments to the liability for covered taxes for the prior year is a decrease, other than an immaterial decrease covered by an election, the relevant constituent entities are not required to recalculate the prior year adjusted covered taxes. They should still include a corresponding increasing adjustment in calculating the current year's adjusted covered taxes where there has been a decrease to the income tax expense of the current fiscal year.*

Deferred taxes and pre-GloBE fiscal years

Where the prior year adjustment relates to deferred tax expense, resulting in a decrease in income tax expense relating to a pre-GloBE fiscal year, an increasing adjustment should be included in calculating the current fiscal year's adjusted covered taxes. However, this prior period adjustment and its impact on the reversal of a deferred tax liability or deferred tax asset should be taken into account when determining the amount of the deferred tax liability or asset to be recognised in the transition year and any subsequent fiscal year.

Revenue Response:

Revenue is considering the above position regarding intended treatment of PYAs as they relate to a deferred tax position at the beginning of a transition year, based on the Model Rules and Commentary. The general rule regarding deferred tax positions and transition years in Article 9.1.1 is that:

> *"When determining the Effective Tax Rate for a jurisdiction in a Transition Year, and for each subsequent year, the MNE Group shall take into account all of the deferred tax assets and deferred tax liabilities reflected or disclosed in the financial accounts of all of the Constituent Entities in a jurisdiction for the Transition Year. Such deferred tax assets and liabilities must be taken into account at the lower of the Minimum Rate or the applicable domestic tax rate."*

The OECD Commentary to Article 9.1.1 does not make any reference regarding adjusting the deferred tax assets and liabilities reflected or disclosed in the financial accounts for the transition year for any prior year adjustments which takes place in a post transition fiscal year, but that is related to a pre-transition fiscal year. Therefore, a number of alternative interpretations of how the Article is to be applied in this scenario.

Update: Following the meeting, Revenue discussed this issue with the Australian Tax Office (‘ATO’). Following that call, Revenue is considering this matter, including whether an update to the TDM is appropriate.

<u>ITI Submission (29 June 2026)</u>

<u>Elections for MOSGs/MOCEs & JVs</u>

There are a number of elections which, if made, apply to all entities in the jurisdiction or group. For example, the election in section 111P(6) TAC 1997 to move to a realisation basis in respect of assets which are subject to fair value or impairment accounting is made by a filing constituent entity but is stated to apply to all constituent entities located in the jurisdiction.

A question has arisen as to how these jurisdiction-wide or group-wide elections should be applied in the case of MOSGs/MOCEs and JVs. While worded slightly differently, the respective rules for both MOSGs/MOCEs and JVs essentially say that their top-up tax should be computed separately from the group of which they are a part:

For MOSGs / MOCEs, section 111AH says:

(2) (a)The calculation of the effective tax rate and the top-up tax for a jurisdiction, with respect to members of a minority-owned subgroup, shall apply as if each minority-owned subgroup was a separate MNE group or large-scale domestic group.

…

(3) (a)The effective tax rate and top-up tax of a minority-owned constituent entity that is not a member of a minority-owned subgroup shall be calculated on an entity basis.

For JVs, section 111AO says:

(4) This Part shall apply to the calculation of the top-up tax of a joint venture group for a fiscal year as if the joint venture and its joint venture affiliates were constituent entities of a separate MNE group or large-scale domestic group and the joint venture was the ultimate parent entity of that group.

A question arises as to whether the MOSG/JV permit separate elections to be made for the MOSG/JV since separate calculations are required. A requirement/ability to make separate elections for MOSGs/JVs appears to also exist within the mechanics of the OECD GIR XML schema and OECD GIR guidance, however, the wording included in these documents is somewhat ambiguous.

We think it is important to resolve this ambiguity particularly if some taxpayers are assuming that either:

- *an election made by the filing entity for the "main" group also applies to an MOSG/MOCE or JV (i.e. no separate election for them) but Revenue's view is that a separate election is required; or*

- *a taxpayer is assuming that separate elections are required and has made an election on the assumption that it would only apply to the "main" group or an MOSG/MOCE or JV and has prepared the other returns based on no election being made.*

On balance, we think separate elections are likely required for MOSGs/MOCEs and JVs on the grounds that (1) the purpose of having separate computations for these entities is because they are partly owned by third parties and therefore, should not have their top-up tax liability affected by decisions made in the "main" group of which they are apart; and (2) section 111P TCA 1997 is a general provision whereas sections 111AH and 111AO TCA 1997 are specific provisions.

