The Consultative Committee
of Accountancy Bodies-Ireland

Chartered Accountants Ireland
The Association of Chartered Certified Accountants
The Chartered Institute of Management Accountants
The Institute of Certified Public Accountants in Ireland

Response to the Public Consultation on Roadmap for the Introduction of a Participation Exemption to Irish Corporation Tax

December 2023

About CCAB-I

The Consultative Committee of Accountancy Bodies–Ireland is the representative committee for the main accountancy bodies in Ireland. It comprises Chartered Accountants Ireland, the Association of Chartered Certified Accountants, the Institute of Certified Public Accountants in Ireland, and the Chartered Institute of Management Accountants.

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Introduction

Across the OECD, the latest data shows that 26 of 38 OECD countries exempt all foreign sourced income received by parent companies from domestic taxation, including Luxembourg, Netherlands, Estonia, the United Kingdom, and the United States.[1] Of the remaining OECD countries, eight exempt at least 95 percent of foreign dividends from domestic taxation.

Ireland's corporate tax code applies a worldwide basis of taxation. This puts Irish companies at a competitive disadvantage when operating alongside companies in jurisdictions operating some form of a territorial system of taxation. The proposal to introduce a participation exemption for dividends will be incredibly well received by Irish businesses, international businesses operating in Ireland, and global companies considering Ireland as a destination for investment.

[1] https://taxfoundation.org/wp-content/uploads/2023/10/TF-ITCI23-Book_16-10_FV.pdf at page 36

Executive Summary

In our response below, we note the overlap between many of the questions asked. Therefore, we would like to summarise our position as follows:

- CCAB-I supports the introduction of a participation exemption for dividends. We also support the subsequent introduction of a participation exemption for foreign branch profits.
- In our view, the introduction of the measure should not itself result in the restructuring of Irish groups with global operations.
- In recent years, measures introduced under the EU Anti-Tax Avoidance Directive (ATAD), OECD's Base Erosion and Profit Shifting (BEPS) initiative, and the EU Minimum Tax Directive are aligned with a territorial system of taxation (of which a participation exemption for dividends is one part).
- We recommend careful consideration of the method of relief, i.e. whether the optimum relief is by way of an exemption (similar to section 129 Taxes Consolidation Act ("TCA") 1997) or as a deduction from total profits. Our initial sense is that a deduction will be preferable when considered in light of the EU Minimum Taxation Directive and the Interest Limitation Rule.
- We recommend that the relief is drafted to provide broad optionality. Ideally, we recommend that taxpayers can opt to apply the rules on a distribution-by-distribution basis.
- We recommend that the exemption should apply by default with the option to claim double taxation relief on a distribution-by-distribution basis.
- We strongly support the formation of a committee under the umbrella of the Main Tax Administration Liaison Committee (TALC). In the context of the implementation of the EU Minimum Taxation Directive, the TALC BEPS Sub-Committee has proven the benefit for all stakeholders in addressing technical, legal, accounting and commercial uncertainties.

Dividend Participation Exemption

Structural considerations

1. Would the introduction of a participation exemption for dividends prompt changes to current or future corporate group structures? Please provide details of relevant considerations, including information on group structures and sectors as appropriate.

In our view, the introduction of a participation exemption should not prompt immediate changes to current Irish corporate structures. This view is based on the premise that the amount of incremental taxation on foreign dividends in Ireland is minimal. The issue for businesses is that the current system of credit requires complex calculations and in some cases the application of the rules is not always obvious or clear. The principal benefit, therefore, for existing groups will be efficiencies in reporting and administration. Groups should not, in our view, need to restructure to benefit from a participation exemption.

We would expect that investment in overseas subsidiaries may increase. There is some data (discussed in further detail below) which suggests that as a dividend participation exemption makes international investment more attractive, businesses may become incentivised to increase investment, potentially unlocking unutilised or inefficiently utilised capital. As such, groups may indeed expand following the introduction of a participation exemption and in this way it could have an impact on future group structures.

Further, Ireland has long promoted itself as a destination for holding companies. We provide access to a highly educated workforce, a stable business and political environment, and an established tax and legal framework. The introduction of a territorial system of taxation, commencing with the implementation of a dividend participation exemption, will significantly enhance Ireland's offering for companies operating globally. As such, once the international community becomes aware of the upgrade to our tax code, it will hopefully impact positively on companies' decisions to operate from or through Ireland. This is a further way in which the implementation of a dividend participation exemption may impact the design of future corporate group structures.

