Deirdre Donaghy
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2
D02 R583

13 December 2023

Dear Deirdre,

Subject: Roadmap to Introduction of Participation Exemption

We are writing to you in response to your invitation for submissions on the "Roadmap for the Introduction of a Participation Exemption to Irish Corporation Tax" document as published by the Department of Finance in September 2023.

First and foremost, we welcome the publication of a roadmap and public consultation concerning the introduction of a participation exemption for foreign dividends and a foreign branch profits exemption. The publication thereof reflects Ireland's continued efforts to promote a business environment characterised by certainty and clarity, thereby giving confidence and foresight to key stakeholders in a time of unprecedented change in the international taxation arena.

The introduction of a territorial system of taxation in Ireland is well overdue, indeed Ireland is an outlier among OECD member states by still maintaining a worldwide taxation system. As you are aware we believe that this has impacted on our competitiveness. We have set out this

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position and rationale in multiple submissions and consultation responses including two detailed submissions earlier this year. We have further engaged on this issue through industry groups and with businesses seeking the regime change. As such we are eager to participate in this and future consultations on the matter to ensure that Ireland improves our attractiveness as a substantive holding location. We believe the new regime should be sufficiently flexible to accommodate the diversity of the Irish economy and its corporate tax base. Ireland's tax system is becoming increasingly complex, particularly in the context of ongoing comprehensive reform internationally. The introduction of such a regime represents a significant step in simplifying Ireland's tax system, thereby enhancing Ireland's competitiveness as a destination for investment.

Although the introduction of the proposed participation exemptions is a welcome step towards the simplification of Ireland's tax system, we believe that there is a great deal more that can be achieved by Ireland in this regard.

- Specifically, given the move to a global minimum effective tax rate under Pillar Two, now is an opportune time for Ireland to review and re-organise its existing schedular system and to reconsider the rationale for the higher 25% tax rate for non-trading income (save, potentially, for certain transactions).
- Consideration should also be given to reviewing the applicability of the 33% CGT to gains derived from business assets and applying the headline corporate tax rate to such gains.
- Our interest deductibility rules are overly complex and require significant simplification.

As the leading advisor to a broad base of taxpayers, ranging from indigenous entrepreneurs and Irish-listed entities to foreign-owned multinationals, we can draw on our experience of dealing with complex taxation matters and reflect our concerns and insights with regard to the implementation of the participation regimes.

We welcome the opportunity to discuss the matters outlined below at your convenience.

Yours sincerely,

Paraic Burke

Paraic Burke
Head of Tax

Appendix

Part 1 - Dividend Participation Exemption		
No.	**Question**	**Answer**
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.	The introduction of a participation exemption for dividends would incentivise businesses to locate their holding operations in Ireland given the simplified tax offering around cash repatriation through dividends. There is significant tax policy change afoot at a global level. The broad introduction of Pillar 2 rules is leading groups to consider how they will hold their operations in the future to ease, where possible, the significant administrative burden the rules place on taxpayers. For example, many US MNCs are considering consolidating their non-US operations under one holding location which would act as the intermediate parent entity for the non-US group entities for Pillar 2 purposes. Furthermore, MNCs are striving to align their jurisdictional holdings with other substantive operations given the potential impact of ATAD 3. The introduction of a participation exemption by Ireland will allow groups to consider Ireland as such a holding location. Indeed Ireland is well placed in this regard as many groups have already chosen Ireland as their EMEA HQ. This increased presence should also attract further substantive infrastructure and jobs investment in Ireland. Put simply, the introduction of such a regime would place Ireland on a level footing with all its major competitors for such investment.
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 regime should be simple, understandable and reasonable to apply and administer. For example, its conditions should be capable of being applied without the need for extensive inquiry into the tax affairs and business operations of the underlying paying company. The UK introduced a dividend income exemption with effect from 1 July 2009. The legislation governing the dividend income exemption runs to approximately 6 pages. The legislation governing the foreign branch exemption runs to approximately 8 pages. ***Summary of dividend income exemption***

		Most foreign dividends received by UK companies are exempt from corporation tax as a consequence of the application of the dividend income exemption. In order to access the exemption, some conditions need to be satisfied. We have provided significant detail in previous submissions on the UK regime. Their system achieves the goals of simplicity and operability that we have outlined above as core goals for the system. Furthermore, as they introduced their system in 2009 it was well tested within an EU law context while the UK was still a member of the EU. The default position in the UK is that dividend income falling within the above categories is exempt from the charge to UK tax. However, taxpayers can elect to treat some or all of those dividend receipts as being taxable if they so wish (so some dividends can be treated as taxable and some dividends can be treated as exempt).
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.	We do not believe that existing Irish legislative constructs should be used for the participation exemption. The key reason for this is that Ireland has committed to and is currently implementing Pillar 2. The results of Pillar 2 will be that all groups will be subject to a minimum effective rate of 15% on a jurisdiction by jurisdiction basis. Furthermore, Pillar 2 provides for a broad participation exemption for dividends. As such, it would be unnecessarily complex and incompatible with Pillar 2 if Ireland were to introduce a regime that attempted to bring Irish tax concepts to the activities of foreign subsidiaries. For those entities which will not be in scope for Pillar 2, the participation exemption should also be available to such entities to ensure parity of treatment. In this regard, we believe that certain areas of our legislation (e.g. 626B, 21B etc) should be updated to align with the operation of Pillar 2. We would also advise that the design features of the regime should align with any changes that might arise out of the upcoming review of the interest relief rules to be conducted next year.
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?	It is suggested that limiting the applicability of a participation exemption in respect of foreign dividends to dividends paid only from certain jurisdictions (or, for that matter, to dividends paid out of trading profits) would detract from the competitiveness of Ireland as a destination for investment, in particular versus key competitors like the UK which already have broad dividend exemption regimes. Moreover, these requirements are generally not relevant in the context of preventing avoidance arising from the payment

