

Record of Meeting

Meeting	TALC BEPS Sub-Committee – Implementation of Pillar Two, Meeting 6		
Location	TEAMS VC and 14-16 Merrion St, Dublin 2	Meeting Date	04/09/2023
D/Finance Attendees	Deirdre Donaghy^; Rafal Saniternik		
Revenue	Keith Noonan; John Quigley; Aine Hollingsworth		
ITI	Anne Gunnell^; Gareth Bryan^; Colin Farrell; Sinead Colreavy; Seamus Kennedy		
CCAB_I	Gearoid O’Sullivan; Paschal Comerford; Enda Faughnan		
Irish Law Society	Andrew Quinn; Philip Tully; Gerry Thornton^; Caroline Devlin		
^ Attended in person			

Purpose
To discuss the treatment of investment entities in the implementation of Pillar Two in Ireland.
Minutes
<p><u>Matter for discussion</u></p> <p>Investment entities/funds that are at the top of a group structure are treated as excluded entities and do not in general fall within the scope of the GloBE rules or Irish QDIT. Investment entities that are neither at the top of the group structure nor owned through a chain of excluded entities are, in general, within the scope of the GloBE rules.</p> <p>However, the OECD guidance states that a jurisdiction may decide not to impose a QDIT on investment entities located in their jurisdiction.</p> <p>The draft legislation, published in the second Feedback Statement, proposed to impose the QDIT on investment entities that are not excluded entities. Draft legislation also proposed that the QDIT would apply to standalone companies that meet the €750m threshold test.</p> <p><u>Standalone entities</u></p> <p>Standalone entities were brought into the scope of QDIT due to constitutionality concerns. It was not expected that many (or possibly any) standalone companies of such size were present in Ireland. However, responses to the Second Feedback Statement noted that the proposed approach could bring into scope some standalone non-consolidating investment entities, located in the State, which satisfy the entity revenue threshold.</p> <p>In many cases, investment funds such as ICAVs or UCITS are not consolidating entities (and therefore are ‘standalone’ for GloBE purposes). The stakeholders, in general, were critical of the proposal to include standalone investment entities in the scope of Irish QDIT, noting that it would go beyond the requirements of the OECD Model Rules and also would be a departure from the current tax treatment of investment funds.</p>

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The stakeholders acknowledged the constitutional considerations that prompted the proposal to extend the GloBE rules to standalone entities, but also noted that if the standalone fund were structured as a group (e.g. if the investment fund had an exempt UPE or was a UPE itself), it would be an 'excluded entity' under GloBE rules. Therefore, in the case of investment funds, a direct comparison between a similar fund structured as a standalone entity versus a corporate group can produce very different outcomes.

Investment entities in the scope of QDTT

The draft legislation, published in the second Feedback Statement, proposed to impose the QDTT on investment entities. The responses received do not support this, citing concerns of diminished competitiveness of the Irish funds industry vis-à-vis other fund domicile jurisdictions.

The Department confirmed that broad policy intention of QDTT was that QDTT would collect top-up-tax payable in respect of Irish entities, where an IIR or UTPR would otherwise arise in respect of those profits in another jurisdiction.

However, stakeholders noted that it was possible under the current proposed approach that, in cases where the parent entity of an Irish investment fund is located in a non-GloBE implementing jurisdiction, no IIR or UTPR would otherwise arise in 2024 on such investment entities located in Ireland. As such, imposing QDTT on such Irish investment entities would be an additional level of taxation that would not otherwise be imposed on those entities.

The Department queried what percentage of the funds industry would fall within the QDTT, as drafted. The stakeholders were unable to provide an estimate, however stated that even if it's a small percentage of a very large funds industry in Ireland it would still be a material additional taxation for those fund structures. As a result, it's likely that such funds would relocate from Ireland to another jurisdiction that does not impose QDTT in these circumstances, such as the UK, in order to preserve their current tax neutral treatment.

The stakeholders highlighted that, for an Irish investment entity, such as ICAV, to qualify as investment fund under the relevant Pillar Two definition, it must meet seven criteria (including being regulated, widely held and professionally managed). Therefore, the potential scope of any investment fund provisions is limited.

The stakeholders argued the need to preserve the tax neutrality of investment funds to the extent allowed under Pillar Two in order for investment structures to stay viable in Ireland.

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Insurance investment entity

An additional, but related issue was raised by the stakeholders in relation to insurance investment entities, which are a separate class of entities within Pillar Two.

A potential issue has been identified with the application of the Pillar Two rules, whereby an Irish insurance entity that is a subsidiary of a group parented in a non-Pillar Two jurisdiction would result in 'excess' taxation on profits without deduction for the costs of claims paid, with potential consequential impacts on regulatory capital.

The issue appears to arise as many insurance groups are headquartered in Bermuda, which only plans to introduce corporate tax in 2025. When this corporation tax is introduced, the Bermuda headquartered groups will be able to elect for certain Pillar Two treatments which would address issues of potential over-taxation and/or timing mismatches that apply specifically in the insurance sector, but this leaves the potential for significant problems to arise in 2024.

The stakeholders therefore asked that consideration be given to excluding insurance investment funds from the scope of the QDTP.

AOB

The Department raised under AOB, that Ireland has been asked to provide comments to the OECD on priority items for discussion under the Administrative Guidance. One item that has been identified already is the issue of different year-ends when a group acquires a company. Under QDTP, this fact pattern would mean that the MNE group could not use local accounting standard in QDTP, but would have to revert to UPE standard.

Revenue provided an update of the engagement with the OECD secretariat on the use of local accounting standards for the purpose of a domestic top-up tax. It was confirmed that where Irish group entities use different local standards (e.g., one group entity prepares Irish GAAP accounts while another group entity prepares IFRS accounts), but none of the group entities prepare accounts in more than one accounting standard, then the tie-breaker test is not applied, i.e. the tie-breaker test is only applied where an entity has prepared accounts in more than one accounting standard.

Action points

Department officials undertook to consider the points discussed and put forward considerations for the Minister's attention.

Department officials advised attendees that no further Feedback Statements are expected for publication due to the short timeline to Finance Bill publication, but some additional draft legislative approaches may be circulated to TALC BEPS members, for example on administration provisions, with an option for feedback.

Signed

Rafal Saniternik