Outbound payments defensive measures

Part 33-05-01

This document should be read in conjunction with Chapter 8A of Part 6, Chapters 1 and 2 of Part 8 and Chapter 5 of Part 33 of the Taxes Consolidation Act 1997

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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1 Executive summary

Finance (No.2) Act 2023 inserted Chapter 5 'Outbound payments defensive measures' in Part 33 of the Taxes Consolidation Act 1997 ('TCA 1997').

The Chapter provides for the implementation of defensive measures by way of withholding taxes, on outbound payments of interest and royalties, and on the making of distributions, in certain circumstances. The measures apply to payments or distributions by Irish resident companies, or payments by Irish branches of non-resident companies, to associated entities who are resident, or situated, in specified territories. Where this document refers to an Irish resident company paying interest or royalties, it should also be read as including Irish branches of non-resident companies, as required.

The aim of these defensive measures is to prevent double non-taxation.

Chapter 5 is comprised of the following sections:

- 817U Interpretation
- 817V Payment of interest
- 817W Payment of royalties
- 817X Making of a distribution
- 817Y Reporting

2 Introduction to outbound payments defensive measures

The measures contained in Chapter 5 of Part 33 remove certain exclusions from the obligation to deduct withholding taxes on outbound payments of interest, royalties, and on the making of distributions to an associated entity who is resident, or situated, in certain territories.

This is coupled with the disapplication of exclusions from the charge to income tax for the non-Irish resident associated entity who receives the payment or distribution.

In the case of the payments of royalties, the underlying charge to income tax for those payments, in the hands of recipients, has been expanded to match the withholding tax measure.

The territories within the scope of the measures are those included in Annex I of the EU list of non-cooperative jurisdictions for tax purposes and 'no-tax' and 'zero-tax' territories (together referred to as 'specified territories').

The measures will not apply in specific circumstances where double non-taxation should not occur. These circumstances are considered in more detail throughout this manual.

Where a payment or distribution is within the scope of the defensive measures, then legislation imposing withholding tax will apply.

Withholding tax at 20% applies to payments of interest and royalties and at 25% to distributions made.

3 Significant concepts and definitions

Section 817U provides the definitions required for the operation of the Chapter. Some familiar definitions, which are referenced in other sections of TCA 1997, are included in this section. Several new definitions are also included, which are required so that the measures operate as intended. These are set out below.

3.1 Specified territory

A 'specified territory' means a 'listed territory' or 'zero-tax territory'.

3.2 Listed territory

'Listed territory' means a territory listed on Annex I of the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes. This is a common list agreed by all Member States of jurisdictions that do not comply with international best practices on tax, based on agreed criteria[1].

3.3 Zero-tax territory

'Zero-tax territory' means a territory which:

- does not generally subject an entity, whether on a remittance basis or otherwise, to a tax on income, profits and gains, or
- one which generally subjects entities to tax at a rate of zero per cent on income, profits and gains.

Where a territory does not have tax law with regard to the income, profits and gains of entities, then it will be considered a zero-tax territory. A territory which generally subjects an entity to a tax at a rate greater than zero per cent on its profits or its income or its gains will not be considered a zero-tax territory.

The definition references the tax regime of a territory rather than how a foreign tax regime treats, or views, any particular entity.

Territories who have, as a feature of their tax regime:

- a participation exemption regime for dividends,
- a remittance basis of taxation,
- a territorial system of taxation,

are not, solely by reason of those features, a 'zero-tax territory'.[2]

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[1] For further information refer to: https://www.revenue.ie/en/companies-and-charities/international-tax/eu-list-of-non-cooperative-jurisdictions/index.aspx

[2] Section 6 of Tax and Duty Manual (TDM) Part 08-03-06 provides further information on remittance basis and territorial systems of taxation.

In addition, the definition does not include territories with tax regimes that generally apply tax at a rate greater than zero percent but who have, as a feature of their tax regimes, free-trade zones and special economic zones. Similarly, territories that generally apply a tax at a rate greater than zero percent on income, profits and gains, but which apply a relatively low de minimis limit before the tax will apply, will not solely by reason of that feature be regarded as a 'zero-tax territory'.

When assessing whether a territory is a zero-tax territory, it shall not be considered a zero-tax territory merely because it treats certain entities as tax transparent. The application of the defensive measures where payments are made to tax transparent entities is dealt with in section 817U(6), discussed in section 5.1.

3.3.1 Example – introduction of a tax regime by a zero-tax territory

Territory A applies a corporate income tax at a rate above zero percent on income received in accounting periods commencing on or after 1 January 2025.

An Irish resident company pays interest to a company that is resident in Territory A in February 2025, but the recipient company is not taxed on the interest income as its financial year-end date is 31 March 2025 (and so it is not subject to tax at a rate above zero percent until its next accounting period which commences on 1 April 2025).

As Territory A does not generally subject entities with an accounting period beginning before 1 January 2025 to a tax, it is regarded as a zero-tax territory in respect of companies with accounting periods beginning before 1 January 2025.

3.3.2 Example – introduction of a new corporate tax regime in response to OECD global minimum tax rules

Territory B generally does not apply a corporate income tax to companies but applies a corporate income tax rate at 15% to companies that are part of a large multinational group with annual group revenue exceeding €750 million. An Irish resident company that is part of a large multinational group pays interest to another group company that is resident in Territory B.

Territory B is a zero-tax territory as it generally subjects entities to tax at a rate of zero per cent on income, profits and gains, and only applies a tax at a rate greater than zero percent in specific circumstances where those entities are part of a large multinational group with annual group revenue exceeding €750 million.

However, the payment may be an excluded payment - see section 3.8 below.

3.4 Associated entities

Two entities will be associated where one entity is directly or indirectly entitled to more than 50% of the ownership rights, voting rights, assets or profits of the other entity, or has definite influence in the management of the other entity.

In addition, two entities will also be associated where there is a third entity in respect of which the first two mentioned entities are associated.

Two entities will not be considered as associated entities for the purposes of the defensive measures solely by the fact that their shares are held on trust by the same nominee or trustee, where there is no other association, as defined in section 817U(3), between those entities.

3.4.1 Example - associated entities (1)

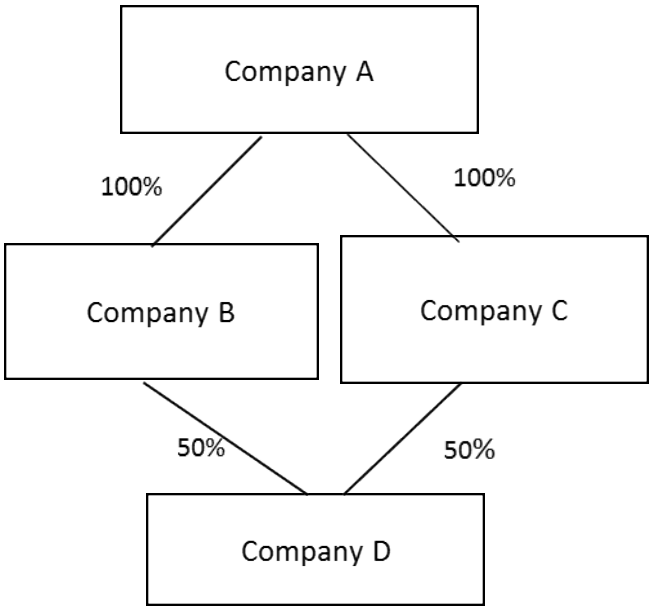

Figure 1: Example 3.4.1 associated entities (1)

Company A owns 100% of the issued share capital of Company B and Company C. Company B and Company C each own 50% of the issued share capital of Company D. All companies in this example are associated entities in accordance with section 817U(3)(e) TCA 1997 as Company A is an associated entity of Company B, and Company C (through direct ownership of their issued share capital) and Company D (through indirect ownership of its issued share capital).

3.4.2 Application of association test to Irish partnerships

Entities, such as Irish partnerships, that do not have separate legal personality typically cannot own assets. Irish partnership property is, for example, held by the partners as tenants in common. Under Irish partnership law, partners are not legally entitled individually to exercise proprietary rights over any of the partnership assets but rather they are collectively entitled to each and every asset of the partnership, in which each of them has an undivided share.[3] This legal position has implications when applying the "associated entities" test to an Irish partnership (or similar foreign entity).

[3] Hoffmann LJ in *Inland Revenue Commissioners v Gray* [1994] STC 360

Where an entity directly, or indirectly, possesses or is beneficially entitled to more than 50% of the ownership rights, voting power or rights to profits in an Irish partnership, that entity (partner) and the Irish partnership shall be "associated entities" in respect of each other.

In applying the "associated entities" test where an Irish partnership holds a subsidiary entity (or entities) it is necessary to look through the partnership to the partners when examining the ownership rights, voting rights and/or rights to profits in that subsidiary entity.

Where two entities are each associated entities of a third entity, then those two entities are each associated entities of each other. Where a partner and the partnership are regarded as "associated entities" in respect of each other where, for example, that partner owns more than a 50 per cent investment in the partnership, then it follows that the partnership and a subsidiary entity that the partner is associated with shall also be regarded as "associated entities" in respect of each other, by virtue of their association with that partner.

3.4.3 Example - associated entities (2)

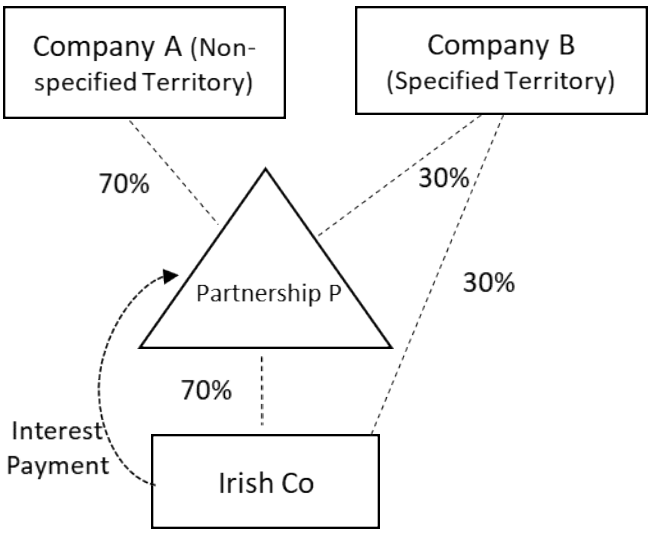

Figure 2: Example 3.4.2 associated entities (2)

Company A and Company B enter into a partnership agreement whereby Company A has a 70% ownership interest and Company B has a 30% ownership interest in the partnership. Companies A and B are not otherwise associated with one another.

The partnership assets include a 70% shareholding in Irish Co. Company B has a 30% shareholding in Irish Co that is held separately to its partnership interests.

Company B is associated with Irish Co as the aggregate of its 30% shareholding in Irish Co and its beneficial interest in the partnership asset consisting of the 70% shareholding in Irish Co [being 30% of 70% = 21%] means that it is beneficially entitled to 51% of the issued share capital in Irish Co.

Where Company A does not exercise definite influence (see section 3.5 below) in the management of Irish Co, it is not associated with Irish Co as it has not reached the

ownership threshold for association [its ownership interest is 70% of 70% being 49%]. (However, it is likely that a majority partner in a partnership that has a majority shareholding in an entity would have the ability to exercise definitive influence in the management of that entity).

The partnership makes a loan to Irish Co.

Company A is resident in a non-specified territory. Corporation B is resident in a specified territory.

All territories view the partnership as being tax transparent. Section 817U(6) TCA 1997 facilitates a 'look through' of the partnership to Company A and Company B such that the interest payment is treated for the purposes of the defensive measures as if it had been made directly to Company A and Company B (see section 5.1 below regarding the application of section 817U(6)).