		of foreign dividends to Irish companies. We suggest that taxpayers availing of the participation exemption would not be required to "trace" the underlying profits to classify their trading status, when those profits were earned or from which class of shares they are paid out in respect of. Furthermore, in the context of the payment of foreign dividends to Irish companies, the use of such criteria to determine whether such dividends should be exempt is misplaced. In any event, as a result of the substantial changes to the Irish tax code and the international tax environment over the past decade, there are, in our view, already other measures and safeguards in place to prevent avoidance arising from diversionary practices (such as, for example, the CFC rules, EU blacklist measures, outbound payments, interest limitation rules, anti-hybrid rules etc), and future changes (e.g. ATAD III, Pillar Two) will enhance and indeed copperfasten these measures and safeguards. Furthermore, using these criteria would, in our view, not have a significant effect on the removal of complexity and the administrative burden associated with the current system. Finally, it should be noted that one of the other criteria for the application of Section 21B is that eligibility for the relevant relief (i.e. effectively a reduction in tax rate to 12.5%) is essentially dependent on whether the distributing company has distributable reserves, and whether the dividend is paid from such reserves. Where this is not the case (i.e. the dividend is paid out of, for example, share premium or is simply paid out of the inherent value of the company), the relief will not apply. We are of the view that this is an artificial distinction (which company law has largely dispensed with), and should not, in any event, be used as a basis for determining whether a participation exemption in respect of foreign dividends should apply or not.
5.	What are your views on the potential scope of jurisdictions that should be eligible for an Irish participation exemption?	We would recommend that this exemption be available on a worldwide basis, rather than limiting it to distributions in respect of shares in companies resident in jurisdictions with which Ireland has a double tax treaty. As has been outlined above, as Ireland will have legislated for Pillar 2 in advance of the introduction of the proposed participation exemption, we believe the necessary safeguards are provided through Pillar 2 which can give comfort to providing for the exemption on a worldwide basis. To ensure parity of treatment, the participation exemption would need to be equally available to

		companies who are not in-scope for Pillar 2 purposes (eg excluded entities or non-constituent entities) and there should be no requirement for the business to confirm that Pillar 2 has been applied in respect of the distribution in accessing the participation exemption. We expect that you would give consideration to preventing access to the exemption in respect of distributions and branch profits from companies resident in territories on Annex I of the EU list of non-cooperative jurisdictions at the time the distribution is paid or the branch profits arise. We would welcome a discussion with you in relation to such territories.
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 is more fully detailed in our above responses, it is widely accepted that Ireland is out of step with other EU and OECD (and indeed global) jurisdictions in relation to its treatment of foreign dividends and branch profits, especially following the plethora of changes to its tax system over the past decade to address concerns relating to base erosion. Moreover, the lack of a territorial system of double taxation relief has an effect on Ireland's competitiveness as a destination for investment. The urgency of the need for the introduction of a competitive territorial regime of double tax relief should therefore not be understated. In light of all of the recent and imminent changes in the international tax landscape, many investment decisions (such as those involving the location of a holding company or central hub) are currently being made by investors. We have outlined above in Q2 our views on other regimes.
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?	We have outlined our view in Question 4 that the use of current legislative constructs for the purposes of the participation exemption would be inappropriate and would add significant layers of complexity.

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?	See Q17
9.	In your view, should an Irish dividend participation exemption provide a full or partial exemption? Please provide reasons for your answer.	Ireland's tax system is becoming increasingly complex, particularly in the context of ongoing comprehensive reform in the international tax landscape. The introduction of a partial exemption regime would only add to this complexity and would mean businesses would face the administrative burden of navigating both the partial participation exemption rules and Schedule 24. Currently, in calculating profits of foreign dividends, an Irish company is required to recompute these dividends on an Irish basis for the purposes of Schedule 24 which creates additional and unnecessary complexity. There are very few regimes that offer partial exemptions, suggesting that this is not best practice internationally. As outlined above,in a Pillar Two context, we would expect that most foreign dividends will effectively qualify for a participation exemption. Foreign branch profits (exempt in the hands of the head office) will be subject to a minimum effective tax rate in any event at the local branch level. Consequently, the adoption of a participation exemption and an exemption in respect of foreign branch profits is congruent with Pillar Two, will avoid unnecessary double taxation and reduce unwarranted complexity.
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?	We are of the view that now is the time for Ireland to introduce an optional territorial system incorporating a broad participation exemption for **all dividends for which an election is made.**

