Irish Tax Institute

December 2023

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

Response to the Technical Consultation

Table of Contents

1. About the Irish Tax Institute 2
2. Executive Summary 3
3. Institute Recommendations 5
3.1. Participation Exemption 5
3.1.1. Structural Considerations 5
3.1.2. Consequential Impacts 7
3.1.3. Anti-Avoidance Rules 8
3.2. Foreign Branch Exemption 10
4. Dividend Participation Exemption 12
4.1. Structural Considerations 12
4.1.1. General Features 12
4.1.2. Specified Jurisdictions 13
4.1.3. Method of Relief 14
4.1.4. Relief for the full amount or only part of the dividend 15
4.1.5. Type of dividend/ distribution and shares 15
4.1.6. Minimum Shareholding Requirements 16
4.1.7. Optionality 17
4.1.8. Interest Limitation 18
4.1.9. Subject to Tax Rule 18
4.1.10. Substance in Ireland 19
4.1.11. Trading Requirement 20
4.1.12. Transitional Arrangements 20
4.2. Consequential Impacts 21
4.2.1. Franked Investment Income 21
4.2.2. Portfolio Investors 21
4.2.3. Alignment with existing Irish reliefs for foreign subsidiaries 22
4.2.4. Deductibility of expenses related to exempt income 23
4.2.5. Close Company Surcharge 23
4.2.6. Specific Tax Regimes 24
4.3. Anti-Avoidance Rules 25
4.3.1. Controlled Foreign Companies 25
4.3.2. Anti-hybrids/ Non-deductibility in payor jurisdiction rule 26
4.3.3. Interaction with Pillar Two of the OECD Inclusive Framework 26
4.3.4. Transfer Pricing 27
4.3.5. Multilateral Instrument Provisions 27
4.4. Any Other Issues 28
5. Foreign Branch Exemption 29
5.1. General 29
6. Appendix I 36
7. Appendix II 39

1. About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's Chartered Tax Advisers (CTA) and is the country's only professional body exclusively dedicated to tax.

The Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice. We benchmark our education programme against the very best in the world. The continued development of our syllabus, delivery model and assessment methods ensure that our CTAs have the skills and knowledge they need to meet the ever-changing needs of their workplaces.

Our membership of over 6,000 is part of the international CTA network which has more than 32,000 members. It includes the Chartered Institute of Taxation UK, the Tax Institute of Australia, the Taxation Institute of Hong Kong and the South African Institute of Taxation. The Institute is also a member of the CFE Tax Advisers Europe (CFE), the European umbrella body for tax professionals.

Our members provide tax services and business expertise to thousands of Irish owned and multinational businesses as well as to individuals in Ireland and internationally. Many also hold senior roles in professional service firms, global companies, Government, Revenue, state bodies and in the European Commission.

The Institute is, first and foremost, an educational body but since its foundation in 1967, it has played an active role in the development of tax administration and tax policy in Ireland. We are deeply committed to playing our part in building an efficient and innovative tax system that serves a successful economy and a fair society. We are also committed to the future of the tax profession, our members, and our role in serving the best interests of Ireland's taxpayers in a new international world order.

Irish Tax Institute - Leading through tax education

2. Executive Summary

Finance (No. 2) Bill 2023 transposes the EU Minimum Tax Directive into Irish law, which implements Pillar Two of the *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* (the Two-Pillar Solution) which was agreed by the member countries of the OECD/G20 Inclusive Framework on BEPS (the Inclusive framework), into EU law.

The Pillar Two Rules, which will be effective for fiscal years beginning on or after 31 December 2023, are grounded in the assumption that countries adopting the 15% global minimum rate operate an exemption system for foreign source (dividend and branch) income. Consequently, while the Institute welcomes the commitment by the Minister for Finance in the Roadmap for the Introduction of a Participation Exemption to Irish Corporation Tax[1] (the Consultation Paper) to legislate for a participation exemption for foreign dividends received by companies based in Ireland, the decision to delay legislating for it until Finance Bill 2024 will add complication to the implementation of Pillar Two in Ireland. In addition, the Consultation Paper offers no clarity on the timeline for the introduction of a foreign branch exemption.

Many of the recommendations we make in this submission regarding the design of a dividend exemption and a foreign branch exemption were previously included in the Institute's response[2] to the Department of Finance's 2022 public consultation on a Territorial System of Taxation and most recently, in the Institute's Pre-Finance Bill Submission[3] in May of this year. We highlighted in those submissions that multinational groups located in Ireland are evaluating the potential impact of Pillar Two on their businesses and making decisions regarding how to structure their operations going forward. We also stressed that the absence of a dividend participation exemption and a foreign branch exemption in the Irish corporation tax code is acting as a disincentive for such investors when determining where to locate future investment and has already impacted certain decisions.

In our view, it is now critical that a participation exemption for dividends and a foreign branch exemption are simultaneously introduced in Finance Bill 2024. Introducing a dividend participation exemption and a foreign branch exemption that are best in class in next year's Finance Bill would send a strong message to businesses that Ireland is fully committed to ensuring that its corporation tax code is competitive and attractive to business investment.