We welcome a discussion with Revenue on this matter.

Validity of Elections

Section 111AAAD TCA 1997 deals with elections and provides that elections are made in the top-up tax information return (TIR). The wording of the legislation might be interpreted as indicating that unless the TIR is filed by the specified return date then any elections it contains are invalid.

While we welcome Revenue's eBrief 109/26 published on Friday, 26 June, which confirms that penalties will not be applied in situations where there has been an extension to the filing date for the TIR in another jurisdiction, members remain concerned that the eBrief did not specifically address the validity of elections in those circumstances or in circumstances where the TIR is filed late.

We note there is nothing in the GloBE rules which indicates that an election should be denied simply because a TIR/GIR is filed late and we understand that many other jurisdictions have not drafted their legislation in a similar manner.

Members would welcome clarification from Revenue as to whether its interpretation of the legislation is such that an election can be denied if the TIR is late. If so, we would recommend that the legislation is amended to align it with the GloBE rules.

Level of Penalties for TIR/GIR Returns and Filing Obligations

As mentioned above, we welcome the clarification from Revenue in eBrief 109/26 that penalties will not be applied to the TIR/GIR in certain circumstances subject to specific conditions. However, members remain generally concerned about the level of penalties imposed for TIR/GIR return and filing obligations. We previously detailed these concerns in a paper to the Department of Finance on 11 February, which we shared with Revenue in advance of the February TALC BEPS meeting (see Appendix). We would welcome a discussion with Revenue at the next TALC BEPS meeting on the matter of penalties.

Appendix

Level of Penalties for GIR Returns

Under Section 111AAAB(2) TCA 1997, failure by a constituent entity to file a GloBE Return (i.e., an IIR Return, UTPR Return or QDTT Return) by the specified return date will give rise to a penalty of €10,000. Where a QDTT Group and an UTPR Group is formed – the penalties for non-filing of each of these returns is applicable to the filing entity only. Likewise, with respect to the IIR return, the penalty is applicable to the filing entity only.

By way of contrast, under Section 111AAAB(1) TCA 1997, failure by a constituent entity to file the Global Information Return (GIR) (or Notification of Filer as appropriate) on time will give rise to a penalty, for each and every constituent entity, of €10,000 for each complete month of delay subject to a cap of 48 months. There is no equivalent provision to that for GloBE Returns where, in the case of a QDTT Group/UTPR Group the penalty applies only to the filing entity).

The impact of this could be very significant for groups with a large number of entities. For example, an aircraft leasing group with, say, 200 Irish SPVs which have formed QDTT and UTPR groups. The total penalty for late filing of a GloBE Return will be €30,000 regardless of the length of the period of delay. By contrast, the penalty for late filing of the GIR/Notification of Filer will equate to a monthly penalty of €2 million for each complete month of delay subject to a cap of €96m. This is the case even if a Designated Local Entity has been appointed to file the GIR/Notification of filer on behalf of all Irish constituent entities in the group.

The OECD Administrative Guidance on penalties provides as follows (emphasis added):

Article 8.1.8 requires that the laws of each jurisdiction with respect to penalties, sanctions, and confidentiality of the returns (including the information in the returns) shall also apply to the GloBE Information Return. In the case of penalties and sanctions, this means that domestic penalties and sanctions would apply if the GloBE Information Return is not submitted on time or if there is any false or incomplete information. Jurisdictions are free to extend existing penalties or sanctions (as well as any penalty or sanction mitigation provisions) or to create new ones for the GloBE Information Return. New penalties and sanctions in respect of the GloBE Information Return should be commensurate with penalties or sanctions in respect of other information returns and other information return filing obligations in the jurisdiction."

Further, Article 46 of the EU Directive provides as follows (emphasis added):

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive, including those pertaining to the obligation of a constituent entity to file and pay its share of top-up tax or to have an additional cash tax expense, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

As a general matter, in our view, the €10,000 per month penalty imposed for late filing of a GIR/Notification of Filer is disproportionate to, and not commensurate with, the penalty level applicable in group filing scenarios for the late filing of GloBE Returns. No tax is due in connection with the filing of the GIR and if a GloBE Tax (meaning IIR top-up tax, UTPR top-up tax, or domestic top-up tax as the case may be) is underpaid there are dissuasive tax penalties applicable to same (including surcharges for late filing of GloBE Returns if applicable, late payment interest and tax geared penalties). However, the level of penalties that a group might suffer due to the per entity liability illustrated above is extremely punitive and clearly excessive.

