Summary of five ITI submissions made to Revenue via the TALC BEPS Sub-committee in relation to the development of Revenue guidance on Outbound Payments Defensive Measures on 4 and 8 December 2023; 26 January 2024; 8 and 15 March 2024.

Further feedback on the draft TDM on Outbound Payments
15 March 2024

1. A dividend will not be a relevant distribution if it is an excluded payment. An excluded payment means a payment made by a company that it is reasonable to consider that the payment is within the charge to - supplemental tax, foreign tax or domestic tax. In this context, Page 10 of the draft TDM confirms that *"It is noted that a relevant distribution which meets the requirements of an excluded dividend for the purposes of a qualifying Pillar Two top-up tax will be considered to be within the charge to supplemental tax."* i.e. a dividend that is an excluded dividend for PII is considered "within the charge".

   In relation to whether a relevant distribution is "within the charge" to a foreign tax, we would ask Revenue to provide confirmation that a relevant distribution which meets the requirements of a participation exemption or an excluded dividend treatment similar to the Pillar Two regime will be considered to be within the charge to foreign tax.

   As an example, the Bermuda Ministry of Finance have legislated for a 15% corporate income tax. Similar to the Pillar Two rules, the Bermuda corporate tax has the concept of excluded dividends, whereby excluded dividends are taken out of taxable income. The Bermudan law defines excluded dividends as "*Dividends or other distributions received or accrued in respect of an Ownership Interest, except for a short-term portfolio shareholding or an ownership interest in an investment entity*". This treatment is in line with the Pillar two regime. Therefore, we would ask for confirmation from Revenue that this will be considered as "within the charge" of a foreign tax.

2. We welcome the example at 3.8.2 in respect of payments which are considered disregarded payments for US tax purposes. For further clarity, we would request an example to be included in the TDM which shows that an interest or royalty payment which is regarded for US tax purposes (i.e. made by or to a regarded entity for US tax purposes) should be considered an excluded payment given that the payment should be subject to GILTI.

3. We would request an example to be included in the TDM which confirms that a dividend payment to a US LLC which is disregarded for US tax purposes but is considered a company for Irish tax purposes (based on an analysis undertaken in line with the "Guidance on the classification of foreign entities in contained in Tax and Duty Manual 35C-00-02") is outside the scope of the measures, on the basis that the US LLC is formed in the US and that the US is not a zero tax territory.

4. We would ask for further consideration be given to the example contained in Section 5.4.4. The nature of widely held investment structures is that they could potentially have multiple tiers of opaque entities, which will be entirely driven by investor structuring requirements e.g. if a US pension fund has its own blocker structure that it utilises for foreign investments. To the extent that it can be clearly demonstrate that there is ultimate inclusion of a corresponding amount in a non-specified territory (within the relevant timeframe provided for in Section 817V(7)(a)), we would consider this to be sufficient to be considered as an excluded payment and consequently, that Section 817V(7) could apply on that basis. Clarification on this point would be welcomed in the example.

Summary of five ITI submissions made to Revenue via the TALC BEPS Sub-committee in relation to the development of Revenue guidance on Outbound Payments Defensive Measures on 4 and 8 December 2023; 26 January 2024; 8 and 15 March 2024.

Comments on the Draft TDM on Outbound Payments

8 March 2024

1. We would welcome clarification from Revenue on how the rules would apply if a particular territory taxes income and profits only, but not gains.? The draft TDM refers to income, profits or gains. [Ref: Draft TDM page 6, second paragraph]

2. We would welcome clarification in the guidance on what the position would be if the company in question was within the scope of Pillar Two, but a safe harbour applied. [Ref: Draft TDM page 6, Example 3.3.2 – introduction of a new corporate tax regime in response to OECD global minimum tax rules]

3. We would welcome confirmation that a country would not be viewed as a zero tax territory where it exempts income below a de minimus limit. For example, if the first €x of profits are exempt? [Ref: Draft TDM page 6, Example 3.3.– introduction of a new corporate tax regime in response to OECD global minimum tax rules]

