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Roadmap to Introduction of Participation Exemption
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Roadmap for the Introduction of a Participation Exemption to Irish Corporation Tax

Dear Sir / Madam

This submission is in response to the paper entitled "*Roadmap for the Introduction of a Participation Exemption to Irish Corporation Tax*" issued by the Department of Finance (the "**Department**") in September 2023 (the "**Consultation Paper**").

Matheson welcomes the opportunity to engage with the Department regarding the public consultation on the introduction of a participation exemption for foreign dividends (the "**Foreign Dividend Exemption**") and a foreign branch exemption (the "**Branch Exemption**") (together the "**Proposed Exemptions**") to the Irish corporation tax system. From an Irish tax policy perspective, we support the Department's proposal "*to reassess the overall tax system following the extensive reforms of recent years*". Further, we support the Department's commitment to ensure "*our corporation tax code is competitive and attractive to business investment, while also maintaining consistency with international best practices*".

As noted in the Consultation Paper, Ireland has implemented a significant number of tax reforms over the past number of years as a result of changes to the international tax landscape, most recently, the transposition of the Pillar Two Global Anti-Base Erosion Model Rules (the "**GloBE Rules**"), into Irish domestic law from 2024. In conjunction with these reforms, it is an opportune time for Ireland to introduce both a Foreign Dividend Exemption and Branch Exemption. We support such a move for the following reasons:

- Ireland is now one of the few OECD countries that has retained a worldwide tax regime. Furthermore, many of the EU law and OECD reforms that have been agreed or implemented (including under ATAD and Pillar Two) are designed primarily with a territorial regime in mind.

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Ireland should use these international tax reforms as an opportunity to shape its future tax policy and tax regime, subject to EU law and in keeping with the global tax framework.

- Schedule 24 of the Taxes Consolidation Act 1997 ("**TCA**") is one of the most complex components of the Irish tax legislation and can be difficult and costly for taxpayers to administer.

- Given the broad availability of credits under Schedule 24 TCA at present, the introduction of the Proposed Exemptions is likely to be revenue neutral.

1 Key Considerations

Our comments in this section 1 highlight a number of key considerations which have emerged from our experience in advising clients, and which we believe should inform the introduction of the Proposed Exemptions to the Irish corporation tax system. We will then turn to provide responses to a number of specific questions raised in the Consultation Paper at section 2 below.

1.1 Certainty

Ireland's stable tax regime has been one of the key successes in attracting and encouraging investment by domestic and multinational enterprises over the past number of decades. Taxpayers rely on stability in the Irish tax regime in order to plan, develop and grow their operations. The introduction of the Proposed Exemptions at this time offers Ireland the opportunity to ensure that its tax regime is compatible with recent tax reforms and remains best in class. We need to maintain a sustainable stable tax system that continues to encourage investment and growth.

1.2 Clarity

It is vital for Ireland that any rules introducing the Proposed Exemptions to the Irish corporation tax system are clear and capable of being understood without uncertainty, by all taxpayers. Following the transposition of the GloBE Rules into Irish domestic law for accounting periods beginning on or after 31 December 2023, there is additional complexity and administrative burdens for many taxpayers applying these rules. Ireland should take every opportunity to remove existing complexities in its tax code.

We agree that active engagement with industry and relevant stakeholders should precede any changes. We therefore welcome the publication of the Consultation Paper by the Department outlining the proposed roadmap to introduce a Foreign Dividend Exemption and the ongoing consideration of the introduction of a Branch Exemption. We would also welcome the opportunity to contribute further to these discussions once the details of the Proposed Exemptions are made available.

2 Consultation Questions

We are responding to the Consultation Paper in our capacity as a professional advisor to many domestic and multinational businesses operating in Ireland and, as such, our responses are informed by the experience of our clients and the broader tax policy considerations which we believe will be important to ensure that Ireland's tax regime remains best in class following the recent EU and OECD reforms.

