Roadmap to Introduction of Participation Exemption,
Tax Division,
Department of Finance,
Government Buildings,
Upper Merrion Street,
Dublin 2
D02 R583.
By email to: businesstax@finance.gov.ie

13 December 2023

Re: Roadmap for the Introduction of a Participation Exemption to Irish Corporation Tax (the "Roadmap")

Dear Sir or Madam

The Irish Debt Securities Association, IDSA, is an industry organisation established with the aim of promoting and developing the environment and infrastructure to support the global structured finance, debt securities and the specialist securities industries in Ireland. A membership association, the membership of IDSA includes the corporate administrators, trustees, audit firms, legal advisors, listing agents, and other parties involved in the structuring and management of Securitisations and SPVs in the industry in Ireland. IDSA promotes a responsible, sustainable and effective environment within which debt securities and other specialist securities can be used to facilitate transactions, to create investment products and to raise capital funding, similar to that of the European Commission's Capital Markets Union initiative.

IDSA welcomes the September 2023 publication of the Roadmap and public consultation concerning the introduction of a participation exemption for foreign dividends and a foreign branch profits exemption and is pleased to have this opportunity to provide feedback and comments with regard to the proposal

We note that:

- Ireland currently operates a worldwide basis of taxation. Most member states of the EU and the OECD now operate predominantly territorial systems of taxation and have an effective dividend exemption. As noted in the Roadmap, Ireland is currently a significant outlier by not operating some form of participation exemption for foreign dividends.

- A dividend exemption territorial basis of taxation is not only compatible with the international tax reform under Pillar Two which will become effective in Ireland from 31 December 2023, but is the assumed approach of adopting jurisdictions under Pillar Two.

- Ireland's current "tax and credit" system to taxing worldwide income has a negative bearing on Ireland's competitiveness as a destination for foreign direct investment. We have mentioned on many occasions the continuing competitive threat posed by the UK Qualifying Asset Holding Company (QAHC) regime and there is very recent evidence that EU assets (both credit and private equity) previously held by Irish Section 110 companies or indeed by other EU entities are now being held through UK QAHC's which further erodes the competitiveness of Ireland and the EU as a whole. The UK QAHC regime is also competing with the flexibility and product range on offer in Luxembourg. While we warmly welcome the policy decision to introduce a participation exemption, a failure to make it comprehensive and straightforward to understand and operate in practice would be a real opportunity lost from a competitive perspective.

- There should be no international sensitivities in introducing a generally applicable participation exemption for dividends (including in the Section 110 sector) given that it is present in most other developed tax systems.

- A participation exemption for foreign dividends should also help with reducing unintended Irish tax consequences when withholding taxes are applied to foreign dividend payments. Further work will also be required to resolve all issues in this problematic area.

Part I – Dividend Participation Exemption Consultation Questions – 4.1 Structural Considerations, 4.2 Consequential impacts

IDSA believes that the design features of an Irish participation regime should contain features similar to the UK system such as:

- A full Corporation Tax exemption for dividends received from non-Irish resident companies. (Question 9).

- Automatic application subject to an ability to opt out of this exemption on a dividend by dividend basis. In such circumstances the existing rules on taxation and crediting should continue to apply to such payments. (Questions 17-18, 20-23)

- A disapplication of the exemption if the payer has obtained a tax deduction for the payment.

- No minimum holding period or ownership requirements in relation to the shares held. (Questions 14, 16)

- An extension of the franked investment income provisions of Section 129 of the Taxes Consolidation Act, 1997, as amended, to foreign dividends. This would be the least disruptive approach in terms of legislation change. A small change to the wording of Section 110 would be needed to exempt domestic dividends and to ensure that the same optionality available to other Irish companies in respect of participation exemption on foreign dividends would also apply to the securitisation and SPV sectors. (Questions 32, 33, 43 and 44)

- An extension of the CGT participation exemption in Section 626B to remove a number of the restrictive conditions, including the trading and tax residence requirements – this is to prevent mis-matches between the dividend and the CGT participation exemptions. (Question 39)

- No additional minimum economic substance or trading requirements. The divergent views expressed among EU member states with respect to the proposed draft 'Unshell Directive' indicate a lack of consensus as to the purpose, conditions, scope and consequences of any such legislative proposals. A participation exemption is a key element of the introduction of a territorial regime – the application of such a regime and exemption should not be predicated on a trading requirement. (Questions 26, 27)

Part II – Foreign Branch Exemption Consultation Questions – 4.5 General

Given the requirements of Section 110, the introduction of a branch exemption regime would not significantly impact the sector. However, in the event of a branch exemption being extended to Section 110 companies it may also be considered prudent to extend the arm's length requirement in Section 110(1) to transactions between an Irish head office and its tax exempt branch.

Conclusion

IDSA believes that the introduction of a comprehensive and easily applicable participation exemption for dividends would benefit Ireland.

The current tax and credit system of taxation of dividends is complex; may become increasingly difficult to administer in the context of the worldwide tax modernisation and adoption of OECD and EU derived standards; is out of step with tax policy in all other EU member states and most OECD countries; and is vulnerable to challenge under EU law as, if any dividends paid from an EU resident company result in Irish tax, a discrimination claim may be made.

The introduction of the EU Anti-tax avoidance directive's CFC rules, Interest Limitation Rules, Anti-hybrid rules and the extended Transfer Pricing rules fully protect Ireland's domestic tax base from the artificial diversion of profits. In fact, it is impossible to conceive of profits that escape Irish tax under those rules that should, as a policy matter, be taxed in Ireland. Although the review of the Section 110 regime will not conclude until summer 2024, the Securitisation and SPV sectors, which rely on Section 110, anticipate that any territorial regime for the optional exemption of foreign dividends, if introduced, will be accessible to Section 110 entities on the same optional basis as other Irish resident companies. Any necessary amendments to the CGT participation exemption in Section 626B to align it with the territorial regime should also seek to accommodate Section 110 companies availing of the revised measures.

Yours sincerely

Gary Palmer
CEO and on behalf of IDSA