4. Can a zero tax territory be considered in the context of the payment? For example, what if it involves a US owned group which is a country that has not implemented Pillar Two and therefore, no IIR? [Ref: Draft TDM page 6, Example 3.3.2 – introduction of a new corporate tax regime in response to OECD global minimum tax rules]

5. We would request that Revenue includes a more straightforward example to demonstrate what is definite influence. For example, using a company with two directors. with normal director rights. [Ref: Draft TDM page 7 – Section 3.5]

6. We suggest Revenue consider a more robust word such as "authority" instead of influence because definite influence is a higher bar test. [Ref: Draft TDM page 7 – Section 3.5]

7. We note the reference to minority partner interests being associated by virtue of having 'tenants in common' interests in the partnership subsidiaries which means a 1% partner in a partnership that owns 51% of an Irish paying company is considered an associate of that company. Although, this is the same conclusion referred to in ILR and anti-hybrid

legislation, Revenue's interpretation has not been fully understood by practitioners until now. This guidance at least draws it out. We welcome the concession for widely held investment funds.

However, we do not understand why the test applied in this example here is the test in section 817U(3)(a)(ii) when the company has shares. Should the test in section 817U(3)(a)(i) not apply in such circumstances? That being the case, unlike section 817U(3)(a)(ii), section 817U(3)(a)(i) makes no reference to "an interest in".

Therefore, we would request clarification please as to how it can then be said that the partner possesses or is beneficially entitled to more than 50% of the shares given that the partner only has a limited interest in each of the shares via the partnership. The partners cannot wholly own any share because the partner does not meet that test. It would be different if the test was phrased by reference to the partner being beneficially entitled to an interest in 50 per cent of the shares, similar to the language in section 817U(3)(a)(ii). [Ref: Draft TDM page 8]

8. We query the use of the word “indirectly” here. There is no indirect in the meaning given to “definite influence” in section 817U(4). Indirect is provided for in the meaning of associated companies but it is not clear how in this example Partner 1 indirectly has definite influence as provided for in the legislation. Also, typo here with the word definitive instead of definite. [Ref: Draft TDM page 8]

9. Should this be royalty instead of interest? [Ref: Draft TDM page 13, last sentence]

10. This description of a Eurobond as an international bond that is denominated in a currency not native to the country where it is issued is a departure from the section 64 meaning of Eurobond. There is an inference that a Eurobond will need to be in foreign currency - that is not a requirement for Eurobond treatment under section 64 TCA 1997. [Ref: Draft TDM page 22, Section 5.3]

11. In relation to distributions out of taxed reserves, is the suggested methodology appropriate particularly where a company has invested in share capital? For example, consider a sale for 200k where reserves are 100k and share capital subscribed is 100k. The gain is 100k. If we understand the draft TDM correctly, under Revenue’s approach, the taxed gain would be considered to be 100k x 100/200 = 50k which cannot be reasonable. A more just and

reasonable basis would be to treat the entire 100k in that example as a gain from taxed reserves. [Ref: Draft TDM page 33, Example 5.7.1]

12. Can have situations where there are a significant reserves generated from a vast array of original resources. Where a company paying a dividend has a mixed pool of available reserves which exceed the amount of the dividend, it should be allowed to nominate the specific source of the profits distributed. We would ask that this be addressed in the guidance. It would be reasonable for a taxpayer to specify resources from which paying out a dividend akin to what exists for double taxation relief. [Ref: Draft TDM page 33, Example 5.7.1]

Examples on Suggested Areas for Revenue Guidance on Outbound Payments
26 January 2024

At the TALC BEPS Sub-committee meeting on 6 December 2023, Revenue requested examples from practitioners to assist with the development of Revenue guidance on the legislative provisions relating to Outbound Payments.

Outlined below are examples and additional information gathered by the Irish Tax Institute's TALC BEPS Reps since the December meeting. We have also attached the Institute's previous submissions on suggested areas for guidance and supplemental queries in respect of the Outbound Payments legislation, in the appendices to this document, for completeness.

Note:

It is assumed, for the purposes of the examples only (except for examples 3A, and 4C) that the tax laws of the jurisdictions treat payments to transparent entities as arising to their partners.

A preliminary issue to be determined in guidance is how to determine that income is attributable to another entity for the purpose of the definition of "zero-tax territory." Is it tax law or corporate law?