Part I – Dividend Participation Exemption

Structural considerations

General Features

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.***

   As a comparatively small and open economy, Ireland has made effective use of its position as an international hub for multinational groups (particularly US groups) seeking to headquarter their European and / or global operations. Ireland needs to ensure its holding company regime remains competitive with other EU and OECD countries to attract further investment in Ireland in the future. The introduction of a Foreign Dividend Exemption at this time offers Ireland the opportunity to implement a regime that aligns with recent tax reforms and other EU and OECD countries. Such a regime would positively influence the decisions of corporate groups in respect of the location of group operations.

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.***

   The Foreign Dividend Exemption should be designed to ensure that it removes existing complexity and offers a clear simplified system. To achieve this objective, any restrictions on scope should be focused on mitigating any possible tax avoidance but this should be limited to circumstances where the existing Irish domestic legislation does not already deal with such avoidance.

   Similar to the UK,

   - a full participation exemption should be available;
   - the exemption should not be limited to treaty countries (similar to the Netherlands and Luxembourg also); and
   - any restriction requiring dividends to be paid out of trading profits should not feature in the design.

   We would also propose that the Foreign Dividend Exemption apply automatically but it should be possible for the taxpayer to elect to opt out on a distribution-by-distribution basis.

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 Foreign Dividend Exemption should be designed to ensure that it is clear and simple for taxpayers, therefore, removing the complexity of the existing system. It should also be considered whether corresponding changes should be made to the existing participation exemption for gains under section 626B TCA to align the treatment of income and capital

distributions. As mentioned above, this should include a review of the existing trading requirement under section 626B TCA.

To ensure there is no unnecessary complexity, it is our view that the Foreign Dividend Exemption should not follow the residence requirement in section 626B TCA but seek a broader application beyond treaty jurisdictions as this can result in unintended restrictions on the relief for multinational enterprises. Section 21B TCA (which outlines the conditions for certain foreign dividends to be charged to tax at the 12.5% rate of corporation tax) already goes beyond treaty jurisdictions to include dividends received by a company that is resident in a country which has ratified the Joint Council of Europe/OECD Convention on Mutual Assistance in Tax Matters or in a non-treaty country where the company is owned directly or indirectly by a quoted company.

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 order to ensure Ireland remains attractive to business investment, while also maintaining consistency with international best practices it is important that the regime is straightforward and does not introduce additional complex rules. In this regard, similar treatment to section 129 TCA (which provides that Irish resident company distributions are generally not chargeable to corporation tax) could be introduced together with an amendment to the definition of franked investment income (section 156 TCA) such that it would include certain dividends / distributions from shares in foreign resident companies.

Additional factors could then be considered for scenarios in which the exemption could be restricted, for example, following the UK approach where a non-UK resident company receives a deduction for the payment of the relevant dividend in which case the exemption is not available. However, opportunities for aggressive tax planning in the context of participation exemptions have largely been addressed by policy developments over recent years.

Specified Jurisdictions

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

In our view, in order to ensure Ireland remains competitive as against other jurisdictions with broad participation exemptions (eg, the UK), the participation exemption should not be limited to jurisdictions with which Ireland has entered into a double tax treaty. As noted above, section 21B TCA applies beyond treaty jurisdictions.

If there are restrictions to the scope of jurisdictions that are eligible for the Foreign Dividend Exemption, it would also be important to ensure that the determination of tax residence is clear given a number of countries do not have this concept domestically.

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 mentioned above, the introduction of a Foreign Dividend Exemption at this time offers Ireland the opportunity to implement a participation exemption that is best in class. While

the participation exemption regimes in the Netherlands, Luxembourg and in particular, the UK are instructive, Ireland can also ensure that the new regime is implemented in a way that is consistent with recent tax reforms and enhances Ireland's tax code. For example, the UK approach includes certain UK specific anti-avoidance rules and Ireland could look to adopt less complex rules given the existing domestic anti-avoidance framework.

