

[DoF Division]

Meeting	1st subgroup meeting on Participation exemption, Strawman Proposal-first feedback statement.		
Location	Thekla Beere Room, 7-9 Merrion Row	Meeting Date	17/05/2024
D/Finance Attendees	Deirdre Donaghy; Zainab Javaid		
Revenue	Alan Carey; Deirdre Ní Alluráin; Maresa Hempenstall,		
ITI	Anne Gunnell		
CCAB_I	Enda Faughnan; Gearoid O'Sullivan;		
Irish Law Society	Olivia Long		
Deloitte	Kim Doyle		
Amcham	Ann Harvey, Christina Kelly		
PWC	Peter Reilly		
EY	Joe Bolland, Rory MacIver		
KPMG	Colm Rogers		
Ibec	Ciaran Flanagan, Dan Shanahan		
^ Attended in person and remotely via Team			

Purpose

To discuss the points in the stakeholders' responses to the Strawman proposal - First Feedback Statement on Participation Exemption. Beginning with detailed consideration of views on Section 5.1 – Scope of Relief and Section 5.2 – Dividends / distributions in scope.

Minutes

The Department of Finance arranged the meeting to take consideration of the recommendations made by stakeholders in their submissions on the Strawman Proposal-first feedback statement. The Department set out the context for the Participation Exemption implementation and how the views and input of stakeholders at this forum can help that process.

Agenda item 1: Scope of Relief

A discussion took place in respect of the following points raised by the stakeholders:

Exemption should be by default with opt-out option

- Stakeholders proposed that exemption should be by default unless the company opts out, as for the companies the Participation Exemption is typically better than the credit system. Stakeholders expressed their opinion that it would be administratively easier for both companies and Revenue.
- Finance noted stakeholder requests for optionality, and advised that a factor in the proposed 'opt in' approach is consideration of smaller companies who may not be engaged with this process, and the potential for difficulties if they were automatically moved to a new exemption system.

No minimum opt-in period:

- Stakeholders proposed that there should not be a minimum period, e.g. 3 years, where a tax payer elects in to a participation exemption.
- Taxpayers should have the option to elect out of the participation exemption for each accounting period. It was noted by stakeholders that a 3-year lock-in period could have negative consequences when policy in another jurisdiction changes and a company is unable to adapt to it.
- Stakeholders proposed that the taxpayers should have the ability to amend their Form CT1 in respect of the election under the provisions of Part 41A Chapter 4, particularly section 959V TCA 1997.

Dividend by Dividend basis:

- Stakeholders proposed that taxpayers should have the option to choose the exemption or use relief under schedule 24 on dividend by dividend basis, noting this approach is used in the UK.
- Stakeholders explained that a reason for optional taxation in the UK is where a double tax treaty provides a reduced rate of withholding tax on condition that the dividend is subject to tax in the UK. Stakeholders were asked to identify Irish double tax treaties where this was a concern.
- Finance asked for information on any other jurisdictions using a similar optional exemption system.

Geographical scope

- There was a unanimous view from stakeholders that the exemption should be available for distributions received from companies located in any jurisdiction other than those on the EU list of non-cooperative jurisdictions. The proposal to restrict the scope to the residents in the EU/EEA or jurisdictions with which Ireland has a double taxation agreement is considered too restrictive, it means dividends received from companies resident in some of the Ireland's key partners would not qualify for exemption, such as Brazil, Indonesia, Argentina
- It was proposed that there should not be any geographical limitation for the companies who are in scope for Pillar II purposes.
- Finance invited discussion on options to ensure the profits underlying dividends received by companies outside scope of Pillar II have been appropriately taxed. Stakeholders proposed no geographical limitation except where the payor is located in a zero tax/no tax zone, or where jurisdiction's tax rate is less than 9% (OECD subject to tax rule).

Agenda item 2: Dividends/distributions in scope

A discussion took place in respect of the following points raised by the stakeholders:

All distributions should be in scope:

- It was strongly proposed by stakeholders in the meeting that all distributions in respect of shares should be considered to be in scope of this exemption where the relevant conditions are satisfied.
- It was suggested by some stakeholders that the definition of the type of distribution to which the participation exemption will apply is widely drafted, and the participation exemption should apply to all distributions out of income and capital to the extent that they are categorized as income of the recipient for Irish tax purposes.
- Finance sought information from stakeholders on specific examples of distributions, beyond the standard dividend of profits paid on ordinary shares, that can arise in practice, so that the policy of including/excluding them from scope can be considered.

Control test

- It was proposed that there should be an alignment in criterion between section 626B 1997 and Participation exemption.
- It was proposed that the reference to voting rights should not be a condition – it is common to have different classes of shares with different voting rights.
- It was proposed during the meeting that 5% of equity test is used elsewhere in legislation (s586/7) and it could be logical to include this test for the purpose of Participation exemption, but there should not be further conditions in control test.
- It was proposed to change the word “ordinary share capital” as the criterion of 5% ownership test to “similar securities”.
- It was noted that the term ordinary share capital may not accurately describe the legal form of equity interests in every foreign jurisdiction e.g. member interests in US LLCs.

Action points

Stakeholders to consider and provide further information on:

- Any other jurisdictions allowing dividend-by-dividend optionality.
- Types of distributions (e.g. income, capital), so that they may be considered for inclusion/exclusion from scope, including examples of distributions which are easily identified as income or capital.
- Alternatives to use of “ordinary share capital” for definition purposes – in what circumstances might this be needed.
- Feedback from representatives of smaller sized companies on the automatic application of an exemption (rather than an “opt-in” approach)
- Voting rights test of control – have any difficulties been encountered with the use of this criterion in applying the Parent Subsidiary Directive / tax treaties.
- Identify any specific entities / ownership structures that need to be specifically considered as to whether they would be in or out of scope.
- Examples of any difficulties with Pillar Two provisions applying to partial ownership cases / joint ventures.
- Examples of Irish double tax treaties where relief from withholding tax on dividends is dependent on those dividends being taxed

Signed