We request that the GIR/Notification of Filer late filing penalties, which are particularly severe and excessive in the case of a group with multiple Irish constituent entities be reviewed.

We recommend that the legislation be amended to provide for an outcome similar to the penalties applicable in group filing scenarios for the late filing of GloBE Returns; and an overall cap be placed on the level of penalties imposed on Irish constituent entities of an MNE Group for the late filing of GloBE Returns (irrespective of how many entities there are and whether or not they have formed a QDTT Group or UTPR Group).

Record of Meeting

GIR Filing Obligations

Under Section 111AAI(1) TCA 1997 the GIR must be filed in Ireland by each Irish constituent entity.

By way of exception to this, each Irish constituent entity does not have to file the GIR if:

- *an appointed designated local entity files the GIR on or before the applicable return date on behalf of each constituent entity under section 111AAI(2) TCA 1997; or*

- *the UPE or a designated filing entity, is located in a jurisdiction that has a competent authority exchange agreement in effect with Ireland for that fiscal year, files a correct and complete GIR in that jurisdiction on or before the applicable return date (section 111AAI(5) TCA 1997).*

Where a designated local entity or the UPE/designated filing entity files, the Irish constituent entities must still file a Notification of Filer with the Revenue Commissioners outlining certain details of the entity who filed the GIR.

Under section 111AAAB(1) YCA 1997, failure by a constituent entity, designated local entity, UPE or designated filing entity (as the case may be) triggers a penalty for each and every constituent entity, of €10,000 for each complete month of delay subject to a cap of 48 months.

Thus, if a designated local entity or the UPE/designated filing entity files a GIR one day late, no penalty should apply as no complete months will have elapsed. However, there appears to be an unintended drafting issue with the relevant legislation whereby in such a circumstance the constituent entities concerned could still be subject to monthly penalties.

The abovementioned exceptions whereby a constituent entity does not have to file a GIR if a designated local entity files (section 111AAI(2) TCA 1997) or the UPE/designated filing entity files (section 111AAI(5) TCA 1997) are framed as only applying where the designated local entity or the UPE/designated filing entity files the GIR on or before the specified return date. Consequently, if the designated local entity or the UPE/designated filing entity files the return late (even by one day), technically the Irish constituent entities are not exempt from having to file a GIR.

Without that exemption applying then even where the designated local entity or the UPE/designated filing entity files the return late, the obligation on the constituent entities to file their own GIR continues and, as a result, monthly penalties continue to apply under section 111AAAB(1) TCA 1997. We consider this to be an unintended outcome.

Indeed, the EU Directive at recital 22 provides:

The primary responsibility of filing the top-up tax information return should lie with the constituent entity itself. A waiver of such responsibility should however apply where the MNE group has designated another entity to file the top-up tax information return. It could be either a local entity, or an entity from another jurisdiction that has a competent authority agreement in place with the Member State of the constituent entity.

Article 44(2) of the EU Directive provides:

A constituent entity located in a Member State shall file a top-up tax information return with its tax administration in accordance with paragraph 5. Such return may be filed by a designated local entity on behalf of the constituent entity.

Article 44(3) of the EU Directive provides:

By way of derogation from paragraph 2, a constituent entity shall not have the obligation to file a top-up tax information return with its tax administration if such return has been filed, in accordance with the requirements set out in paragraph 5, by: (a) the ultimate parent entity located in a jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Member State in which the constituent entity is located; or (b) the designated filing entity located in a jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Member State in which the constituent entity is located.

We request that the legislation be amended to provide that if the GIR is filed in an appropriate jurisdiction, this would satisfy the Irish filing requirements. This could be achieved by amending both sections 111AAI(2) and 111AAI(5) TCA 1997 to remove the references to filing by the specified return date.

Penalties for late filing would continue to apply so long as the GIR is not filed but the exemption for the Irish constituent entities from having to file their own GIR would apply even if the return is filed late by the designated local entity or the UPE/designated filing entity.