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?***

   No, see response to Question 3 above in respect of section 626B and 21B TCA. By limiting the Foreign Dividend Exemption to certain jurisdictions or linking it to a trading activity it may not achieve the objective of simplifying the current regime. Furthermore, as a result of recent reforms, Ireland's tax system contains comprehensive rules that offer the protections that these limitations would be seeking to achieve.

   However, we note that any amendments required to these provisions once the Foreign Dividend Exemption is finalised will also need to be considered.

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?***

   Please see response to Question 4 above regarding the proposal for the Foreign Dividend Exemption to be excluded from the charge to tax.

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 approach taken in the UK, Netherlands, Switzerland and Luxembourg a full exemption should apply to ensure that the Foreign Dividend Exemption is broad in nature and is straightforward to apply.

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?***

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

    The Foreign Dividend Exemption should apply to all income distributions (including dividends and all *in specie* distributions). See our comments above recommending that the treatment of capital distributions pursuant to section 626B TCA be broadened to align with the new Foreign Dividend Exemption. To the extent that this amendment is not

included in section 626B TCA, consideration should be given to including capital distributions in the Foreign Dividend Exemption.

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

    A broader definition could be considered, subject to the exclusion of where the payer receives a deduction for the payment of the relevant dividend (similar to the UK exemption). It would also be helpful to have additional clarity in respect of other interests held in corporate vehicles which are very common in practice (eg, membership interests in entities such as LLCs established in the US).

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.***

    No, see response to Question 3 above in respect of section 626B TCA.

Minimum shareholding requirements

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

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)?***

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?***

    Addressing Questions 14 - 16 together, a number of jurisdictions including Switzerland, Belgium, the Netherlands and Luxembourg require a certain percentage participation for the exemption to apply (5 – 10%) and in some of those jurisdictions a minimum holding period (typically 12 months) applies or in Luxembourg a commitment that recently acquired shares will be held for a pre-determined period also applies. It would therefore align with international norms to apply a minimum percentage participation and conditions regarding a specified holding period. This would be consistent with the 5% minimum holding requirement for 12 months under section 626B TCA. However, notably, this does contrast to the broader exemption in the UK where there is no minimum percentage or required holding period.

    To the extent a participation percentage requirement is included, it would be important to include similar provisions to section 626B TCA whereby the 12 month holding period does not necessarily need to be satisfied at the time of the distribution and instead that this condition can be satisfied in respect of a distribution made at any point during an uninterrupted period of ownership of 12 months.

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.***

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

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

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

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

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?***

Addressing Questions 17 - 23 together, we would propose that the Foreign Dividend Exemption should be the default position but the taxpayer should be able to opt out of the exemption by way of an election on a distribution-by-distribution basis to ensure that any groups that may need to avail of the credit system based on their particular circumstances could continue to do so. For example, the benefit of credit pooling may be reduced for certain groups on the introduction of an exemption.

This optionality (as well as any dividend that does not fall within the exemption) would require simplification of Schedule 24 TCA to ensure the complexity of a remaining credit regime would be reduced.

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?***

In introducing the Foreign Dividend Exemption it should be elective (as set out above) so that the taxpayer can consider any resulting impact on their interest expense restriction and whether to opt out of the exemption.

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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?***

Ireland has already introduced comprehensive domestic tax measures which prevent double non-taxation. Ireland's tax system already includes comprehensive rules on:

- anti-hybrid rules;
- reverse hybrid rules;
- controlled foreign company rules;
- interest limitation rules; and
- general anti-avoidance rules.

Substantive amendments to the CFC and anti-hybrid rules should not be required following the introduction of a Foreign Dividend Exemption to ensure they meet their stated aim.

The CFC rules operate by attributing undistributed income of a CFC to a controlling company or a connected company in Ireland. If a company receives a dividend from its CFC and a participation exemption applies this may result in the CFC charge not applying to that income as the CFC has distributed the income. Therefore, to ensure a CFC charge applies as appropriate in those circumstances certain amendments may need to be considered.