Accordingly, 51% of the amount of interest paid by Irish Co to the partnership is within scope of the defensive measures (as it is treated as paid to an associated company resident in a specified territory).

3.4.4 Example – associated entities (3)

The facts are as in example 3.4.3 except Company B does not hold a 30% shareholding in Irish Co separately from its partnerships interest i.e. the partnership holds 100% of the share capital of Irish Co.

In this scenario, provided that Company B does not exercise definite influence (see section 3.5 below) in the management of the Irish Co, Company B would not be associated with Irish Co.

3.4.5 Association via individual(s)

With respect to a relevant payment or a relevant distribution made on or after 1 January 2026, two entities will be associated where an individual, or other individuals or entities connected, within the meaning of section 10 TCA 1997, with that individual, directly or indirectly:

- possesses or are beneficially entitled to more than 50% of the ownership rights,
- are entitled to exercise more than 50% of the voting rights, or
- holds rights in respect of more than 50% of the profits on a distribution, or to a share of more than 50% in the profits,

in relation to each of the two entities.

Section 817U(3A) provides for situations where individuals are connected solely by reference to being in partnership with other individuals or entities, in accordance with section 10(5) or section 10(8) TCA 1997. Where both conditions below are met, an individual will not be considered as connected with another individual or entity by reason only of the individual and such other entity or individual being in partnership (unless otherwise connected within the meaning of section 10). These conditions are:

- the individual's interest in the ownership rights in the partnership is not greater than 5%, and
- the individual is a 'limited partner' in that partnership.

'Limited partner', for the purposes of subsection (3A) is defined as—

- a person carrying on a business as a limited partner in a limited partnership registered in accordance with the Limited Partnerships Act 1907,
- a person carrying on a business as a 'general partner' in a partnership who is not entitled to take part in the management of the business but is entitled to have the person's liabilities, or those liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the business, discharged or reimbursed by some other person, or
- a person who carries on a business jointly with others under any agreement, arrangement, scheme or understanding which is governed by the law of any territory outside the State and, under the law of that territory outside the State, is not entitled to take part in the management of the business and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the business.

The latter brings into the definition of 'limited partner' individuals who are members/owners of foreign entities where those individuals and foreign entities have similar rights, obligations and characteristics as a limited partner and a limited partnership registered in accordance with the Limited Partnerships Act 1907.

3.4.6 Example - associated entities (4)

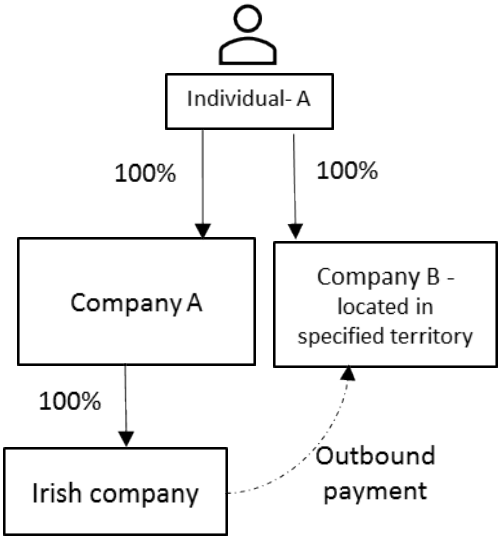

Figure 3: Example 3.4.6 associated entities (4)

Company A owns 100% of the issued share capital of Irish company.

Mr. A, an individual, owns 100% of the share capital of Company A and Company B.

Irish company makes an outbound payment to Company B, which is located in a specified territory.

Company B and Irish company are associated entities for the purposes of the outbound payment defensive measures by virtue of Mr. A's control of both.

3.4.7 Example - associated entities (5)

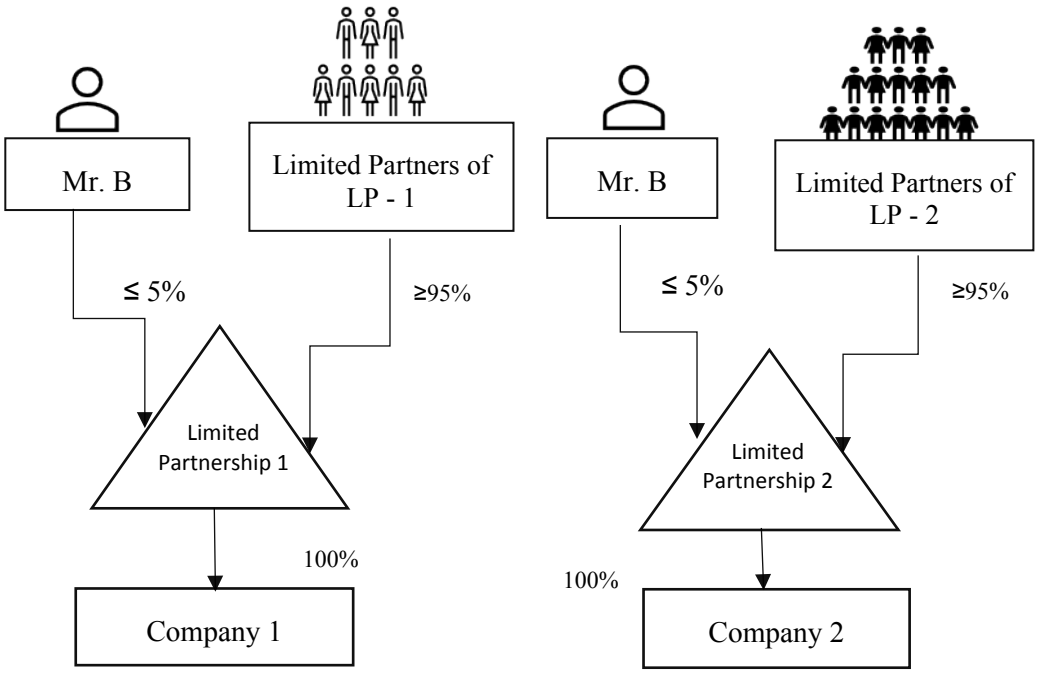

Figure 4: Example 3.4.7 associated entities (5)

Mr. B holds an ownership interest of 5% or less in both Limited Partnership 1 (LP1) and Limited Partnership 2 (LP2). Mr B is not entitled to take part in the management of the business of LP1 or LP2.

Mr B is connected with the partners of LP1 and LP2 in accordance with section 10 TCA 1997 solely by virtue of being in partnership with those partners.

Mr B is not acting together with any other partner to secure or exercise control in any company.

LP1 owns 100% of Company 1. LP2 owns 100% of Company 2.

Company 1 and Company 2 are not associated by virtue of Mr. B's interests in LP1 and LP2, as provided for under section 817U(3A).

3.5 Definite influence

One entity will be considered to have definite influence in another entity where that entity has the ability to participate on the board of directors or equivalent governing body of the other entity, and that ability causes or may cause the affairs of the other entity to be conducted in accordance with the wishes of the first entity.

An entity will have definite influence in respect of another entity where it has the capability to exert, whether or not exerted, influence on the affairs of another entity, so that those affairs are conducted in accordance with its wishes.

3.5.1 Example - definite influence

Company A and Company B are unconnected companies. Both Company A and Company B own 50% of the issued share capital of Company C which entitles both Company A and Company B to equal voting power in Company C. Company A and Company B can both appoint an equal number of directors to the board of Company C. Neither Company A nor Company B has the ability to cause the affairs of Company C to be conducted in accordance with their wishes, without the agreement of the other company. On this basis, neither Company A nor Company B has definite influence in the management of Company C.

3.6 Relevant payment

Payments of interest and royalties which are within the scope of the defensive measures are those for which the Irish paying company, or its Irish group companies, has, or may in any period, receive a deduction, allowance or relief for Irish tax purposes, and are referred to in the legislation as ‘relevant payments’.

Where a deduction, allowance or tax relief is not available in respect of a payment of interest or royalties in a period, or will not be available in another period, (i.e., where the necessary conditions to obtain relief under legislation are not met) then double non-taxation in respect of that payment should not arise.

3.7 Interest as a distribution

In certain circumstances, section 130 TCA 1997 treats interest as a distribution. A company may, in certain circumstances, make an election under section 452 TCA 1997 to disapply the treatment of interest as a distribution under section 130(2)(d)(iv) TCA 1997. Where such an election applies, the payment of that interest will be a relevant payment of interest for the purposes of section 817U.

Conversely, where interest is treated as a distribution under section 130(2)(d)(iv) TCA 1997 and the company does not make an election under section 452, then that payment is a relevant distribution for the purposes of section 817U. Accordingly, the defensive measures, as these pertain to distributions, will apply. This is discussed in further detail at section 5.6 below.

Section 452A TCA 1997 applies to certain non-yearly interest to disapply section 130(2)(d)(iv) in certain circumstances. Where the defensive measures apply such that withholding tax is deducted on non-yearly interest, and such withholding tax is non-refundable, then that non-yearly interest will not be re-classified as a distribution under section 130(2)(d)(iv) TCA 1997. This is discussed in further detail at section 5.9 below.

3.8 Excluded payment

Certain payments and distributions are excluded from the scope of the defensive measures where it is reasonable to consider that double non-taxation does not arise. These are referred to in legislation as 'excluded payments' and consist of payments where:

a) an amount of income, profits or gains arising from the payment is within the charge to a 'supplemental tax', 'foreign tax' at a nominal rate greater than zero per cent, or 'domestic tax', or

b) the payment is made out of income, profits or gains of the Irish resident company or Irish branch and that income, profits or gains are within the charge to 'foreign tax' with no account taken of that payment, or any amount in respect of that payment, in calculating the amount of 'foreign tax' to which that income, profits or gains are subject.

For the purposes of point (a) above:

- 'Supplemental tax' means a top-up tax arising under a top-up tax regime with qualified status under the review process developed, and undertaken, under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting ('Pillar Two Top-up Tax'). It also includes taxes which are similar to OECD Pillar Two top-up taxes.
- The meaning of 'foreign tax' for the defensive measures refers to the definition contained in Part 35C 'Hybrid Mismatches'. It means a tax that is similar to domestic tax, meaning income tax, corporation tax (including a controlled foreign company charge) or capital gains tax, that is charged in another territory but does not include refundable withholding tax. For the purposes of the defensive measures, global intangible low taxed income (GILTI) tax or Net CFC Tested Income tax (NCTI) under US tax law is considered to be similar to the controlled foreign company charge.
- 'Domestic tax' means income tax, corporation tax or capital gains tax.

A relevant distribution made by a company to which Part 4A TCA 1997 applies which meets the requirements of an excluded dividend for the purposes of a qualifying Pillar Two Top-up Tax, or a similar tax, will be considered to be within the charge to supplemental tax.

In addition, where an amount of income, profits or gains arising from a payment would be within the charge to a qualifying Pillar Two Top-up Tax but for the fact that the jurisdiction of the recipient can avail of a safe harbour as set out under the qualified Pillar Two Top-up Tax regime, that amount will be considered to be within the charge to supplemental tax.

Point (b) above concerns paragraph (b) of the definition of 'excluded payment' contained in section 817U(1). This paragraph addresses scenarios where the profits of the payor are within the charge to a foreign tax on a 'look through' basis, i.e. another territory taxes the income, profits or gains of the payor and takes no account of the payment, or any amount in respect of that payment, when calculating the amount of foreign tax to which that income, profits or gains are subject.

Where there is a payment to an entity in a territory other than a specified territory, but that entity is exempted from tax which generally applies to profits, income or gains in that territory, the payment will be considered to be an excluded payment

3.8.1 Reasonable to consider

A 'reasonable to consider' test is used in the definition of 'excluded payment', and in sections 817V(5), 817V(6), 817W(4), 817X(3). These provisions take account of the state of knowledge of a taxpayer.