11.	Should a participation exemption apply to both income and capital distributions and, if so, how should a capital distribution be defined?	In our view the participation exemption should apply to both income and capital dividends.
12.	Is there a rationale for extending a participation exemption to other classes of shares beyond distributions in respect of ordinary share capital?	As outlined in Q9 and Q10 above, we are of the view that now is the time for Ireland to introduce an optional territorial system incorporating a broad participation exemption for **all dividends.** However, if it is desired from a policy perspective to exclude certain distributions (e.g. fixed rate distributions on 'debt-like' shares) from the exemption, then the proposed Section 129 approach below would achieve that with minimal potential amendments required to Section 138. Depending on the extent to which it is decided that the exclusion is to apply to such distributions, the opportunity could be taken to refine Section 138 to be more specific as to the type of distributions that Section 129 treatment is to be disapplied for (both domestic and foreign). **Overview of potential Section 129 approach* Section 4 sets out that, for the purposes of the Corporation Tax Acts, the term franked investment income is to be construed in accordance with Section 156. One approach that could be taken to implementing the dividend exemption regime is to include within the Section 156 definition of "franked investment income" the income of a company which consists of a distribution made by another company resident outside the State where a company elects for the exemption regime to apply to such dividends/distributions. To minimise uncertainty, it might be necessary to define what is meant by "distribution" in the context of a non-Irish resident company (e.g. in this submission referred to as a "qualifying foreign distribution" in respect of shares of a foreign company). The term "qualifying foreign distribution" could be interpreted in line with case law or the definition could be more prescriptive. Whatever approach is taken, it is anticipated that any such exemption will apply to income receipts in respect of foreign shares.

		It is expected that the tax residence position of the paying company should not be limited to EU/EEA or DTA resident entities. Consideration may need to be given to preventing access to the exemption in respect of distributions from companies resident in territories on the EU list of non-cooperative jurisdictions at the time the distribution is paid. By treating qualifying foreign distributions as being franked investment income for the purposes of the Acts thereafter it serves to relatively neatly allow the same treatment that currently applies to franked investment income (i.e. exempt Irish dividends/distributions via Section 129) to apply to qualifying foreign income distributions. If felt necessary, instead of deeming such qualifying foreign distributions as franked investment income, consideration could be given to including a new defined term of "foreign qualifying investment income" within Section 156 and include, throughout the Acts, after the term "franked investment income" the words "and foreign qualifying investment income" where such income is comprised of qualifying foreign distributions.
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 we have outlined in a number of the questions above, we do not believe that there is any justification for applying the rationale of 626B to the participation exemption for dividends. Indeed, as has been set out above, we believe that 626B itself requires modernisation.
14.	What are your views on the application of a minimum holding period in respect of participations qualifying for exemption?	The minimum holding periods should be aligned to minimum holding periods set out in the Pillar Two rules. The Pillar Two rules around excluded dividends allow for an exclusion of the dividend, irrespective of the length of ownership, unless the dividend is a "portfolio shareholding", in which case a one year ownership requirement applies.
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 predetermined length of time)?	Please see our response to Q14 above.

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?	The rules should be aligned to the Pillar Two rules concerning portfolio dividends (<10% shareholding).
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.	As noted above regarding the approach of the UK, all foreign dividends would prima facie be exempt from corporation tax in Ireland, with appropriate anti-avoidance rules to prevent the diversion of income from Ireland. The complexity and administrative burden associated with the calculation of foreign tax credits in Ireland is viewed as a significant disincentive to using Ireland as a holding company or centralised hub location. An optional approach would allow for flexibility and ensure that all taxpayers are treated equitably. Taxpayers should be entitled to elect out of exemption treatment on a dividend-by-dividend basis (in which case foreign tax credits in respect of the non-exempt dividends would be taxable as is the case at present). In the context of the diversity of corporate taxpayers in Ireland, there are likely to be some taxpayers that would be at a significant disadvantage if there is no option to elect out of exemption treatment (and to be taxed in the ordinary course, with credits available for any foreign taxes that may be due). In the case of dividends, this would be the case particularly where the participation exemption is restricted in any way (which is likely to be the case on the basis that there will always be dividends that will not qualify for exemption).
18.	Having regard to the above, if you are in favour, please outline your views on what basis optionality would operate.	See Q17. The taxpayer should have the ability to elect not to treat a distribution as tax exempt on a distribution-by-distribution basis to allow for maximum flexibility. Such taxpayers would need to retain access to the Schedule 24 and other provisions in the event they choose not to treat the distribution as exempt. The election would be made via the annual Form CT1.
19.	What anti-avoidance measures should apply in order to deter and prevent aggressive tax planning with regards to an optional exemption regime?	The treatment afforded by the regime could be subject to the usual anti-avoidance protections. In terms of monitoring the quantum and value of dividends availing of the relief, there are existing disclosures required in the annual Form CT1 under Foreign Income which could be modified to track both exempt and non-exempt foreign dividend income.

20.	Should a participation exemption apply automatically once qualifying criteria is met, or should a business elect to apply the exemption?	Our expectation is that the regime will function best if exempt treatment to qualifying dividends/distributions is afforded as the default position with taxpayers entitled to elect for non-exempt treatment on a dividend-by-dividend basis. The result of this approach would be that the existing credit regime (where applicable) and other legislative provisions will continue to apply as they currently do for any dividends in respect of which the regime is elected out of, which would protect the current position for certain taxpayers who avail of the pooling provisions to use excess tax credits to shelter some or all of their low tax dividend income. It further removes the need to consider whether or not all dividends of a particular company need to be elected upon. In the context of a branch exemption, please refer to Question 59.
21.	Should an election apply on a subsidiary by subsidiary, dividend by dividend, year to year or other basis?	Dividend by dividend approach is preferable.
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?	If the participation exemption were designed such that the taxpayer could elect on a dividend-by-dividend basis which distributions to exempt, there would not be a need for a revocation of the election in our view.
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?	We suggest aligning the regime with the UK, keeping it as simple and broad as possible. There are no other jurisdictions which we believe are worth considering at this point.

