Record of Meeting

Meeting	Minutes of TALC BEPS Sub-Committee, 24 October 2023 – Implementation of Pillar Two, Meeting 8		
Location	DFIN Offices, 7-9 Merrion Row	Meeting Date	24/10/2023
D/Finance Attendees	Deirdre Donaghy^; Michael Cantwell; Rafal Saniternik; Evan Lombard		
Revenue	Jeanette Doonan; John Quigley; Keith Noonan; Catherine Duffy; Alan Carey; Maresa Hempenstall; Brendan O'Hara^; Diarmúid Kelly^; Sarah Murphy^; Aisling Dooley^; Norma Lane^; Máirín Kane^; Rory Noone^		
ITI	Anne Gunnell; Denis Harrington; David Fennell; Cormac Golden; Kim Doyle		
CCAB_I	Gearoid O'Sullivan; Enda Faughnan^; Kevin Doyle^; Paschal Comerford^		
Irish Law Society	Philip Tully; Caroline Devlin^		
^ Attended remotely via Dial-in			

Purpose

To discuss practitioners' observations / proposed amendments in relation to the Pillar Two legislation contained in the Finance (No. 2) Bill 2023.

Minutes

The Department of Finance ('DFIN') opened the meeting thanking practitioners for their comments and observations and reminded everyone of the stage that the legislation is at within the Finance Bill process.

Observations submitted by the ITI (full submission & questions in Appendix I)

1. **S. 111A(1) – Interpretation – Investment Fund**

   ITI submitted that the wording (d) diverges from Model Rules and EU Directive and proposed a wording change.

   Revenue clarified that the wording used is consistent with the language used throughout the TCA and that it has the same meaning as the proposed wording. It is therefore not proposed to make any change.

   CCAB-I sought clarification as to whether a s. 110 company may meet the definition of an investment entity where its management is subject to a regulatory regime. Revenue confirmed that is it possible that a s. 110 company may be considered to be an investment entity where all of the conditions as set out in the legislation are met.

Action:

Revenue to consider clarification in TDM regarding the meaning of 'has as its main purpose'.

2. S. 111A(1) – Interpretation – Net Book Value of Tangible Assets

ITI submitted that the wording should reflect the Model Rules to provide clarity to businesses.

Revenue stated that the word 'amortisation', as suggested by the ITI as a modification, does not appear in the definition contained in the Model Rules or Directive. Revenue also confirmed that OECD Commentary p122 para 335 provides that payroll expenditures capitalised into eligible tangible assets will be taken into account in the tangible assets carve-out.

3. S. 111A(1) – Interpretation – Ownership Interest

ITI submitted that the definition of 'ownership interest' is critical to the mechanical operation of the rules. Where a fixed return preference share is treated as equity under the financial accounting standard used by the UPE it is unclear how this test will operate in practice.

Revenue sought clarity on the legislative amendment proposed.

ITI stated it wanted to just draw attention to the issue. As it will be problematic in practice for example re-preference shares where a group might fall in and out of the definition and stated that it may not be for legislation but rather an issue for OECD guidance.

4. Principles for Construing Rules in accordance with OECD Pillar Two Guidance

ITI recommended that a consolidated version of the OECD commentary is prepared which incorporates the February and July admin guidance.

Revenue explained that this is a matter for the OECD and that it is understood that this will happen at some point in the future.

5. Ministerial Order to Designate Additional Guidance

ITI recommended, to ensure tax certainty for businesses, that future amendments to the definition of 'OECD Pillar Two guidance' come into effect from a specified date after publication of the statutory instrument. Following discussion on the matter it was agreed that the timing of application of new guidance would depend on the content and context of that guidance. It would not be possible to give a definitive view on how future guidance would take effect without knowing the content and context of such guidance.

6. **Section 11B(2) – 'other than where such an application…would be inconsistent with the Directive'**

   ITI sought clarification as to how Revenue/DFIN will interpret consistency?

   Revenue confirmed that there has been ongoing meetings of the EU's Working Party IV ('WPIV') to discuss consistency between the OECD guidance and the EU Directive.

   It is expected that a Council statement will be made on the state of play with the OECD two pillar solution. Specifically, the statement would recall the OECD guidance and its relevance for the implementation of the Pillar 2 Directive. It is expected that the Commission will also issue a parallel statement confirming that the OECD administrative guidance is compatible with the Pillar 2 Directive.

   DFIN confirmed that more meetings are scheduled regarding the OECD 'peer review' of implementing legislation including the form self-review and peer review. However, the full design of such reviews are yet to be agreed.

7. **Section 111F – Intermediate Parent Entity in the State**

   ITI noted that the wording in ss(1) is aligned to the Model Rules but does not appear to be aligned with the Directive. It was recommended that clarity be sought on application of the Directive.

   Revenue confirmed that the matter had been discussed at WPIV and it was confirmed that the IIR takes precedence over the UTPR in terms of rule order (even in the case where a MS has deferred application under Article 50).

8. **Section 111K – Effect of QDTT**

   ITI recommended that 'discharged' should also be included in ss(2) to facilitate instances where tax refunds are offset against the QDTT liability (e.g. 960H TCA 1997).

   Action:

   Revenue confirmed that the matter would be addressed in guidance.

9. **Section 11O – Determination of Qualifying Income of Loss**

   ITI sought clarity on why Article 15(4) of the Directive was not included within legislation.

   Revenue confirmed that it was provided for in the definition of 'consolidated financial statements' in section 111A.

10. Section 111P – Adjustments to Determine Qualifying Income or Loss

ITI noted that whilst this definition aligns with the EU Directive and Model Rules, it envisages that a single functional currency will be used to compute the taxable income / loss of the entity. Consideration should be given to amending the definition or clarifying in guidance, the approach to be followed where there is more than one tax functional currency.

Action:

Revenue confirmed that the matter would be addressed in guidance.

11. Section 111X – Total Deferred Tax Adjustment Amount

Clarity should be sought at OECD level on whether the deferred tax liability recapture assessment should be completed on an item or a category basis.

Revenue confirmed that this is on the OECD priority list for administrative guidance.

12. Section 111AB – Post-filing Adjustments and Tax Rate Changes

ITI proposed an amendment to ss(1)(a) to remove certain wording, which it was felt was dealt with in the next subsection.

Revenue confirmed that the wording as per the legislation follows Article 25(1) and that the wording would remain.

13. Section 111AE – Substance-based Income Exclusion

Re ss(4)(a)(ii) ITI sought clarity on how this provision should be interpreted for tangible assets that are owned by an Irish constituent entity where the asset technically sits outside Irish territorial waters (e.g. offshore wind assets operated by an Irish entity). Similar comments apply to other assets such as satellites and it is an issue expected to become more prolific in coming years.

Revenue confirmed that this requires further guidance from the OECD.

14. Section 111AE – Substance-based Income Exclusion

Re ss(10)(a) ITI noted that the requirement for the leased asset to be located in the same jurisdiction as the constituent entity as the lessor is likely to significantly reduce the benefit of the SBIE for lessors of mobile assets in practice.