As work progresses on drafting the legislation which will implement the dividend participation exemption and the foreign branch exemption, we strongly urge the Department of Finance to continue to engage with stakeholders directly and via the formal Feedback Statement process. As part of the consultation process for the transposition of the Pillar Two Global Anti-Base Erosion Rules (GloBE) Rules into Irish

[1] Roadmap for the Introduction of a Participation Exemption to Irish Corporation Tax including technical consultation, Department of Finance, September 2023
[2] https://taxinstitute.ie/wp-content/uploads/2022/03/2022-03-07-ITI-Response-to-Consultation-on-a-Territorial-System-of-Taxation-Final.pdf
[3] https://taxinstitute.ie/wp-content/uploads/2023/06/2023-05-31-ITI-Pre-Finance-Bill-Submission-FINAL.pdf

law, there was constructive engagement through the TALC BEPS Sub-committee between officials from the Department of Finance, Revenue and stakeholders on technical issues relevant to the policy development of the implementation of Pillar Two into domestic legislation. Adopting a similar approach in respect of the implementation of the participation exemption and the foreign branch exemption would ensure the legislation, when published, is clearly understood by all stakeholders and does not give rise to any unintended consequences.

We have summarised in Section 3 of this submission, the Institute's detailed recommendations for a participation exemption and a foreign branch exemption and we have outlined in further detail our responses to the consultation questions in Sections 4 and 5. However, it is important that policymakers consider the following key matters when considering the structural design of a participation exemption for foreign dividends and a foreign branch exemption.

- The rules governing the participation exemption for foreign dividends should be clear and simple with limited exceptions and it should have a broad territorial scope, i.e. not limited to tax treaty countries.

- The participation exemption for foreign dividends should not be limited to distributions paid out of trading profits of companies as this would add unnecessary complexity and uncertainty for investors regarding the availability of the exemption.

- The participation exemption for foreign dividends should apply automatically with the option for taxpayers to elect out on a distribution-by-distribution basis.

- In tandem with the introduction of a participation exemption for foreign dividends, Ireland should adopt a foreign branch exemption which applies automatically with the option for taxpayers to elect out on a branch-by-branch basis.

- The branch exemption should apply to profits arising in a foreign branch in any jurisdiction outside Ireland and should extend to profits in the nature of income or capital gains arising to the branch.

The Institute is happy to engage further in this consultation through stakeholder meetings or direct discussions and looks forward to the publication of a Feedback Statement on draft legislative approaches for the participation exemption early in 2024. Please contact Anne Gunnell of this office at agunnell@taxinstitute.ie if you require any further information in relation to this submission.

3. Institute Recommendations

3.1. Participation Exemption

3.1.1. Structural Considerations

General Features

1. The rules governing the participation exemption should be clear and simple with limited exceptions. This would ensure the participation exemption can achieve its objective of simplifying the Irish corporation tax code and enhancing Ireland's attractiveness as a place to do business.

Specified Jurisdictions

2. Ireland should adopt a participation exemption which applies to all foreign source distributions irrespective of whether they are derived from treaty or non-treaty jurisdictions. Policymakers could consider restricting the participation exemption in circumstances where the payor is located in a jurisdiction included in Annex 1 of the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes (the EU non-cooperative list) at the time the distribution is made. If a company is a member of a group which is within scope of Pillar Two, the group's underlying profits will be subject to a 15% minimum effective tax rate thus minimising any potential risk of base erosion.

Method of Relief

3. Irrespective of the method of relief (i.e., whether the participation exemption operates as an exemption or alternatively the foreign earnings are in scope but with a deduction in arriving at taxable income), if the participation exemption is to achieve the objective of ensuring Ireland remains an attractive location for foreign direct investment, it is critical that the regime has broad application with limited conditions.

Relief for the full amount or only part of the dividend

4. We firmly believe that the participation exemption should provide a full exemption from Irish corporation tax if Ireland is to remain an attractive location for investment in the current competitive environment.

Type of dividend/ distribution and shares

5. The participation exemption should apply to all distributions out of income and gains, irrespective of whether the payment is called a dividend. The only type of distributions we would not envisage being in scope of the participation exemption would be distributions which are considered capital distributions within the meaning of Section 583 Taxes Consolidation Act (TCA) 1997 that are subject to capital gains

tax (CGT) and therefore, may qualify for relief under Section 626B TCA 1997 on the satisfaction of the conditions set out in that section.

6. Rather than aligning the participation exemption with the criteria for relief under Section 626B, consideration could be given to amending Section 626B to remove the trading requirement and to broaden the range of jurisdictions to which it can apply.

Minimum Shareholding Requirements

7. We believe it would be reasonable to impose a minimum ownership requirement similar to that which applies to the participation exemption for gains in Section 626B TCA 1997. This would limit the availability of the participation exemption to dividends where the Irish resident company has a minimum holding of at least 5% of the ordinary share capital which has been held for an uninterrupted period of twelve months.