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?	Firstly, as is discussed above, we believe that our interest rules are unnecessarily complex and as such we do not believe that further conditions or limitations should be placed upon taxpayers. Indeed it is our hope and expectation that work will soon be underway to simplify the existing interest relief rules. We are of the view that interest costs in respect of borrowings used to acquire foreign subsidiaries or to fund foreign branches should not be restricted if the income from such participations were to be exempted. If certain dividend income is exempted, this would consequently reduce taxable EBITDA for the purposes of Ireland's interest limitation rule. An elective system would mean that taxpayers could choose not to opt for the exemption if they determined it appropriate for their purposes. This is not unlike other elections that can be made by taxpayers in the Irish tax system.
25.	How should a participation exemption be designed in order to prevent double nontaxation? 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?	It should be noted at the outset, that the payment of dividends does not give rise to significant risks of double nontaxation. In general, dividends are paid out of after tax profits in the subsidiary jurisdiction. After the implementation of Pillar 2, dividends paid by inscope entities should be subject to a minimum effective tax rate of 15%. In these cases the risk of double nontaxation should be eliminated. We would also point to the recent introduction of the outbound payment rules in Ireland which, themselves imply, that the risk of double nontaxation related to dividends is very low. Furthemore, Ireland already has anti-abuse measures, in the form of CFC rules, which would also safeguard the integrity of a participation exemption regime. Generally, these rules are adequately aligned with a territorial system of double tax relief (in this regard, most other EU jurisdictions that operate such systems also adopted these rules). We are of the view that one adjustment would be required to the CFC rules should a participation exemption in respect of foreign dividends be introduced. The operation of the CFC rules is such that, where a CFC of an Irish company distributes all of its profits to the Irish company by way of a dividend, no CFC charge can arise as there would be no distributable income for the year in question. In circumstances where the Irish shareholder claims a participation exemption in respect of the dividend (with the result that the dividend is exempt from Irish tax), an anomaly would arise: there could be no CFC charge (if applicable), and the dividend

		would be exempt from tax in Ireland. Consideration should therefore be given to introducing a rule, the effect of which would be that, to the extent that the Irish company wishes to avail of the participation exemption in respect of the dividend, the dividend income which availed of the participation exemption in Ireland should be treated as undistributed income for the purposes of the CFC rules.
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?	Consideration should be had for the ongoing development of the Unshell Directive which is being debated at EU level. It is understood that as part of the development of a compromise text, that a minimum standard for a substance criterion is under consideration.
27.	What are your views on a potential condition of exemption whereby relief only applies to certain trading companies?	We do not believe that applying Irish trading principles, which themselves may need to be reconsidered, should be applied to the participation exemption. We note that other countries do not have a trading requirement in their participation exemption regimes. See our response to Q13 for further discussion.
28.	Should a participation exemption align with trading criteria applicable in other foreign subsidiary related reliefs such as Section 21B and 626B? Please elaborate.	No. Section our comments with respect to 626B in Q13 and Q27 above.
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?	We believe that the new dividend participation exemption regime should be introduced at the earliest possible opportunity with a commencement date of 1 January 2025 (introduced via Finance Act 2024). It would be optimal that the new regime aligns to Pillar Two 'excluded dividends' as soon as possible. For the purposes of Pillar Two a constituent entity's Financial Accounting Net Income or Loss is adjusted for excluded dividends, effective for accounting periods beginning on or after 1 January 2024. If the new regime were to have elect in/elect out optionality on a distribution-by-distribution basis, this would obviate the need for a lead-in period.

30.	Would you still be in favour of introducing a participation exemption if unutilised foreign tax credits were lost?	We believe that the introduction of an optional system would mean that taxpayers may choose how they administer their affairs with regard to the new regime. Given varying business models, jurisdictional footprints and overall size, there is no "one size fits all" answer to this type of question.
31.	Are there other transitional arrangements that should be considered?	No
32.	In your view, what are the main opportunities or issues in applying similar treatment to domestic and foreign dividend exemption regimes?	The comments below are made on the assumption that the legislative approach adopted to the dividend exemption is to treat foreign qualifying dividends/distributions as being similar to dividends from Irish resident companies which are eligible for Section 129 treatment and also for foreign qualifying dividends/distributions to be treated in a similar manner to franked investment income for the purposes of the Acts. Section 4 sets out that, for the purposes of the Corporation Tax Acts, the term franked investment income is to be construed in accordance with Section 156. One approach that could be taken to implementing the dividend exemption regime is to include within the Section 156 definition of "franked investment income" the income of a company which consists of a distribution made by another company resident outside the State where a company elects for the exemption regime to apply to such dividends/distributions. To minimise uncertainty, it might be necessary to define what is meant by "distribution" in the context of a non-Irish resident company (e.g. in this submission referred to as a "qualifying foreign distribution" in respect of shares of a foreign company). The term "qualifying foreign distribution" could be interpreted in line with case law or the definition could be more prescriptive. Whatever approach is taken, it is anticipated that any such exemption will apply to income receipts in respect of foreign shares. It is expected that the tax residence position of the paying company should not be limited to EU/EEA or DTA resident entities. Consideration may need to be given to preventing access to the exemption in respect of distributions from companies resident in territories on the EU list of non-cooperative jurisdictions at the time the distribution is paid.