It is important that the payor has reasonably considered the transaction. It is not expected that the taxpayer has perfect knowledge as this would likely require an excessive burden on the taxpayer to investigate the treatment of a payment. However, equally, it is expected that there will be no artificial structuring with a view to the Irish taxpayer being kept unaware about activities outside of Ireland.

The word "reasonable" is based on the common law "reasonable man test"[4]. The reasonable man test asks what a "reasonable person of ordinary prudence" would do in a given situation. It is an objective test. The word "consider" is an action verb which therefore suggests that something is to be done by the payor. It means to think carefully about, to contemplate, or to reflect upon. Therefore, it is important, in this context that, the payor has taken action and thought carefully about/contemplated the tax treatment of a payment in a manner akin to a hypothetical reasonable entity. The test involves asking oneself a hypothetical question of what a reasonable entity would reasonably consider, given the facts of the case.

[4] Refer to TDM Part 33-01-01 for a discussion on the objective test.

3.8.2 Example (1) – excluded payments

An Irish company that is owned by a non-US parent company but that is part of a US corporate group, which is not within the scope of a Pillar two top-up tax, makes an interest payment to another group company that is resident in a specified territory. The Irish company and the other group company are checked open under US check-the-box rules and are treated as tax transparent for US tax purposes.

The interest payment from the Irish company to the other group company is not within the charge to tax in the US as the payment is disregarded for US tax purposes.

The interest payment is also not global intangible low taxed income (GILTI) or Net CFC Tested Income (NCTI) for US tax purposes as the payment is disregarded. However, the underlying profits of the Irish company out of which the interest payment is made are included in the calculation of GILTI taxation or NCTI taxation of the US group.

On the basis that:

- GILTI or NCTI is similar to the controlled foreign company charge,
- the taxpayer can demonstrate that the payment is made out of an amount of income, profits or gains that is included in the GILTI or NCTI calculation for the purposes of the group's US taxable income, and
- no account is taken of the payment of interest from the Irish company to the other group company, or any amount in respect of that payment, for the purposes of the GILTI or NCTI calculation,

then the payment should be considered to be an excluded payment.

3.8.3 Example (2) - excluded payments

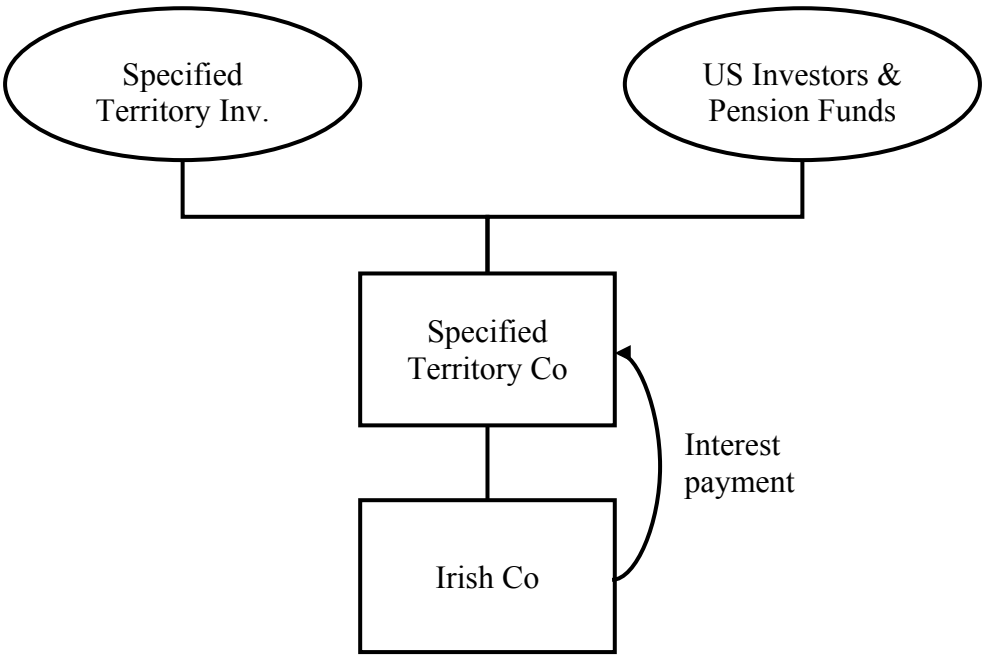

Figure 5: Example (2) 3.8.3 excluded payments

An Irish tax resident company ('Irish Co') issues an interest-bearing note to Specified Territory Co which is located in a specified territory, as defined. The interest payments made by Irish Co to Specified Territory Co are deductible for Irish corporation tax purposes. Specified Territory Co is owned by investors in other specified territories and investors resident in the US (consisting of taxable investors and tax-exempt pension funds).

Specified Territory Co has made a check-the-box election to be treated as a transparent entity for US tax purposes. None of the parties are within the scope of a Pillar Two top-up tax.

A payment of interest is an excluded payment of interest to the extent that it is reasonable to consider that an amount of income, profits or gains arising from the payment is within the charge to foreign tax at a nominal rate greater than zero per cent.

On the basis that Specified Territory Co is tax transparent for US tax purposes, it is reasonable to consider that the US taxable investors are within the charge to US tax on the interest payment at a rate greater than zero per cent. As such, the portion of the interest payment that is attributed to the taxable US investors will be considered to be an excluded payment. Similarly, the portion of the interest payment that is attributed to the tax-exempt pension funds will be considered to be an excluded payment.

It is not reasonable for Irish Co to consider that the remainder of the interest payment made to Specified Territory Co will be within the charge to a supplemental tax or a foreign tax at a nominal rate greater than zero percent. Therefore, the remaining portion of the interest payment is not an excluded payment.

4 Operation of defensive measures

4.1 Section 817V - Payment of interest

The defensive measures, as they relate to payments of interest, operate by removing exclusions from interest withholding tax[5] and the charge to income tax where an Irish resident company, or an Irish branch of a non-resident company, makes a deductible payment of interest to:

- an associated entity resident in a specified territory (not being resident in a non-specified territory), or
- to a permanent establishment of an associated entity which is situated in a specified territory,

and that payment is not an excluded payment.

[5] Refer to Tax and Duty Manual Part 08-03-06 for further information.

The following sections will not apply where the above conditions are met:

- section 64(2) TCA 1997,
- section 198(1)(c) TCA 1997,
- section 246(3) TCA 1997,
- section 246A(3)(a)(A) TCA 1997, and
- section 246A(3)(b)(A) TCA 1997.

In addition, where the above conditions are met,

- interest withholding tax applied by section 246(2) TCA 1997 will apply to a relevant payment of interest (both yearly and non-yearly interest), and
- exclusions from interest withholding tax on certain securities of State-owned companies will be removed.

However, the exclusions from interest withholding tax on payments of interest on a quoted Eurobond or wholesale debt instrument held in a recognised clearing system, contained in sections 64(2)(b)(i), 246A(3)(a)(A) and 246A(3)(b)(A) TCA 1997, will continue to apply where it is reasonable to consider that the company is not, and should not be, aware that any portion of the relevant payment of interest is made to an associated entity.

4.1.1 Persons liable for withholding tax on outbound payments of interest

Section 817V(8) states that "Nothing in this section shall result in the application of section 246(2) to an entity other than a company which makes a relevant payment of interest" i.e., the only entity to which the defensive measure applies is the payor of the interest.

This subsection ensures that an intermediary, for example, a clearing house, cannot have a withholding tax obligation imposed on it where a payment of interest falls within the scope of the defensive measures.

4.2 Section 817W - Payment of royalties

The defensive measures, as they relate to payments of royalties, operate by removing exclusions[6] from royalty withholding tax and applying a charge to income tax where an Irish resident company, or an Irish branch on a non-resident company, makes a deductible royalty payment:

- an associated entity resident in a specified territory (not being resident in a non-specified territory), or
- to a permanent establishment of an associated entity which is situated in a specified territory, and

that payment is not an excluded payment.

[6] Refer to Tax and Duty Manual Part 08-03-06 for further information.

Where an associated entity receives a relevant payment of a royalty it is deemed to be annual profits arising to that entity from property in the State for the purposes of section 18(1) TCA 1997.

In addition, a relevant payment of a royalty to which section 817W applies will

be an annual payment charged with tax under Schedule D for the purposes of section 238(2), i.e., there is a withholding tax obligation under that section.

Subsections (3) and (4) of section 242A TCA 1997 and section 757(2) TCA 1997 will not apply where the above conditions are met.

4.3 Section 817X – Making of a distribution

The defensive measures, as they relate to the making of a distribution, operate by removing exclusions from dividend withholding tax[7] where an Irish resident company makes a relevant distribution to:

- an associated entity resident in a specified territory (not being resident in a non-specified territory) or
- to a permanent establishment of an associated entity which is situated in a specified territory, and

that relevant distribution is not an excluded payment, and it is made out of income, profits or gains which have not been chargeable, directly or

indirectly, to -

- domestic tax,
- foreign tax at a nominal rate greater than zero per cent,
- a controlled foreign company charge,
- a supplemental tax, or
- any other tax which is similar to any of the aforementioned taxes.

Where the above conditions are met the following sections will not apply:

- section 140(3)(a) TCA 1997,
- section 142(2) TCA 1997,
- section 153(4) TCA 1997,
- section 172B(7) TCA 1997,
- section 172D(2) TCA 1997 and
- section 172E(1) TCA 1997.

[7] Refer to Tax and Duty Manuals Part 06-08A-01 and Part 06-08B-01 for further information.

4.3.1 Qualifying intermediaries

A qualifying intermediary receiving dividends from publicly listed companies may accept declarations of exemption from non-liable persons and continue to treat such persons as non-liable unless it would be reasonable to consider that the person beneficially entitled to the dividend may be an associated entity of the public company[8]. As section 172E(1) TCA 1997 does not apply where section 817X applies, the obligation to withhold tax on a distribution to which the defensive measures apply rests with the company making the distribution.

5 How the measures address specific circumstances

5.1 Payments to tax transparent entities – Section 817U(6)

Where a relevant payment or relevant distribution is made by an Irish resident company, or a relevant payment is made by an Irish branch of a non-resident company as the case may be, to an entity and that payment is considered not to arise or accrue to that entity for tax purposes but instead arises or accrues to another entity or individual, then section 817U(6) operates to treat the payment or distribution as if it had been made to the second mentioned entity or individual.

In other words, where there is an entity, or entities, that are "looked through" for tax purposes such that tax is charged on the owners rather than on the entity(ies), a relevant payment or relevant distribution will be treated for the purposes of the defensive measures as if it had been made directly to the owners.

The objective of the provision is to cater for payments to transparent entities that are treated by both the territory of the recipient entity and the territory of the owner of that entity as arising or accruing to the owner of the recipient entity.

5.1.1 Territories with no tax law with regard to the income, profits and gains of entities

Instances may arise where the recipient of a payment and/or its owners are situated in a territory with no tax law with regard to the income, profits and gains of entities. These scenarios are as follows:

1. Both the territory of the recipient and the territory of the owners have tax law with regard to the income, profits and gains of entities.
2. The territory of the recipient has no tax law with regard to the income, profits and gains of entities and territory of the owners has tax law with regard to the income, profits and gains of entities.
3. The territory of the recipient has tax law with regard to the income, profits and gains of entities and territory of the owners has no tax law with regard to the income, profits and gains of entities.
4. Neither the territory of the recipient nor the territory of the owners have tax law with regard to the income, profits and gains of entities.

[8] Refer to section 6.4 TDM Part 06-08B-01.