A follow-on question is then to identify what is the position if the country concerned has no tax laws at all. How will section 817U(6) TCA 1997 apply and, depending on the answer to the first question, the "zero tax territory" definition apply?

Example 1: This example illustrates the interaction of the definition of "zero-tax territory" with s.817U(6) TCA 1997.

Irish Co. makes an interest payment to an Associated Enterprise: Scottish LP. Scottish LP is owned 60% by Japan Co and 40% by a Australia Co. The characteristics of Scottish LP are such that it is considered **opaque** under Japanese and Australian law.

The UK should not be considered to be a “zero-tax territory” within the meaning of section 817U as the UK generally subjects entities to tax at a nominal rate greater than 0%. This is notwithstanding the fact that the UK does not generally tax entities whose income, profits or gains are treated under UK tax law as arising or accruing to another entity, such as an Scottish LP.

This is because the definition of “zero-tax territory” contains the qualifier *“other than in respect of an entity whose income, profits or gains are treated by that territory… as arising or accruing to another entity”* which confirms that an entity will not be treated as being situated in a zero tax territory merely because that territory does not tax it due to it being considered tax transparent.

Please confirm that the provisions of section 817V should not apply to this scenario for the reasons listed above (noting that a separate analysis of the application of the anti-hybrid provisions would be required)

Example 2: This example illustrates multiple levels of partnerships.

Irish Co makes an interest payment to Ruritania LP2, which is owned by Ruritania LP1, which is in turn 20% owned by Europa Gmbh (taxed) and 80% owned by Haven Co (not taxed).

Section 817U(6) TCA 1997 will treat the income as that of the Europa partner (20%) and Haven Co (80%) for the purpose of the outbound payment provisions.

Section 817V will apply only to the extent that recipient entities are associated with Irish Co. If Haven Co is associated with Irish Co, it may be necessary to apportion the interest payment and apply a withholding tax to 80% of the payment if necessary.

Example 3: This example illustrates ‘same territory’ requirement of section 817U(6) TCA 1997.

Irish Co makes an interest payment to Ruritania LP. Ruritania LP is owned 70% by Haven Co and 30% by Ruritania Inc.

Section 816U(6) TCA 1997 will operate to treat 70% of the interest payment as having been made directly to Haven Co. While a strict reading of section 817U(6) would suggest that the remaining 30% cannot be attributed to Ruritania Inc because it is the same territory in which

Ruritania LP is located, we understand this was not the intent and would give rise to an illogical outcome (not least because if non-Ruritanian company is in a zero tax territory held the 30% interest, section 817U(6) would apply).

Please confirm, notwithstanding that the provisions of section 817U(6) require that the *"first-mentioned entity or permanent establishment"* and the "*second-mentioned entity or permanent establishment"* are resident or situated in different territories, the interest payment by Irish Co will be treated as having been made to Ruritania Inc.

Example 3A: This example illustrates 'tax laws' requirement of section 817U(6) TCA 1997.

Irish Co makes an interest payment to Freedonia LP. Freedonia is a zero tax territory and has no income tax/ corporate tax laws. Freedonia LP is owned 70% by US Co and 30% by Tributonia Co. (Tributonia being another zero tax territory and has no income tax/ corporate tax laws).

The laws of the US treat the income as arising to the partners. Neither Freedonia nor Tributonia have tax laws which specify that the profits of a partnership should be treated as arising to the partners. However, under the Revenue Commissioners' guidance on entity classification[1] Freedonia LP would be regarded as transparent.

Please confirm, notwithstanding that the provisions of section 817U(6) refer to attribution under tax laws of the jurisdiction of the entity and its member/ partner(s) and that neither Freedonia nor Tributonia have tax laws, the interest payment by Irish Co will be treated as having been made to US Co and Tributonia Co, due to the transparent status of Freedonia LP.

Example 4: This example demonstrates the interaction of section 817U(6) and 817V(7) TCA 1997

Ireland Co makes an interest payment to Ruritania LP. Haven Co is a 99.9% partner in Ruritania LP. Haven Co makes an immediate matching interest payment to Americas Inc. Assume the tax law of Ruritania and Haven treat the payment as being made to Haven Co and that Americas Inc taxes the payment.