One specific legal entity which functions more effectively under a territorial system of taxation is the investment limited partnership (ILP). The introduction of a territorial system, beginning with the dividend participation exemption, should signal to the international community that Ireland is an appropriate location for structures involving ILPs.

2. Are there design features in other jurisdictions that operate a dividend participation exemption regime that should or should not feature in the design of an Irish regime? Please provide details.

As will be discussed in further detail below, Ireland should consider the following when designing a dividend participation exemption:

- Generally, practitioners feel that a participation exemption for dividends should apply automatically once introduced with the option to continue applying the worldwide system of taxation on a distribution-by-distribution basis. This should ensure any previously available reliefs (including losses) are not guillotined.
- We recommend optionality in as granular a way as possible because where a dividend is not eligible for exemption, then it will be subject to tax under the existing system of double taxation relief. Companies will need to analyse dividends received on a distribution-by-distribution basis

to determine if certain minimum conditions have been satisfied (e.g., ownership, holding period, etc.). Therefore, from a tax policy perspective, our view is that optionality may be provided for given that dual systems will need to be maintained anyway.

- Ireland should introduce a full exemption for eligible dividends. Introducing a partial exemption will not go as far in reducing complexity. Tax simplification should be chosen wherever possible within the tax code. The cost of administering a partial exemption is likely to be greater than any benefit to the Exchequer. Further, most OECD countries operate full participation exemptions. Furthermore, we note that while full relief is often achieved in Ireland under the existing credit system, it presents significant challenges to taxpayers not least of all from an administrative perspective.

- We would recommend that the UK system is considered in particular. The UK introduced a territorial tax system in 2009. The key change at the time was the abolition of UK taxation on foreign-earned dividends (i.e. a participation exemption for dividends). Research also suggests that the move to a territorial system of taxation in the UK increased investment nine times more than the expected revenue loss.

3. Are there design features in other reliefs provided for in the Taxes Consolidation Act, 1997 that should or should not feature in the design of an Irish participation exemption? Please provide details.

The conditions for an Irish participation exemption for dividends could draw on the conditions established by section 626B & schedule 25ATaxes Consolidation Act ("TCA") 1997. These provisions are well-established and guidance on the various terms is now extensive and mature. The following features of section 626B should be considered:

- The minimum holding requirement in section 626B(1)(b)(i). This section contains a helpful definition of ownership which encompasses both direct and indirect investment.
- The look-back period for ownership contained in section 626B(2)(a)(ii) is two years. We suggest that the look-back period in which the ownership test may be satisfied is as long as possible. This would ensure companies are not unfairly excluded due to share-dilutions or other events.

The following features of section 626B could be adapted in the context of the participation exemption:

- The trading requirement in section 626B(2)(c) should not be included.
- The look-back period should also be worded prospectively, such that a commitment to hold shares continuously for a period of twelve months would entitle a company to exempt any dividend received. This would be helpful where a company is acquired in a year.

We also note that the participation exemption should be designed with the review of the treatment of interest planned in 2024.

We broadly agree that leveraging existing legislation as much as possible makes sense. The design will also need to align with the new EU Minimum Taxation Directive and the new provisions contained in Finance (No. 2) Act 2023. For example, we refer to our comments below on the method of relief by way of deduction or exemption.

4. How can complexity be reduced in the design of a participation exemption, while also ensuring the objectives of the regime are achieved and eliminating opportunity for aggressive tax planning?

In our view, a participation exemption is protected from abuse through a robust suit of anti-avoidance legislation. Ireland has enacted its own suite of anti-avoidance legislation in recent years. These measures are designed to protect the Irish corporate tax base from aggressive tax planning, e.g. the Controlled Foreign Company rules (sections 835I to 835YA TCA 1997) ("CFC rules"), the Interest Limitation Rule (Part 35D TCA 1997) ("ILR"), the Anti-Hybrid rules (Part 35C TCA 1997), and the Outbound Payment measures introduced in Finance (No. 2) Act 2023.

A participation exemption is also a well-established mechanism across the OECD. The anti-avoidance mechanisms listed above are derived from BEPS and ATAD. We would note that our CFC rules will need to be considered. This would be best be discussed via a focus group.