Revenue confirmed that this requires further guidance from the OECD.

CCAB-I stated that the leasing sector find the inclusion of this subsection in draft legislation unhelpful and had thought that they could rely on section 111B.

Revenue confirmed that the legislative approach is consistent with the OECD guidance. Where further guidance is issued then legislative amendments could be considered and the proposed legislation provides the Minister with the power to make an order that new guidance be included within the guidance referred to in section 111B.

15. Section 111AI – Qualified Domestic Top-Up Tax Safe Harbour

ITI noted that the wording “based on constitutional grounds…limiting the MNE group’s tax liability” should equally apply to subsection (a).

Revenue confirmed that that subparagraphs 111AI(3) (i) to (iii) qualify both paragraphs (a) and (b) of that subsection.

16. Section 111AI – Qualified Domestic Top-Up Tax Safe Harbour

ITI suggested that the legislation indicates that the safe harbour doesn’t apply unless the OECD peer review process has been completed by 30 June 2026 and sought clarification.

Revenue confirmed that the peer review process is a 3-step process - transitional (self-assessment), legislative and administrative. It is intended that OECD will provide a list of each jurisdiction with qualified status at each stage and that ‘self-assessments’ will be completed before 30 June 2026.

ITI asked what happens if the peer review process is ‘failed’.

Revenue confirmed that that has yet to be agreed upon by the inclusive framework.

17. Section 111AJ – Transitional CbCR Safe Harbour

The ITI sought clarity, in connection with the definition of ‘qualified financial statements’, on how purchase price accounting adjustments should be dealt with for the purposes of the Transitional CbCR Safe Harbour.

Action:

Revenue stated that it would be necessary to consult with International Tax Division as to whether this will be addressed by OECD guidance. It was confirmed, subsequent to the meeting that this will be addressed in OECD guidance.

18. Section 111AJ – Transitional CbCR Safe Harbour

ITI recommended an amendment to (b)(ii) of the definition of ‘qualified financial statements’ to bring wording into the above line.

Action:

Revenue agreed that a Committee Stage amendment, subject to Ministerial approval, is required.

19. Section 111AJ – Transitional CbCR Safe Harbour

Re-ss(2)(c) the ITI recommend the removal of the wording 'in respect of constituent entities resident in that territory'.

Action:

Revenue agreed that a Committee Stage amendment, subject to Ministerial approval, is required.

20. Section 111AJ – Transitional CbCR Safe Harbour

Re ss(12) ITI noted this subsection gives effect to the Transitional CbCR Safe Harbour, as outlined on page 12 of the OECD's Safe Harbours and Penalty Relief guidance. ITI proposed that Section 111Y, Qualifying loss election, should be updated to reflect that the qualifying loss election with respect to a jurisdiction can be delayed until that jurisdiction ceases to qualify for or apply the Transitional CbCR Safe Harbour.

Action:

Revenue agreed that a Committee Stage amendment, subject to Ministerial approval, is required.

21. Section 111AJ – Transitional CbCR Safe Harbour

Re ss(13) the ITI suggested an amendment to remove a reference to subparagraph (i).

Action:

Revenue agreed that a Committee Stage amendment, subject to Ministerial approval, is required.

22. Section 111AW – Tax Treatment of Deferred Assets…

ITI noted that clarifications and amendments included in the February administrative guidance were not included in legislation.

Revenue sought clarification on what aspects specifically from the February guidance needed to be included in primary legislation, noting the application of section 111B.

ITI stated the main issue is that there was quite a lot contained in the February guidance and are concerned that it is different from the text of the Directive, although it would not be an issue where you can refer to the OECD guidance as a source of interpretation of the primary legislation.

23. Section 111AW – Tax Treatment of Deferred Assets…

Regarding ss(3)(b) and the date of 30 November 2021, the ITI noted that whilst this is the date included in the Directive and Model Rules it would in their view create practical issues over time. For example, a group that is not currently within the scope of Pillar Two could be acquired at a future point (e.g., 2030). Based on the wording of the legislation as currently drafted, deferred tax assets generated after 30 November 2021 would need to be tracked.

Revenue noted the concern but confirmed that there is no flexibility provided in the Directive or the OECD Model Rules in this regard.

24. Section 111AW – Tax Treatment of Deferred Assets…

Regarding ss(4)(a) the ITI noted that similar issues as per point 23 for intra group transfers. The ITI recommended that the OECD clarifies that a specific look-back period can apply for groups that enter into the scope of Pillar Two at a later date.

Revenue stated that OECD guidance would be required.

25. Section 111AX – Transitional Relief for Substance-Based Income Exclusion

ITI noted in regards to ss(1) that, albeit in line with the Directive and Model Rules, for groups that transition into the scope of Pillar Two at a future point in time, they believe that the transitional rates for the Substance-based Income Exclusion should equally apply.

Revenue stated that OECD guidance would be required but as it’s not presently in guidance it cannot be addressed in legislation.

26. Section 111AAB – Qualifying Entities

The ITI proposed an amendment to (1)(b) which would in their view bring joint ventures within the scope of the QDTT.

Action:

Revenue agreed that a Committee Stage amendment, subject to Ministerial approval, is required.

27. Section 111AAB – Qualifying entities

Regarding (1)(c), the ITI noted an issue with the indentation.

Action:

Revenue confirmed that there was an alignment issue on publication that will be fixed via the proof-reading process.

28. Section 111AAB – Qualifying Entities

Regarding ss(2) ITI sought clarification regarding the denominator of 365 days applies even where the calendar year is 366 days.

Revenue confirmed that was the case.

29. Section 111AAB – Qualifying Entities

Regarding ss(2)(e) the ITI noted that as currently drafted, the local accounting standard would appear to only apply where the accounting period (start date and end date) of each qualifying entity is aligned to the fiscal year of the ultimate parent entity. Another issue noted was with regard to liquidated entities and how that would interact with the 'same fiscal year' requirement.

Revenue confirmed that the issue had been raised as a priority item with the OECD. The legislation as drafted follows the guidance.

30. Section 111AAD – Determining top-up amounts of qualifying entity

Regarding ss(3)(c) the ITI proposed removal of sub-paragraph (ix) which referred to section 111AR (ultimate parent entity subject to a deductible dividend regime).

Revenue sought clarity as to the specific issue here as s111AR applies where the UPE of an MNE or largescale domestic group is subject to the deductible dividend regime and therefore that section would not have application to a 'stand-alone' entity. Subsequent to the meeting it was noted that an issue could arise if there was a standalone agricultural cooperative subject to a deductible dividend regime that was in scope of the rules. However this was understood to be a hypothetical scenario which may be addressed in a future Finance Bill if necessary.

31. Section 111AAD – Determining Top-up Amounts of Qualifying Entity

The ITI noted that section 111AAD(2)(e) and the meaning of same 'fiscal year' could be problematic and raised a number of questions. Revenue noted that the issues have been raised with the OECD for further guidance.