Section 817U(6) applies to regard the payment as having been made to Haven Co. As that entity 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.

[1] TDM 35C-00-02

In this regard, a payment of a corresponding amount made within the same accounting period will, by definition, be within 12 months of the end of that period, as an accounting period cannot exceed 12 months in duration.

Example 4A: This example illustrates the administrative aspects

Same facts as Example 4 except that the corresponding amount is not paid until 11 months after the year-end of Irish Co.

For the purpose of preliminary tax, the self-assessment provisions apply. Irish Co will need to make a judgment call as to how likely it is that a payment qualifying as a corresponding amount will be made within the requisite 12- month period. To the extent that a corresponding amount is not so made, interest charges may arise.

In this example, the corresponding amount will not have been made at the time of filing the Form CT1 for Irish Co. However, as noted above, it is acceptable for Irish Co to take a preliminary position that a qualifying corresponding amount will be paid within 12 months. Irish Co. will need to keep the position under review and amend the Form CT1 promptly, if no such payment is made within the requisite 12 months.

Question: What is the position with respect to penalties and possible surcharges? Alternatively, could Irish Co file on the basis of the information available at the time of submitting its Form CT1 and account for income tax if necessary? If it discovers that a corresponding amount was paid within 12 months, it may amend its Form CT1 and seek repayment under the provisions of section 959V TCA 1997.

Example 4B: This example illustrates a variance on Example 4.

Same facts as Example 4 except that the corresponding amount is paid by Ruritania LP rather than the partners themselves.

In this situation, section 817U(6) TCA 1997 has regarded the payment from Irish Co as having been made to the partners directly. While strictly the corresponding amount is made by an entity (Ruritania LP) that is not the same as the entity considered to have received the payment (Haven Co), given the transparent nature of Ruritania LP, will Revenue accept that the payment

of the corresponding amount has been made by the same entity that is regarded as receiving the interest payment?

Example 4C: This example demonstrates the application of 817V(7) TCA 1997

Ireland Co makes an interest payment to Tributonia Co (Tributonia being zero tax territory and has no income tax/ corporate tax laws). Tributonia Co is owned by Tributonia LP. Tributonia Co makes an immediate corresponding payment to Tributonia LP and Tributonia LP makes an immediate corresponding payment to its partners.

Tributonia LP is owned 70% by US Co and 30% by Freedonia Co (Freedonia being another zero tax territory and has no income tax/ corporate tax laws). The laws of the US treat the income received by Tributionia LP as arising to the partners.

As Tributonia Co 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 Ireland Co to the recipient of the corresponding amount. As Tributionia LP is regarded as a tax transparent entity under US rules, 70% of the corresponding amount will be subject to a foreign tax and, as a result, that portion of the interest paid by Ireland Co to Tributionia Co would have qualified as an excluded payment had it been paid directly to US Co. Therefore, section 817V(7) applies to 70% of the payment. As Freedonia is a zero tax territory, section 817V(7) does not apply to the remaining 30% of the payment.

Example 4D: This example demonstrates the application of 817V(7) TCA 1997

Ireland Co makes an interest payment to Tributonia Co (Tributonia being zero tax territory and has no income tax/ corporate tax laws). Tributonia Co is owned 70% by US Co and 30% by Freedonia Co (Freedonia being another zero tax territory and has no income tax/ corporate tax laws).

Tributonia Co immediately uses the entire interest received to pay interest on its own debt from unrelated third parties. Half is paid to UK Co and half is paid to Freedonia Co (Freedonia being another zero tax territory and has no income tax/ corporate tax laws).

US Co is subject to a control foreign company charge in respect of its interest in Tributionia Co. Consequently, 70% of the corresponding amount will be subject to a foreign tax and, as a result, that portion of the interest paid by Ireland Co to Tributionia Co qualifies as an excluded payment.

Tributonia Co has also made a corresponding payments within the meaning of section 817V(7)(a) TCA 1997. As more than 30% of that corresponding payment was made to UK Co, that portion of the interest paid by Ireland Co to Tributionia Co, would have qualified as an excluded payment had it been paid directly to UK Co. Therefore, section 817V(7) applies to the remaining 30% of the payment.