8. In line with the position which exists for relief under Section 626B, a dividend received shortly after the share acquisition should qualify for the participation exemption provided the shares are held for the minimum holding period. It would also be important that the provisions of Schedule 25A TCA 1997 which supplement Section 626B would also apply in the context of the participation exemption for foreign dividends.

Optionality

9. In our view, the participation exemption for foreign source dividends should apply automatically with the option for the taxpayer to elect out of the exemption on a distribution-by-distribution basis. Such an approach would increase the attractiveness of Ireland as a location for investment compared with other competitor countries, such as the Netherlands and the UK. In designing the participation exemption in this manner, the question as to whether the election should be revocable does not arise.

Interest Limitation

10. In designing the participation exemption, the key focus should be the simplification of the corporation tax code. Any changes to Ireland's interest deductibility provisions should be made as part of the separate reform of the rules, which the Minister for Finance has signalled in his Budget 2024 speech.

Subject to Tax Rule

11. Policymakers may wish to consider amending Ireland's controlled foreign company (CFC) rules to ensure a CFC charge cannot be averted solely on the basis that the CFC has no undistributed income in circumstances where a participation exemption has been applied to a dividend received from a CFC.

12. Section 835AB TCA 1997 deals with the application of the anti-hybrid rules in the context of a worldwide system of taxation. In adopting a participation exemption for dividends and/or a foreign branch exemption, it is essential that section 835AB TCA 1997 is retained as its application will continue to be necessary in certain circumstances, to ensure that the impact of the anti-hybrid rules is confined to actual economic hybrid mismatches and not technical hybrid mismatches.

Substance in Ireland

13. Similar to the approach adopted in other jurisdictions, we do not believe that Ireland's participation exemption should include substance requirements. Given Ireland already has significant base erosion protections in its corporation tax code, we believe that any further action regarding possible substance requirements for companies should be agreed at an EU level. Aligning with a co-ordinated approach agreed at EU level would ensure that Irish companies are on a level playing field with those in other EU Member States.

Trading Requirement

14. The participation exemption should not be limited to dividends paid out of trading profits of companies as this would add unnecessary complexity and uncertainty for investors regarding the availability of the exemption.

Transitional Arrangements

15. We do not consider that a lead-in period would be necessary on the adoption of a participation exemption if taxpayers are given the option to elect out of the exemption on a distribution-by-distribution basis.

16. Given the participation exemption will apply to payments received, the participation exemption should apply to any dividends or distributions received on or after 1 January 2025 rather than applying for accounting periods commencing on or after 1 January 2025.

3.1.2. Consequential Impacts

Franked Investment Income

17. We strongly believe that no additional qualifying conditions should apply for the domestic dividend exemption on the introduction of the participation exemption. Regardless of the methodology policymakers choose in designing the participation exemption (i.e., an exemption method or a deduction method), it is important that, in line with EU case law, foreign sourced dividends do not suffer tax greater than that which applies to domestic sourced dividends.

Portfolio Investors

18. The portfolio exemption in Section 21B TCA 1997 is important for the insurance and banking sector, as it provides administrative ease of complexity for those sectors in dealing with the type of dividends which are covered by the exemption. The introduction of a participation exemption should not impact the continuation of the existing exemption for portfolio investors in its current form.

Deductibility of expenses related to exempt income

19. We do not consider that an amendment to the expenses of management which may be claimed by an investment company under Section 83 TCA 1997 would be necessary on the introduction of a participation exemption for foreign earnings. In addition, we believe that imposing further restrictions on interest relief for funding costs of investments in circumstances where a participation exemption would apply to the dividends derived from that investment would be unwarranted.

Close Company Surcharge

20. We do not believe that exempt foreign earnings to which the participation exemption would apply should be subject to the close company surcharge.

21. Section 434 TCA 1997 already provides that a dividend or other distribution by a company is not regarded as "investment income" for the purposes of the close company surcharge if the close company to which it is paid would be exempt from tax on any gains on the disposal of those shares under Section 626B at the time the dividend or distribution is made. Policymakers could consider whether an amendment to the definition of investment income in Section 434(1) is necessary to ensure that any earnings to which the participation exemption applies are not subject to the close company surcharge.

Specific Tax Regimes

22. A number of legislative provisions which may need to be reviewed if a participation exemption via Section 129 TCA 1997 is implemented. For example, Part 24A TCA 1997 provides an alternative method (called "tonnage tax") for calculating the shipping related profits of a company for corporation tax purposes. While it is important that this regime is retained following the introduction of a participation exemption, the definition of 'relevant shipping income' in Section 697A TCA 1997, which includes dividends from overseas companies, may need to be reviewed if a participation exemption via Section 129 is implemented.