Tie Breaker Test:

The ITI noted that the tie breaker test in section 111AAD(2)(e)(3B) may not apply in every scenario, e.g. where there was a company without Case I or II profits or losses and did not file accounts with the CRO. Revenue and DFIN noted this and said that they would work on a solution which would be included at Committee Stage subject to Ministerial approval.

Loss Making Company:

It was further noted that the tie-breaker test should refer to case I or II losses as well as profits.

Action:

Subject to Ministerial approval a Committee Stage amendment will be included here.

Financial Statements v Financial Accounts:

ITI noted that the term financial statements is used in (3B) and whereas in other cases interchangeably the term financial accounts is used, financial accounts would be preferable.

Action:

Subject to Ministerial approval a Committee Stage amendment will be included here.

32. Section 111AAD – Determining Top-up Amounts of Qualifying Entity

With regards to paragraph (h) the ITI noted that it was unclear to which entity the withholding tax is allocated and the impact of same.

Revenue referred to the July administrative guidance (page 67 para 44) which updated commentary on Article 118.30.

The CCAB-I requested clarification on section 111AAD(5) with reference to the transition year. Revenue clarified that the legislation is in line with the July 2023 guidance on page 67 to 70. Revenue also confirmed that a question has been raised with the OECD Secretariat asking how this guidance interacts with a QDTT that has been granted SH status.

33. Section 111AAH – Obligation to Register

ITI noted in relation to ss (3) and (4) that there is a 12 month window to register or de-register for the QDTT, IIR and UTPR purposes and that based on previous discussions it had understood that an entity would not be required to de-register if a liability to IIR/UTPR/QDTT did not arise and a nil return could be filed.

Revenue confirmed that an entity which is subject to IIR/UTPR/QDTT but for which no liability to top-up tax arises is not required to deregister but can instead file a 'nil' return. If an entity meets the definition of a qualifying entity in section 111AB it will have to file a QDTT return. An entity will be a relevant parent entity or relevant UTPR entity if it is subject to either of those top-up taxes for the fiscal year. If an entity is subject to either of those taxes but the liability is NIL they can file a NIL return.

34. Section 111AAJ – IIR Return and Self-Assessment

ITI welcomed the fact that an amended return can be filed for IIR purposes and that there are similar provisions for UTPR and QDTT. ITI though noted that the OECD commentary on Article 4.6.1 is confusing with regards to refunds and potential for double taxation.

Revenue confirmed that it is on the OECD's list as an item to be looked at in future guidance.

35. Section 111AAM – UTPR Group Recovery

ITI noted from section 111AAX that surcharge and interest would form part of the tax due for the purpose of section 111AAM. However, it is not clear whether the notice served under section 111AAM would also allow for an authorised officer to serve notice on another UTPR member for any unpaid penalties of the UTPR group filer.

Revenue confirmed that section 111AAM(1)(b) provides that a reference to an amount of UTPR top-up tax shall be construed as including a reference to any interest, surcharge or penalty relating to such amount. Therefore, penalties would be captured within the notice.

36. Section 111AAX – Surcharge for Late Return

Regarding ss(2) the ITI welcomed the monetary cap on the surcharge, however it was noted that the surcharge cap was subject to the number of entities in Ireland. ITI recommended that the cap should instead be based on the total amount of Irish Top-up Tax due.

Revenue confirmed that this is ultimately a policy decision but since these are the biggest groups with the most resources it would be expected that they have the greatest ability to file on time.

37. Section 111AAAB – Penalties

ITI noted, re ss(1)(b), that the monthly penalty is €10,000 and will apply to each entity that fails to notify Revenue that another group entity will file the Top-Up Tax information return. ITI recommended a reduced penalty.

Revenue confirmed that this is ultimately a policy decision and reiterated again that since these are the biggest groups with the most resources it would be expected that they have the ability to comply with the requirements.

38. Section 111AAAB – Penalties

The ITI recommended that relief from penalties should be provided for groups that transition into the rules at a later stage (after the transition period).

Revenue confirmed that again it was a policy decision but, notwithstanding that, such an approach regarding penalty relief is not provided for in OECD guidance.

39. Section 111AAAC – Transitional Simplified Jurisdictional Reporting Framework

ITI sought confirmation that the transitional simplified jurisdictional reporting framework would apply to a single Irish entity.

Revenue sought clarity on the issue and the basis upon which a single entity would need to apply the 'netting approach'. ITI clarified there is an administrative reduction if they can complete the jurisdictional panel of the GIR.

Action:

Revenue agreed to consider the single entity point further.

40. Section 111AAAC – Transitional Simplified Jurisdictional Reporting Framework

The ITI noted regarding ss(3)(c) that it suggests that, if a group operates in a jurisdiction that does not include the transitional simplified jurisdictional reporting framework in its domestic legislation, the framework will not be available for the group as a whole. Given the fact that this framework was agreed by OECD Inclusive Framework members in July 2023, it is hoped that all jurisdictions will apply the framework in practice. Further clarification on how the availability of the framework will be assessed in practice would be welcome.

Revenue confirmed that the simplified jurisdictional reporting framework will depend on the specific approach adopted in the specific jurisdiction in which the liabilities arise.

41. Section 111AAAC – Transitional Simplified Jurisdictional Reporting Framework

Regarding ss(4) the ITI noted a possible typo.

Action:

Revenue agreed that a Committee Stage amendment, subject to Ministerial approval, is required.

42. Section 111AAAD – Elections

Regarding ss(3) the ITI noted that it provides that an annual election should automatically be considered to be made again in subsequent years unless withdrawn. ITI sought clarity as to how the withdrawal of an annual election might operate in practice.

Action:

Revenue confirmed that elections are something that will be addressed by way of Revenue guidance. However it was noted that the template GIR does not provide for revoking annual elections.

43. Section 93 (of Finance Bill (No. 2) 2023): Amendment of Schedule 24 to Principal Act (relief from income tax and corporation tax by means of credit in respect of foreign tax)

ITI suggested that there was possible a typo in this provision between paragraph's (a) and (b).

Revenue confirmed that the approach taken is correct because you either have to come within (a) 'or' (b).

44. Additional Comment – Supplementary Query (Part B) – Section 111AY

The ITI submitted the following example and questions:

Assume the following fact pattern:

A group in scope of Pillar 2 has an Irish UPE
that group has constituent entities in no more than 6 territories
and has tangible assets less than €50m in non-Irish constituent entities
and therefore falls within new S.111AY(3), meaning it can benefit from S.111AY(1) for the initial 5 year period.

The equivalent Article in the EU Directive to S.111AY is Article 49. It seems clear that Article 49(1), the equivalent of S.111AY(1), deems IIR and UTPR to be zero in respect of the UPE and ***any constituent entities in the UPE country*** *(i.e. entities in scope of Article 5(2)). No such deeming arises for constituent entities outside the UPE country.*

There are 2 issues arising from this:

45. <u>S.111E – does it fulfil EU Directive requirements?</u>

The equivalent section in the Finance Bill to Article 5 of the Directive is s.111E. However, the Bill transposed Article 5(2) in a different manner so that the Irish constituent entity taxation, other than in respect of the UPE, is covered by s.111E(1) and not s.111E(2). This appears to have the effect of limiting the s.111AY relief to the UPE tax in respect of itself and not the other Irish CEs. Thus, the draft legislation does not seem to fulfil the Directive's requirement to deem the IIR top-up tax to be nil for <u>all</u> UPE country entities, not just the UPE itself.

