



Asset Management Tax & Regulatory Update

Webinar – May 15th @ 4.00pm

Speakers:



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PCF Approval Process

**Recent Developments &
Key Implications**

Session overview

- 01 Outline of PCF approval process**
- 2. Key points from AB-v-Central Bank**
- 3. Implications for stakeholders**

PCF Approval Process



Key Potential Steps

- Individual questionnaire
- Additional documents
- Attendance at interview(s)
- Preliminary refusal
- Further submissions
- Final decision (appeal)

AB-v-CBI - Background



- AB previously involved in fund associated with investor losses
- 2019 Central Bank investigated losses, no sanction imposed
- 2020 several applications for PCF roles
- 2021 applications for these two PCF roles
- At that time AB authorised by Central Bank as non-executive director of 17 funds

AB-v-CBI – Assessment interview

- Notice provided in advance
- Topics put to AB at interview
- Complexity of questioning

AB-v-CBI – Specific Interview

- Notice in advance
- Access to documents granted
- Scope of questioning

AB-v-CBI, Preliminary refusal

- 'Minded to Refuse' letter
- Further submissions invited
- Testimonial-type statements

AB-v-CBI – Decision by the Central Bank

- Central Bank official with no prior involvement
- Decided AB had not demonstrated clear and comprehensive understanding of regulatory and legal environment
- IFSAT found Central Bank official acted on information which emerged from flawed interview process, and failed to adequately consider “highly significant material”

AB-v-CBI – IFSAT’s Decision

IFSAT found fault with:

- Central Bank’s approach to providing notice of the issues to be raised with AB,
- Timing of provision of documents to AB,
- Nature, content and complexity of questioning of AB.

Also found Central Bank failed to:

- Adequately engage with material put forward on behalf of AB.
- Provide reasons for its decision.

Implications of IFSAT Decision

- Prior notice of issues and access to documents
- Substance and form of questioning at interviews
- Information submitted in support of application
- Individuals performing multiple PCF roles

Conclusion

- Approach engagements with appropriate awareness of:
 - Profound professional, financial, employment-related and reputational consequences.
 - Relevant legal issues, including operation of principles of natural justice.
- Together with necessary:
 - Level of preparation.
 - Expert professional support.



- ✓ **Individual Accountability Framework (IAF)**
- ✓ **Senior Executive Accountability Regime (SEAR)**

IAF / SEAR Overview

- The IAF applied to all regulated entities from 31 December 2023
- SEAR will initially only apply to credit institutions, insurers, and certain MiFID Firms (Class 1, or which underwrite on a firm commitment basis, deal on own account or hold client assets) and applies from 1 July 2024
- Potential for SEAR to be expanded in the future



1 Conduct Standards:

- Standards for Business that are applicable to all regulated entities
- Common Conduct Standards for all individuals performing Controlled Functions (CFs)
- Additional Conduct Standards for those individuals performing Pre-Approval Controlled Functions (PCFs) roles and those who may exercise a significant influence on the conduct of the firm's affairs (i.e. CF1 roles)

2 Enhancements to F&P:

- Extension of F&P to apply to holdings companies established in Ireland
- Annual Certification on compliance with the F&P Standards
- Need to inform Central Bank where formal disciplinary action has been taken against individuals for breaches of the Conduct Standards.

3 Enforcement Process:

- Breaches of Conduct Standards will be subject to direct enforcement action
- Link between the conduct of an individual and a firm's wrongdoing ('participation') is removed to allow the direct action against individuals for misconduct
- High Court will have oversight of the settlement process and will have to confirm sanctions

SEAR

- SEAR will initially apply to credit institutions (excluding credit unions), insurance undertakings, **Class 1 investment firms** (*i.e.* systemically important MiFID firms), or **which underwrite on a firm commitment basis, deal on own account or hold client assets**
- Applies to all Pre-Approval Controlled Functions (**PCFs**), including **Board members**, Non-Executive Directors (**NEDs**), and Independent Non-Executive Directors (**INEDs**)
- **Statement of Responsibilities** for each PCF, outlining their role and the specific areas of their responsibility, including the allocation of Prescribed Responsibilities
- **Management Responsibility Map** illustrating the key management and governance responsibilities within their organisation
- Regulated entities must be able to demonstrate the compliance of PCFs to their Duty of Responsibility by documenting the **Reasonable Steps** taken to avoid contravention of legal and regulatory requirements

How can we help?