		By treating qualifying foreign distributions as being franked investment income for the purposes of the Acts thereafter it serves to relatively neatly allow the same treatment that currently applies to franked investment income (i.e. exempt Irish dividends/distributions via Section 129) to apply to qualifying foreign income distributions. If felt necessary, instead of deeming such qualifying foreign distributions as franked investment income, consideration could be given to including a new defined term of "foreign qualifying investment income" within Section 156 and include, throughout the Acts, after the term "franked investment income" the words "and foreign qualifying investment income" where such income is comprised of qualifying foreign distributions. An alternative approach to treating qualifying foreign distributions as eligible for Section 129 treatment is adopt an approach taken in other places in the Acts to exempt foreign dividends (e.g. Section 222(3)) whereby dividends of a certain type "shall not be taken into account… for the purposes of corporation tax". The outcome is similar to Section 129 treatment without deeming the income be franked investment income. The submission continues on the assumption that a Section 129 type approach as opposed to a Section 222(3) type approach is taken to implementing the regime; however, the comments remain broadly relevant under either approach as to the issues to consider on introducing such a regime.
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?	See Q32
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 existing Portfolio Dividend Exemption ("PDE") is, in practice, one of very few relieving provisions relevant to financial/securities trading businesses operating in Ireland, the removal of which could result in double taxation for certain financial services businesses and therefore additional cost/complexity for those businesses. Notwithstanding its complex application and interaction with other provisions, it is a relief which has helped to attract and retain financial trading business in Ireland. Financial trading businesses employ highly skilled personnel across a range of disciplines including trading, operations and technology. Employees of PDE claimant

		businesses are often highly paid and so the benefit to the State in terms of employment taxes is clear. Further, the availability of the PDE has allowed several banks and other financial institutions to create or enhance their operations in Ireland. This trading sector typically also contributes very significant levels of corporation tax, even in circumstances where such financial trading activities could, theoretically, be undertaken in tax exempt investment undertaking. The availability of the PDE allows financial traders to conduct extensive operations involving financial products through Ireland; activities which, other than income attributable to portfolio dividends, generate income subject to corporation tax.
35.	What are the arguments for or against retention of a portfolio exemption following the introduction of a participation exemption?	The PDE should be analysed separate from any general participation exemption, particularly where such a participation exemption includes a minimum shareholding or holding period which would be in conflict with the portfolio nature of the PDE. There are in our view therefore no arguments against the retention of the PDE following the introduction of a participation exemption, with the benefits outlined in our response to Question 34.
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?	The removal of the PDE or the introduction of additional qualification criteria following the introduction of a general participation exemption would be a negative development for the financial services sector. Amendment of the existing PDE legislation should only be contemplated in a scenario where the proposed general participation exemption includes portfolio holdings and does not impose qualifying criteria which are in any respect more onerous than the existing PDE requirements. Furthermore, the removal of the PDE would disadvantage portfolio investors in favour of more significant shareholders. Often the portfolio investor does not have sufficient information in order to make a claim for double tax relief whereas a more significant shareholder would be in a position to obtain sufficient evidence of underlying or withholding taxes paid. Therefore, if the introduction of a participation exemption required the consequential removal of the PDE the impact would be to remove time/effort for one group of taxpayers and replace it with cost/complexity for a different

		group. It would be preferable that the system was equally fair/economical to operate for all taxpayers. As noted in our response to Question 35, PDE should in our view be considered independently from the introduction of any general participation exemption. They are measures which, in practice, typically target entirely different cohorts of taxpayers and so should not be considered together.
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?	Where the general participation exemption excludes portfolio holdings, or indeed even where it includes such holdings but places unworkable minimum shareholding and/or holding period criteria, the existing PDE provisions should be retained. In practice, PDE claimants must currently consider the complex interaction between Section 21B(4) and other relevant provisions, such as the anti-bond washing and double taxation rules.
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?	See Q3 & Q27
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?	See Q28 and 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?	See Q2, Q4, Q17 and Q20.

41.	What are the considerations in support of or against allowing a deduction for expenses related to exempt foreign dividend income?	See our response to Q24 above.
42.	What are the considerations in relation to applying a close company surcharge in a regime incorporating a participation exemption for foreign dividend income?	By taking a Section 129 type approach to implementing the exemption, it would allow the regime to be introduced in a manner that allows existing provisions to operate appropriately in light of such income thereafter being exempt without the need to amend those provisions. Section 434 sets out important definitions for close company surcharge purposes. The definition of "investment income" excludes dividends that would be taken into account as trading receipts, or would be but for Section 129 meaning such qualifying foreign dividends would also be properly excluded from the definition in those situations where the Section 129 approach to introducing the regime is adopted. Also, the "estate and investment income" of a company includes "franked investment income" meaning it would continue to include qualifying foreign distribution income (except that which is received as income from a trade or income from shares eligible for Section 626B relief) for close company surcharge purposes under the proposed legislative route to introducing the exemption regime via a Section 129 type approach.
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.	• **CFC Rules:** Part 35B of the TCA, 1997 (which contains Ireland's CFC rules) implements Articles 7 and 8 of the EU ATAD provisions on CFCs. Generally, these rules are adequately aligned with a territorial system of double tax relief (in this regard, most other EU jurisdictions that operate such systems also adopted these rules). See also our comments in Q25. We have, elsewhere in this consultation response, suggested an elective branch profits exemption. Depending on the design of such an exemption, it may also be appropriate to consider the extension of the application of the Irish CFC rules to branch profits (i.e. with the result that, where an entity has elected into the branch exemption regime, an Irish head office would only be taxed in Ireland on unremitted profits of its foreign branches to the extent the profits of the branches would have resulted in a CFC charge if they had been carried on

