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Roadmap to Introduction of Participation Exemption,
Tax Division,
Department of Finance,
Government Buildings,
Upper Merrion Street,
Dublin 2
D02 R583

13th December 2023

BY EMAIL TO: businesstax@finance.gov.ie

Re: Roadmap to Introduction of Participation Exemption

Dear Sir/Madam,

We welcome the opportunity to participate in the consultation process on a Roadmap to the Introduction of a Participation Exemption to Irish Corporation Tax ("the Consultation") as announced by the Minister for Finance and published in September 2023 relating to the proposed potential introduction of:

(a) a participation exemption for foreign sourced dividends; and

(b) a branch profit exemption.

Kenmare Resources plc ("Kenmare") is a holding company incorporated and tax resident in Ireland since 1972. As the issues under consultation are of central importance to our business, we very much appreciate the Minister and the Department of Finance carrying out the Consultation and inviting comments.

We have provided our views and recommendations below from a high-level commercial perspective, focusing on the competitive advantages and disadvantages for both Ireland and Irish businesses such as Kenmare. We therefore do not propose to provide responses to the detailed questions posed in the Consultation document.

We are sharing these views from the perspective of an Irish publicly-listed holding company with foreign subsidiary and branch undertakings, that would welcome the simplification of the current 'tax and credit' system and the reduced risk and certainty that a territorial system for taxation of foreign sourced dividends and foreign branch income would provide.

Our view is that Ireland should urgently implement exemptions for foreign dividends and foreign branch profits. The scope of the exemptions should be as wide ranging as possible and should contain appropriate anti-avoidance measures to ensure compliance with best practice in current international tax thinking and policy. As a general consideration, the Irish system could closely mirror the foreign dividend exemption and foreign branch exemption regimes that the UK has adopted. This would provide for foreign sourced dividends that are compliant with specific anti-avoidance rules to be generally exempt from corporation tax, and foreign branch income to be treated as exempt once the appropriate elections are made.

Competitive Advantages and Disadvantages

Ireland has had, and continues to have, a significant competitive advantage in terms of attracting Foreign Direct Investment by incentivising Ireland as a location for holding company or head office operations. The opportunity for attracting FDI has become greater with the UK leaving the EU through Brexit, as Ireland is now the only country with English as the primary business language that has full access to EU markets.

However, many international businesses still choose the UK or another jurisdiction as a holding company location over Ireland. This is because simplification of processes, lowering of costs and obtaining certainty over the outcome of business dealings and decisions are of paramount importance in the modern business environment.

In terms of tax policy on the taxation of foreign income, Ireland is significantly out of step with the rest of the developed world and fails to deliver the simplified processes, low costs and certainty of outcome provided by other jurisdictions:

- The Irish 'worldwide' tax system taxes the repatriated profits of foreign subsidiaries and the profits of foreign branches, and then grants a credit through a very complicated calculation methodology for foreign taxes paid on the same repatriated income. The system is administratively burdensome, costly and entails an unnecessary level of uncertainty.

- By comparison, other countries deliver these desired outcomes to holding companies and head office locations by allowing the repatriation of foreign earned and foreign sourced funds without seeking to tax this foreign sourced income, and by implementing an easy to follow and easy to claim exemption system in respect of these types of income.

This simpler method of exemption on a territorial tax basis greatly reduces cost, reduces risk of administrative error and non-compliance in the calculation and payment of taxes and provides certainty of outcome for companies and their shareholders. These criteria are of central importance to publicly listed companies.

The absence of similar rules in Ireland place Irish holding companies, including Kenmare, at a material disadvantage in the marketplace.

Within the EU, with a young and highly talented workforce and English as the first and primary business language, Ireland should be the primary jurisdictional location on the minds of international companies as a location to centralise and manage group operations. However, notwithstanding that it is no longer part of the EU, the UK has a significant advantage over Ireland as a holding company location as it provides exemption for foreign dividends and foreign branch profits as mentioned above. Rectifying this situation by providing a broad participation exemption for foreign sourced dividends and exempting foreign branch profits could be expected to have a significant impact in making Ireland the primary location for holding company and head office operations globally. It would also remove the comparative disadvantage of existing Irish holding companies and head offices, such as Kenmare's, which we have described above.

Scope of Foreign Dividend Exemption and Foreign Branch Income Exemption

We believe that a foreign dividend exemption should apply as follows:

- It should apply to all foreign sourced dividends originating from any jurisdiction that is not on the EU's list on non-cooperative jurisdictions for tax purposes;

- It should apply to all profits repatriated, whether those profits are derived from trading activities (including "excepted trades" as defined by S21B TCA 1997) or non-trading activities (e.g. rents), as any such profits would be derived from extra-territorial operations in any event;

- There should be no minimum shareholding requirement for the operation of the exemption regime;

- There should be no minimum holding period during which a holding company should have to have held the shares in any investment for the exemption to apply;

- It should be a condition of the exemption that the dividend is treated as a distribution of after-tax profits in the paying jurisdiction and therefore that the payer does not get a tax deduction for the payment making up the distribution;

- The exemption should apply to foreign sourced dividends received from all share classes of shares and should not be limited to one or more classes of shares (e.g. 'ordinary shares' only).

We further believe that a foreign branch income exemption should also be introduced into the Irish tax code, should be as broad and simple as possible and should contain the following characteristics:

- It should apply to all foreign trading income from any activity or source;

- It should apply to both income (profits) and capital gains derived from foreign branch activities;

- The taxpayer should be able to elect into the foreign branch income exemption on a branch-by-branch basis separately for each accounting period.

We thank you for the opportunity to make this submission and look forward to the introduction of wide-ranging exemptions for foreign dividends and foreign branch income at the earliest opportunity.

Yours sincerely

Tom Hickey
Financial Director
Kenmare Resources plc