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Pillar Two: Asset Management & Funds Briefing

Overview



Pillar Two: Overview of Key Principles



Scope

- Global Minimum Effective Tax Rate (ETR) of 15% on a Jurisdictional basis
- Based on financial accounting (adjusted) income and tax expense (including certain deferred tax expenses)
- Large MNEs & EU domestic groups – Global revenue €750m+
 - Joint Ventures 50%+ owned by in-scope groups & accounted for under ‘equity method’
 - Groups covered by accounting consolidation exemptions



Compliance and reporting

- Financial reporting (provisions and disclosures)
- GloBE information return and local payment and filing obligations



Collection Mechanisms

- 1) Parent Country (Income Inclusion Rule (“IIR”))
- 2) Local Country (Qualified Domestic Top-up Tax – (“QDTT”))
- 3) Backstop – Other Group Countries – (Under Taxed Profits Rule (“UTPR”))



Transitional Safe Harbours

- De minimis test
- Simplified ETR test
- Routine Profits test

Investment Funds & Investment Entities

IIR Exclusion for Investment Funds



IIR “excluded entities” include:

- ❖ an **investment fund** that is an ultimate parent entity
- ❖ an entity where 95%+ of its value is owned (directly or through other excluded entities) by an investment fund that is a UPE where it
 - operates (almost) exclusively to hold assets or invest funds for the benefit of an excluded entity, or
 - exclusively carries out activities ancillary to those performed by excluded entities
- ❖ an entity where 85%+ of its value is owned (directly or thorough other excluded entities) by an investment fund that is a UPE provided that substantially all of the income of the entity is derived from dividends or equity gains or losses that are excluded from tax under IIR



Investment fund: an entity or arrangement that—

- a) is designed to pool financial or non-financial assets from a number of investors, some of which are not connected,
- b) invests in accordance with a defined investment policy,
- c) allows investors to reduce transaction, research and analytical costs or to spread risk collectively,
- d) has as its main purpose the generation of investment income or gains, or protection against a particular or general event or outcome,
- e) its investors have a right to return from the assets of the fund or income earned on those assets, based on the contribution they made,
- f) is, or its management is, subject to the regulatory regime, including appropriate anti-money laundering and investor protection regulation for investment funds in the jurisdiction in which it is established or managed, and
- g) is managed by investment fund management

QDTT Exclusion for Investment Funds & Investment Entities



QDTT excludes “excluded entities” include:

- ❖ IIR excluded entities (such as an investment fund that is a UPE or its qualifying 95%/85% subsidiaries)
- ❖ An **investment entity**



Investment entity: an entity or arrangement that—

- an investment fund or a real estate investment vehicle,
- an entity where 95%+ of its value is owned (directly or through a chain of such entities) by an investment fund or a real estate investment vehicle where it operates (almost) exclusively to hold assets or invest funds for the benefit of that entity,
- an entity where 85%+ of its value is owned (directly or directly or through a chain of such entities) by an investment fund or a real estate investment vehicle provided that substantially all of the income of the entity is derived from dividends or equity gains or losses that are excluded from tax under QDTT
- an insurance investment entity;

Tax Transparency Election & Taxable Distribution Method Election



Investment Entity Tax Transparency Election

- May elect to treat an Investment Entity or an Insurance Investment Entity as a Tax Transparent Entity if the owner (group shareholder) is subject to tax under a mark-to-market (or similar regime) at a 15%+ rate.
- Five-Year Election.
- If election is revoked, gain or loss from the disposition of an asset or liability held by the Investment Entity is determined based on the fair value of the assets or liabilities on the first day of the revocation year.