When assessing the tax transparent nature of the recipient entity and whether section 817U(6) applies:

- In the first scenario, consideration is given to both the tax law of the territory of the recipient and the territory of the owners (as it is necessary for all territories to view the recipient entity as tax transparent).
- In the second scenario, consideration is given to the tax law of the territory of the owners (as it is necessary for the tax territory of the owners to view the recipient entity as tax transparent).
- In the third scenario, consideration is given to the tax law of the territory of the recipient (as it is necessary for the tax territory of the recipient to view the recipient entity as tax transparent).
- In the fourth scenario, consideration is given to Irish tax law to determine if the recipient entity is considered tax transparent.

Guidance on the classification of foreign entities in contained in Tax and Duty Manual Part 35C-00-02.

Where the recipient of a payment or distribution and its owners are resident or situated in the same territory, section 816U(6) should be applied with reference to the tax law with regard to the income, profits and gains of entities, or absence thereof, of that territory – see section 5.2 below.

Where there are multiple tax transparent entities in an ownership chain held by a tax opaque entity or an individual, section 817U(6) will continue to operate to treat the relevant payment or relevant distribution for the purposes of the defensive measures as if it had been made directly to the tax opaque entity or individual.

5.1.2 Example – payments to tax transparent entities, generally

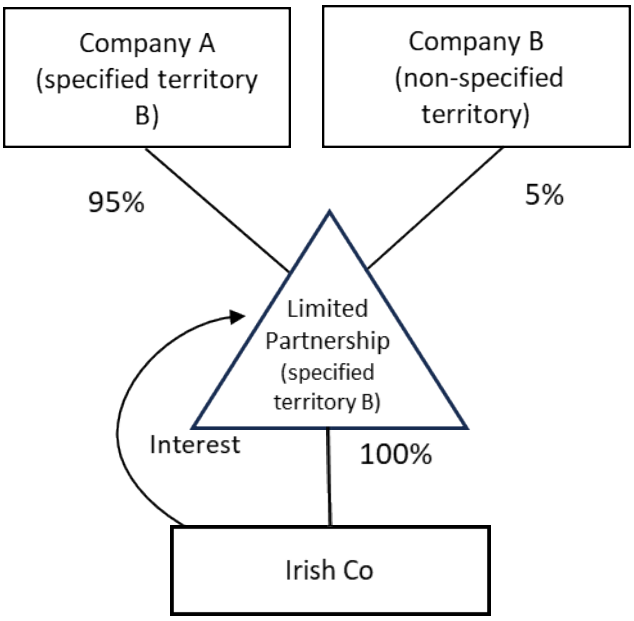

Figure 6: Example 5.1.2 payments to tax transparent entities, generally

An Irish company ('Irish Co') pays interest to a limited partnership resident in, or created under the laws, of specified territory B ('LP').

LP has two partners being Company A and Company B. Company A is resident in a specified territory, has a 95% ownership interest in the LP and is the general partner such that it has definite influence in the management of the LP and Irish Co, i.e. Company A may cause the affairs of Irish Co to be conducted in accordance with its wishes. The remaining 5% is owned by an unconnected company, Company B, which is resident in a non-specified territory.

LP is treated by all of the territories concerned as being tax transparent. The Irish company and Company A are associated entities (see section 3.4.2 above).

Section 817U(6) TCA 1997 facilitates a 'look through' of the LP to Company A and Company B.

Accordingly, 95% of the amount of interest paid is within scope of the defensive measures as it is treated as being paid to a company which is resident in a specified territory.

On the basis that Company B is resident in a non-specified territory, the defensive measure in section 817V will not apply to 5% of the payment of interest. Furthermore, though not determinative in the example above as Company B is resident in a non-specified territory, in this example Company B is not associated with Irish Co within the meaning of section 817U(3) TCA 1997. This is because Company B's beneficial interest in the partnership asset consisting of the 100% shareholding in Irish Co is 5%. It follows that it is indirectly beneficially entitled to

less than 50% of the ownership rights, voting rights and distributed profits of Irish Co. In addition, Company B does not have any other rights which give it the ability to participate on the board of directors of Irish Co such that it cannot cause the affairs of Irish Co to be conducted in accordance with its wishes.

5.1.3 Example – payments to tax transparent entities - multiple levels of transparent entities

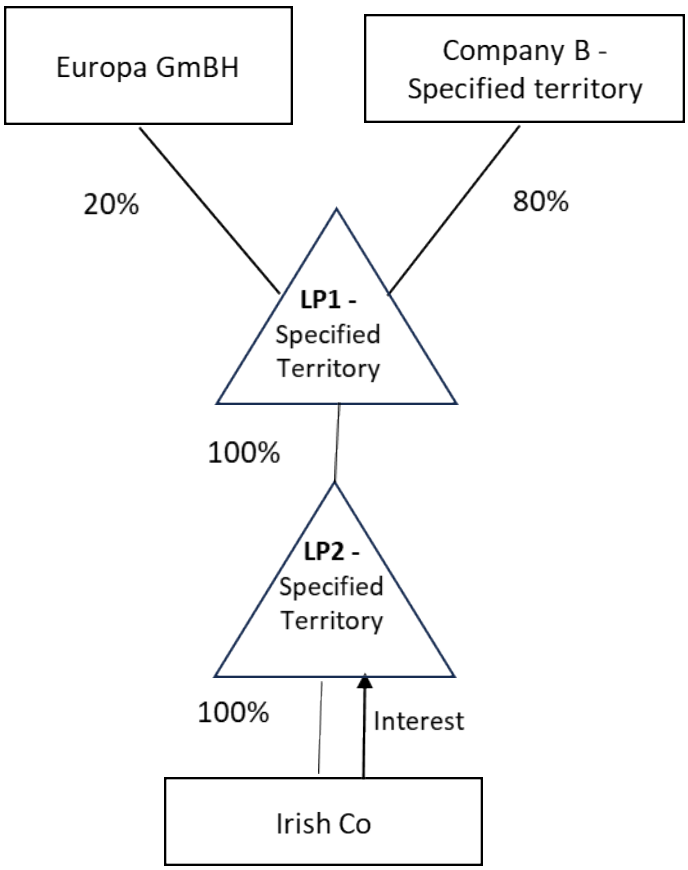

Figure 7: Example 5.1.3 payments to tax transparent entities - multiple levels of partnerships

An Irish resident company ('Irish Co') makes an interest payment to LP2- Specified Territory, which is owned by LP1 – Specified territory, which is in turn 20% owned by Europa GmbH (a company resident in a non-specified territory) and 80% owned by Company B, a company resident in a specified territory.

LP1 and LP2 are limited partnerships located in specified territories. All territories concerned view LP1 and LP2 as tax transparent. Company B is the general partner of LP1.

Section 817U(6) will treat 20% of the interest as being paid directly to Europa GmbH and will treat 80% of the interest as being directly paid to Company B for the purpose of the defensive measures.

On the basis that Company B is an associated entity of Irish Co and is resident in a specified territory, the defensive measure in section 817V will apply to 80% of the payment of interest.

On the basis that Company A is resident in a non-specified territory, the defensive measure in section 817V will not apply to 20% of the payment of interest.

5.1.4 Example – fund structure

An Irish company pays interest to a limited partnership that is located in a specified territory for the purposes of the defensive measures. This limited partnership is a widely held fund. The territory of the limited partnership does not have tax law with regard to the income, profits or gains of entities but the characteristics of the limited partnership are such that it should be considered to be tax transparent for Irish tax purposes. The ownership interest in the fund is held widely by many non-associated investors, resident in various territories.

The Irish company may not reasonably be aware of how all the territories, in which those holding an ownership interest, view the fund for tax purposes.

The defensive measures legislation is ultimately focused at preventing double non-taxation through payment to associated entities, which, in the circumstances described in this example, is not at issue.

Accordingly, Revenue is prepared to accept that, for these purposes, the partners are not associated with the Irish company in circumstances where the ultimate ownership and control of the Irish company is widely dispersed among a large number of investors in funds operated through a limited partnership structure. Section 817U(6) may then be applied such that an interest payment to the limited partnership will not be treated as a payment to an associated entity but rather a payment directly to non-associated partners.

In respect of outbound payments made on or after 1 January 2026, the above example is subject to confirming that an individual that is a partner in the limited partnership is not connected with the other individuals or entities that are partners in the limited partnership, such that the ownership interests of that individual are not aggregated with ownership interests of the other partners for the purposes of applying the association test – see section 3.4 above.

Similar to individual partners in an Irish limited partnership as defined under the Limited Partnership Act 1907, the exception noted in section 3.4.5 above with regard to the connected persons rules for portfolio investors in a foreign limited partnership applies (i.e. those that have a 5% or less partnership interest in the foreign limited partnership and are not entitled to take part in the management of the business and are not liable beyond a certain limit for debts or obligations incurred for the purposes of the business). This places the treatment of investors in an Irish limited partnership and a foreign limited partnership on an equal footing. The exception to the connected person rules does not apply where a portfolio investor takes part in the management of the business of the foreign limited partnership.

5.1.5 Examples - Investment Limited Partnerships

5.1.5.1 Example 1 - Investment Limited Partnership

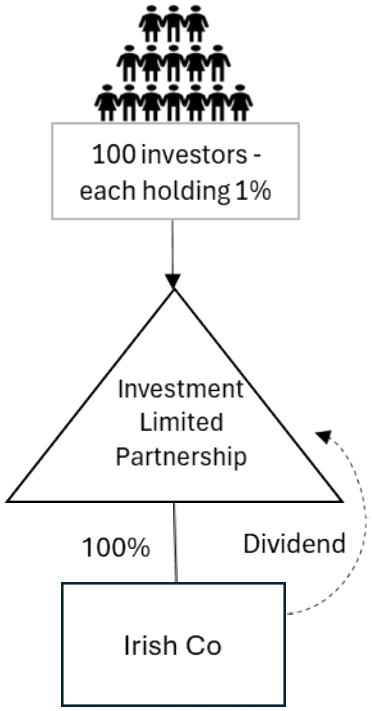

Figure 8: Example 5.1.5.1 dividend to an Investment Limited Partnership

An Irish resident company ('Irish Co') pays a dividend payment to its sole shareholder, Investment Limited Partnership ('ILP') (formed under the Investment Limited Partnerships Act 1994), which is owned by 100 investors, each with a 1% interest as a limited partner (the general partner is not entitled to any of the profits of the Investment Limited Partnership).

No investor takes part in the management of the business of ILP, and no one is liable beyond a certain limit for debts or obligations incurred for the purposes of the business of ILP.

The investors comprise a mix of individuals and companies and none of them are otherwise connected with each other outside of their investment in ILP.

99 of the investors are not resident in a specified territory and one investor is resident in a specified territory. All of the territories regard ILP as tax transparent.

In order for the outbound payment defensive measure to apply to the distribution in this example, there must be a distribution by Irish Co to an associated entity resident, or situated in, a specified territory.

(1) Payments to tax transparent entities – Section 817U(6)

Section 817U(6) applies to this example such that where a relevant distribution is made to ILP, and the distribution is treated as arising or accruing to the investors in ILP, under

- the tax law of Ireland, and
- the tax law of the territory where the investors are resident, or situated,

then the distribution, or the relevant portion thereof, is treated as if it had been made to the investors rather than ILP.

It follows, in accordance with section 5.1 above, that the portion of the distribution made to the ILP which relates to the 1% investor resident in the specified territory is treated for the purposes of the outbound payment defensive measures to have been made to that investor.

(2) Is the investor in a specified territory an entity?

It must then be established if the investor is an entity. "Entity" has the same meaning as it has in Part 35C. An entity does not include an individual. Therefore, if the investor in this example is an individual, then, in respect of the portion of the distribution attributable to that investor, there has not been a relevant distribution made to an associated entity and the measures in section 817X TCA do not apply to that portion of the distribution.

The example continues on the basis that this investor is an entity.