Is our understanding correct? If this is intended, what is the rationale for this?

46. ***Interaction of Irish QDMTT with Irish IIR***

Where the above situation applies, is it intended that Irish QDMTT would still apply a top-up tax to the Irish UPE and its Irish constituent entities, notwithstanding IIR/UTPR top-up tax is deemed to be nil? The relevant wording is in s.111AAD(4) which disapplies s.111AY for domestic purposes if constituent entities/qualifying entities are held by a parent entity subject to a Qualified IIR. This is presumably the case if there is an Irish UPE.

If this is intended, what is the logic for applying Irish QDTT if no IIR or UTPR top up tax would arise? Perhaps this is designed with non-Irish UPEs in mind but does an anomaly exist in the scenario above?

In response to 1:

Action:

Revenue agreed that a Committee Stage amendment, subject to Ministerial approval, is needed to section 111AY due to the manner in which section 111E operates.

In response to 2:

Action:

Revenue agreed that a Committee Stage amendment, subject to Ministerial approval, is needed to section 111AAD(4) to ensure it operates as intended.

Observations submitted by the CCAB-I

1. **The updates made in respect of the use of the local accounting standard for QDTT/QDMTT Safe Harbour purposes**

   These points were dealt with at #31 and #32 above.

2. **The scope of the carve out for Investment Entities in s111AAB**

   This point was dealt with at #27 above.

3. **S111AAAC(3) – the simplified reporting jurisdictional framework has had the dates updated to align with the OECD guidance but the wording is not exactly the same. Are we satisfied that this is sufficiently close to the OECD simplification such that groups can use it?**

Revenue confirmed that in their view the draft legislation correctly applies the SJRF and asked whether there were any specific concerns regarding the legislation. CCAB-I said that they did not have a specific concern but it was a general question.

4. **The concept of the "new transition year" first referred to in S.111AAD?**

   This point was dealt with at #32 above.

5. **S.111AAD(h): Determining Top-up amounts of qualifying entity, unclear to which entity the with-holding tax is allocated / what is the impact of this?**

   This point was dealt with at #32 above.

6. **The phrasing of the OECD peer review process interaction with the QDMTT safe harbour: S111AI(2): "*Notwithstanding section 111AD(3), and subject to subsections (3) to (6), on the making of an election by a filing constituent entity in respect of a QDTT subgroup for a fiscal year, jurisdictional top-up tax in respect of the QDTT subgroup for the fiscal year concerned shall be deemed to be zero (in this section, referred to as the 'QDTT Safe Harbour') where the qualified domestic top-up tax implemented under the tax law of that jurisdiction is determined to have met the QDTT Safe Harbour standards under an OECD peer review process prior to the specified return date in respect of that fiscal year.*" Indicates that the safe harbour is no good unless the OECD peer review process has completed by 30 June 2026. What happens if that date is not met, or if we then find out that Ireland does not qualify either before or after 30 June 2026?**

   This point was dealt with at #16 above.

7. **The lack of ability to make group registrations –**

   Revenue stated regarding registrations that each in scope entity needs to contact Revenue at least once at registration, particularly where the entity is going to consent to a group filer.

8. **The interaction of the arm's length requirements of Section 111P with the carve outs contained in Section 110 and Section 835E**

   The OECD Commentary to Model Rule published in March 2022 on Article 3.2.3 runs from p64 to 66 (paragraphs 96-109). The first two paragraphs are as follows:

   "96. Article 3.2.3 requires transactions between Group Entities to be priced consistently with the Arm's Length Principle and recorded at the same price for GloBE purposes for all Constituent Entities that are parties to the transaction.

97. Constituent Entities of an MNE Group typically maintain a transfer pricing policy based on the Arm's Length Principle and this standard is used to determine the transfer price that is reflected in their financial accounts and in computing the local taxable income. Therefore, it is generally expected that Constituent Entities' financial accounts will reflect transactions between Group Entities based on the Arm's Length Principle and at the same price. The MNE Group and the tax administrations examining the tax returns of Constituent Entities engaged in the controlled transactions are in the best place to assess compliance with the Arm's Length Principle. Where the MNE Group has used the ***transfer price*** *reflected in its financial accounts to compute local taxable income and the relevant tax authorities do not require a transfer pricing adjustment, this price should be used in the computation of GloBE Income or Loss. In these circumstances, the MNE Group should not make an adjustment under Article 3.2.3."* [Emphasis added]

A view was provided by the CCABI that this guidance suggests that the general rule in Article 3.2.3 of the Model Rules/Article 16(4) of the Directive should not apply in cases where there is no domestic requirement for a transfer pricing adjustment and that domestic legislation does not impose an arm's length or transfer pricing requirement.

It is Revenue's view that the words highlighted in bold above ("transfer price") are key to interpreting this piece of commentary. Revenue's understanding is that transfer pricing needs to be applied (which is clear from the Model Rules and Directive and paragraph 96 in the OECD Commentary).Revenue's interpretation of the OECD Commentary at paragraph 97 is that if the tax authorities do not adjust that transfer price (perhaps because they agree it, or perhaps because they don't verify it) then there is no requirement to make an adjustment for Pillar Two purposes. In other words, to the extent you comply with the arm's length principle and that is not disputed (or is accepted), that follows through to the amount to be included in the calculation of qualifying income.

The uses of the term 'transfer price' rather than 'price' in paragraph 97 implies something more than the price as per the accounts.

9. Whether a payment for group relief surrendered constitutes a covered tax as defined in Section 111T?

Regarding this Revenue asked if there were concerns that the payment would not be accounted for under the current tax amount in the financial accounts of the pater/recipient. CCAB-I stated that the concern is that under group relief a payment may be made to a member of the group and not to a tax authority and would that call into question whether the payment is a covered tax. This could have implications where the ETR and top-up tax of the entities are not calculated on a jurisdictional basis (e.g. an investment entity that calculates its ETR separately from the rest of the entities in the jurisdiction)

Action:

Revenue to consider further and it may need to be covered in guidance.

10. **The leasing specific guidance has been included in the main body of the legislation whereas preference would have been that it would have been dealt with under S111B, particularly given much of the current guidance is still being discussed directly with the OECD, and we are hopeful we will see some changes there.**

    This point was dealt with at #16 above.

AOB

The ITI asked about publication of minutes of previous TALC BEPS meetings. Revenue agreed to have those published.

Action:

Revenue to publish minutes.

Regarding the issuance of Revenue guidance; it was confirmed that a TDM would be prepared, however the TDM would not provide guidance on guidance issued by the OECD.

The Department of Finance and Revenue thanked the bodies for their submissions and for preparing same within very tight deadlines.

