

[DoF Division]

Meeting	BTSF sub-group – participation exemption for foreign dividends		
Location	Room B13, 7-9 Merrion Row	Meeting Date	30/05/2024
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	Rory MacIver		
KPMG	Colm Rogers		
Ibec	Dan Shanahan		
^ Attended remotely via Teams			

### 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 5.3 – Anti-avoidance and 5.2 – Administration.

### Minutes

It was noted that the meeting would first consider the remaining aspects of the Strawman proposal, and then return to the main themes discussed in the first meeting.

#### Strawman: Anti- Avoidance

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

- It was noted that the proposed wording for the targeted anti-avoidance rule (TAAR) is similar to s.811C, so stakeholders queried whether the TAAR is needed, suggesting that the existing anti-avoidance provisions in Irish tax code are sufficient safeguard. On the wording itself, it was suggested that it is too broad and could lead to a detailed analysis being required of every distribution. E.g. difficulty to define what is/isn't 'bona fide commercial purposes'.
- Strawman proposal suggested that the dividend must not be deductible for tax purposes in any other jurisdiction. Stakeholders shared their concerns that this restriction should not give rise to any unintended consequences where, for example, a jurisdiction has something akin to Ireland's close company provisions. Finance requested more detail on this including in relation to how other jurisdictions cater for this in their participation exemptions.
- Strawman proposal suggested that the dividends received from a jurisdiction on the EU list of non-cooperative jurisdictions for tax purposes, as reflected in the TCA 1997 on the date of the dividend, will not qualify for relief. The stakeholders proposed that such a restriction

should not apply where the group is within scope of the Pillar Two Rules, as in such circumstances the underlying profits from which the dividend is paid will be subject to the 15% minimum effective tax rate.

#### **Strawman: Administration**

- Stakeholders proposed that the exemption should be available on dividends received from 1 January 2025, and not by reference to accounting periods commencing on or after 1 January 2025.
- There was a discussion of the merits of the exemption operating as 'opt-in' or 'opt-out' and what the default position should be. Stakeholders were of the view that a system where the exemption is the default position with an option to elect out would be preferable for companies of all sizes, over an opt-in system.
- It was proposed by stakeholders during the meeting that taxpayers should have the flexibility to make or revoke an election via the Form CT1, should the need arise. Stakeholders suggested that the provisions of section 959V TCA 1997 should apply to allow the typical four-year self-correction period to rectify errors arising from lack of information or knowledge. It was noted that self-correction re-starts the 4-year clock for Revenue to review returns.
- Where an irrevocable election applies for a minimum period of time, stakeholders noted that there may be some potential for the status of a company to be unclear, e.g. where there has been a change in advisors / staff turnover and records have not been properly maintained.

#### **Topics from 1st meeting:**

There was a further discussion on the following issues raised in the first meeting:

##### **No Minimum opt-in period**

Shareholders proposed that the election in/out of the exemption should not be for a minimum period of three years and they should be able to elect for each accounting period.

##### **Dividend by Dividend:**

Shareholders proposed that if a taxpayer decides to use participation exemption or the relief under Schedule 24 it should be on dividend by dividend basis like UK. Finance asked for examples to be provided of any other jurisdiction using a similar approach, other than UK.

##### **Dividends / Distributions in scope**

- Finance sought information from stakeholders in our first meeting with them on specific examples of distributions that can arise in practice, so that the policy of including/excluding them from scope can be considered.
- A number of different terms were discussed – "income from shares"; s.831 meaning of "distribution"; s.130; s.586 (shares which includes stock/other interests) – various pros and cons of each definition were discussed.

### **Geographical scope**

- Stakeholders again advocated 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. They referenced other jurisdictions such as Germany, Australia, UK, the Netherlands, Switzerland, Luxembourg etc. as examples.
- Finance noted the necessity for the regime to be robust, to protect against Ireland being used as a conduit for low/no-taxed profits.
- The level of examination required to identify the source of profits was also discussed. Stakeholders suggested that most EU regimes just require consideration of the immediate payor company and don't require tracing down to the original source if the profits. They suggested that an exemption requiring tracing back to the original profits would replicate the complexities currently in Schedule 24.

### **Control test**

- It was proposed by stakeholders that the reference to voting rights should not be a condition in control test citing s.626B in support of this view.
- There was further discussion of the term "ordinary share capital" as the criterion of 5% ownership test. It was suggested by stakeholders that the term may not accurately describe the legal form of equity interests in other jurisdictions e.g. member interests in US LLCs, possibly some similar DE entities. They referred to the terms "capital" and "share capital" that are used in other provisions, e.g. PSD and s.831, double tax treaties. Use of the term 'equivalent ownership interest' was also suggested by stakeholders. Finance suggested that preference will be for something that is easy to understand and not open to abuse.

### **Other issues noted**

A question was raised about accounting year-ends – a year-end can be triggered where a corporate ceases to be in the charge to CT. Could this arise if a company's only income is foreign-source dividends and it comes in scope of the exemption (by election or by default)?

### **Action points**

Further information requested from stakeholders:

- Examples of any other jurisdiction using a dividend-by-dividend approach to a participation exemption, in addition to the UK.
- Examples of definitions of dividend/distribution and consideration of any particular types of dividend/distribution whose treatment may be unclear.
- Detail on how Pillar Two inclusion could be used to evidence taxation of profits and potential alternative methods for smaller groups that fall outside of its scope.
- Detail requested regarding the close company surcharge issue, particularly with regard to how other jurisdictions deal with similar issues in their participation exemption regimes.
- Examples of entities for which the term "ordinary share capital" may not be clear.

**Signed**