Example 5: This example illustrates 'opaque' entity layering.

Irish Co makes an interest payment to an Associated Enterprise: Ruritania Co2 which is owned by Ruritania Co1. Ruritania Co2 makes a matching interest payment to Ruritania Co1 which immediately makes a similar payment to Europa Co, such payment being subject to tax in Europa, where it is tax resident. Assume Ruritania is considered a zero-tax territory for the purpose of the outbound payment rules.

Section 817V(7) TCA 1997 does not apply. The Irish payment would not constitute an excluded payment had it been made **directly** to Ruritania Co1.

Example 6: This example illustrates the interaction of section 817X (1) TCA 1997 with participation exemption or similar regimes.

Ireland HoldCo makes a distribution of €1.5 million to its parent Haven Co (an Associated Enterprise). Ireland HoldCo had sourced the dividend as follows:

- 500k from its subsidiary Irish Sub Co1 which has paid the dividend out of a gain realised on an intra-group transfer to which section 617 applied, thereby giving rise a no-gain/ no-loss outcome.
- 500k from the disposal of its subsidiary Irish Sub Co2, the gain on which qualified for exemption under section 626B TCA 1997.
- 500k 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.

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.

In the case of the dividend from Irish Sub Co1, while corporation tax and capital gains tax was not paid on the transfer, the effect of section 617 TCA 1997 is to defer the gain and consequently, the profits are 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).

In the case of the dividend from Irish Sub Co2, where a particular disposal of shares meets the requirements of section 626B, that section treats it as not being a 'chargeable gain' within the meaning of the Capital Gains Tax Acts. However, as a general matter, Ireland Hold Co (as an Irish tax resident company) is, in the first instance, chargeable to corporation tax on all its profits wherever arising.

Thus, the company's income, profits or gains are, as a general matter, chargeable to domestic tax for the purposes of section 817X(1)(c) and while, as a policy matter, Ireland has decided to exclude/ exempt gains on the disposal of certain shares by excluding them from the meaning of 'chargeable gains', this does not alter the fact that the gain was chargeable to Irish tax in the first instance. Consequently, the gain arising on disposal of Irish Sub Co2 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).

In the case of the 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 not 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).

Example 7: This example demonstrates the grandfathering rule

In May 2024, Ireland Co makes an interest payment on a wholesale debt instrument to an Associated Enterprise: Tributonia Co (Tributonia being a zero tax territory). The wholesale debt instrument was issued in May 2023.

Please confirm that as the wholesale debt instrument was in place before 19 October 2023, section 817Z(2) applies such that the interest payment is not in scope until 1 January 2025.

Example 8: Feeder Fund Structure - application of section 817U(6) TCA 1997

An Irish company pays interest to a Cayman LP. US investors (widely held) have been identified as indirectly having a 90% interest in the company's payment. The remaining 10% is held widely by lots of non-associated non-US investors, possibly through tiers of partnerships.

As regards, the US investors, section 817U(6) TCA 1997 should apply to treat the interest as arising to the US partners as the Cayman LP is treated as transparent for US tax purposes (ignoring the separate tax law question raised above).

However, a number of investors resident in various jurisdictions outside of the US make up the remaining 10% interest. Those investors hold interests which individually are small in the context of the overall feeder funds. The advisers may not be aware of how the investors in those jurisdictions treat the partnership and in many cases, it is only the significant investors for which there may be visibility.

While it is unusual for a jurisdiction to treat a Cayman partnership as opaque, despite not knowing each and every jurisdiction in which the investors are located, section 817U(6) is nevertheless intended to apply to such minority interests and thus, will treat the payments as made to non-associated partners. This is on the basis that 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 indirectly made to an associated entity (similar to section 817V(6) TCA 1997).