Action points

Action points have been noted throughout the minutes.

Next Meeting

It was suggested that the next meeting would take place in December to discuss the work programme for next year. It was noted that the TALC Sub-Committee meetings would be reverting back to their usual form, to discuss issues around tax administration and the development of guidance. A suggested window for the meeting was the end of December.

Signed	*Rory Noone*

Appendix I

Feedback on Finance (No.2) Bill 2023 - Pillar Two Provisions
23 October 2023
Supplemental Query (Part B)

Additional Comment: This concerns the initial phase relief in section 111AY (page 219)

Assume the following fact pattern:

- A group in scope of Pillar 2 has an Irish UPE
- that group has constituent entities in no more than 6 territories
- and has tangible assets less than €50m in non-Irish constituent entities
- and therefore falls within new S.111AY(3), meaning it can benefit from S.111AY(1) for the initial 5 year period.

The equivalent Article in the EU Directive to S.111AY is Article 49. It seems clear that Article 49(1), the equivalent of S.111AY(1), deems IIR and UTPR to be zero in respect of the UPE and **any constituent entities in the UPE country** (i.e. entities in scope of Article 5(2)). No such deeming arises for constituent entities outside the UPE country.

There are 2 issues arising from this:

1. **<u>S.111E – does it fulfil EU Directive requirements?</u>**
   The equivalent section in the Finance Bill to Article 5 of the Directive is s.111E. However, the Bill transposed Article 5(2) in a different manner so that the Irish constituent entity taxation, other than in respect of the UPE, is covered by s.111E(1) and not s.111E(2). This appears to have the effect of limiting the s.111AY relief to the UPE tax in respect of itself and not the other Irish CEs. Thus, the draft legislation does not seem to fulfil the Directive's requirement to deem the IIR top-up tax to be nil for <u>all</u> UPE country entities, not just the UPE itself.

   Is our understanding correct? If this is intended, what is the rationale for this?

2. **<u>Interaction of Irish QDMTT with Irish IIR</u>**
   Where the above situation applies, is it intended that Irish QDMTT would still apply a top-up tax to the Irish UPE and its Irish constituent entities, notwithstanding IIR/UTPR top-up tax is deemed to be nil? The relevant wording is in s.111AAD(4) which disapplies s.111AY for domestic purposes if constituent entities/qualifying entities are held by a parent entity subject to a Qualified IIR. This is presumably the case if there is an Irish UPE.

If this is intended, what is the logic for applying Irish QDTT if no IIR or UTPR top up tax would arise? Perhaps this is designed with non-Irish UPEs in mind but does an anomaly exist in the scenario above?

Feedback on Finance (No.2) Bill 2023 - Pillar Two Provisions (Part A)
23 October 2023

Section 111A(1) – Interpretation

'investment fund' *means an entity or arrangement that— […]*
(d) ~~has as its main purpose~~ is primarily designed to generate investment income or gains, or protection against a particular or general event or outcome,
[…]

1. **Comment:**
   The wording in (d) of the definition diverges from both the Model Rules and the EU Directive definition and has been marked up to bring it into line.

'net book value of tangible assets' means the average of the beginning and end values of *tangible assets after taking into account accumulated depreciation, amortisation, or depletion and impairment, and increased by any amount attributable to the capitalisation of payroll expenses, as recorded in the financial statements;*

2. **Comment:**
   Whilst the current proposed definition aligns with the EU Directive, we have amended to reflect the wording contained in the Model Rules to provide clarity to businesses.

   We also note that the term "amortisation" is included in the definition of an Eligible Tangible Asset for the purposes of the Substance-based Income Exclusion.

'ownership interest' *means any equity interest that carries rights to the profits, capital, or reserves of an entity, or of a permanent establishment;*

3. **Comment:**
   In several places throughout the EU Directive, the definition of 'ownership interest' is critical to the mechanical operation of the rules, such as establishing if there is a Partially-Owned Parent Entity, Joint Venture, excluded dividends, excluded equity gain or loss.

   In applying the 'ownership interest' test, often the weighting of the equity rights to profit / capital / reserves is necessary to assess if the ownership criteria have been met. Where a fixed-return preference share is treated as equity under the financial accounting standard used by the UPE in the preparation of its consolidated financial statements, it is unclear how this test will operate in practice.

Clarity on the issue is sought, as differing interpretations / weightings applied by tax administrations could give rise to complex issues in practice. For example, an entity could be deemed to be a POPE in one year, then not a POPE in a subsequent year, then a POPE again etc.

Section 111B – Principles for construing rules in accordance with OECD Pillar Two guidance

'OECD Pillar Two guidance' *means—*
(a) the document entitled OECD (2022), Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), First Edition: Inclusive Framework on BEPS, OECD Publishing, Paris published by the OECD on 14 March 2022
[…]

(d) the document entitled OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD Publishing, Paris published by the OECD on 2 February 2023

(e) the document entitled OECD (2022), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD Publishing, Paris published by the OECD on 17 July 2023

4. **Comment:**
   We recommend that a consolidated version of the OECD Commentary is prepared, which incorporates the OECD February Administrative Guidance and the OECD July Administrative Guidance.

In this section—
(3) The Minister may, for the purposes of this Part, by order designate any additional subsequent guidance referred to in paragraph (g) of the definition in subsection (1) of 'OECD Pillar Two guidance' as being comprised in the OECD Pillar Two guidance.

5. **Comment:**
   To ensure tax certainty for business seeking to interpret the Irish implementation of the GloBE rules in light of the OECD guidance, we strongly recommend that future amendments to the definition of "OECD Pillar Two guidance" come into effect for accounting periods commencing on a specified date subsequent to the publication of the effecting statutory instrument (subject to the comments below).

   Given the novelty and complexity of the GloBE rules, measures that simplify the operation of the rules and/or prevent double taxation outcomes are essential. It is therefore imperative that measures or clarifications agreed at the OECD level that simplify the operation of the rules or prevent instances of double / excessive taxation will be implemented in Ireland as soon as practicable.

To achieve this outcome, we recommend that businesses should be entitled to take into account such measures or clarifications as soon as they are agreed by the OECD Inclusive Framework. This could be achieved by means of administrative practice until such time as the updated guidance can be formally incorporated into the definition of "OECD Pillar Two guidance" by means of statutory instrument.

6. **Comment:**
   In section 111B, ss2, (line 10-15 of the Bill), where it states: "other than where such an application of this section would be inconsistent with the Directive." How will Revenue/Dept of Finance interpret consistency or inconsistency with the Directive?

Section 111F – Intermediate parent entity in the State

(1) Subject to subsection (3), an intermediate parent entity located in the State—
(a) whose ownership interests are owned directly or indirectly by an ultimate parent entity that is located in a third-country territory or a Member State that has not applied a qualifying IIR to the ultimate parent entity, and
[…]

7. **Comment:**
   We note that while this subsection is aligned with the Model Rules, it does not appear to be aligned with the requirements of the EU Directive.