		in a subsidiary). Such an approach would be congruent with a territorial basis of taxation generally, as well as with many other recent and imminent reforms and anti-avoidance measures. ● **Exit Tax:** As stated in the consultation document, ATAD required EU Member States to impose an exit tax on unrealised gains arising on the transfer of assets from an Irish head office to a permanent establishment in another territory, but this particular measure was not required to be transposed into Irish law (on the basis that it was not necessary, given Ireland's worldwide system of double tax relief). Whether, and how, such a measure will need to be transposed into Irish law if a territorial system of double taxation relief is introduced will depend on the relevant rules that are introduced. Although not strictly within the scope of this consultation, we do wish to point out an anomaly that exists with regard to the participation exemption provided for in Section 626B and its interaction with the exit tax. This anomaly is best illustrated by way of an example. Assume that, on day 1, an Irish company disposes of all of its participations in foreign companies, and Section 626B is applied to exempt the gains from these disposals. On day 2, the Irish company migrates, and is not subject to the exit tax. If the same company were to migrate without having first disposed of all of its participations, it would realise a chargeable gain. There therefore appears to be no reason why the exit tax should apply to a migrating company (without the ability for Section 626B to apply), and it is suggested that this treatment be reviewed in the interests of simplification. ● **Anti-Hybrid Rules:** Foreign branches of Irish headquartered companies are often located in jurisdictions that have also introduced anti-hybrid rules. In the context of Ireland's worldwide tax regime, this creates significant complexity and uncertainty, largely as a result of the fact that all income is dual inclusion income (and all expenses are double deductions). Issues arise where there are significant timing mismatches between the Irish and local bases of taxation, and where losses arise. It is difficult to adjust the anti-hybrid rules themselves to deal with these situations, and the introduction of a territorial regime in this context significantly reduces the inherent complexity, as well as the likelihood of anomalies.

		● **Two Pillar Solution:** Under Pillar Two, net GloBE income adjusts for certain dividends (which are stripped out of the net GloBE income calculation). We recommend that there should be no difference between the tax treatment of distributions for Pillar Two or under a participation exemption in respect of foreign dividends (i.e. under both scenarios, dividends should initially be included as taxable income but will then be stripped out of the Irish tax base as exempt income and out of the GloBE income or loss when calculating the ETR). The starting position for adjusted covered taxes under Pillar Two is the current tax expense in the financial statements. Certain adjustments are then made. For example, adjusted covered taxes is reduced by "the amount of current tax expense with respect to income excluded from the computation of GloBE Income or Loss under Chapter 3". As per the above, dividend income is excluded (stripped out) from the Net GloBE income calculation. As such, any current tax on dividends (where a participation exemption in respect of dividends is not available or where the taxpayer has elected out of exempt treatment) should be deducted from the adjusted covered taxes amount. On this basis, the adjusted covered taxes position should be the same whether a participation exemption in respect of dividends implemented or not (i.e. the current tax on dividends would be deducted from the adjusted covered taxes or there would be no tax in the first place and no adjustment required to the adjusted covered taxes). ● **Dividends paid out of foreign profits:** Section 129A disapplies the exemption from corporation tax in respect of franked investment income for dividends of certain companies which have become tax resident in Ireland 10 years before the relevant distribution is made. In our view this provision should be disapplied where dividends would have qualified for the participation exemption had the relevant company not become Irish tax resident. *Irish SPVs* In our view the dividend participation exemption should be made available to Irish

		special purpose vehicles which are qualifying companies within the Section 110 regime. We can see no policy reason why dividends (and gains albeit under a different regime, notably s626B TCA 1997) in respect of shareholdings which satisfy the relevant conditions should be exempt outside the Section 110 regime but taxable within it. In addition, Section 129 which provides for an exemption from corporation tax in respect of distributions on ordinary shares from Irish resident companies should also be amended such that this section has application to qualifying Section 110 companies. We would request that this is resolved through legislative amendments which could be implemented as part of the introduction of the dividend participation regime.
44.	What amendments, if any, would be required to those provisions in order to ensure their continued operation in conjunction with a participation exemption?	See Q43.
45.	What type of anti-avoidance provisions should be incorporated into a participation exemption in order to eliminate opportunities for tax avoidance?	See Q4.
46.	Are there features of existing anti-avoidance provisions that could be enhanced in order to support this aim?	See Q4.
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?	See Q25.

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?	See Q43. As a general matter, the Anti-Hybrid rules are concerned, amongst many other things, with hybrid mismatches arising due to disregarded PEs or due to a different allocation of profits between a head office and a foreign PE. Such concerns would seem to be based on an assumption that branch profits are exempt from tax in the head office, which is not currently the case in Ireland. Introduction of a branch exemption in fact aligns Ireland with the type of regime envisaged by ATAD rules (and the ATAD anti-hybrid rules). Article 5 para 1 of Council Directive (EU) 2016/1164 (ATAD) required EU Member States to impose an exit tax, inter alia, on unrealised gains arising on the transfer of assets from an Irish head office to a permanent establishment in another territory. However, as a result of Ireland's worldwide system of taxation it was not necessary to transpose this measure into Irish law. This may need to be revisited in respect of a participation exemption for branches.
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?	No
50.	Are there features of the Pillar II regime that should be considered and taken into account when designing a dividend participation exemption?	See Q43.
51.	Do you foresee potential impacts arising from moving to a participation exemption for Ireland's transfer pricing regime?	We do not expert that there would be an impact from a transfer pricing perspective.
52.	Do you foresee a need to adopt any provisions of the Multilateral	The introduction of a dividend income exemption and foreign branch exemption should not require the renegotiation of individual tax treaties.