Example 9: Quoted Eurobonds - This example demonstrates the application of 817V(6) and 817V(7) TCA 1997

Ireland Co makes an interest payment to Tributonia Co (Tributonia being a zero tax territory and has no income tax/ corporate tax laws). Tributonia Co immediately uses the entire interest received to pay interest on its own listed debt, being debt which had Tributonia Co been Irish tax resident, the interest thereon would have been within the scope of section 64(2) TCA 1997. Tributonia Co undertakes sufficient due diligence to satisfy itself that it is not aware of any portion of that interest being paid to an Associated Enterprise.

Tributonia Co has made corresponding payments within the meaning of section 817V(7)(a) TCA 1997 equal to the total amount of the relevant payment received. Those corresponding amounts would have qualified for the exception to section 817V in accordance with section 817V(6) had they been paid directly Ireland Co. Therefore, it is accepted that section 817V does not apply.

Further Feedback on Areas for Revenue Guidance on Outbound Payments
8 December 2023

1. Meaning of Zero Tax Territory

Section 817U(1) defines a 'zero-tax territory' as:

> *a territory that, other than in respect of an entity whose income, profits or gains are treated by that territory, or would be so treated but for an insufficiency of income, profits or gains, as arising or accruing to another entity—*
>
> *(a) generally subjects entities to tax at a rate of zero per cent on income, profits and gains, or*
> *(b) does not generally subject entities, whether on a remittance basis or otherwise, to a tax on income, profits and gains.*

We understand that the phrase in the definition of 'zero-tax territory'

> *other than in respect of an entity whose income, profits or gains are treated by that territory, … as arising or accruing to another entity…*

is to be interpreted as referring to the tax treatment in that territory rather than its legal treatment. However, where the territory has no tax laws for entities in general (because as a zero tax country it has no tax laws) it will not have a such a deeming rule.

In such circumstances, where the territory in which the entity is resident/ situated is silent on the tax treatment (i.e., neither provides for allocation of the payment to the entity nor to another party such as the member/ owner), we understand that so long as the payer territory (Ireland) and the territory of the member/ owner both treat the member/ owner as the recipient under their tax rules then the above phrase should operate such that the payment is not considered to be paid to the entity.

We would request that Revenue consider confirming this in Revenue guidance.

2. Minority Partnership Interests (Non-Associates)

We understand that section 817U(6) TCA 1997 can facilitate transparent entities. In particular, it treats relevant payments made to such entities as if they were made to its members. However, it is unclear as to why there is a requirement that the first entity (e.g., a partnership) and second-mentioned entity (e.g., a partner) must be in resident or situated in different territories. This may be relevant to the test for association.

We understand that a typical scenario can arise where interest is paid to say a Cayman LP and that Cayman LP has two partners, one a 95% US entity with the remaining 5% owned by an unconnected Cayman company. We understand that section 817U(6) TCA 1997 requires one to look through the partnership to the partners, at least as far as the 95% interest, assuming everyone treats the Cayman LP as transparent.

However, as regards the 5% interest, section 817U(6) TCA 1997 would not seem to apply because the partner is situated in the same location as the partnership. Does this mean that withholding tax might apply to the 5% of the interest payment because it cannot be deemed to arise to that 5% partner who would not be associated?

If the 5% interest was held by say, a Bermudan or Jersey entity, section 817U(6) TCA 1997 would apply meaning no withholding tax would arise because the 5% partner treated as receiving the interest is not associated with the Irish payor.

We do not believe it is intuitive that withholding tax could arise in one minority partner situation but not the other, simply by virtue of not being able to look through the transparent entity that is located in the same jurisdiction as the partner.

As outlined at 1 above, while we note that the definition of zero tax territory might indicate a look through approach be adopted in any event, as discussed above we understand that where the territory in which the entity is resident/ situated does not have any tax law, one must consider the tax law in which the member is resident. In the case of a member in a zero tax territory (as in the example given here) there will be no tax law and so we understand that the look through language in the definition of zero tax territory would not assist.

We would request that Revenue consider the above scenarios further when developing Revenue guidance. In addition, we understand that the provisions of section 817U(6) allow for a look through of multiple levels of entities and we would request that Revenue consider confirming this in Revenue guidance

3. Corresponding Amounts

We understand that Revenue is of the view that section 817V(7) TCA 1997 does not apply where there are layers of companies. For example, if an interest payment is made to an associated Cayman company that itself makes a 'corresponding payment' to its Cayman associate who in turn makes a corresponding payment to a 'good location', we understand that this is not within scope of section 817V(7) TCA 1997. Revenue might please confirm if this understanding is correct.