   The Directive only provides for the Intermediate Parent Entity rules to apply where the UPE is located in a third-country territory. It does not apply where the UPE is located in the EU and has not introduced a qualified IIR (potentially due to adopting Article 50 of the EU Directive).
   We recommend that clarity be sought (to the extent not already sought) at EU level that this amendment is not in contravention of the EU Directive.

Section 111K – Effect of qualified domestic top-up tax

(2) Where the amount of qualified domestic top-up tax in respect of a constituent entity for a fiscal year has not been paid within the four fiscal years following the fiscal year in which it was due, the amount of domestic top-up tax that was not paid or discharged, and cannot be collected anymore, shall be added to the territorial top-up tax in respect of the territory where the constituent entity is located computed in accordance with section 111AD(3).

8. **Comment:**
   The term "paid" should be clarified by way of definition or through guidance to include discharge and facilitate where other tax refunds are offset against the QDTT liability, similar to section 960H TCA 1997.

Section 111O – Determination of qualifying income or loss

9. **Comment:**
   Clarity would be welcome on why Article 15(4) of the EU Directive has not been included in the legislative provisions.

Section 111P – Adjustments to determine qualifying income or loss

'tax functional currency' *means the functional currency used to determine the constituent entity's taxable income or loss for a covered tax in the territory in which it is located;*

10. **Comment:**
    Whilst this definition aligns with the EU Directive and Model Rules, it envisages that a single functional currency will be used to compute the taxable income / loss of the entity. Consideration should be given to amending the definition or clarifying in guidance, the approach to be followed where there is more than one tax functional currency.

Section 111X – Total deferred tax adjustment amount

(9) Subject to subsection (10), a deferred tax liability that is not reversed or has not been paid within 5 years of the end of the fiscal year in which it arose shall be recaptured to the extent it was taken into account in the total deferred tax adjustment amount of a constituent entity, and for this purpose—
[…]

11. **Comment:**
    Clarity should be sought at OECD level on whether the deferred tax liability recapture assessment should be completed on an item or a category basis. This may arise in instances where there is a class of assets resulting a net deferred tax liability. tracking each component of this deferred tax liability for a category will be extremely burdensome. Further OECD guidance which simplifies the deferred tax recapture rules would be welcome.

Section 111AB: Post-filing adjustments and tax rate changes

(1)(a) Subject to paragraph (b), where a constituent entity records an adjustment to its covered taxes for a previous fiscal year in its financial accounts, such adjustment shall be treated as an adjustment to covered taxes in the fiscal year in which the adjustment is made~~, unless the adjustment relates to a fiscal year in which there is a decrease in covered taxes for the territory~~.

12. **Comment:**
    We recommend that this provision be amended as marked up. In our view, the deleted text is unnecessary given that the provision is already stated to be subject to paragraph (b).

Section 111AE: Substance-based income exclusion

(4)(a)(ii) an eligible tangible asset shall be considered to be located in the jurisdiction in which the constituent entity is located where the eligible tangible asset is located within that jurisdiction more than 50 per cent of the time in a fiscal year

13. **Comment:**
    Clarity would be welcome on how this provision should be interpreted for tangible assets that are owned by an Irish constituent entity where the asset technically sits outside Irish territorial waters (e.g., offshore wind assets operated by an Irish entity). Similar comments apply to other assets such as satellites.

10(a) Subject to subsection 11, for the purposes of subsection (4) and notwithstanding section (4)(b)(i), a constituent entity that is the lessor of property, plant or equipment leased under an operating lease may calculate a tangible asset carve-out in respect of the leased property, plant or equipment in accordance with paragraph (b) where the property, plant or equipment is located in the same jurisdiction as the constituent entity.

14. **Comment:**
    The requirement for the leased asset to be located in the same jurisdiction as the constituent entity as the lessor is likely to significantly reduce the benefit of the SBIE for lessors of mobile assets in practice. It is important that further guidance is prepared by the OECD to address the treatment of mobile assets for SBIE purposes.

Section 111AI – Qualified domestic top-up tax safe harbour

15. **Comment:**
    As noted in previous feedback, the wording "based on constitutional grounds….limiting the MNE group's tax liability" should equally apply to subsection (a). While it appears that this may have been incorporated into the Finance Bill provisions (based on the indentation of the text), this is not entirely clear. Further clarification of this point would be welcome.

The phrasing of the OECD peer review process interaction with the QDMTT safe harbour:
S111AI(2): "*Notwithstanding section 111AD(3), and subject to subsections (3) to (6), on the making of an election by a filing constituent entity in respect of a QDTT subgroup for a fiscal year, jurisdictional top-up tax in respect of the QDTT subgroup for the fiscal year concerned shall be deemed to be zero (in this section, referred to as the 'QDTT Safe Harbour') where the qualified domestic top-up tax implemented under the tax law of that jurisdiction is determined to have met the QDTT Safe Harbour standards under an OECD peer review process prior to the specified return date in respect of that fiscal year.*"

16. **Comment**:
Indicates that the safe harbour doesn't apply unless the OECD peer review process has been completed by 30 June 2026. What happens if that date is not met, or if we then find out that Ireland does not qualify either before or after 30 June 2026?

Section 111AJ – Transitional CbCR safe harbour

'qualified financial statements' *means—*
(a) the accounts used to prepare the consolidated financial statements of the ultimate parent entity before any consolidation adjustments eliminating intra-group transactions

17. **Comment:**
The definition of Qualified Financial Statements in the OECD safe harbour guidance includes a reference to the consolidated financial statements of the UPE mirroring the requirement under Article 3.1.2. The Commentary on Article 3.1.2 includes additional detail regarding the treatment of purchase price accounting.

Clarity would be welcome on whether purchase price accounting adjustments are required for the purposes of the Transitional CbCR Safe Harbour and whether the OECD guidance should be relied upon in this regard.

(b) separate financial statements of each constituent entity, joint venture or joint venture affiliate provided they are prepared in accordance with—
i. an acceptable financial accounting standard, or
ii. *an authorised financial accounting standard, and where the information contained in the financial statements is reliable, or*
~~*and where the information contained in the financial statements is reliable, or*~~

18. **Comment:**
The qualifying condition that the information contained in the financial statements must be reliable appears, based on the OECD safe harbour guidance, to only relate to authorised financial accounting standards. We have prepared a mark-up to align with the OECD guidance as a result.

(2) […]
(c) subject to subsection (6), the MNE group reports a profit or loss before income tax in that territory that is equal to, or less than, the substance-based income exclusion amount ~~in respect of constituent entities resident in that territory~~, as calculated in accordance with section 111AE and 111AX (in this section referred to as the routine profits test) in respect of constituent entities that are both,

19. **Comment:**
We believe that the marked-up amendments would more clearly reflect the OECD guidance included in paragraph 29 of the OECD's Safe Harbours and Penalty Relief guidance with respect to constituent entities that are located in different jurisdictions for CbCR and GloBE purposes.