	Instrument in conjunction with a participation exemption?	Where the dividend exemption applies, the dividends are not doubly taxed as the dividends are exempt in Ireland. Where the conditions are not met for the dividend exemption to apply, or the taxpayer chooses not to elect into the regime, the current regime should apply and foreign tax credits should be available in line with the current regime. However, some Double Taxation Agreements (DTAs) provide that treaty benefits on certain types of income are only available if the income is subject to tax in Ireland. The optional nature of the branch election for example ensures that, where circumstances arise such that the interaction of a treaty and the branch profits exemption gives rise to unintended consequences in terms of accessing treaty benefits, the taxpayer may choose to remain in the current regime. In other words, where doubt exists over the availability of treaty benefits on certain income, the taxpayer could decide not to elect into the branch exemption. Ireland reserved its right to the entirety of Article 10 “Anti-abuse Rule for Permanent Establishment Situated in Third Jurisdictions” of the Multilateral Instrument to not apply to its Covered Tax Agreements. This article provides that treaty benefits will be denied if an item of income derived by a treaty resident and attributable to a PE in a third jurisdiction, is exempt from tax in the residence state and the tax in the PE jurisdiction is less than 60% of the tax that would be imposed in the residence state if the PE were located there. The article makes an exception for cases where the income is derived in connection with or is incidental to an active trade or business carried out through the PE, and it allows discretionary relief to be requested when treaty benefits are denied under this article. As the foreign branch exemption is likely to capture only trading profits, there should be no need to adopt Article 10. This approach would be consistent with the approach taken in the UK; the UK reserved its right to the entirety of Article 10.
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?	See Q13.

Part II - Foreign branch exemption		
No.	**Question**	
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?	Branch structures are common in many sectors in Ireland. Foreign branches are used to enter new markets, in particular where Irish companies are seeking to expand abroad without the additional requirements of establishing separate legal entities. Foreign branches also commonly arise where the permanent establishment thresholds have been breached in a foreign location due to employees' presence in those locations. This is becoming more and more prevalent post Covid, where hybrid working arrangements across jurisdictions is sought after by employees. Foreign branches of Irish companies are common across a range of industries, and are established across various geographical regions. The branch locations are varied and dependent on the sector and the markets in which the businesses in question operate. Pillar 2 will mean that MNCs look to consolidate their non-US branch operations (which may hold significant assets or businesses) under one holding location which would act as the intermediate parent entity for the non-US group entities for Pillar 2 purposes. If Ireland offered a foreign branch exemption, it would be more attractive to locate that holding location in Ireland. In a financial services context, branch structures are prevalent in certain industries such as insurance, banking and more recently asset management for many non-tax reasons including capital, regulatory and personnel efficiencies. The branch model enables these financial services groups to operate efficiently and competitively across the jurisdictions in which they wish to operate.
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.	In many cases the foreign branch activities will be trading activities specific to that business. This may include manufacturing, distribution, marketing, finance or other functions and we would see a mix of these and other activities carried on through a foreign branch. For example, in the financial services industry, the foreign branch activities could include; intra-group services, asset management activities, insurance underwriting activities, banking and financing activities etc.
56.	If foreign branch structures are not	In many cases branch structures are already in operation where they are beneficial and

	currently used, are there specific features of the Irish tax code that influence this decision? If so, please provide detailed information.	required for non-tax reasons. However, when international groups are considering where to locate certain operations that need to operate via a branch structure, Ireland's current credit regime is a deterrent for those groups in considering Ireland as a location to establish operations. The administrative burden of detailed double taxation relief calculations on an on-going basis is seen as complex and costly, especially given Irish tax is not expected to arise on branch profits where the foreign rate of tax is higher than 12.5%. That being said, scenarios can arise where double taxation could occur across different taxable periods due to timing differences in the recognition of profits in Ireland and the foreign branch location. This risk of double taxation is of concern to multinational groups and can be a deterrent in choosing Ireland as a location for their European and non-European operations. Our complex credit rules do not always provide double taxation relief in these scenarios. While Tax and Duty Manual Part 35-02-06 seeks to address such scenarios, the administrative practice is seen as overly complex and burdensome. It is also not a relief that is set out in legislation but rather a practice that can be amended or withdrawn by Revenue at any time which gives little certainly to taxpayers. As international accounting standards develop, the risk of such timing differences increases. By way of example, the recent introduction of IFRS 17, Insurance Contracts, gives rise to new timing differences between Ireland and foreign branch locations which could be of extreme quantums. This significant issue would be addressed by the introduction of a foreign branch exemption.
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?	As noted above, where groups are considering where to locate certain operations that need to operate via a branch structure for non-tax reasons, if Ireland has an optional branch exemption regime, Ireland will be a more desirable location from a tax perspective. The activities to take place in Ireland in the head office will vary depending on the business in question. However, we note that in many cases, the head office activities and employee headcount can be significant and this can attract further investment in Ireland by the group in question as Ireland becomes a "hub" for that group.
58.	Would a foreign branch exemption be	As noted in Q54, foreign branches are commonly used by Irish companies across