3.1.3. Anti-Avoidance Rules

23. In designing the participation exemption, policymakers should place reliance on the robust provisions which already exist in Ireland's corporation tax code to protect Ireland's domestic tax base from the artificial diversion of profits and base erosion,

including the EU Anti-Tax Avoidance Directive[4] (ATAD) compliant CFC rules, transfer pricing rules, ATAD Interest Limitation Rule (ILR) and anti-hybrid rules. Consequently, we consider any anti-avoidance provisions to be included in the participation exemption should be very limited. For example, policymakers may wish to consider imposing a condition which would deny the participation exemption in circumstances where the payor has received a tax deduction for the dividend.

24. Under Ireland's current CFC rules, if a participation exemption applies to a dividend which it received by a company from its CFC, this could result in a CFC charge not applying to that income on the basis that the CFC has distributed that income. Policymakers may wish to consider amending the CFC rules to ensure a CFC charge cannot be averted solely on the basis that the CFC has no undistributed income in such circumstances.

Interaction with Pillar Two of the OECD Inclusive Framework

25. For MNEs in scope of Pillar Two, aligning the participation exemption with the conditions required to be considered an excluded dividend under the GloBE Rules would avoid the imposition of multiple levels of taxation on the same underlying profits which will have been subject to a minimum level of tax. It would act as a positive signal to MNEs that are considering the optimal location for their operations following Pillar Two implementation and the benefits of establishing or retaining Irish entities in their group structure.

Transfer Pricing

26. We do not foresee any potential impacts arising from moving to a participation exemption for Ireland's transfer pricing regime.

Multilateral Instrument Provisions

27. We do not foresee a need to adopt any provisions of the Multilateral Instrument in conjunction with a participation exemption.

Any Other Issues

28. While the introduction of a participation exemption for dividends and a foreign branch exemption must be the priority, we would also urge for the simplification of Schedule 24 TCA 1997. Such simplification is necessary even following the adoption of a dividend exemption and foreign branch exemption as Schedule 24 would continue to apply to foreign income which is outside the scope of such exemptions.

29. While the introduction of a participation exemption and a foreign branch exemption would be a significant step towards the simplification of Ireland's corporation tax code, another area where simplification of the corporation tax code is urgently

[4] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

required are the rules regarding the deductibility of interest. We recommend that Ireland adopts reformed interest deductibility provisions to reduce the inherent complexity and ensure the rules compare favourably with regimes in other jurisdictions competing with Ireland for foreign direct investment.

30. Section 129A TCA 1997 disapplies Section 129 treatment to certain dividends of formerly non-Irish resident companies which became Irish resident. With the possible exception of companies located in a jurisdiction included on the EU non-cooperative list, the rationale for Section 129A after the introduction of a participation exemption for dividends would need to be reviewed.

3.2. Foreign Branch Exemption

31. We firmly believe that Ireland should adopt a foreign branch exemption in tandem with the adoption of a participation exemption.

32. As Ireland does not have a branch exemption at present, for Irish companies there can be significant differences in the timing and measure of taxable income between their head office and branches resulting in tax uncertainty and complexity. Adopting a foreign branch exemption into the Irish corporation tax code would significantly reduce the administrative burden for Irish companies with foreign branches.

33. In our view, Ireland should adopt a foreign branch exemption which applies automatically, with the option for taxpayers to elect out of the exemption on a branch-by-branch basis. The automatic application of the branch exemption would provide ease of administration for taxpayers and would also align with the approach we have recommended in this submission for the adoption of a foreign dividend exemption.

34. The branch exemption should apply to profits arising in a foreign branch in any jurisdiction outside Ireland and should extend to profits in the nature of income or capital gains arising to the branch. For multinational groups in scope of the Pillar Two GloBE Rules, the profits of a foreign branch will be captured under GloBE income and subject to the global minimum effective tax rate of 15% at local branch level thus minimising any potential risk of base erosion.

35. Policymakers could consider restricting the availability of the branch exemption to circumstances where the profits of the branch are considered to be subject to tax in the foreign jurisdiction (i.e., the exemption would not be available if the branch is not recognised as a taxable presence in the branch jurisdiction). This approach could be aligned with the anti-hybrid mismatch measures that apply in respect of branches.

36. Section 25A TCA 1997 provides for the application of the Authorised OECD Approach to the attribution of income to a branch of non-resident companies carrying on a trade in Ireland. In considering the attribution of profit to the foreign branch of an Irish company for the purpose of the foreign branch exemption, a similar approach could be taken to that in Section 25A. Such an approach would also be consistent with the approach adopted in the UK.

37. In adopting a foreign branch exemption in Ireland, it would be important for Section 835AB TCA 1997 to be retained, as the application of the provisions would continue to be required in certain circumstances to ensure that the anti-hybrid rules are confined to actual economic hybrid mismatches.

38. In adopting a foreign branch exemption, the Irish CFC rules would need to be extended in line with ATAD to ensure the rules apply to the undistributed income of foreign branches where the relevant conditions are satisfied, and the foreign branch exemption applies.