(12) Where the transitional CbCR safe harbour applies to an MNE group in respect of a jurisdiction for a fiscal year then—
[…]

20. ***Comment:***
    Subsection (12) gives effect to the Transitional CbCR Safe Harbour, as outlined on page 12 of the OECD's Safe Harbours and Penalty Relief guidance. We believe that Section 111Y, Qualifying loss election, should also be updated to reflect that the qualifying loss election with respect to a jurisdiction can be delayed until that jurisdiction ceases to qualify for or apply the Transitional CbCR Safe Harbour (i.e., to be valid, the election has to be made in the first GIR that includes the general calculations of the jurisdiction).

(13) For the purposes of subsection 12(c)~~(i)~~…

21. **Comment:**
    There does not appear to be a subsection 12(c)(i). Should this be a reference to subsection 12(c)?

Section 111AW: Tax treatment of deferred tax assets, deferred tax liabilities and transferred assets upon transition

22. **Comment:**
    We note that the clarifications / amendments included in the OECD February Administrative Guidance have not been placed on a legislative footing. Given the significant changes to the EU Directive and Model Rules in the February Administrative Guidance, it would be helpful if these changes were incorporated into the legislation.

(3) For the purposes of subsection 2(a), deferred tax assets—

[…]
(b) generated in a transaction that takes place after 30 November 2021

23. **Comment:**
    While we acknowledge that the 30 November 2021 is included in the EU Directive and the OECD Model Rules, we believe that including a fixed starting date will create practical issues over time. For example, a group that is not currently within the scope of Pillar Two could be acquired at a future point (e.g., 2030). Based on the wording of the legislation as currently drafted, deferred tax assets generated after 30 November 2021 would need to be tracked. This is likely to cause practical challenges for groups that are not currently in-scope but fall within the scope of Pillar Two at a later stage.

(4) Where—
(a) after 30 November 2021, and
[…]

24. **Comment:**
Similar to the point above, the specific reference to 30 November 2021 for intra-group transfers is likely to give rise to practical issues in future years. Groups that become subject to Pillar Two in the future (e.g., due to revenue growth or an acquisition) will need to track intra-group asset transfers from 30 November 2021.

We recommend that the OECD clarifies that a specific look-back period can apply for groups that enter into the scope of Pillar Two at a later date.

Section 111AX: Transitional relief for substance-based income exclusion

(1) For the purpose of applying section 111AE(3), the value of 5 per cent shall be replaced, for each fiscal for each fiscal year beginning in the calendar year set out in column (1) of the Table to this subsection, with the values set out in the column (2) of that Table:

25. **Comment:**
For groups that transition into the scope of Pillar Two at a future point in time, we believe that the transitional rates for the Substance-based Income Exclusion should equally apply. We appreciate that the current legislation is reflecting the OECD Model Rules and EU Directive, however, we would recommend that this point is raised with the OECD.

Similar comments also apply to the table in subsection (2) of section 111AX.

Section 111AAB: Qualifying entities

(b) a joint venture or joint venture affiliate in respect of which a constituent entity is subject to section 111E to 111J in accordance with section 111AO~~with a parent entity to which this part applies or world apply but for the fact that no parent entity is located in the State~~, or

26. **Comment:**
We note that a 'parent entity' is defined term in section 111A in a manner which would not include an ownership interest in a joint venture (e.g., an ultimate parent entity requires a controlling interest to be held in a constituent entity). We have provided a suggested mark-up to enable joint ventures to be brought within the scope of QDTT.

(c) an entity not referred to in paragraph (a) or (b), that—
[…]

(ii) is not an excluded entity by virtue of section 111C(2),
but shall not include an investment entity.

27. **Comment:**
    Based on the indentation of the wording "but shall not include an investment entity", we understand that this provision is intended to exclude a standalone investment entity from the scope of Irish QDTT. However, investment entities that are part of an MNE Group would still fall within the scope of (a) and would be subject to Irish QDTT.

    Clarification of this point would be welcome, as well as clarification of how tax will be applied to investment entities. We would also recommend that the intention of the drafting is made clearer, to avoid any unnecessary confusion in practice.

(2) For the purposes of subsection (1)(c)(i), the entity revenue threshold shall be calculated as follows:
€750,000,000 x A/365
where—
A is the number of days in the accounting period concerned.

28. **Comment:**
    Confirmation would be welcome that the 365 denominator should continue to be applied in cases where there are 366 days in a calendar year.

(2)(e) there were inserted in section 111O the following subsections after subsection (3):
[…]
for the accounting period which corresponds to the fiscal year

29. **Comment:**
    As currently drafted, the local accounting standard would appear to only apply where the accounting period (start date and end date) of each qualifying entity is aligned to the fiscal year of the ultimate parent entity. This will create practical challenges, including in cases where entities are incorporated in the middle of a fiscal year and where there are acquisitions in a period.

    As noted previously, it will be important that a sufficient grace period is provided to groups to give them the opportunity to align their accounting periods and accounting standards so that the local accounting standard may continue to be met.

(3) […]
(c)
[…]
~~*(ix) section 111AR;*~~

30. **Comment:**
    The above section may be relevant in circumstances where the standalone qualifying entity is an Irish agricultural cooperative, for example. Therefore, we propose that Section 111AD (3)(c) be amended to remove paragraph (ix).

Section 111AAD: Determining Top-up amounts of qualifying entity

31. **Comment**:
    Re local accounting facility for the QDTT, section 111AAD(2)(e) on page 223/4 and the meaning of the same 'fiscal year'. In particular, if the OECD view is that the fiscal year means that the start and finish dates must coincide, this is likely to be problematic in many situations. For example:

    - Week 52/53 periods operate in Ireland with minor fluctuating year ends
    - Establishment of new companies (or Irish branches)
    - Liquidation of old companies
    - Post-acquisition movement of accounting year ends to align with new group year ends etc. which will create short or long periods.

    If strictly interpreted by the OECD, it may beg the question as to how many of the largest groups will be able to adopt local accounting in practice?

    Is it clear that the tie-breaker in the new (3B)(b) will always work? (page 224). It is required to apply in every case where no Case I/II accounts are prepared, i.e. Case III/IV/V and Holding companies preparing accounts for two different purposes but not necessarily CRO requirement. What do companies in liquidation, unlimited liability companies file with the CRO? Might there be anything that falls between (a) and (b)?

    Are loss-making trading companies within (3B) (a) or (b) as 'no such profits or gains exist' might apply (b)? Are these in CRO territory?

    The words 'financial statements' are used in (3B). Is there a concern that this is seemingly used interchangeably with 'financial accounts' and that 'financial accounts' would be preferable? We understand that 'financial statements' encompasses more than the financial accounts. The OECD guidance refers to applying tiebreakers to financial accounts.

32. **Comment:**
    Re 111AAD(h) - It is unclear to which entity the withholding tax is allocated / what is the impact of this?

Section 111AAH: Obligation to register

(3) Where there is any change to the information provided under subsection (2) the entity shall notify the Revenue Commissioners of the change within 12 months of the end of the fiscal year in which the change occurred.

(4) Where an entity ceases to be a qualifying entity, relevant UTPR entity or relevant parent entity, as the case may be, the entity shall notify the Revenue Commissioners of the cessation within 12 months of the end of the first fiscal year in which the entity is not such an entity immediately following a fiscal year in which the entity was such an entity.