(3) Associated entities – Sections 817U(3) and 817U(3A)

Where the investor is an entity, it must then be established if the investor is associated with Irish Co. Section 817U(3) and (3A) provide the rules for establishing if two entities are associated.

Taking each of criteria for the association test in Section 817U(3) in turn:

(a) The investor does not directly or indirectly possess, nor is the investor beneficially entitled to, more than 50 of the issued share capital of Irish Co. The ownership rights of the other ILP partners are not amalgamated with the ownership rights of the investor entity for the purposes of this test.

(b) The investor does not directly or indirectly possess, nor is the investor beneficially entitled to, more than 50 per cent of the voting power in Irish Co. The ownership rights of the other ILP partners are not amalgamated with the ownership rights of the investor entity for the purposes of this test.

(c) The investor does not directly or indirectly hold such rights as would entitle the investor to more than 50% of the distributed profits of Irish Co. The ownership rights of the other ILP partners are not amalgamated with the ownership rights of the investor entity for the purposes of this test.

(d) It is assumed (but it would need to be confirmed based on the facts of the case) that the investor does not have the ability to participate on the board of directors of Irish Co in the financial and operating policy decisions of Irish Co, where that ability causes, or could cause, the affairs of Irish Co to be conducted in accordance with the wishes of the investor.

(e) There is no other entity in respect of which the investor entity and Irish Co are, in accordance with *paragraph (a), (b), (c)* or *(d)*, associated entities.

(f) It is assumed (but it would need to be confirmed based on the facts of the case) that there is no individual, or any other entity or individual connected with that individual, that in respect of **both** the investor entity and Irish Co directly or indirectly possess or are beneficially entitled to the ownership rights mentioned in section 817U(f). (While Irish Co and the ILP would be considered to be associated with each other on the basis that each of the partners in the ILP are connected with each other, paragraph (f) above does not operate to associate the partners themselves and Irish Co.)

Subject to the confirmations mentioned above, in particular that, on the facts, the investor does not have definite influence in the management of Irish Co, the investor entity would not be considered to be associated with Irish Co for the purposes of section 817X.

Example 2 – Investment Limited Partnerships

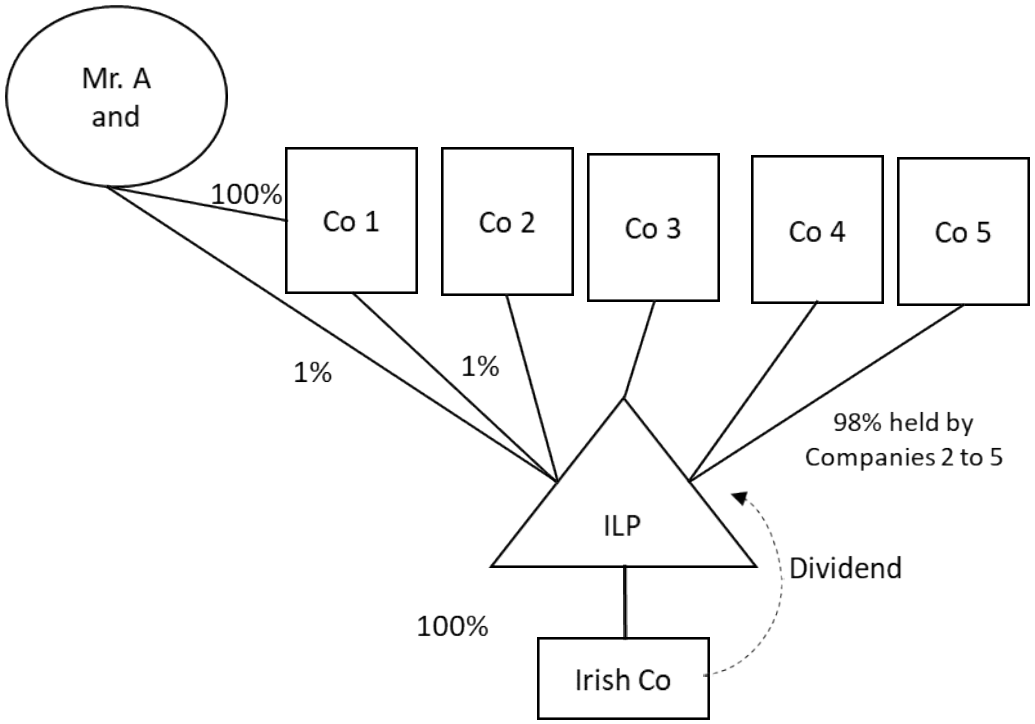

Figure 9: Example 5.1.5.3 dividend to an Investment Limited Partnership

An Irish resident company ('Irish Co') makes a dividend payment to its sole shareholder, Investment Limited Partnership ('ILP') (formed under the Investment Limited Partnerships Act 1994). ILP is owned by 5 investors.

Four of the investors (Company 2 to Company 5) in aggregate hold 98% of the partnership interests as limited partners (the general partner is not entitled to any of the profits of ILP).

Mr. A and Family hold a 1% partnership interest in ILP directly as a limited partner, and a 1% partnership interest indirectly via their 100% ownership interest in Company 1.

No investor takes part in the management of the business of ILP, and no one is liable beyond a certain limit for debts or obligations incurred for the purposes of the business of ILP.

Company 1 is located in a specified territory. Company 1 is owned 100% by individuals, Mr. A, together with his family, who are all relatives of Mr. A in accordance with section 10 TCA.

Companies 2, 3, 4 and 5 are not associated with Mr. A. nor with his family and are not located in a specified territory.

In order for the outbound payment defensive measures to apply to the distribution in this example, there must be a distribution by Irish Co to an associated entity resident, or situated in, a specified territory.

(1) Payments to tax transparent entities – Section 817U(6)

Section 817U(6) applies to this example such that where a relevant distribution is made to the ILP, and the distribution is treated as arising or accruing to the investors in the ILP, under

- the tax law of Ireland, and
- the tax law of the territory where the investors are resident, or situated,

then the distribution, or the relevant portion thereof, is treated as if it had been made to the investors rather than ILP.

Assume that the specified territory in this example either views the ILP as tax transparent or has no tax law with regard to the income, profits and gains of entities.

It follows that the portion of the distribution made to the ILP which relates to Company 1 (being 1 per cent) is treated for the purposes of the outbound payment defensive measures to have been made to Company 1.

(2) Associated entities – Sections 817U(3) and 817U(3A)

It must then be established if Company 1 (being an entity) is associated with Irish Co.

Sections 817U(3) and 817U(3A) provide the rules for establishing if two entities are associated.

By virtue of section 817U(3)(f), Company 1 and Irish Co are associated entities. This is on the basis that:

(i) Mr. A and his family directly or indirectly possess, or are beneficially entitled to, more than 50 per cent of the issued share capital of Company 1,

(ii) Mr. A and his family are in partnership with Companies 1 to 5. Accordingly, the ownership interests of ILP held by those companies are aggregated with the ownership interests of Mr. A and his family. It follows that Mr. A. and his family and the entities or individuals connected (within the meaning of section 10) directly or indirectly possess, or are beneficially entitled to, more than 50 per cent of the issued share capital of Irish Co.

Therefore, section 817X TCA97 applies to 1 per cent of the distribution (i.e. the portion attributable to Company 1) from Irish Co to the ILP-

- to the extent that the relevant distribution is not an excluded payment (by virtue of section 817U(1)(b)),
- to the extent the relevant distribution is made out of income, profits or gains which have not been chargeable, directly or indirectly, to (i) domestic tax, (ii) foreign tax at a nominal rate greater than zero per cent, (iii) a controlled foreign company charge, (iv) a supplemental tax, or (v) any other tax which is similar to any of the taxes referred to above as *(i)* to *(iv)* (by virtue of section 817X(1)(c)).

5.1.6 Example – entities receiving interest payments where there is conflicting analysis of its tax transparency

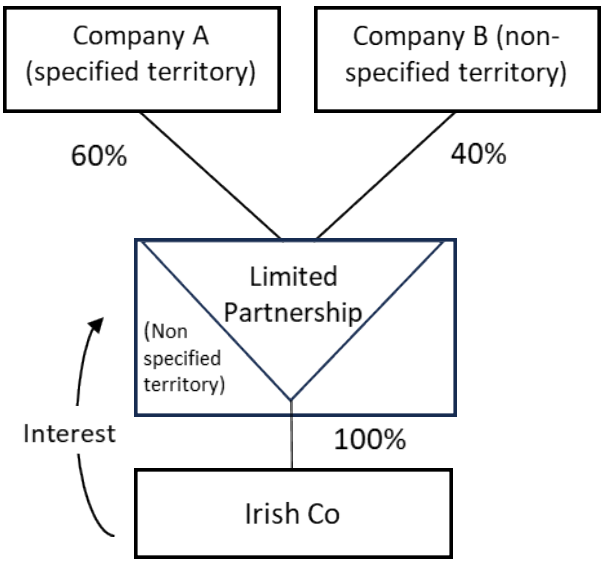

Figure 10: Example 5.1.6 entities receiving interest payments where there is conflicting analysis of its tax transparency

An Irish Company makes a payment of interest to Limited Partnership ('LP') whose ownership interests are held 60% by Company A and 40% by Company B.

The characteristics of LP are such that it is considered transparent in its place of creation but opaque under the tax law of both the territories of Company A and Company B. Company A is resident in a specified territory. Company B and LP are resident/created in a non-specified territory.

As the territories of the member/owners of LP treat the limited partnership as opaque then the interest payment should be treated as being made to LP, as section 816U(6) cannot apply.

Once that has been established, then whether LP is resident or located in a specified territory needs to be considered.

It is assumed that the LP is not tax resident in any territory and therefore is regarded as being resident in the territory under whose laws it was created. Then, notwithstanding the fact that the LP is treated as tax transparent in the territory where it was created, as that territory is not a specified territory the provisions of section 817V will not apply to the payment.

However, an analysis of the application of the anti-hybrid provisions is required. Where there is a denial of deduction for the interest paid by the Irish company as a result of the application of the anti-hybrid provisions[9], then that payment would not be a 'relevant payment' of interest and would, therefore, not be within the scope of the defensive measures in any event.

5.2 Section 817U(6) - tax transparent entity and one or more owners located in the same territory

Instances may arise where a tax transparent entity and its owners/members are located in the same territory.

In such scenarios section 817U(6) operates by considering the tax laws with regard to the income, profits and gains of entities, or absence thereof, of the territory where both entities are located. As previously mentioned, where that territory does not have any tax law with regard to the income, profits and gains of entities, the provision should be applied by considering whether the recipient entity would be considered to be transparent under the tax law of Ireland, see section 5.1.1.

5.2.1 Example - section 817U(6) and same zero-tax territory

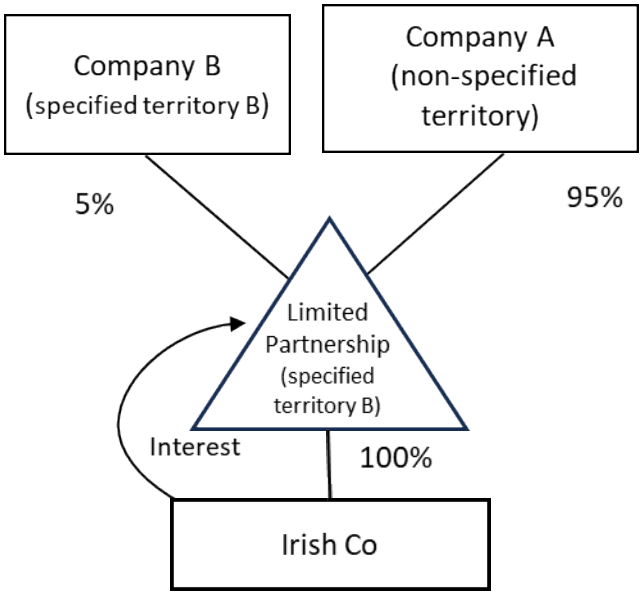

Figure 11: Example 5.2.1 section 816U(6) and same zero-tax territory

The facts are the same as in example 5.1.2 except that LP and Company A are created / resident in the same specified territory and that territory does not have tax law with regard to the income, profits and gains of entities.