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?***

We are of the view that given the existing protections in Ireland's tax code with regard to base erosion, substance requirements should not be required in the Foreign Dividend Exemption.

As mentioned above, the introduction of a Foreign Dividend Exemption that removes the existing complexity and administrative burden should in and of itself encourage further investment in Ireland.

Trading requirement

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

    Addressing Questions 27 and 28 together, relief should not be limited to trading companies. The trading test applicable in section 626B TCA introduces complexity and a significant administrative burden for companies to comply with this requirement (see further comments on the exemption in 626B TCA in responses to Questions 2, 3 and 7 above).

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?***

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

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

    Addressing Questions 29 – 31 together, it is vital that the parameters of the Foreign Dividend Exemption are clear and the rules straightforward to apply, this coupled with the proposed optionality should mean that a lead-in period is not required and the Foreign Dividend Exemption should apply to distributions made on or after 1 January 2025 (on the basis that it is to be introduced in Finance Bill 2024).

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?***

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?***

    Addressing Questions 32 and 33 together, please see response to Question 4 above. More specifically, with regard to the application of additional qualifying conditions to the treatment of exempt domestic dividends, we are of the view that no additional limitations should apply.

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?***

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

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?***

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?***

    Addressing Questions 34 - 37 together, we believe the exemption for portfolio investors should remain in place following the introduction of the Foreign Dividend Exemption and should not be subject to additional limitations. Similarly, on the basis that Ireland's tax code contains a number of existing measures, additional anti-avoidance provisions should not be required.

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?***

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?***

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?***

    Addressing Questions 38 – 40 together, please see responses to Questions 3 and 7 above regarding sections 626B and 21B TCA.

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?***

    We are of the view that there are existing comprehensive rules included in the Irish tax system regarding the availability of tax deductions and expenses of management and therefore, no additional restrictions should be required.

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?***

    We believe that exempt foreign earnings to which the Foreign Dividend Exemption applies should not be subject to the close company surcharge. In this regard, we believe that it would be appropriate to amend the definition of "investment income" in section 434(1) TCA to provide a new limb (c) in this regard, to refer to any dividends or other distributions received by a company in respect of shares at a time when the provisions of the Foreign Dividend Exemption would apply thereto.

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.***

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

    Addressing Questions 43 and 44 together, it is difficult to identify specific consequential changes that may be required at this stage without more detailed parameters of the proposed Foreign Dividend Exemption. However, and as mentioned above, Ireland's tax code has undergone significant changes in recent years following the implementation of EU and the OECD reforms and, therefore, it will be important to ensure that the Foreign Dividend Exemption is compatible with these provisions and there are no unintended consequences arising from the new regime.

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?***

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

    Addressing Questions 45 and 46 together, as mentioned in the response to Questions 2 and 25, given the existing protections in the Irish tax code including the general anti-avoidance rules, the inclusion of anti-avoidance provisions in the Foreign Dividend Exemption should be kept to a minimum where strictly necessary.

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?***

    Please see response to Question 25 above.

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?***

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?***

    Addressing Questions 48 and 49 together, the anti-hybrid provisions should not require modification to remain ATAD compliant following the introduction of the Foreign Dividend Exemption.

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?

There may be merit in considering an alignment of shareholding thresholds applicable under the Foreign Dividend Exemption with those applicable under the Pillar II to avoid entities within the scope of Pillar II having to prepare separate additional tax computations. That noted, given the Pillar II rules will only apply to a limited set of large multinational groups, this will not be relevant for the majority of taxpayers.

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 potential impacts arising from moving to a participation exemption for Ireland's transfer pricing regime.

Multilateral Instrument provisions

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

The implementation of a Foreign Dividend Exemption should not result in the need to adopt any provisions that Ireland had reserved its position (based on the worldwide tax regime) under the Multilateral Instrument.