However, we have also encountered situations where an interest payment is made to a transparent entity (sometimes a Cayman LP) which is owned by a Cayman company/LLC owned by members in good locations. If we assume a corresponding payment is made at that company level, there appears to be an anomaly.

Assuming that the payment to the Cayman LP is not subject to taxation at member level (for example the US), it seems that section 817U(6) TCA 1997 would not be of assistance to treat the payment as being received by the Cayman company because the LP and company are located in the same territory.

Is it intended then that any corresponding payment made by the Cayman company cannot be regarded as a corresponding amount for section 817V(7) TCA 1997 purposes because the entity receiving the payment from Ireland (i.e. the Cayman LP) is not the same as the entity making the corresponding payment (i.e. the Cayman company)? This seems anomalous because there is no double non-taxation here given the payment by Cayman company in this example will be subject to tax at the level of the recipients of the corresponding amount.

In this regard, we note the discussions at 1 and 2 above which would suggest that the general approach should be to treat payments made via transparent entities to be received by their (non-transparent) members in which case it would seem reasonable to apply section 817V(7) with respect to members of entities where the payment is treated as arising

to those members either by application of the zero tax territory definition or under Section 817U(6). We would request that Revenue consider the above scenarios further when developing Revenue guidance.

Summary of five ITI submissions made to Revenue via the TALC BEPS Sub-committee in relation to the development of Revenue guidance on Outbound Payments Defensive Measures on 4 and 8 December 2023; 26 January 2024; 8 and 15 March 2024.

Feedback on Suggested Areas for Revenue Guidance on Outbound Payments 4 December 2023

- We would request confirmation in guidance that Hong Kong and Singapore would not be considered specified territories from an outbound payment defensive measures perspective (i.e., that the existing WHT treatment as outlined in TDM 08-03-06 would continue to apply for payments made to these jurisdictions).

- We would request confirmation in guidance that the legislation would not apply to a payment made to an entity located in a free-zone within a jurisdiction that imposes a corporate tax.

- We would request confirmation in guidance that in the definition of 'zero-tax territory' the phrase *"…other than in respect of an entity whose income, profits or gains are treated by that territory, or would be so treated but for an insufficiency of income, profits or gains, as arising or accruing to another entity…"* refers to the tax treatment in that territory (rather than its legal treatment).

- We would request clarification in guidance that a jurisdiction will not be considered to be a zero-tax territory if a participation exemption applies in that jurisdiction.

- We would request examples in guidance of when the anti-avoidance provisions in sections 817V, 817W and 817X TCA 1997 would apply.

- We would request examples in guidance of the different scenarios when section 817X(1)(c) TCA 1997 would apply.

- We would request examples in guidance of the interaction of section 817X TCA 1997 with participation exemptions

Summary of five ITI submissions made to Revenue via the TALC BEPS Sub-committee in relation to the development of Revenue guidance on Outbound Payments Defensive Measures on 4 and 8 December 2023; 26 January 2024; 8 and 15 March 2024.

- We would request examples in guidance of the different scenarios where section 817V(7) TCA 1997 would apply (including the meaning of where the payor company and the payee have overlapping accounting periods).

- Section 817U TCA 1997: We would request examples in guidance of when two entities shall be considered "associated entities"

- Section 817U TCA 1997: We would request examples in guidance of the meaning of definite influence.

- Section 817U TCA 1997: We would request confirmation in guidance that a distribution would still be considered an excluded payment (subject to a supplemental tax) where the distribution is treated as an Excluded Dividend for Pillar Two purposes.

- Section 817Z TCA 1997: We would request in guidance on how *"arrangements are in place on or before 19 October 2023"* should be assessed in the context of distributions made after that date.

- Section 817V TCA 1997: We would request confirmation in guidance that interest which is non-deductible is excluded from the scope of the outbound payment measures (i.e., the distribution provisions do not need to be considered as the payment remains an interest payment from an accounting / legal perspective).