	of particular relevance to any sectors? If so, please describe the sector(s) and outline the relevant considerations.	many sectors and increasingly so post Covid due to hybrid working arrangements and permanent establishment thresholds being breached. However, branch structures are of particular importance in the financial services industry due to the significant capital and regulatory efficiencies that arise with a branch operating model versus a subsidiary operating model.
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.	**UK Legislative Position** As mentioned in Q4, the UK introduced a dividend income exemption with effect from 1 July 2009 A summary of the dividend income exemption is outlined in Q4 above. *Summary of foreign branch exemption:* The exemption is an optional election which applies to all accounting periods of the company beginning on or after the time of the election. Once the election is made, the exemption provisions apply to all foreign branches of the company. The election cannot be revoked, with certain exceptions including where the company ceases to be UK resident. The exemption is not subject to territorial limitation and it applies to all trading profits and capital gains of a branch wherever located. The exemption provisions do not operate by requiring a UK tax computation of the company's worldwide profits from which is subtracted from the UK measure of the foreign branch profits. Instead, the provisions operate by identifying the components of what would (in the absence of the exemption) be the UK chargeable profits calculation that are, due to the making of the election, to be left out of account in calculating chargeable profits. There are a number of exceptions or carve-outs from the branch profits and losses which can be left out of account for UK tax purposes. These include, subject to certain exceptions: ● income, profits and losses deriving from activities associated with UK land and other property; ● profits and losses from a business which consists of the making of investments;

		● capital gains or losses accruing on the disposal of certain assets including interests in UK land or other assets deriving at least 75% of their value from UK land. The measures also include an anti-diversion rule which effectively applies the CFC tests to the branch profits such that any 'diverted profits' which pass the CFC gateway tests as defined are excluded from the branch exemption regime and remain chargeable to UK corporation tax. Special transitional provisions are in place to deal with opening losses and capital allowances: ● where a company enters the exemption regime with net branch losses (excluding chargeable gains and allowable losses) which have accrued in the previous six years (the 'opening negative amount'), profits attributable to its branches arising after entry into the exemption regime will not be exempt until this amount has been matched with profits (i.e. the start date of the exemption is effectively deferred); ● entry into the exemption regime triggers a disposal event for capital allowance purposes. There are special rules to determine the disposal value of the branch assets. Generally, the transition value is the tax written down value of the plant and machinery, being the amount that gives rise to neither a balancing allowance nor a balancing charge. However there are some exceptions to this rule. The foreign branch exemption provisions are contained in Part 2 Chapter 3A of the Corporation Tax Act 2009 which comprises 30 sections as follows: ● Exemption provisions - 8 sections ● Anti-Diversion rule - 12 sections ● Opening Negative Amount provisions - 6 sections ● Special Cases and Interpretation - 4 sections *(c) Further information:* If you would like any further information in relation to the UK legislative framework dealing with the dividend income exemption or the foreign branch exemption please let us know and we would be happy to provide it to you.

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.	**Transfer Pricing** From a transfer pricing perspective, when looking at branch operations, the use of the OECD's 2010 Report on the Attribution of Profits to Permanent Establishments is a long established practice for taxpayers and advisors in Ireland and other OECD Member/Observer States for addressing branch operations from a transfer pricing perspective. It was formally codified into Irish law as part of Finance Act 2021. In essence, Ireland already has established best practice enacted in its tax legislation. In dealing with Irish branches of foreign entities, Section 25A TCA 1997 (introduced in Finance Act 2021) sets out the approach/methodology to be used in attributing profits to the branch. It also sets out the documentation requirements. In respect of foreign branches of Irish companies, for participation exemption purposes, a similar approach could also be taken. This would only require a straight-forward addition to existing Irish legislation and it would be consistent with the approach taken in the UK. **Anti-avoidance** in the case of foreign branches, the current worldwide system of double tax relief (i.e. attribution of profits and losses to the Irish head office, with credit being granted in respect of foreign taxes due) should apply, with the option to make an election for branch exemption treatment on a branch-by-branch basis. To the extent that misallocation of branch profits or losses is a concern, appropriate anti-avoidance provisions could be considered (obviously with recognition of the steps already taken in recent years). It is anticipated that the branch exemption would not apply to profits/losses from trades of dealing in or developing Irish land (or shares mainly deriving their value from same) nor would it apply to income from Irish immovable property. In addition, anti-avoidance measures would be envisaged aimed at preventing the diversion of Irish profits to foreign permanent establishments. *We have previously shared with you details of a range of existing provisions which would be impacted by the introduction of a foreign branch exemption.* **Special tax regimes** As noted above, the branch exemption should be optional on an election basis.

		Specific rules should not be required for special regimes such as Life Assurance Companies which are dealt with under Part 26 TCA 1997. Section 718 TCA 1997 is relevant only to Old Basis Business carried on by an overseas branch of an Irish life assurance company. In practice it has very limited application and use and there is no reason to amend the section following the introduction of a 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?	We are of the view that now is the time for Ireland to introduce an optional territorial regime incorporating a broad participation exemption for all dividends (on election) and a branch exemption, which is sufficiently flexible to accommodate the diversity of the Irish economy and its corporate tax base. Ireland's tax system is becoming increasingly (and unnecessarily) complex, particularly in the context of ongoing comprehensive reform in the international tax landscape. The introduction of such a regime would be a significant step in simplifying Ireland's tax system,thereby enhancing Ireland's competitiveness as a destination for investment. Ideally, we believe that the new regime should be introduced at the earliest possible opportunity. Although the introduction of such a regime would be a significant step towards the simplification of Ireland's tax system, we believe that there is a great deal more that can be achieved by Ireland in this regard. Specifically, given the move to a global minimum effective tax rate under Pillar Two, now is an opportune time for Ireland to review and re-organise its existing schedular system and to widely repeal the higher 25% tax rate for non-trading income (save, potentially, for certain transactions). Consideration should also be given to reviewing the applicability of the 33% CGT to gains derived from business assets and applying the headline corporate tax rate to such gains.