



## **Business Taxes Stakeholder Forum (BTSF)**

### **Potential impact of Section 817X TCA 1997 on a proposed Dividend Withholding Tax (DWT) exemption for Investment Limited Partnerships (ILPs)**

The Irish Tax Institute welcomes the opportunity to provide further feedback to the Department of Finance as it considers potential options for providing a DWT exemption for ILPs. We note from the paper circulated by the Department on 10 July to members of the subgroup of the BTSF that if a proposal is brought to the Minister for Finance for a DWT exemption for ILPs, policymakers envisage the outbound payments defensive measures would apply to such an exemption.

The potential interaction of the outbound payments defensive measures with a DWT exemption for ILPs was the subject of discussion at the meeting of the subgroup of BTSF on 26 June. Since that meeting Revenue's guidance on the outbound payments defensive measures, Tax and Duty Manual Part 33-05-01 (TDM), has been updated to reflect the amendments to section 817U TCA 1997, which were introduced by the Finance (Local Property Tax and Other Provisions) (Amendment) Act 2025 and signed into law on 2 July 2025.

In particular, Revenue has updated the example at paragraph 5.1.4 of the TDM, which clarifies the application of section 817U in the context of a limited partnership which is a widely held fund. This example had been the subject of extensive discussions at the TALC BEPS Sub-committee in advance of the first publication of the TDM in April 2024 following the passing of Finance (No. 2) Act 2023 into law. The example had noted that the Irish company may not reasonably be aware of how all the territories, in which those holding an ownership interest in the partnership, view the fund for tax purposes.

This example confirmed that Revenue was prepared to accept that, for these purposes, the partners are not associated with the Irish company in circumstances where the ultimate ownership and control of the Irish company is widely dispersed among a large number of investors in funds operated through a limited partnership structure. This was a very

important clarification regarding the operation of the outbound payments defensive measures in the context of a widely held limited partnership.

Following the recent update to the TDM, a note has been added to the example which states *“In respect of outbound payments made on or after 1 January 2026, the above example is subject to confirming that an individual that is a partner in the limited partnership is not connected with the other individuals or entities that are partners in the limited partnership, such that the ownership interests of that individual are not aggregated with ownership interests of the other partners for the purposes of applying the association test”*. This update to the example was not discussed with practitioners at the TALC BEPS Sub-committee and in our view it is a very concerning development.

The nature of widely held investment structures is that they can potentially have multiple tiers of opaque entities, which are entirely driven by investor structuring requirements. The impact of the change to Revenue’s guidance means that, even where a fund is widely held, it will be necessary to trace through multiple layers of the ownership structure to determine if the association test based on the 5% ownership threshold has been exceeded. In many cases this is likely to be a very complex exercise. Undoubtedly such a requirement would have a very significant impact in practice and we would urge that it is reviewed.

If policymakers take the view that a DWT exemption for ILPs must come within the scope of the outbound payments defensive measures, we firmly believe it would be inappropriate to apply the association test based on the 5% ownership threshold in section 817U(3A) TCA 1997 where the distribution is made to an ILP which is widely held.

As an ILP can be differentiated from other partnership structures on the basis that it is a regulated entity, we consider an alternative approach could be to confirm that the association test based on the 5% ownership threshold in section 817U(3A) TCA 1997 does not apply where it can be shown that the ILP is widely held.

In considering the meaning of the term “widely held” policymakers could adopt a similar approach to that adopted under the hybrid mismatches legislation. Under the hybrid mismatches legislation, for the purpose of the definition of a “collective investment scheme”, a “relevant investment undertaking” is considered to be “widely held” where there is no “beneficial owner” in relation to that undertaking.

The meaning of a “beneficial owner” in this context is based on the Fourth Anti-Money Laundering Directive (AMLD4) and means any natural person who ultimately is entitled to, or controls, either directly or indirectly, more than 25% of the capital (or units), profits or voting rights of an entity or otherwise controls the entity. This means that for the purposes of the hybrid mismatches legislation where there is no natural person who ultimately owns or controls more than 25% of the undertaking that undertaking will be considered “widely held”.

Under Irish AML legislation, ILPs are required to identify and disclose their beneficial owner(s) on the Central Beneficial Ownership Register for Certain Financial Vehicles (i.e. Beneficial Ownership Register) held by the Central Bank of Ireland. In the case of an ILP, where, having carried out all appropriate checks, no “beneficial owner” is identified, details of the general partners(s) are entered into the Beneficial Ownership Register. In this scenario, the ILP is regarded as “widely held” for the purposes of the definition of a “collective investment scheme”.

As ILPs are already required to identify their beneficial owner(s) for AML purposes, applying a beneficial ownership test which is based on such AML requirements, for the purposes of the outbound payments defensive measures should not be a further burden for these taxpayers.

## **Conclusion**

If policymakers consider a DWT exemption for ILPs must come within the scope of the outbound payments defensive measures, we would urge that the association test based on the 5% ownership threshold in section 817U(3A) TCA 1997 is disapplied where the ILP is widely held.

The Institute looks forward to discussing the matters raised in this submission further directly with Department officials or at a meeting of the subgroup of the BTSF.