Specified jurisdictions

5. What are your views on the potential scope of jurisdictions that should be eligible for an Irish participation exemption?

The legislation should follow the general theme of current Irish tax legislation in limiting relief by reference to the EU list of non-cooperative jurisdictions. We do not believe it is necessary to further limit relief to EU/EEA/DTA countries. In this regard, we are advocating for the widest coverage possible with the exception of the non-cooperative jurisdictions.

We would also recommend considering widening the exemption where groups are in scope of the EU Minimum Taxation Directive. In this regard, we note that the participation exemption could apply to distributions received from entities on the list of non-cooperative jurisdictions on the assumption that a minimum corporate tax rate of 15 percent would have applied to profits being distributed from those jurisdictions. This would ensure complex calculations which result in nil incremental taxation are avoided for Pillar Two purposes.

Lastly, we reiterate our recommendation that the new provisions on Outbound Payments are considered in terms of the additional layer of protection they provide for the Irish tax-base.

6. Should Ireland seek to align with international norms and, if so, what other country or countries should Ireland seek to align with in terms of the list of specified jurisdictions that qualify for a participation exemption?

As noted above, Ireland could adopt measures in line with the tax acts generally. We also recommend that the UK regime is considered. As mentioned above, the system has been in place since 2009 and they have many similar anti-avoidance provisions, e.g. an interest limitation rule and controlled foreign company rules. We note for completeness that among the 26 OECD countries with full dividend participations exemptions, many do not impose any country limitations, e.g. Australia, Israel, Luxembourg, Netherlands, the United Kingdom, and the United States.

Ireland has robust anti-avoidance (discussed in further detail below) which should protect the Exchequer without the need for a further layer. Further, arrangements among the largest companies (and therefore largest contributors to corporation tax) will be subject to global minimum taxation from 1 January 2024, putting another layer of protection on tax receipts.

7. **Should the scope of qualifying jurisdictions for a participation exemption align with the scope of existing Irish reliefs relating to foreign subsidiaries, such as relief under section 21B or the section 626B participation exemption for gains?**

As mentioned above, there is merit in aligning with the general theme of the tax acts. We encourage the legislator to make the rules as simple as possible. While they will necessarily have to consider the risk of loss of tax revenue, any opportunity for simplicity should be taken. In this regard, it is arguable that even if a dividend is received from a company in a non-cooperative territory, once that income is back in the Irish entity, it can be deployed for economic purposes.

We recommend an exception for any limitation on 'black-listed' territories for entities in scope of the EU Minimum Taxation Directive (for the reasons listed in Q5 above).

Method of relief

8. A participation exemption could operate as an exemption, in that the income is excluded from the charge to tax, or alternatively the income could be included in scope but with a deduction in arriving at taxable income. In your view, are there any advantages and/or disadvantages for one method of relief over the other? Are there other methods of relief that should be considered?

In the first instance, we strongly recommend a focus group to discuss the optimum method of relief. We would expect a robust series of engagement (ideally in line with recent discussions on Pillar Two implementation at the TALC BEPS Sub-committee). Regardless, the optimum method of relief needs to be robustly teased out.

Our initial sense is that a deduction in arriving at taxable income is likely to be a preferred approach for many businesses. Further, it will provide the tax authorities with reliable information on the quantum of income which is being exempt.

A deduction will likely be preferred to an exemption once the interaction with Pillar Two legislation, the Interest Limitation Rule, and other rules is fully considered.

Relief for the full amount or only part of the dividend

9. In your view, should an Irish dividend participation exemption provide a full or partial exemption? Please provide reasons for your answer.

In line with the overall aim of simplicity, we recommend a full exemption. Also, in terms of competitiveness, 26 of the 38 OECD member states operate a full exemption for dividends under comparable participation exemptions. Eight further jurisdictions exempt at least 95 percent of the dividend received from domestic taxation.

Our view is that we should follow jurisdictions like Luxembourg, Netherlands, and the United Kingdom and fully exempt qualifying dividends. Further, the current iteration of the EU Minimum Taxation Directive operates on a full exemption basis.

Type of dividend/distribution and shares

10. What should the scope of a participation exemption be in terms of the type of dividend or other distributions that may qualify? What are the specific types of distributions that you envisage should or should not be eligible for exemption?

In our view, any lawful distribution from an eligible entity should be eligible for the participation exemption. In this regard, we recommend that the definition of distribution is as wide as possible.