Taxable Distribution Method Election

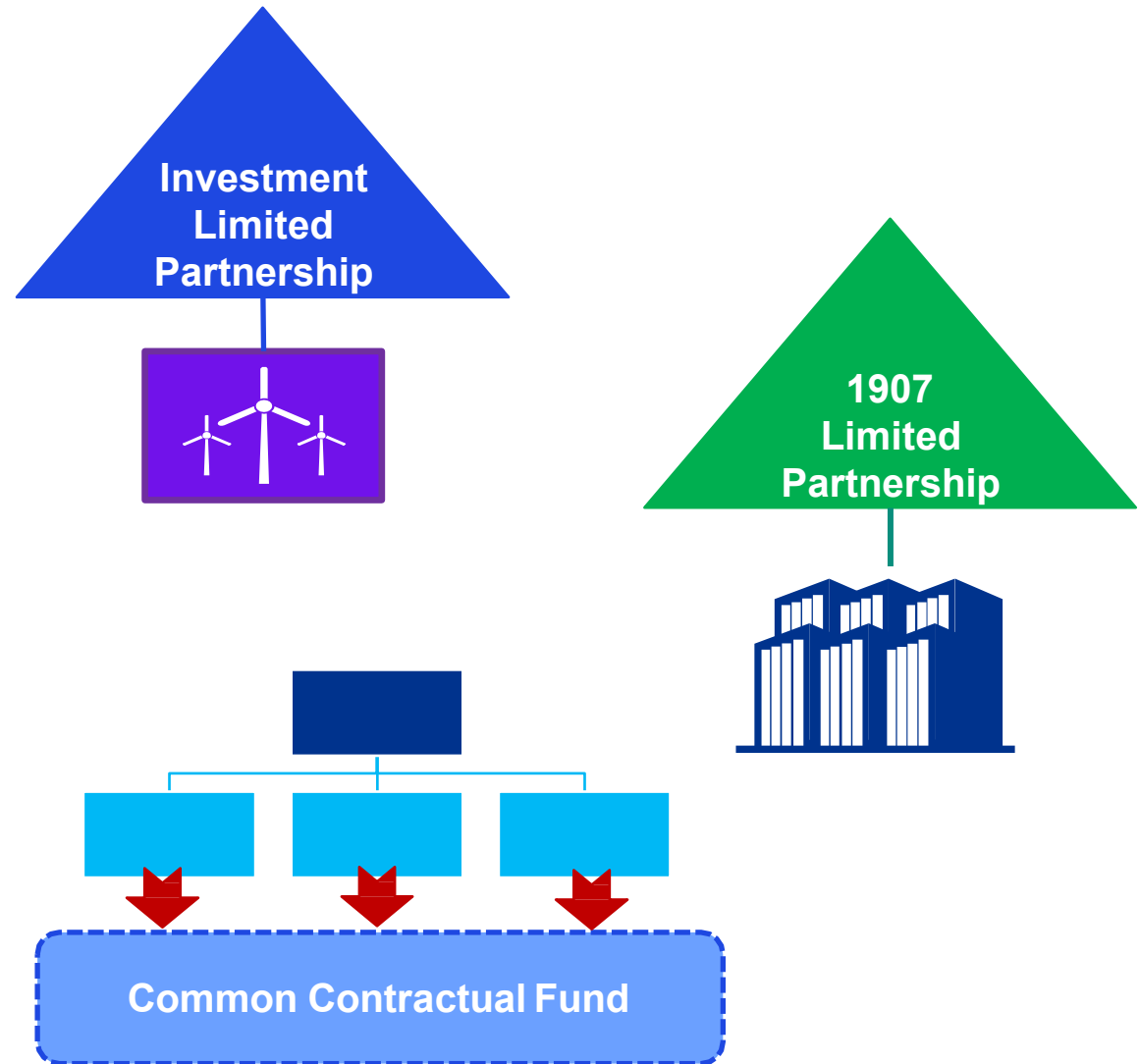
- A group company (that is not itself an Investment Entity) may elect to apply the Taxable Distribution Method with respect to its investment in a subsidiary Investment Entity if the shareholder can be reasonably expected to be subject to tax on distributions from the Investment Entity at a 15%+ tax rate.
- The investor's share of the Investment Entity's income is excluded from the MNE Group's GloBE Income or Loss computations so long as it is distributed (or deemed distributed) to the investor within four years (tax deferral).

Reverse Hybrid Entities



Reverse Hybrid Entities

- A **flow-through entity** means an entity to the extent that it is fiscally transparent with respect to its income, expenditure, profit or loss in the jurisdiction where it was created unless it is tax resident and subject to a covered tax on its income or profit in another jurisdiction;
- A flow-through entity is a **reverse hybrid entity** with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the jurisdiction in which its owner is located.
- Otherwise unallocated financial accounting net income or loss is allocated to the reverse hybrid entity.
- Reverse hybrid entity is considered “stateless” and so taxable under IIR (not QDTT)



Safe Harbours

Transitional CbCR safe harbours – time to prepare



Relevance of CbCR data and safe harbours

- do you need to make changes to approach taken in CbCRs?

(Note changes have to be explained)

CbCR safe harbour (transitional)

Exemption from detailed ETR and top-up tax computations by deeming the jurisdictional top-up tax to be zero.

CbCR data (revenue and income) and financial accounting data (tax expenses) need to be tested against the:

- de minimis threshold,
- substance-based income that is excluded from the GloBE tax base (routine profits), or
- agreed effective minimum rates.