Revenue Response:

Elections for MOSGs/MOCEs & JVs

Revenue considered the template GIR and the OECD guidance in respect of same published in January 2025:

- Section 3 of the GIR is to be completed on a sub-group basis. The blue box on p22 of the paper version of the GIR states that "The Filing Constituent Entity shall complete Section 3 on a jurisdictional basis, for each jurisdiction (or subgroup, where relevant) where exceptions to the GloBE computation do not apply.
- This is repeated in the first line of the blue box on p60. It goes on to say "The Filing Constituent Entity is therefore required to report the relevant information on a jurisdictional basis. Under specific circumstances, the ETR and Top-up Tax computation shall be performed on a sub-group basis. Section 3.1 therefore requires the identification of such subgroups."
- The note to box 3.1.2 of the GIR on p61 of the guidance states in the last line "The Filing Constituent Entity shall report the relevant information in Sections 3.2 for each subgroup". Section 3.2.3 contains the boxes for the jurisdictional elections.

As noted in the ITI submission, the rules for MOSGs/MOCEs and JVs require that their top-up tax should be computed separately from the group of which they are a part and are in effect 'separate jurisdictions'.

Record of Meeting

Taking all of the above into account, Revenue would agree with the view that for jurisdictional elections, separate elections are required for subgroups, such as for MOSGs/MOCEs and JVs, from the elections made for the 'main' CEs in the MNE group.

Validity of Elections

eBrief 109/26 referenced the circumstances where *"certain jurisdictions where groups intend to complete a central filing have indicated that no late filing penalties will be charged if the submission of a TIR has been made by a certain date after the specified return date, that is a date which is later than 18 months following the end of the fiscal year."*

Similar to the position outlined in the eBrief, Revenue is prepared to accept that where:

- a correct and complete TIR is filed in a jurisdiction on behalf of a constituent entity located in Ireland on or before the earlier of

  (i) the date to which penalties will not apply in that jurisdiction, and
  (ii) 30 September 2026, and

- a Notice of Filer has been submitted to Revenue on or before the specified return date,

then an election contained within the TIR will be treated as having been made on or before the specified return date for the relevant fiscal year.

Regarding the filing of a late TIR; section 111AAAD(1) is clear that an election, and a withdrawal of an election, must be made on a TIR delivered on or before the specified return date for the fiscal year in respect of which the election or the withdrawal relates.

Section 111AAI(3)(d) is clear that TIR must contain a record of elections made.

The legislation is based on the EU Minimum Tax Directive. Article 44 – Filing Obligations of the Directive states:

> *"5. The top-up tax information return shall be filed in a standard template and include the following information with respect to the MNE group or large-scale domestic group:*
>
> *(d)* ***a record of the elections*** *made in accordance with this Directive."*

In addition, Article 44 clarifies when the TIR must be filed which is reflected in the *"specified return date"* definition in section 111AAF.

Revenue's view is there is nothing in the GloBE rules or Directive that provides that an election can be made at any point. Such an approach would be unmanageable, given that TIR's need to be exchanged etc. Therefore, there needs to be some point by which elections must be made.

Record of Meeting

The issue of amending TIRs was considered at the Pillar Two Administration Subgroup meeting on Tuesday (14 July 2026) and it was clarified that:

- Where a TIR is being amended for a matter unrelated to an election, the amendment should not invalidate elections made in a TIR filed on time.
- However, where the TIR is being amended for a matter related to an election, the taxpayer/agent should write to Large Corporates Division ('LCD').

The starting position is that if a TIR is filed late, then the elections will not be valid. However, where a TIR has been filed late (for example, due to exceptional circumstances) and this may impact the validity of elections, taxpayers / agents should also contact LCD and they will consider the matter on a case by case basis.

A discussion then took place.

- The ITI noted that since the issuance of eBrief 109/26 that other jurisdictions are willing to accept returns after 30 September.

  Revenue confirmed that it was aware of this, but no decision has been made which would impact eBrief 109/26.

- Revenue confirmed that DFIN will be in contact with the Business Tax Stakeholders Forum regarding technical queries on the implementation of the January (2026) Administrative Guidance (side-by-side package).

- ITI raised a query on the amount of nil top-up tax returns filed and whether the obligation to file could be waived in the case of nil returns.

  Revenue stated such an approach would require legislative change and would be a policy matter for the Department of Finance to consider. From a Revenue perspective, there are benefits to receiving nil returns as it indicates that a taxpayer has considered their position and is self-assessing a nil liability which then prevent follow up queries from Revenue where a return has not been filed. There is also a group filing option for domestic top-up tax and UTRP top-up tax which should mitigate the issue.

<u>Any other business</u>

The Chairperson indicated that the next meeting of the Sub-Committee would likely be scheduled for October after the publication of the Finance Bill.