11. Should a participation exemption apply to both income and capital distributions and, if so, how should a capital distribution be defined?

As mentioned above, the participation exemption should apply to all lawful distributions.

12. **Is there a rationale for extending a participation exemption to other classes of shares beyond distributions in respect of ordinary share capital?**

In our view, and in the aim of simplicity, the exemption should apply to any lawful distribution from an eligible company.

13. **Should a dividend exemption only apply in respect of shares which, if disposed of, would qualify for the section 626B participation exemption? Please provide details in support of your response.**

As set out in our response to question 3 above, the following features of section 626B should be considered:

- The minimum holding requirement in section 626B(1)(b)(i). This section contains a helpful definition of ownership which encompasses both direct and indirect investment.
- The look-back period for ownership contained in section 626B(2)(a)(ii) is two years. We suggest that the look-back period in which the ownership test may be satisfied is as long as possible. This would ensure companies are unfairly excluded due to share-dilutions or other events.

The following features of section 626B could be adapted in the context of the participation exemption:

- The trading requirement in section 626B(2)(c) should not be included.
- The look-back period should also be worded prospectively, such that a commitment to hold shares continuously for a period of twelve months would entitle a company to exempt any dividend received. This would be helpful where a company is acquired in a year.

We also note that our regime must also align with the EU Minimum Taxation Directive. This results in the non-application of a number requirements of section 626B.

Minimum shareholding requirements

14. **What are your views on the application of a minimum holding period in respect of participations qualifying for exemption?**

A minimum shareholding requirement is a common feature of comparable regimes. For example, in Luxembourg, there is a 10 percent equity participation requirement. Alternatively, the Luxembourg rules also provide an exemption from dividends and/or liquidation proceeds where the investment acquisition cost is at least €1.2 million. The minimum shareholding requirement must be satisfied for an uninterrupted period of 12 months on the date income is allocated or realised for tax purposes. Alternatively, a commitment to hold the shares for an uninterrupted period of at least 12 months will satisfy the requirements.

In the United Kingdom, there is also a 10 percent holding requirement. In the UK, the 10 percent ownership requirement must be satisfied for at least 12 months in a prior 6-year period.

In Ireland, we recommend aligning with the existing rules in section 626B TCA 1997 with the addition of the opportunity to exempt dividends with a commitment to hold the shares for the minimum period, if not otherwise satisfied.

If a minimum holding period requirement is applied, then a dividend which falls out of scope of the exemption should still be taxable under general principles, including with appropriate credit for foreign tax.

15. **Are there circumstances in which dividends received shortly after a share acquisition should qualify (for example if the shares are subsequently held for a pre-determined length of time)?**

As mentioned above, in the case of Luxembourg, a commitment to hold the shares until the minimum holding requirement has been satisfied would ensure dividends received shortly after acquisition remain in scope of the exemption. The exemption should apply from the date of ownership once the holding period requirements are subsequently satisfied by the company.

16. **Should a participation be determined by reference to a percentage of ownership, voting rights and/or other criteria? What is the appropriate percentage of participation that should apply and why?**

As mentioned above, many jurisdictions include minimum ownership requirements. We recommend aligning with section 626B TCA 1997, as this is a well-understood and applied provision.

Optionality

17. **Are you in favour of allowing businesses to choose whether to apply an exemption or to retain the current system of taxing foreign dividends and claiming a foreign tax credit? Please outline the key reasons in support of your answer.**

Optionality would be a welcome aspect of the dividend exemption. Ideally, as jurisdictions have a range of domestic and international rules and regulations, we would like optionality on a distribution-by-distribution basis. In our view this is consistent with an exemption by deduction rather than exclusion approach. Where a company wishes to exempt a dividend from domestic taxation, it can deduct that portion of its income. The remainder can then be subject to tax in the up-to-now usual way

The aim of distribution-by-distribution is also consistent with minimum holding and ownership requirements, and the application of territoriality restrictions (e.g., by reference to the EU list of non-cooperative jurisdictions). Companies will need to carry out a detailed analysis of each of their holdings to ensure dividends received from those companies may be exempt. The next step would then be for the company to determine which dividends should be deducted in arriving at taxable profits.

From an administrative perspective, we do not foresee full optionality creating unnecessary complexity for either the taxpaying company or Revenue. Companies would welcome full optionality.