39. On the introduction of a foreign branch exemption, it will be necessary to amend the exit tax provisions contained in Section 627 TCA 1997 to ensure alignment with ATAD. However, in amending the exit tax rules, care would need to be taken to ensure that exit tax would not apply where a taxpayer elects not to apply a foreign branch exemption.

4. Dividend Participation Exemption

4.1. Structural Considerations

4.1.1. General Features

Q1. 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 existence of a participation exemption in the Irish corporation tax code will be a key influential factor in the decision-making process for businesses regarding long-term investments in Ireland in the coming years. An attractive holding company regime would mean that businesses would be more likely to choose Ireland as their headquarter location, whether regional or otherwise, resulting in their key decision makers and significant business functions, such as treasury and IP management being based in the State, leading to more related business areas from such international groups locating in Ireland. A participation exemption would also encourage further international growth and development of existing Irish headquartered multinational groups.

MNE groups are currently revisiting their operations and evaluating their group structures and the locations of their operations in light of the implementation of Pillar Two in the EU and globally and the prospect of the EU's Unshell proposal to tackle the misuse of shell entities.[5] Ireland's existing credit system for providing relief from double taxation on foreign earnings is cumbersome and administratively challenging for such businesses to navigate, in contrast to the more straightforward exemption systems available in other countries, particularly in the EU. This means MNE groups are more likely to choose to locate their significant operations and future investments in such other countries in the absence of a participation exemption in Ireland.

Q2. 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.
Q3. 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.
Q4. 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?

[5] Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU - known as the Unshell Proposal

Q5. What are your views on the potential scope of jurisdictions that should be eligible for an Irish participation exemption?

If a participation exemption is to achieve the objective of ensuring Ireland remains an attractive location for foreign direct investment (FDI), it is critical that the regime has broad application with limited conditions and can be easily understood so as to provide certainty to investors. The participation exemption should not be limited to dividends paid out of trading profits of companies as this would add unnecessary complexity and uncertainty for investors regarding the availability of the exemption.

Ireland should adopt a participation exemption which would apply to all foreign source distributions irrespective of whether they are derived from treaty or non-treaty jurisdictions. The participation exemption should apply automatically with the option for taxpayers to elect out on a distribution-by-distribution basis. Designing the participation exemption in this manner would increase the attractiveness of Ireland as a location for investment compared with other competitor countries, such as the Netherlands and the UK.

In designing a participation exemption for dividends, we believe it would be reasonable to impose a minimum ownership requirement. For example, policymakers could consider imposing a condition similar to that which already applies to the participation exemption for gains in Section 626B TCA 1997. This would limit the availability of the participation exemption to dividends where the Irish resident company has a direct or indirect interest of at least 5% in the company from which the dividend is ultimately sourced.

Policymakers may wish to consider imposing a condition which would deny the participation exemption in circumstances where the payor has received a tax deduction for the dividend. This approach would align with Ireland's existing anti-hybrid mismatch rules.

4.1.2. Specified Jurisdictions

Q6. 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?
Q7. 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?

In our view, Ireland should adopt a participation exemption which would apply to foreign source distributions irrespective of whether they are derived from treaty or non-treaty jurisdictions. Policymakers could consider restricting the participation exemption in circumstances where the payor is located in a jurisdiction included on the EU non-cooperative list. If a company is a member of a group which is within

scope of the Pillar Two GloBE Rules, the group's underlying profits will be subject to a 15% minimum effective tax rate thus minimising any potential risk of base erosion.

Notably, Germany, Luxembourg and Netherlands do not restrict their respective participation exemptions depending on the location of the payor, while some other Member States only restrict their participation exemption where the payor is located in a jurisdiction on the EU non-cooperative list.

If the participation exemption for dividends is restricted to companies resident in a defined category of jurisdictions, it would be important that the dividend is capable of being tracked through any number of intermediary layers to determine that it is paid by a company located for tax purposes in a qualifying jurisdiction in order to determine if the dividend is paid by a company in such a jurisdiction.

As some countries, such as Hong Kong, do not have a domestic concept of tax residence, should the participation exemption for dividends be restricted to companies resident in a defined category of jurisdictions, it would be important that clarity is given on the approach to be adopted to determine the residence of the payor. For example, the participation exemption could mirror the approach used in Article 10.3. of the GloBE Rules to determine the location of an entity for the purposes of the GloBE Rules.

4.1.3. Method of Relief

Q8. 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?

Section 129 TCA 1997 provides that where a dividend or distribution is received by an Irish resident company from an Irish resident company, the company is not chargeable to corporation tax on the receipt of the distribution.

In our view, one relatively straightforward approach to legislating for a participation exemption could be to facilitate Section 129 treatment for certain dividends/ distributions from shares in foreign resident companies.

An alternative method which could be considered by policymakers is for the distribution to be included in scope of corporation tax but with a deduction for the full amount of the distribution provided in arriving at taxable income.

Irrespective of the method of relief, if a participation exemption is to achieve the objective of providing much-needed administrative simplification and greater certainty for businesses, it is critical that the regime has broad application with limited conditions.