[9] Refer to Tax and Duty Manual Part 35C-00-01 for further information

Where LP is considered to be akin to an Irish partnership, LP should be considered to be tax transparent and the analysis in example 5.1.2 will equally apply, i.e., the payment of 95% of the interest will be treated as being paid directly to Company A.

Where LP is considered not to be akin to an Irish partnership and would be considered to be opaque for Irish tax purposes, then the provisions of section 817U(6) will not apply to the portion of the interest attributable to Company A. As such, 95% of the interest will be considered to be paid to LP, an entity situated in a specified territory. Where LP is an associated entity of Irish Co and is situated in a specified territory, the defensive measure in section 817V will apply to 95% of the payment of interest. This analysis does not impact on the 5% amount where the territory of Company B continues to view the LP as tax transparent.

5.3 Section 817V(6) - interest paid on quoted Eurobonds and wholesale debt instruments

Eurobonds are long-term debt instruments. Commercial paper, also known as a wholesale debt instrument, is a short-term debt instrument that is generally unsecured.

Legislation provides for an exclusion from interest withholding tax on quoted Eurobonds[10] and commercial paper where certain conditions are met[11]. The existing exclusions are important features of the tax system for Irish resident companies raising long and short-term debt in the international capital markets.

Generally, these financial instruments will be issued via a clearing house. In such circumstances the borrower may be unaware of the identity of the lender.

It is necessary to ensure that defensive measures in respect of interest payments cannot be circumvented through the use of withholding tax exemptions. However, the new defensive measures will not apply where it is reasonable to consider (see section 3.8.1 above) that the payor of interest on quoted Eurobonds and commercial paper issued via a clearing house is not, and should not, be aware that any portion of the interest is payable to an associated entity. This provision is subject to specific anti-avoidance measures.

Intermediaries such as clearing systems, their nominees or paying agents will not be subject to any withholding tax arising as a result of the new defensive measures.

[10] Quoted Eurobond means a security which is issued by a company, is quoted on a recognised stock exchange and carries a right to interest – please refer to section 64(1) TCA 1997.

[11] Refer to Revenue's Notes for Guidance – Taxes Consolidation Act 1997 for Parts 4 and 8 of that Act. https://www.revenue.ie/en/tax-professionals/legislation/notes-for-guidance/taxes-consolidation-act-tca.aspx

5.4 Section 817V(7) - Back-to-back financing arrangements – Interest payments

Section 817V(7) addresses situations where entities are resident, or situated, in 'specified territories' for commercial reasons and payments of interest to such entities do not give rise to double non-taxation, as the interest payment funds a corresponding payment that would have been an excluded payment had it been made directly to its recipient.

For example, an entity located in a specified territory may:

- facilitate a group of investors to pool funds to invest in, typically, a single investment (such as providing loan finance), or
- isolate, for commercial reasons, financial risk associated with a particular asset or activity such as back-to-back lending for asset acquisition.

In these scenarios it may be the case that only a small portion of the interest could result in double non-taxation, i.e., the portion of interest retained by the entity resident in the specified territory as compensation.

The defensive measures will not apply to the portion of the relevant payment of interest to the extent that:

- a 'corresponding amount' has been paid to another person,
- the 'corresponding amount' would have been an excluded payment had it been paid directly to the other person, and
- all payments were made for bona fide commercial purposes.

The amount referred to as a 'corresponding amount' is discussed at section 5.4.1.

To avail of section 817V(7), the corresponding amount must be on-paid by the entity in a tax period which commences within 12 months of the end of the tax period in which the payment is made by the company - see section 5.4.5.

5.4.1 Corresponding amount

The portion of the outbound interest payment received by an associated entity which is on-paid to investors who are not resident in specified territories is referred to as a "corresponding amount".

The term "corresponding amount" is also used in Part 35C TCA 1997 (Hybrid mismatches)[12]. The concept does not mean the "same amount" or an "equal amount". The term recognises that the full amount of the interest received by an in-scope entity is received in its capacity as a separate entity, so that the amount on-paid by that entity cannot, in strictness, be precisely the same as the interest received by the entity from the Irish resident company or Irish branch of a foreign company. This allows account to be taken of variations that might arise due to differences in the value ascribed to payments between territories.

These differences might arise, for example, through the application of transfer pricing or foreign exchange movements.

[12] Refer to Tax and Duty Manual Part 35C-00-01.

5.4.2 Example – payment of a corresponding amount

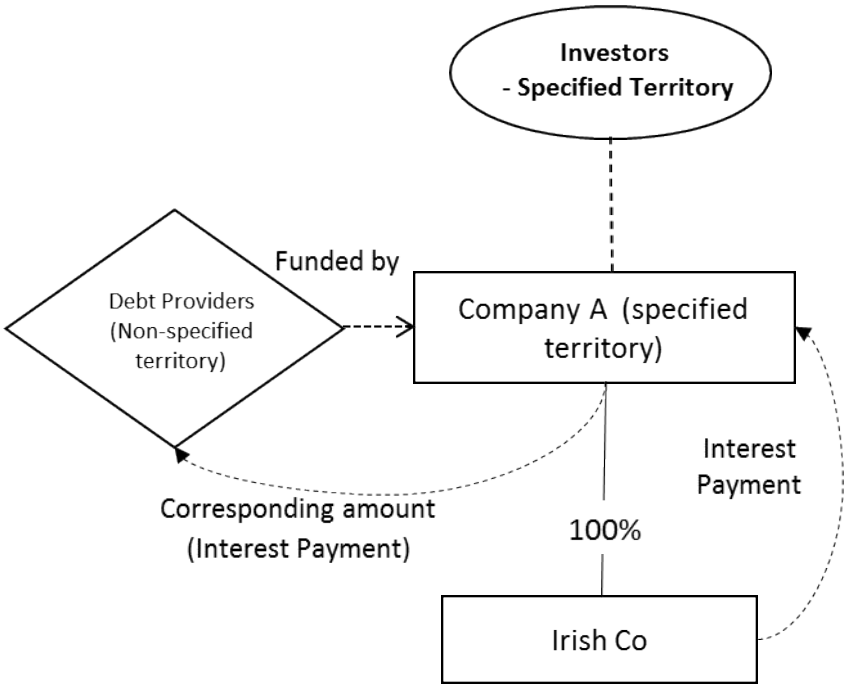

Figure 12: Example 5.4.2 payment of a corresponding amount

An Irish resident company ('Irish Co') issues an interest-bearing note to Company A. Company A is resident in a specified territory.

Company A borrows from third-party lenders that are resident in a non-specified territory to fund its subscription for the note.

Irish Co makes a relevant payment of interest of €100 to Company A. Company A pays a corresponding amount of interest of €99 to the third-party lenders that are resident in a non-specified territory within the period specified in section 817V(7). All payments are made for bona fide commercial purposes.

The payment of interest of €99 by Company A should be considered to be a "corresponding amount" for the purposes of section 817V(7). The provisions of section 817V(7) will apply to the portion of the payment of interest by Irish Co to Company A, which is matched by the corresponding amount paid by Company A to the third-party lenders. This is on the basis that the payment of that portion of interest by Irish Co to Company A would have been an excluded payment if it had been paid directly by Irish Co to the third-party lenders that are resident in a non-specified territory.

5.4.3 Administrative aspect – 'corresponding amount' and preliminary tax

An Irish resident company, or Irish branch of a foreign company, which makes a relevant payment of interest has an obligation to file its corporation tax return, Form CT1, on or before the specified return date. Such return must be correct and complete. The company will file its corporation tax return and calculate the amount of its preliminary corporation tax liabilities on the basis of self-assessment.

A company may fulfil its preliminary tax obligations and file its From CT1 on the basis of the information available at the time, account for income tax if necessary and the recipient of the interest payment may subsequently seek a refund of the tax paid where such tax was not due as a result of the application of section 817V(7).

Alternatively, a company may decide on the basis of information available to it, and the company's interpretation of that information, to adopt a position that it is reasonable to consider that a corresponding amount will be on-paid within the relevant time period. In which case, the company may decide not to deduct, and remit, withholding tax from that portion of the interest to which section 817V(7) will apply.

However, where that corresponding amount is not subsequently paid, or if it is paid outside the relevant time period, then a withholding tax obligation may have arisen at the time the relevant payment was made. In such circumstances, the company would need to amend the Form CT1 in accordance with section 959V TCA 1997 and make a payment of any underpaid tax (including any underpayment of preliminary tax as applicable).

Assessment, collection and recovery mechanisms for income tax due by the company apply in the usual manner. Accordingly, any underpayment of tax would be subject to interest under section 1080 TCA 1997 and penalties/surcharges may arise under section 1077F TCA 1997 and section 1084 TCA 1997.

5.4.4 Example - section 817V(7) and multiple tiers

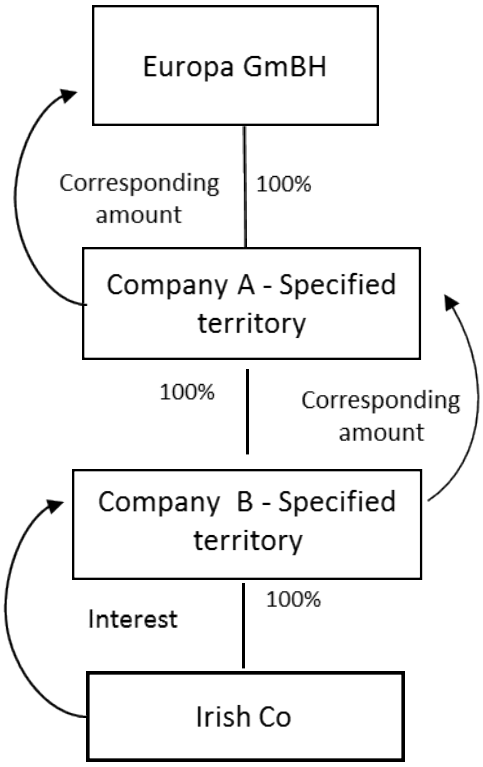

Figure 13: Example 5.4.4 section 817V(7) and multiple tiers

An Irish resident company ('Irish Co') makes an interest payment to an associated entity, Company B, resident in a specified territory. Company B is owned by Company A which is also resident in a specified territory.

Company A is owned by Europa GmBH, a company resident in a non-specified territory.

On receipt of the interest from Irish Co, Company B immediately makes a payment of interest to Company A.

On receipt of the interest from Company A, Company B immediately pays an amount to Europa GmBH.

Section 817V(7) cannot apply to the relevant payment of interest by Irish Co to Company B as the payment of interest by Irish Co would not constitute an excluded payment had it been made to Company A.

5.4.5 Tax period

Section 817V(7)(a) requires that "a corresponding amount has been paid by that entity to another person in a tax period which commences within 12 months of the end of the tax period in which the payment is made by the company".

The first mentioned tax period is the tax period of the recipient of the interest payment. The second mentioned tax period is the tax period of the Irish resident

company, or Irish branch of a non-resident company, in which the payment of interest has been made.

The 'tax period' in which the payment of interest is made by an Irish resident company, or Irish branch of a non-resident company, is that company's chargeable period, which has the same meaning as it has in Part 41A.

The tax period of the recipient of the payment is the period equivalent to a chargeable period or, where the entity concerned is not charged to tax, the period for which financial statements are prepared.

The following example illustrates how section 817V(7)(a) applies where the payor and recipient do not have co-terminus accounting periods.