As mentioned above, our recommendation is that the exemption applies automatically once introduced into legislation, with the option to apply the worldwide-system of credits on the distribution-by-distribution basis.

18. **Having regard to the above, if you are in favour, please outline your views on what basis optionality would operate.**

As mentioned above, optionality should operate on a distribution-by-distribution basis and the default system should be the dividend participation exemption. Given the benefits of a participation exemption, it is likely that in almost all cases, the exemption will be the preferred approach. Where the existing worldwide-system gives the taxpayer a more beneficial tax position, and with the rules readily available to them in the tax code, our view is that it is equitable to provide the taxpayer with the option.

The extent to which an election is revocable is discussed below.

19. What anti-avoidance measures should apply in order to deter and prevent aggressive tax planning with regards to an optional exemption regime?

In our view, the measure is an aid to efficient tax compliance. Through the existing system of double taxation relief, minimal if any Irish corporation is paid on foreign-source dividends. In line with our comments above regarding corporate structures, we do not foresee complex reorganisations or novel structures following implementation of a participation exemption for dividends.

As mentioned in our response to the Public Consultation on a Territorial System of Taxation in March 2022, the suite of anti-avoidance measures arising from the OECD's Base Erosion and Profit Shifting Project (BEPS) and the EU's Anti-Tax Avoidance Directive (ATAD) are designed based on territorial systems of taxation. Therefore, these measures should prevent aggressive tax planning which abuse the efficiencies offered by a dividend participation exemption.

The following questions are specific to optionality and are intended to inform consideration of the overall concept. They should not be taken as an indication that optionality will be a feature of a participation exemption when introduced.

20. Should a participation exemption apply automatically once qualifying criteria is met, or should a business elect to apply the exemption?

As mentioned above, a company should be given full optionality by deducting amounts on a distribution-by-distribution basis. We reiterate our recommendation that the participation exemption should apply by default.

21. Should an election apply on a subsidiary by subsidiary, dividend by dividend, year to year or other basis?

As mentioned above, the election should be as granular as possible. With that said, we would recommend at a minimum that an election is applied on a company-by-company basis.

22. Should an election be irrevocable once made?

  a. **If not, what are the circumstances in which you would wish to opt-out of the exemption regime (and revert to the current system of taxing the income and claiming a double tax credit)?**
  b. **If an election were to be revocable or apply for a specific minimum time period, what is the appropriate minimum length of time that an election should apply for?**

In line with our comments above, there should be no concerns around revocation as the exemption would apply automatically. The option to apply for double taxation relief would then be made on a distribution-by-distribution basis and so revocation becomes a moot point.

23. Are there examples of other jurisdictions, in addition to the UK, that allow optionality in relation to their participation exemption and if so, what are the key features that would or would not be suitable in Ireland?

Interest limitation

24. Would the potential for an increased interest expense restriction as a result of the exemption of dividend income influence your view on the desirability of a participation exemption?

The restrictions on interest deductibility are complex. Naturally, an increased restriction is undesirable. As mentioned above, we understand that a detailed review of provisions relating to the deductibility of interest is planned in 2024. This review should feed into work on the dividend participation exemption so that the interaction between these provisions is carefully considered.

Subject to tax rule

25. How should a participation exemption be designed in order to prevent double non-taxation? Are there provisions of the current Irish corporation tax system, such as Controlled Foreign Company (CFC) and anti-hybrid rules, that could be enhanced in order to support this aim?

In our view, the existing suite of anti-avoidance measures (including the Outbound Payment provisions) and the maintenance of an up-to-date list of non-cooperative jurisdictions should prevent double non-taxation. In the spirit of cooperation, dividends received from EU/EEA/DTA countries should be exempt even where the effective tax rate in the paying jurisdiction was nil, as long as there is generally a tax applied which is comparable to corporation tax.

Substance in Ireland

26. What considerations are relevant to the design of substance requirements for a participation exemption that could be effective in promoting Ireland as a holding location for companies with economic substance in Ireland?

In our view, there should be no additional substance requirements included in the participation exemption itself. Any substance measures should be agreed in a coordinated manner at EU-level and should operate independently of the exemption.

Trading requirement

27. What are your views on a potential condition of exemption whereby relief only applies to certain trading companies?

Our view is that there should not be a trading requirement. If Ireland is to be promoted a destination for holding companies, it should enable the receipt of dividends regardless of the trading status of the underlying companies.