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?***

As mentioned at Question 23 above, although the priority should be the introduction of the Foreign Dividend Exemption, given the preference for optionality we would advocate for a simplification of Schedule 24 TCA to ensure the complexity of a remaining credit regime would be reduced. We would also advocate for amendments to the participation exemption applicable to capital distributions in section 626B to remove the current trading test and the current restriction to distributions from subsidiaries that are resident in a jurisdiction with which Ireland has a double tax treaty.

Part II – 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?***

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.***

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.***

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?***

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.***

Addressing Questions 54 – 58 together, there are operational and administrative factors that may influence the decision for an Irish company to establish a foreign branch. For example, certain regulatory factors can be a key driver for Irish companies to establish a foreign branch (eg, to enable a foreign branch in an EU Member State to use the Irish company's authorisation from the Central Bank of Ireland to operate in that Member State). Therefore, a branch exemption would be of particular relevance to regulated sectors.

The advantage of such branch structures can vary depending on the particular jurisdiction but it can often enable Irish companies to expand the scope of their operations with less administrative and compliance issues.

The absence of a Branch Exemption in Ireland, in particular following the implementation of the GloBE rules, creates added complexity in respect of branch profits as the additional administrative burden of calculating foreign tax credits is a disincentive for multinational enterprises to use Ireland to establish a foreign branch structure.

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.

The Branch Exemption should be designed to ensure that it removes existing complexity and offers a clear simplified system that is not overly burdensome to administer. To achieve this objective, we would propose that the Branch Exemption should be optional at the election of the taxpayer on a branch by branch basis each year. This optionality would enable certain taxpayers to remain within the credit regime depending on their circumstances but would require a simplification of Schedule 24 TCA.

This approach would align with the UK which has both a participation and branch exemption. The UK branch exemption does not apply automatically but allows the tax payer to opt into the regime on a company by company basis. Further the UK branch exemption is not limited to trading income and includes chargeable gains. Ireland's Branch Exemption should follow a similar approach. However, by contrast to the UK system which provides that the election is irrevocable, it should be considered whether the election would be revocable given the ongoing changes to the international tax landscape.

By taking a broad approach to the Branch Exemption similar to the UK, this would ensure that the existing administrative and operational complexity applying under Ireland's existing regime would be simplified and offer a more attractive regime in Ireland.

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.

The potential consequential considerations for Ireland's transfer pricing provisions, anti-hybrid rules, CFC rules and exit tax rules on the introduction of a foreign branch exemption will need to be considered in further detail once the parameters of the proposed Branch Exemption are finalised. However, as mentioned above, it will be important to ensure that the Branch Exemption is compatible with the recent changes to implement EU and the OECD reforms.

For example, from a transfer pricing perspective, the Authorised OECD Approach to the attribution of income to a branch of a non-resident company carrying on a trade in Ireland (which is now incorporated into Irish legislation under section 25A TCA) could also be implemented with respect to the attribution of profit to the foreign branch of an Irish company for the purposes of the foreign branch exemption. Similarly, consideration should be given to any required amendments to Ireland's exit tax rule under section 627 TCA to ensure it remains ATAD compliant and to ensure that where a taxpayer opts in to the Branch Exemption it does not trigger an unintended tax charge.

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?***

Ireland has now introduced ATAD compliant CFC and interest limitation rules in addition to anti-hybrid rules and an extension of the Irish transfer pricing rules. These reforms work to prevent the artificial diversion of profits from Ireland and address the risks that may have been a barrier to the introduction of a Branch Exemption.

Ireland will also shortly introduce GloBE rules that will ensure that a foreign branch of an in-scope Irish company is subject to a minimum level of tax.

Given the significant protections already in place to avoid base erosion and profit shifting, it is important to ensure that the Branch Exemption is introduced in a manner that is as easy to understand and operate as possible. It is important to ensure that, following significant international reforms, Ireland emerges with a best in class offering, within the parameters that have been internationally agreed.

We would welcome the opportunity to contribute further once the details of the Proposed Exemptions are made available by the Department.

Yours sincerely

Sent by email, bears no signature

MATHESON