5.4.6 Example – non co-terminus accounting periods

An Irish resident company has an accounting period ending 31 December. It makes an interest payment to an associated entity on 1 February 2025 i.e., in the Irish company's tax period ending 31 December 2025. The latest date which is within 12 months of the end of the tax period in which the payment is made by the Irish company is 31 December 2026.

The associated entity is not charged to tax but prepares financial statements for accounting periods ending 31 March. The associated entity pays a corresponding amount on 1 March 2025, which means that the associated entity pays a corresponding amount in its 'tax period' 1 April 2024 to 31 March 2025. As that tax period commenced before 31 December 2026, the corresponding amount is paid within the required timeframe.

If the associated entity had paid a corresponding amount on 1 March 2027, the associated entity would have paid a corresponding amount in its 'tax period' 1 April 2026 to 31 March 2027. As that tax period commenced before 31 December 2026, the corresponding amount would have again been paid within the required timeframe.

5.5 Interaction of section 817U(6) and section 817V(7)

Circumstances may arise where a relevant payment of interest is made to a tax opaque entity that makes a corresponding payment to a tax transparent entity. Similarly, a relevant payment of interest may be made to a tax transparent entity whose owner(s) make a corresponding payment. In these circumstances the interaction of section 817U(6) and section 817V(7) will need to be considered. These circumstances are illustrated in the following examples.

5.5.1 Example – operation of section 817V(7)

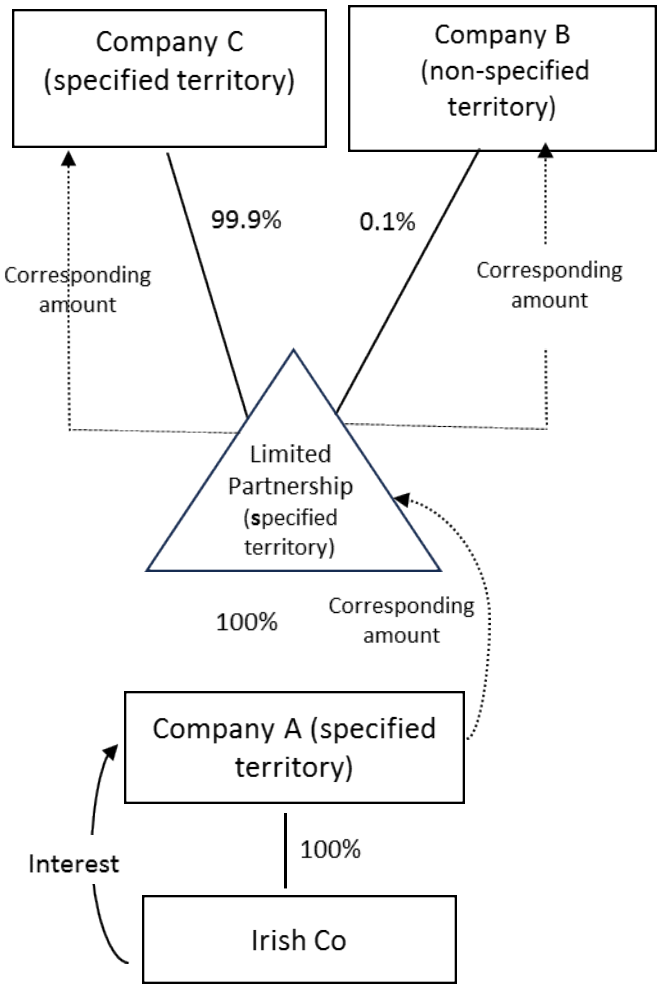

Figure 14: Example 5.5.1 operation of section 817V(7)

An Irish resident company ('Irish Co') makes a relevant payment of interest to Company A, a company resident in a specified territory. Company A is owned by a Limited Partnership ('LP').

The ownership interest in LP is owned 0.1% by Company B located in a non-specified territory with a corporate income tax of 15% and 99.9% by Company C (the general partner) located in a specified territory.

The laws of the territory of Company B treat the income received by the LP as arising to the partners. The territories of LP, Company A and Company C have no tax law with regard to the income, profits and gains of entities. The characteristics of LP are such that the LP is considered transparent under Irish tax law.

On receipt of the interest from Irish Co, Company A makes an immediate corresponding payment to LP.

As Company A makes payment of a corresponding amount within the timeframe specified in section 817V(7)(a), section 817V(7) may apply subject to all other conditions being met.

In this regard, section 817V(7)(b) requires that the corresponding amount would have been an excluded payment had it been paid directly by Irish Co to the recipient of the corresponding amount.

As LP is regarded as a tax transparent entity by Company B, section 817U(6) operates such that the corresponding amount is treated to have been paid directly to Company B for the purposes of the excluded payment test in section 817V(7)(b). Therefore, 0.1% of the interest paid by Irish Co to Company A would have qualified as an excluded payment had it been paid directly to Company B as it is resident in a non-specified territory with a corporate income tax of 15%.

As a result, section 817V(7) applies to 0.1% of the payment such that the defensive measures do not apply (where all the payments must have been made for bona fide commercial purposes).

As Company C is resident in a specified territory, section 817V(7) cannot apply. If Irish Co had made a relevant payment of that portion of the interest directly to Company C it would not have been an excluded payment. Therefore, 99.9% of the relevant payment of interest is within scope of the defensive measures as it is a payment to an associated company resident in a specified territory.

5.5.2 Example – section 817U(6) and section 817V(7) variation A

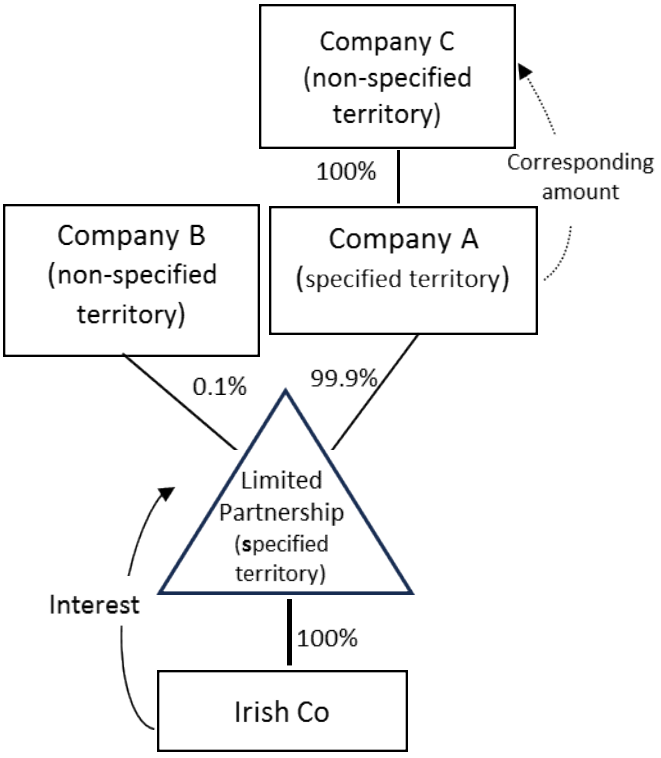

Figure 15: Example 5.5.2 – section 817U(6) and section 817V(7) variation A

An Irish resident company ('Irish Co') makes an interest payment to a limited partnership ('LP') that is resident in a specified territory for the purposes of the defensive measures.

The ownership interests in LP are held 99.9% by Company A which is the general partner and is resident in a specified territory, and 0.1% by company B resident in a non-specified territory. The tax law of all territories concerned view LP as a tax transparent entity.

Company A makes an immediate corresponding payment to its parent company, Company C which is resident in a non-specified territory.

Section 817U(6) applies to treat the payment from Irish Co to LP as having been paid directly by Irish Co to Company A and Company B in proportion to their interests in LP. The portion of the interest payment attributable to Company B is not within the scope of the defensive measures as Company B is resident in a non-specified territory.

On the basis that all payments are made for bona fide commercial purposes, section 817V(7) may apply to the corresponding payment by Company A to Company C (where Company C would have been within the charge to foreign tax at a rate greater than zero percent had the relevant payment been made by Irish Co directly to Company C).

5.5.3 Example – section 817U(6) and section 817V(7) variation B

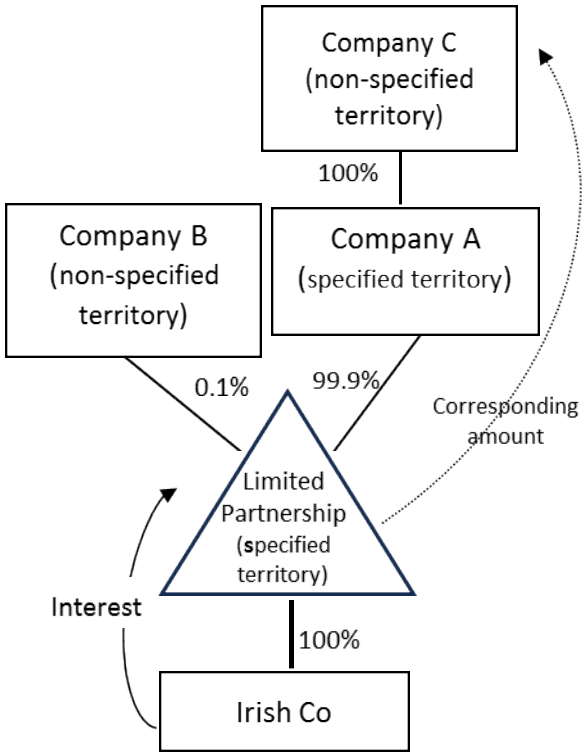

Figure 16: Example 5.5.3 – section 817U(6) and section 817V(7) variation B

Assume the same facts as Example 5.5.2 except that the corresponding amount is paid by LP to Company C rather than by Company A to Company C.

On the basis that a corresponding amount has been paid within the relevant time period and all the provisions of section 817V(7) would be met had the corresponding amount been paid by Company A rather than LP as in the above example, then

Revenue can accept that section 817V(7) applies to the relevant payment of interest from Irish Co to LP.

5.6 Defensive measures where interest has been classified as a distribution

Section 817X applies to a relevant distribution when certain conditions are met. A relevant distribution has the same meaning as it has in Chapter 8A of Part 6 TCA 1997 'Dividend Withholding Tax'. This chapter includes a distribution within the meaning of paragraph 1 of Schedule F in section 20(1) TCA 1997 and in turn that paragraph includes a distribution within the meaning of Chapter 2 of Part 6 TCA 1997 'Meaning of distribution'.

Chapter 2 of Part 6 TCA 1997 includes section 130 TCA 1997 which provides for certain matters to be treated as distributions. Subsection 2(d) of section 130 provides for certain interest to be treated as a distribution for corporation tax purposes.

Therefore, where there is a payment of an amount considered to be a distribution under Chapter 2 of Part 6 it will be a relevant distribution for the purposes of section 817X and not a relevant payment of interest for the purposes of section 817V.

As such, consideration must then be given as to whether the relevant distribution is:

- paid to an associated entity that is resident in a specified territory and is not resident in another territory that is not a specified territory, or a permanent establishment of an associated entity which is situated in a specified territory,
- not an excluded payment, or
- made out of income, profits or gains which have not been chargeable, directly or indirectly, to:
    - domestic tax,
    - foreign tax at a nominal rate greater than zero per cent,
    - a controlled foreign company charge,
    - a supplemental tax, or
    - any other tax which is similar to any of the aforementioned taxes.

Where the income, profits or gains out of which the relevant distribution has been made have been charged to tax, then section 817X(2) will not apply to that payment.

5.7 Exclusions relevant to dividend payments

The defensive measures use the definition of 'relevant distribution' which pertains to the dividend withholding tax regime, as set out in Chapter 8A of Part 6 TCA 1997.