28. Should a participation exemption align with trading criteria applicable in other foreign subsidiary related reliefs such as section 21B and 626B? Please elaborate.

Reserves from which dividends may be paid can arise from several sources. There are benefits to enabling the repatriation of all profits into Ireland as efficiently as possible. We do not recommend the inclusion of a trading requirement.

Transitional arrangements

29. Should there be a lead-in period before a participation exemption regime is introduced? If so, what is an appropriate length of lead-in time that should apply?

In our view, and in line with the constructive discussions that have taken place over the course of Pillar Two implementation at the TALC BEPS Sub-committee, we suggest robust stakeholder engagement in advance of the introduction of any new measures. If this process commences early in 2024, then an implementation date of 1 January 2025 could be achieved.

Regarding transitional arrangements, if full optionality is chosen, then transitional arrangements should not be required.

If the legislator choses to apply a dividend participation exemption without optionality (i.e., if a dividend qualifies for exemption, then it must be deducted in arriving at taxable profits), we recommend a transitional period of at least three years. This will ensure that any unused foreign tax credits are not immediately lost.

Given the complexity of the existing regime, we reiterate our recommendation to provide optionality in as granular a manner as possible. This will avoid concerns about lost tax reliefs.

30. Would you still be in favour of introducing a participation exemption if unutilised foreign tax credits were lost?

The participation exemption should be designed to minimise the loss of tax credits. In our view, the aim of the participation exemption is to make reporting more efficient. The saving from companies' perspectives is the simplification of the reporting process. There is also good data to suggest that countries who introduce a participation exemption see an increase in corporate investment. The knock-on impact on the Exchequer in such a scenario must be positive as it is likely to result in increased profits in Irish companies, leading to increased taxes by way of increased salaries and distributions to Irish shareholders.

31. Are there other transitional arrangements that should be considered?

We recommend an election-based regime. The benefit of such a regime is that transitional arrangements should not be required. As part of this, we recommend the avoidance of punitive time-limits. For example, the usual opportunity to self-correct within 12 months or to amend a return within 4 years should be available to a client.

Consequential impacts

Franked investment income

32. In your view, what are the main opportunities or issues in applying similar treatment to domestic and foreign dividend exemption regimes?

Designing the foreign dividend exemption based on the franked investment income rules may not be suitable. Government needs to engage with stakeholders to understand whether the optimum method of relief is by way of deduction or exemption.

There may be significant interactions with the EU Minimum Taxation Directive and additionally the Interest Limitation Rule.

33. Would you be in favour of aligning the tax treatment of domestic and foreign dividend exemption regimes, if this meant additional qualifying conditions would apply to the treatment of exempt domestic dividends?

As mentioned above, we are in favour of aligning with existing legislation as far as possible. However, we reiterate that the method of relief must be carefully considered. Again, we recommend engaging with stakeholders to tease out whether relief by deduction or exemption is preferable.

Portfolio investors

34. What are the main advantages to the State and to businesses in the application of the portfolio exemption in its existing form under section 21B?

The portfolio exemption (PE) in section 21B is a relief availed of by a number of highly specialised securities' traders which have been attracted into Ireland due to the robust, and largely equitable, regulatory and legal landscape.

These operations generate significant tax revenues. As the PE allows businesses undertake activities which might otherwise be carried out through a traditional tax-exempt hedge fund structure, it generates additional corporate tax and VAT revenues for the Exchequer. The revenues arise from the additional ancillary activities conducted which are outside the scope of the PE.

Companies benefitting from the PE tend to hire highly skilled personnel. Therefore, these entities provide very well-paid employment which generates significant PREM taxes for the State.

Such high-profile front office activities also highlight the attractiveness of Ireland as a location for all categories of financial services business not just back office or administration.

35. What are the arguments for or against retention of a portfolio exemption following the introduction of a participation exemption?

The PE should remain as is (as it would operate quite independently of a participation exemption). However, the opportunity should be taken to examine its interaction with other provisions such as section 749 & Chapter 3 Part 28 TCA 1997 (stock lending) which are causing real problems in practice. We do not see any reason to remove the PE in order to introduce a dividend participation exemption.

Where possible, we would in fact recommend a separate review of the PE to consider how it could be further enhanced to support the companies the relief is aimed at. In turn, our view is that this should further enhance the attractiveness of the sector in this country (discussed in further detail below).