4.1.4. Relief for the full amount or only part of the dividend

Q9. In your view, should an Irish dividend participation exemption provide a full or partial exemption? Please provide reasons for your answer.

In our view, the participation exemption should provide a full exemption from Irish corporation tax. We firmly believe that a full exemption is necessary if Ireland is to remain an attractive location for investment in the current competitive environment and achieve the desired simplification benefits. After all, many of our EU counterparts such as Belgium, Luxembourg and the Netherlands grant full exemption for dividends under their regimes.

In our view, a partial exemption and partial credit system would be unduly onerous and would add even further complication to the existing cumbersome system for double taxation relief on foreign earnings. Furthermore, a full exemption would align with the Pillar Two GloBE Rules which provide a GloBE income exclusion for dividend income from equity interests other than for short-term portfolio holdings.

4.1.5. Type of dividend/ distribution and shares

Q10. 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?
Q11. Should a participation exemption apply to both income and capital distributions and, if so, how should a capital distribution be defined?
Q12. Is there a rationale for extending a participation exemption to other classes of shares beyond distributions in respect of ordinary share capital?
Q13. 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.

In our view, the participation exemption should apply to all distributions out of income and gains, irrespective of whether the payment is called a dividend. It should apply to both deemed distributions and distributions in specie.

The only type of distributions we would not envisage to be in scope of the participation exemption would be distributions that are considered capital distributions within the meaning of Section 583 TCA 1997 which are subject to CGT and therefore, may qualify for relief under Section 626B on the satisfaction of the conditions set out in that section.

Section 583 defines a capital distribution as any distribution from a company (including a distribution on a winding-up) other than a distribution which is treated as income in the hands of the recipient. It is unclear to us why a new definition of a

capital distribution would be required for the purpose of a participation exemption given a definition of capital distribution already exists in Section 583.

Limiting the participation exemption to distributions in respect of ordinary share capital could cause difficulties in practice where there is uncertainty as to the nature of a membership interest, for example, with US LLCs.

It would be helpful if the conditions for the participation exemption for dividends/distributions and the conditions for the participation exemption for gains in Section 626B were aligned. However, rather than aligning the participation exemption with the criteria for relief under Section 626B, consideration should be given to amending Section 626B to remove the trading requirement and to broaden the range of jurisdictions to which it applies.

We firmly believe it would be inappropriate for the participation exemption for dividends/distributions to include a trading requirement similar to that which currently applies in Section 626B. Furthermore, we do not believe that the participation exemption should be limited to the jurisdictions to which Section 626B relief applies.

4.1.6. Minimum Shareholding Requirements

Q14. What are your views on the application of a minimum holding period in respect of participations qualifying for exemption?
Q15. 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)?
Q16. 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?

As outlined above, in designing a participation exemption for dividends, we believe it would be reasonable to impose a minimum ownership requirement similar to that which applies to the participation exemption for gains in Section 626B TCA 1997. This would limit the availability of the participation exemption to dividends where the Irish resident company has a minimum holding of at least 5% of the ordinary share capital which has been held for an uninterrupted period of twelve months.

Similar to the position which exists for Section 626B, a dividend received shortly after the share acquisition should qualify for the participation exemption provided the shares are held for the minimum holding period. It would be important that the provisions of Schedule 25A which supplement Section 626B would also apply in the context of the participation exemption.

4.1.7. Optionality

Q17. 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.
Q18. Having regard to the above, if you are in favour, please outline your views on what basis optionality would operate.
Q19. What anti-avoidance measures should apply in order to deter and prevent aggressive tax planning with regards to an optional exemption regime?
Q20. Should a participation exemption apply automatically once qualifying criteria is met, or should a business elect to apply the exemption?
Q21. Should an election apply on a subsidiary by subsidiary, dividend by dividend, year to year or other basis?
Q22. 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?

Q23. 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?

In our view, the participation exemption for foreign source dividends should apply automatically with the option for the taxpayer to elect out of the exemption on a distribution-by-distribution basis. In designing the participation exemption in this manner, the question as to whether the election should be revocable does not arise.

Companies have structured their businesses so that they can repatriate profits to Ireland and avail of credit, deduction, pooling and carry-forward entitlements as set out in Schedule 24 TCA 1997 in circumstances where there is a double taxation treaty in place and also, where unilateral relief provisions apply.

Depending on the countries in which a business may be located and the scope of the participation exemption which is introduced, the benefit of credit pooling could be diminished following a move to a territorial system of taxation if the option to elect out of the regime is not provided.

We do not believe that additional anti-avoidance measures would be necessary if there is an option for taxpayers to elect out of the participation exemption on a distribution-by-distribution basis, given the extensive reforms that have been implemented in domestic legislation over recent years to prevent the artificial diversion of profits to other jurisdictions and base erosion including ATAD compliant CFC rules, extended transfer pricing rules, the ATAD ILR and anti-hybrid rules.