33. **Comment:**
We note that an entity has been provided with a 12 month window to register or de-register for QDTT, IIR and UTPR purposes, as the case may be.

In previous TALC BEPS discussions, it had been suggested that an entity would not be required to de-register if an IIR/UTPR/QDTT liability did not arise for a period and that a nil return would be filed instead.

Given that a 15-month filing window will be provided for IIR/UTPR/QDTT purposes, an entity may not have determined whether an IIR/UTPR/QDTT liability arises for a period by the time that the de-registration deadline has lapsed. It would be preferable if an entity could file a nil return for the period instead of de-registering as a result (particularly given the potential penalty of €10,000 per entity).

Section 111AAJ: IIR return and self-assessment

(3) An IIR return and IIR self-assessment may be amended in accordance with section 959V, as applied by section 111AT.

34. **Comment:**
We welcome the fact that an amended return can be filed for IIR purposes and that similar provisions are also provided in respect of UTPR and QDTT. It is welcome that refunds will be provided in cases where a group has overpaid its Pillar Two obligations.

We note that the current OECD Commentary on the application of Article 4.6.1 is quite confusing and it is unclear when a refund would apply and potentially gives rise to scenarios where there would be double taxation outcomes.

However, we understand that further guidance may be prepared by the OECD in relation to Article 4.6.1. We believe that it is important that comprehensive guidance is prepared by the Inclusive Framework which appropriately sets out the cases where a refund of top-up tax should be available.

Section 111AAM: UTPR group recovery

(3)(c) Where the amount of tax included in a notice served under this subsection is not paid in full by the specified relevant UTPR member, an authorised officer may -

(i) revoke the notice, and

(ii) serve a notice under this subsection on another relevant UTPR member until the full amount of tax due and payable is paid.

35. **Comment**:
It appears from section 111AAX that surcharge and interest would form part of the tax due for the purposes of section 111AAM. However, it is not clear whether the notice served under section 111AAM would also allow for an authorised officer to serve notice on another UTPR member for any unpaid penalties of the specified relevant UTPR member.

A similar comment arises in relation to the QDTT group recovery provisions.

Section 111AAX: Surcharge for late return

(2) Where subsection (1) applies, the amount of the surcharge shall not exceed—

(a) €50,000, where the surcharge applicable is 5 per cent, or

(b) €200,000, where the surcharge applicable is 10 per cent.

36. **Comment:**

While we welcome that a monetary cap has been included on the surcharge, we note that the impact of the cap will depend on the structure of an MNE group's operations in Ireland. For example, where a top-up tax liability of €10 million arises for Ireland, a 5% rate would result in a total surcharge of €500,000. This surcharge would be capped at €50,000 if a group had a single entity in Ireland, whereas a group with at least 10 Irish entities could potentially be subject to the full €500,000 amount.

We would recommend that the cap should be based on the total amount of Irish top-up tax due.

Section 111AAAB: Penalties

(1)(b)

[…]

fails to deliver a notification of filer on or before the specified return date

37. **Comment:**

We note that a monthly penalty of €10,000 (up to a maximum of €480,000) will also apply for each entity that fails to notify Revenue that another group entity will file the top-up tax information return on its behalf.

We believe that a reduced penalty should apply for failing to notify Revenue and that a monthly penalty of €10,000 is excessive.

(5) Where an entity would otherwise be liable to a penalty under this Chapter or section 1077F in respect of a fiscal year the entity shall not be liable to that penalty where—

(a) the penalty relates to a fiscal year beginning on or before 31 December 2026 and ending on or before 30 June 2028, and

(b) the entity has taken reasonable care to ensure the correct application of this Part.

38. **Comment:**

We note that similar difficulties will arise for groups that transition into the scope of the GloBE Rules at a later stage (e.g., a group meets the GloBE revenue thresholds in 2030). We therefore recommend that a similar relief from penalties is provided for these groups for a transitional period.

Section 111AAAC: Transitional simplified jurisdictional reporting framework

39. **<u>Comment:</u>**
    Confirmation would be welcome that a single Irish entity could also qualify for the transitional simplified jurisdictional reporting framework, potentially as a group of one. This will be important as the transitional simplified jurisdictional reporting framework allows for adjustments to be disclosed on a net basis.

(3)(c) under the tax law of all jurisdictions in which qualified domestic top-up tax, qualified UTPR or qualified IIR may arise in respect of the other jurisdiction members for the fiscal year, the filing constituent entity may complete, in accordance with the simplified jurisdictional reporting framework, the top-up tax information return for the fiscal year, in respect of the other jurisdiction members,

40. **<u>Comment:</u>**
    Subsection (3)(c) suggests that, if a group operates in a jurisdiction that does not include the transitional simplified jurisdictional reporting framework in its domestic legislation, the framework will not be available for the group as a whole.

    Given the fact that this framework was agreed by OECD Inclusive Framework members in July 2023, it is hoped that all jurisdictions will apply the framework in practice. Further clarification on how the availability of the framework will be assessed in practice would be welcome. For groups attempting to complete the top-up tax information return, any lack of the availability of the framework is likely to create significant compliance challenges in practice (particularly if it is only identified at a late stage that the framework is not available).

(4) Subsection ~~(1)~~(2) shall not apply in respect of an investment entity that is not an excluded entity, of an MNE group or large-scale domestic group.

41. **<u>Comment:</u>**
    There appears to be a typo in subsection (4).

Section 111AAAD: Elections

(3) The elections referred to in column (2) of the Table to this section shall be in effect for the fiscal year in respect of which that election was made and shall remain in effect for subsequent fiscal years, other than where the filing constituent entity withdraws the election in respect of a fiscal year subsequent to the fiscal year in respect of which the election is made.

42. **<u>Comment:</u>**
    We note that subsection (3) provides that an annual election should automatically be considered to be made again in subsequent years unless withdrawn. Clarity regarding how the withdrawal of an annual election might operate in practice would be helpful (for example, is it expected that this withdrawal would be included in the GIR, GloBE Top-Up Tax Return, etc?). We would note the template GIR issued by the OECD in July includes panels that allow the return of details regarding the revocation of a five-year election. However, equivalent panels do not appear to be included with respect to annual elections.

Section 93 (of Finance Bill (No.2) 2023): Amendment of Schedule 24 to Principal Act (relief from income tax and corporation tax by means of credit in respect of foreign tax)

(f) in paragraph 9FA(1), by the substitution of the following definition for the definition of "foreign tax":
" 'foreign tax' in relation to foreign branch income of a company, means—

(a) tax which—
(i) is paid under the laws of the territory in which the foreign branch is situated on income attributable to that branch, and
(ii) corresponds to corporation tax,
~~or~~and
(b) an amount of foreign qualified domestic top-up tax payable or paid by a foreign branch or agency being—
[…]

43. **<u>Comment:</u>**
We have included a suggested mark-up as we believe that the reference to "or" might be a typo.