36. What would your views be on the introduction of a participation exemption if it required consequential amendments to, or removal of, the portfolio exemption?

As noted above important that the PE is retained and no reason why its removal would be required.

37. What modifications or anti-avoidance provisions could be introduced to the tax treatment of portfolio investments in Ireland should a participation exemption exclude portfolio holdings?

As noted above we do not believe this is necessary. In relation the bond washing rules, we understand that these rules were originally enacted prior to the introduction CGT. In our view, these provisions should be considered in light of the activities of modern financial traders taxable under Case I of Schedule D and the complex interaction with Section 21B and double tax relief rules. The interactions could be adapted to enhanced the PE.

Alignment with existing Irish reliefs for foreign subsidiaries

38. To what extent should criteria for a foreign dividend exemption align with criteria for other reliefs related to foreign subsidiaries, such as section 21B and section 626B reliefs?

We have discussed our views on existing reliefs above.

39. Should a participation exemption for dividends align with the qualifying conditions for the participation exemption on gains under section 626B? If not, what are your views on a scenario where a participation in a subsidiary qualifies for one relief but not the other?

We have discussed our views above.

40. What are the features in other jurisdictions that operate participation exemptions for both dividends and gains that would or would not work well in Ireland?

We have discussed this above.

Deductibility of expenses related to exempt income

41. What are the considerations in support of or against allowing a deduction for expenses related to exempt foreign dividend income?

As mentioned above, there are specific restrictions relating to interest relief under section 247 where exempt dividends are received. In addition, there is the general restriction in section 81 TCA 1997 and the Interest Limitation Rule.

Close company surcharge

42. What are the considerations in relation to applying a close company surcharge in a regime incorporating a participation exemption for foreign dividend income?

In our view, the taxation of qualifying foreign distributions should align with franked investment income insofar as no special additional measures need to be introduced to deal with the close company surcharge issues.

Specific tax regimes

43. Please identify any corporation tax legislative provisions that could be affected by a change in how foreign dividends are taxed, along with consideration of the potential implications.

As noted above, we believe that the CFC provisions will need to be amended somewhat as these were framed against the backdrop of foreign dividends being fully liable to Irish tax. We also think that the tax treatment of franked investment income received by Section 110 companies should be changed and the new participation exemption should be applied to them as for other Irish companies.

44. What amendments, if any, would be required to those provisions in order to ensure their continued operation in conjunction with a participation exemption?

For the CFC changes, the legislation would need to be amended to deal with distributions from overseas companies that are being received tax free in Ireland. For the section 110 change a carve out from the taxation of Irish and foreign dividends would have to be provided for in the section.

Anti-avoidance rules

45. What type of anti-avoidance provisions should be incorporated into a participation exemption in order to eliminate opportunities for tax avoidance?

As mentioned in prior consultations, a participation exemption for foreign dividends is aligned with modern anti-avoidance legislation. No further specific anti-avoidance provisions should be required once the requisite amendments are made to specific provisions.

46. Are there features of existing anti-avoidance provisions that could be enhanced in order to support this aim?

As mentioned above and below, the CFC rules will need to be updated.

Controlled Foreign Companies

47. Are there other legislative amendments required to CFC rules in order to ensure they are robust enough in the context of a participation exemption?

As mentioned above, the CFC rules will need to be updated as these were framed against the backdrop of foreign dividends being fully liable to Irish tax.

Anti-hybrids / Non deductibility in payor jurisdiction rule

48. What modification, if any, would be required to anti-hybrid provisions in order for Irish tax rules to remain ATAD compliant in conjunction with a participation exemption?

The anti-hybrid legislation was framed in the context of dividend participation exemption applying so no changes should be required in that context. The introduction of a branch exemption regime would require some changes to the rules.

49. Are there specific features of anti-hybrid regimes in other jurisdictions that have a participation exemption that Ireland should adopt in addition to our existing anti-hybrid regime?

As above.

Interaction with Pillar II of the OECD Inclusive Framework

50. Are there features of the Pillar II regime that should be considered and taken into account when designing a dividend participation exemption?

As noted earlier the participation exemption regime should be aligned as closely as possible to the EU Minimum Taxation Directive.

Transfer Pricing

51. Do you foresee potential impacts arising from moving to a participation exemption for Ireland's transfer pricing regime?

We do not foresee any impact.