Should a taxpayer be permitted to elect out of the dividend exemption, the current system of taxing the income and claiming double tax credits under Schedule 24 should continue to be available.

As detailed in our response to Question 53, the simplification of Schedule 24 is necessary, even following the adoption of a participation exemption for dividends and a foreign branch exemption, as Schedule 24 would continue to apply to foreign income which is outside the scope of such exemptions. However, in simplifying Schedule 24, it would be important that any unrelieved tax credit carried forward would continue to be available for offset and the benefit of unilateral relief be preserved.

4.1.8. Interest Limitation

Q24. 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?

The Consultation Paper acknowledges that the purpose of the participation exemption is to provide much needed administrative simplification and greater certainty for businesses in a time of much change. We believe that in designing the participation exemption the focus should remain on simplification of the corporation tax code and any changes to Ireland's interest deductibility provisions should form part of the separate review of the domestic interest deductibility rules which the Minister for Finance committed to in his Budget 2024 speech.

As the Institute has previously highlighted, the ATAD ILR which was introduced in Finance Act 2021 was layered on top of existing comprehensive interest deductibility provisions making the operation of the Irish rules onerous and overly complex. This makes it difficult and costly for businesses to operate in Ireland and comply with their tax obligations and has resulted in Ireland having one of the most complicated interest deductibility regimes within the EU. We firmly believe that a full review is necessary to ensure the rules governing interest deductibility are less complicated and compare more favourably with competitor jurisdictions.

4.1.9. Subject to Tax Rule

Q25. 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?

CFC rules

Under the existing CFC rules, if a participation exemption applies to a dividend which a company receives from its CFC, this could result in a CFC charge not

applying to that income on the basis that the CFC has distributed that income. Therefore, policymakers may wish to consider amending the CFC rules to ensure a CFC charge cannot be averted solely on the basis that the CFC has no undistributed income in such circumstances.

For example, an amendment could be made to Section 835Q TCA 1997 to ensure that, to the extent that the Irish company avails of a participation exemption in respect of a dividend from a CFC, the dividend income which was covered by the participation exemption in Ireland would be treated as undistributed income for the purposes of the CFC rules.

Anti-hybrid rules

Section 835AJ TCA 1997 addresses deduction without inclusion mismatch outcomes which arise to the extent a payment, or part of a payment, is tax deductible in one jurisdiction without a corresponding amount being included in income in another jurisdiction. Therefore, as noted earlier in this submission, a participation exemption for dividends should not be available where the payor is entitled to a tax deduction in respect of the distribution.

Section 835AB TCA 1997 addresses the application of Ireland’s anti-hybrid rules in the context of worldwide tax systems to ensure that the rules only operate to neutralise actual economic hybrid mismatches and not technical hybrid mismatches. This provision can apply where there is an Irish company with a foreign branch or where there is a foreign company with an Irish branch.

In adopting a participation exemption for dividends in Ireland, it would be essential that Section 835AB TCA 1997 is retained, as the application of the provisions would continue to be required in certain circumstances to ensure that the anti-hybrid rules are confined to actual economic hybrid mismatches. For example, Section 835AB would have application where another jurisdiction operates a worldwide system of taxation.

4.1.10. Substance in Ireland

Q26. 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?

Similar to the approach adopted in other jurisdictions, we do not believe that Ireland’s participation exemption should include substance requirements. An administratively straightforward participation exemption would enable Ireland to become an attractive holding company location for multinational groups. If MNEs choose to use Ireland as a holding company location, they are more likely to base substantive business activities in the State.

Given Ireland already has significant base erosion protections in its corporation tax code, we believe that any further action regarding possible economic substance requirements for companies should be agreed at an EU level. Indeed, there are ongoing efforts at EU level under the Unshell proposal to develop a common approach towards shell entities and part of that initiative is to agree suitable economic substance indicators. Following a co-ordinated approach agreed at EU level would ensure that the rules under an Irish participation exemption would be comparable with those operating in other EU Member States.

4.1.11. Trading Requirement

Q27. What are your views on a potential condition of exemption whereby relief only applies to certain trading companies?
Q28. Should a participation exemption align with trading criteria applicable in other foreign subsidiary related reliefs such as section 21B and 626B? Please elaborate.

The participation exemption should not be limited to dividends paid out of trading profits of companies as this would add unnecessary complexity and uncertainty for investors regarding the availability of the exemption. The distinction made between trading and non-trading profits and dividends in the Irish corporation tax code is not replicated in the participation exemption regimes in other countries.

4.1.12. Transitional Arrangements

Q29. 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?
Q30. Would you still be in favour of introducing a participation exemption if unutilised foreign tax credits were lost?
Q31. Are there other transitional arrangements that should be considered?

In adopting a participation exemption for dividends, consideration would need to be given to what relief should be provided to taxpayers with unrelieved foreign tax credits carried forward from prior years. However, we do not believe that a lead-in period would be necessary in this case, if the participation exemption applies automatically but with an option for a taxpayer to elect out of the regime.