The term 'relevant distribution' encompasses what is commonly regarded as dividend payments and also a variety of other transactions or payments which are

treated as distributions for corporation tax purposes and captures all types of distributions which could fall within the scope of the defensive measures.

The exclusions from the scope of the defensive measures as they relate to dividends have been set out in section 4.3 above.

A company may specify the profits out of which a dividend or distribution has been paid when assessing the application of an exclusion to the defensive measures. Where the profits out of which a dividend or distribution has been paid have not been specified, the dividend or distribution will be considered have been paid from the profits of the last period for which accounts of the company were made up and which ended before the dividend or distribution became payable. Where the total dividend or distribution exceeds the profits available for distribution for a period, then so much of the dividend or distribution as is equal to the excess will be treated as paid out of profits of the immediately preceding period (other than profits of that period which were previously distributed).

The following example illustrates the application of section 817X(1)(c).

5.7.1 Example – application of section 817X(1)(c)

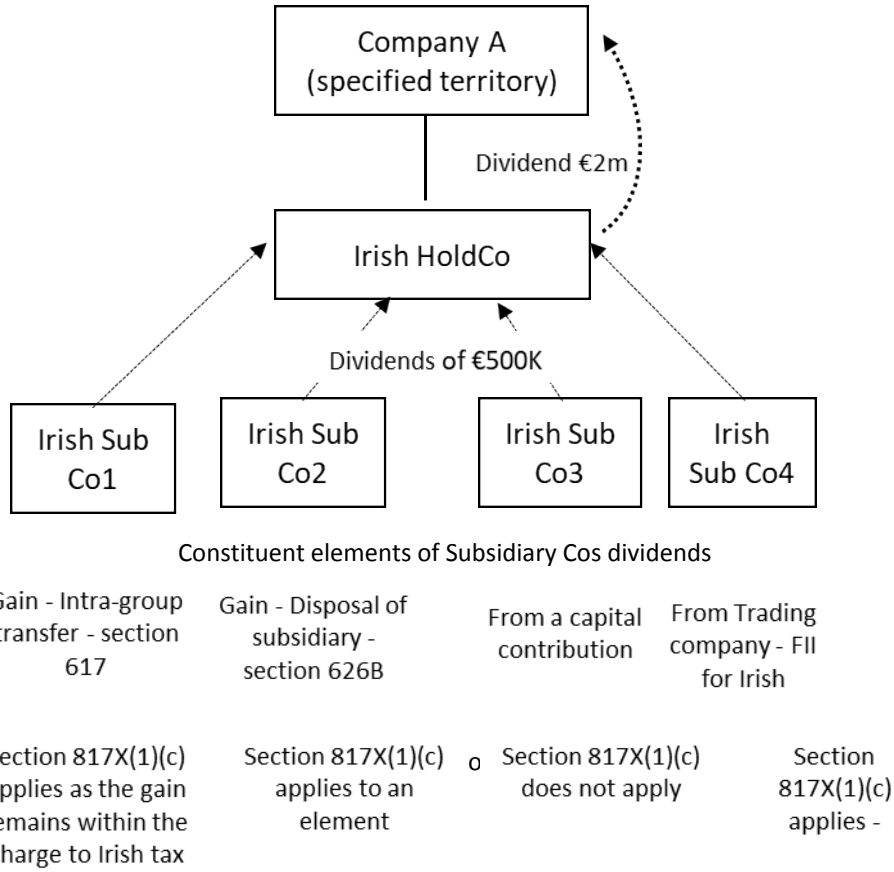

Figure 17: Example 5.7.1 – application of section 817X(1)(c)

Irish HoldCo, an Irish resident company, makes a distribution of €2 million to its parent company, Company A, an associated entity resident in a specified territory.

The distribution has been funded by Irish HoldCo from the following sources:

- €500K from a dividend from its subsidiary Irish Sub Co1 which has paid the dividend out of a gain realised on an intra-group transfer of assets to which section 617 TCA 1997 applied, thereby giving rise a no-gain/ no-loss outcome.
- €500K from a dividend from its subsidiary Irish Sub Co2, which has paid the dividend out of a gain arising from the disposal of Irish Sub Co2's subsidiary which qualified for relief under section 626B TCA 1997.
- €500K from a dividend from its subsidiary Irish Sub Co3, which has paid the dividend out of a capital contribution reserve, which was not subject to corporation tax when received by Irish Sub Co3.
- €500K from a dividend from its Irish tax resident trading company, Irish Sub Co4. Irish Sub Co4 made a distribution out of trading profits to Irish HoldCo.

Pursuant to section 129 TCA 1997, Irish HoldCo is treated as receiving tax-exempt franked investment income from its subsidiaries. The group is not within GloBE Pillar Two Rules.

In accordance with section 817X(1)(c)(i), section 817X does not apply to a relevant distribution made to the extent that the relevant distribution is made out of income, profits or gains which have been chargeable, directly or indirectly, to domestic tax.

- Dividend from Irish Sub Co1

The effect of section 617 TCA 1997 is to defer the taxation of a gain and consequently, the gain remains chargeable to tax. Therefore, the dividend will be considered to have been paid out of income, profits or gains which have been chargeable to domestic tax for the purposes of section 817X(1)(c)(i).

- Dividend from Irish Sub Co 2

Where a disposal of shares meets the requirements of section 626B TCA 1997, that section treats it as not being a 'chargeable gain' within the meaning of the Capital Gains Tax Acts.

Section 626B(2) states "A gain accruing to a company (in this section referred to as the "investor company") on a disposal of shares in another company (in this section referred to as the "investee company") is not a chargeable gain if....".

In such circumstances, the gain accruing to Irish Sub Co 2 has not been directly chargeable to tax. Accordingly, that portion of the relevant distribution made to Company A by Irish Holdco is made out of a gain which has not been chargeable directly to domestic tax, or any other taxes as set out in section 817X(1)(c).

However, it is possible that a portion of the gain may have been indirectly chargeable to domestic tax. Where a portion of the gain on the sale of shares can be attributed, on a just and reasonable basis, to the reserves of the entity being disposed of and those reserves have been chargeable to domestic tax or foreign tax, then that portion of the gain should be considered to have been indirectly chargeable to domestic tax or foreign tax. See example 5.7.2 below.

- Dividend from Irish Sub Co3

As the capital contribution out of which the dividend was paid was not subject to corporation tax when received by Irish Sub Co3, the dividend will not be considered to have been paid out of income, profits or gains which have been chargeable to domestic tax for the purposes of section 817X(1)(c). Accordingly, that portion of the relevant distribution made to Company A by Irish Holdco is made out of a gain which has not been chargeable directly to domestic tax, or any other taxes as set out in section 817X(1)(c).

- Dividend from Irish Sub Co4

As the dividend from Irish Sub Co4 has been paid out of the profits of its trade which have been chargeable to corporation tax, the portion of the dividend from Irish HoldCo to Company A attributable to the dividend received from Irish Sub Co4 will be considered to have been paid out of income, profits or gains which have been indirectly chargeable to domestic tax for the purposes of section 817X(1)(c)(i) (even though the dividend received by Irish HoldCo was itself tax exempt).

5.7.2 Example – gain indirectly charged to tax

Further to example 5.7.1 above, Irish Sub Co3 realises a gain on the sale of shares to which section 626B applies, such that the gain is not a chargeable gain. The gain is calculated as follows:

Proceeds of disposal	600,000
Cost of acquisition	100,000
Gain	500,000

The proceeds of disposal are attributed on a just and reasonable basis as follows:

Net asset value of trading subsidiary	400,000
Goodwill / hope value	200,000
	600,000

The net asset value is funded by €300k P&L reserves (post tax profits arising from the company's trade which does not include any tax-exempt income), and €100k paid-up share capital.

The amount of the gain that has been chargeable indirectly to domestic tax for the purposes of section 817X(1)(c) is €300k, being the post-tax reserves of the company.

5.8 Targeted anti-avoidance provisions

Subsections 817V(5), 817W(4) and 817X(3) are targeted anti-avoidance measures for the relevant payment of interest, and royalties and for relevant distributions, respectively.

These subsections apply where it is reasonable to consider that the main purpose, or one of the main purposes, of an arrangement, or of any part of that arrangement, is the avoidance of the application of any of the provisions of these sections to a

relevant payment of interest, a relevant payment of a royalty or the making of a relevant distribution (as appropriate), directly or indirectly to an associated entity in a specified territory. Where the subsection applies then the relevant section (817V, 817W or 817X) applies as if the arrangement, or that part of the arrangement, had not been entered into.

Arrangements undertaken to eliminate existing payments to associated entities resident, or situated, in specified territories (and that are not designed to merely circumvent the defensive measures such that the relevant payments fund other amounts paid directly or indirectly to specified territories) would not, of themselves, be subject to the targeted anti-avoidance provisions.

5.8.1 Example – specific anti-avoidance provisions

Company A owns Company B, and Company B owns Irish Co.

Companies A and B are located in a specified territory. Irish Co makes interest payments to Company B.

To avoid the application of the defensive measures, Company B subscribes for shares in Company C located in a non-specified territory.

Company B assigns its receivable to Company C in return for the issue of an interest-bearing loan note by Company C to Company B.

In this case, an arrangement is entered into, and it is reasonable to consider that the main purpose of the arrangement is the avoidance of the application of section 817V to the payment of interest to Company B by Irish Co.

This can be contrasted with another arrangement where Company A subscribes for shares in Company D, a company resident in a non-specified territory. Company D lends an amount to Irish Co at interest so that Irish Co can repay its loan to Company B. In this case, Irish Co is now making a payment of interest to a company resident in a non-specified territory and that payment is not funding an interest payment back to Company B.

5.9 Interaction with section 452A TCA 1997

Section 452A TCA 1997 was amended as a consequence of the introduction of the outbound payments defensive measures.

A payment of ‘short’ interest, i.e. not annual interest, to a 75% related group company may, in certain circumstances, be re-classified as a non-deductible distribution for Irish corporation tax purposes unless an election to disapply distribution treatment is made, under the provisions of section 452 TCA 1997.

However, such an election cannot be made where the payment of ‘short’ interest is made to a company resident in a territory which in not an EU Member State or does not have double tax agreement with Ireland.

Instead, as provided by section 452A, the short interest may be deductible as an interest expense where the foreign rate of tax in the territory of the recipient is higher than the Irish rate of tax on that interest.

The consequential amendment to section 452A ensures that where withholding tax applies to short interest as a result of the defensive measures, then it should not be re-classified as a non-deductible distribution for Irish corporation tax purposes.

6 Dates of application

The defensive measures apply to arrangements entered into post 19 October 2023 in respect of payments of interest and royalties, and the making of distributions, on or after 1 April 2024.

For arrangements which were in existence on 19 October 2023[13], the provisions will apply to payments and distributions on or after 1 January 2025. This limited deferral of application facilitates an orderly transition to the new rules.

Examples of arrangements which may have been in place on or before 19 October 2023 in respect of which there is a payment of interest or royalties, or the making of a distribution include:

- the issuance of an interest-bearing loan note on or before 19 October 2023,
- the drawdown on a loan facility which was in place on or before 19 October 2023,
- entering into a contract for access to intellectual property in respect of which there is an agreed royalty on or before 19 October 2023, or
- the declaration of a dividend or the making of a distribution on or before 19 October 2023.

7 Reporting requirements

Every company that makes a payment of interest or royalties, or makes a relevant distribution, in a chargeable period to—

- an associated entity that is resident in a specified territory and is not resident in another territory that is not a specified territory, or
- a permanent establishment of an associated entity which is situated in a specified territory,

must return information on that payment or distribution in their corporation tax return. This reporting requirement applies irrespective of whether an exclusion from the defensive measures applies.

[13] The date of publication of Finance (No. 2) Bill 2023