Multilateral Instrument provisions

52. Do you foresee a need to adopt any provisions of the Multilateral Instrument in conjunction with a participation exemption?

We do not see this need arising.

Any other issues

53. In your view, are there any other relevant considerations that should be taken into account in the design of a participation exemption for foreign dividends, or the integration of the exemption into the existing corporation tax regime?

Foreign branch exemption

54. Are foreign branches currently used by Irish companies? If so, in what jurisdictions are those branches located? What are the current advantages of or reasons for using a branch structure?

In a financial services context foreign branches are frequently used, particularly in the banking and insurance sectors, often for capital and regulatory reasons rather than tax. However, foreign branches also exist in other sectors often if a group are first establishing operations in a particular jurisdiction. Also an employee's presence in a particular jurisdiction can sometimes create a taxable presence.

55. What activity is carried out in the foreign branch structures? Responses should include, for example, sectoral information, whether activity is trading or passive, etc.

Given the nature of activities which would typically give rise to a branch, branches typically involve some trade-related activity or venture.

56. If foreign branch structures are not currently used, are there specific features of the Irish tax code that influence this decision? If so, please provide detailed information.

Foreign branch structures are used but usually for non-tax purposes. Our worldwide tax system and our foreign tax crediting rules would normally be a deterrent to the use of foreign branch structures where other alternatives exist.

57. If an exemption for foreign branch profits were introduced, would a restructuring to use foreign branch structures be considered by existing Irish groups, and if so for what reason(s)? What substantial activities would take place in Ireland?

Multinational companies would almost certainly consider restructuring corporate groups to involve branches in the event of the introduction of a foreign branch exemption. As noted earlier this could be the optimum structure from a capital, regulatory or personnel perspective. However, the tax treatment is presently a deterrent. The introduction of a foreign branch exemption would be expected to attract in more international activities, especially in the financial services space.

58. Would a foreign branch exemption be of particular relevance to any sectors? If so, please describe the sector(s) and outline the relevant considerations.

As mentioned above, it would be particularly welcome in the financial services sector.

59. What features of tax exemptions in other jurisdictions that operate both participation and branch exemption should Ireland consider? Please include:

- **a. the name of the relevant jurisdiction;**
- **b. details of the features; and**
- **c. why those features should be considered.**

In the UK, they operate a worldwide system of taxation. However, it is effectively a territorial system when combined with the dividend exemption and the robust tax treaty network. If Ireland introduces a dividend exemption, we will likely create a similar system which is effectively territorial given our own robust tax treaty network.

The UK applies tax to dividends in two scenarios: (a) where groups engineer a tax benefit through transactions or entities that lack economic substance; or (b)where foreign companies have structured their UK activities to avoid a UK permanent establishment resulting in a tax mismatch. These features could be considered in an Irish context.

For foreign branch profits, the UK operates an election-based exemption regime. All profits and losses of a foreign branch are excluded for UK tax purposes. The election is irrevocable. We are not aware why an election should be irrevocable. In our view, an election should be revocable.

60. Please outline the potential consequential considerations you envisage would be required should a foreign branch exemption be introduced, including the potential impact on:

  a. transfer-pricing provisions;
  b. anti-avoidance measures, including but not limited to ATAD/anti-BEPS measures;
  c. special tax regimes for particular sectors or structures (for example, Part 26 TCA 1997 which deals with Life Assurance Companies); and
  d. any other Irish tax code provisions.

In terms of transfer pricing, we refer to the updates in Finance Act 2021. These amendments are current best-practice in terms of transfer pricing.

We expect that some specific anti-avoidance provisions will be required to avoid the diversion of profits from Ireland to foreign permanent establishments. As flagged earlier we would also need some changes to our Anti-Hybrid rules to accommodate permanent establishment mismatches in the event of a foreign branch exemption.

61. The international corporate tax landscape has undergone and is continuing to undergo significant reform. What impact do current and proposed future reforms have on your rationale for a transition to a foreign branch exemption?

In the context of the introduction of EU Minimum Taxation Directive and the implementation of the ATAD and BEPS provisions in recent years, Ireland should now feel fully entitled to introduce a broad-based participation exemption encompassing foreign dividend and foreign branch exemptions. This is simply bringing Ireland into line with most other OECD countries and is important in maintaining our international competitiveness.

Yours faithfully,

Enda Faughnan

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Enda Faughnan
Chair, CCAB-I