Applicable to fiscal years beginning on or before 31 December 2026 but will not include Fiscal Years that end after 30 June 2028.

Transitional CbCR safeharbour: overview



Safe harbour tests

De minimis test

01

The test is satisfied if, on a jurisdictional basis, an entity's Qualified CbC Report for the FY shows that:

- Revenue does not exceed €10million
- Profit (Loss) before Income Tax does not exceed €1 million

02

Simplified ETR test

The test is satisfied if:

Simplified ETR > Transition rate

$$\text{Simplified ETR} = \frac{\text{Simplified covered taxes}}{\text{Total Profit Loss before incomes tax}}$$

Transition rate: **15%** (2023 and 2024), **16%** (2025) and **17%** (2026)

03

Routine profits test

The test is satisfied if a Constituent Entity's Substance-based Income Exclusion ("SBIE") is equal to or greater than the Total Profit (Loss) before Income Tax

No simplified determination of substance factors.

(General rule is: Net GloBE income – SBIE = excess profit)



Definitions

Qualified CbC Report

A Country-by-Country (CbC) Report prepared and filed using Qualified Financial Statements.

Total Revenue

An MNE Group's Total Revenues in a jurisdiction as reported on its Qualified CbC Report.

Total Profit (Loss) before Income Tax

An MNE Group's Profit (Loss) before Income Tax in a jurisdiction as reported on its Qualified CbC Report.

Qualified financial statements

Accounts used to prepare the consolidated financial statements of the Ultimate Parent Entity, or separate financial statements prepared using an acceptable or authorised financial accounting standard, or the financial accounts used for the preparation of the MNE Group's CbC Report where the entity is not consolidated on a line-by-line basis due to materiality or size grounds.

Challenges

Top-down v bottom-up approach to CbC reports, i.e. are the consolidated financial statements used to prepare CbC report?

QD TT Safe Harbour



- If an MNE Group claims the QD TT safe harbour for a jurisdiction, it turns off the application of the IIR and UTPR tax collection rules in respect of that country.
- This has the benefit that only one GloBE calculation should be required, and the liability under the local QD TT in that jurisdiction should be final for the Group.
- The safe harbour is available if a jurisdiction implements its QD TT in such a manner that it meets three standards – (i) an accounting standard, (ii) a consistency standard, and (iii) an administration standard. Details on these are outlined below:



The QD TT Accounting Standard

- The QD TT liability must be calculated using either:
 - UPE’s Financial Accounting Standard, or
 - Local Financial Accounting Standard (subject to conditions)



Consistency Standard

- QD TT computations should be the same as those required under the GloBE rules
- This applies with the exception of certain specific mandatory variations or optional variations



Administration Standard

- The local QD TT must meet the requirements of an on-going monitoring process
- This includes review of the QD TT’s information collection and reporting requirements for consistency with the GloBE Rules and GIR



- Ireland has chosen to implement its QD TT in such a manner that the QD TT safe harbour should be available for the majority of MNE Groups with Irish operations.
- Groups may be required to calculate their Irish QD TT liability using data from local statutory accounts (rather than using figures from the UPE’s consolidated financial statements as is the case normally for the IIR and UTPR). Other groups with Irish operations may be precluded from using local accounts to calculate their Irish QD TT, for example due to having an Irish entity that prepares statutory accounts with an accounting period that differs from the overall group accounts.

Transitional UTPR Safe Harbour



Safe Harbour

- Elective Transitional UTPR Safe Harbour applicable where the UPE jurisdiction's nominal corporate tax rate is at least 20%



Application period

- UTPR Top-up Tax deemed to be zero for fiscal years that begin on or before 31 December 2025, and end before 31 December 2026 (i.e., FY 2024 and FY 2025 for calendar year taxpayers)



Interplay with transitional CbCR Safe Harbour

- Option to choose either the Transitional UTPR Safe Harbour or the Transitional CbCR Safe Harbour for a jurisdiction in a particular year
- Where Transitional UTPR Safe Harbour is applied, MNE Group ceases to be eligible for the Transitional CbCR Safe Harbour in future years



Practical considerations

In practical terms, the Transitional UTPR Safe Harbour is beneficial in circumstances when:

- a. The UPE jurisdiction profits are subject to a low ETR (as determined for GloBE purposes),
- b. The MNE Group's UPE is located in a jurisdiction that does not implement a QDMTT, and
- c. The MNE group has a CE in a jurisdiction that will implement a UTPR effective in 2025 or earlier

Questions & Answers



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