It is critical that the eligibility criteria for the participation exemption in Ireland is as streamlined as possible to allow companies to easily transition into the regime. Given the participation exemption will apply to payments received, we believe that the participation exemption should apply to any dividends or distributions received on or after 1 January 2025 rather than applying to accounting periods commencing on or after 1 January 2025.

4.2. Consequential Impacts

4.2.1. Franked Investment Income

Q32. In your view, what are the main opportunities or issues in applying similar treatment to domestic and foreign dividend exemption regimes?
Q33. 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?

We strongly believe that no additional qualifying conditions should apply to the domestic dividend exemption. Regardless of the methodology policymakers choose in designing the participation exemption (i.e., an exemption method or a deduction method), it is essential that that foreign sourced dividends would not suffer tax greater than that which applies to domestic sourced dividends, in line with the judgments[6] of the Court of Justice of the European Union in the cases of *Test Claimants in the FII Group Litigation v Revenue and Customs Commissioners* (FII GLO).

Section 21B and paragraph 9I of Schedule 24 TCA 1997 were introduced to ensure that Ireland's taxation of foreign-sourced dividends was better aligned with the principles established in FII GLO. Given policymakers consider that the current regime is compliant with EU rules, it is difficult to foresee why a closer alignment of the treatment of domestic and foreign dividends would give rise to any issues.

4.2.2. Portfolio Investors

Q34. 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?
Q35. What are the arguments for or against retention of a portfolio exemption following the introduction of a participation exemption?
Q36. What would your views be on the introduction of a participation exemption if it required consequential amendments to, or removal of, the portfolio exemption?

Section 21B TCA 1997 exempts certain foreign dividends received by portfolio investors from corporation tax where the dividends form part of the trading income of the company. A portfolio investor is defined as an investor that holds no more than 5% of the dividend paying company.

The portfolio exemption is important to the insurance and banking sectors as it provides administrative ease for those sectors in dealing with the type of dividends which are covered by the exemption.

[6] *Test Claimants in the FII Group Litigation v Revenue and Customs Commissioners* C-446/06 and *Test Claimants in the FII Group Litigation v Revenue and Customs Commissioners* C-35/11.

In our view, the policy rationale for potentially revoking the portfolio exemption on the introduction of a participation exemption is unclear. If policymakers considered the portfolio exemption was warranted when there was no dividend participation exemption in the Irish corporation tax code, we do not understand why this view would change as a result of Ireland adopting a participation exemption. We believe the introduction of a participation exemption should not impact the continuation of the existing exemption for portfolio investors in its current form.

Q37. 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?

We do not consider that any additional anti-avoidance provisions regarding the tax treatment of portfolio holdings in Ireland would be necessary in the event that portfolio holdings are excluded from the scope of the participation exemption. In addition to a general anti-avoidance rule, Ireland already has a range of measures to prevent the artificial diversion of profits to other jurisdictions and base erosion including ATAD compliant CFC rules.

4.2.3. Alignment with existing Irish reliefs for foreign subsidiaries

Q38. 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?
Q39. Should a participation exemption for dividends align with the qualifying conditions for the participation exemption on gains under section 626B?
Q40. 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?

As we have set out above, we believe that there are elements of the participation exemption for gains in Section 626B TCA 1997 which could be reflected in the participation exemption such as the minimum shareholding requirements. However, it would be inappropriate for the participation exemption to include a trading requirement similar to that which exists in Section 626B. Furthermore, we do not believe that the participation exemption should be restricted to the jurisdictions to which Section 626B relief applies.

Rather than aligning the participation exemption with the criteria for relief under Section 626B, consideration should be given to amending Section 626B to remove the trading requirement and broaden the range of jurisdictions to which it can apply.

4.2.4. Deductibility of expenses related to exempt income

Q41. What are the considerations in support of or against allowing a deduction for expenses related to exempt foreign dividend income?

As noted in the Consultation Paper, an investment company is entitled to take a deduction for expenses of management. However, the amount of management expenses available for deduction is restricted under Section 83(2) TCA 1997 by the amount of any income of the accounting period derived from sources not charged to tax, apart from franked investment income. We do not consider that any amendment to this section would be necessary on the introduction of a participation exemption for foreign earnings.

In addition, we do not consider that any amendment in respect of tax relief for the funding costs of investment under Section 247 TCA 1997 would be necessary on the introduction of a participation exemption for foreign earnings. Notably, there is no qualification in Section 247 for companies in receipt of franked investment income.

Stringent and complex conditions governing tax relief for funding costs of investment contained in various sections of the corporation tax code provide strong protections for the Irish corporation tax base. Section 247(4A) already limits the relief available where the borrower is connected with the lender in circumstances where there is not ‘relevant income’, which includes dividends or other distributions chargeable to corporation tax.

Furthermore, Finance Act 2017 amended the interest deductibility provisions under Section 247 to allow relief for investments held indirectly through one or more intermediate holding companies. Moreover, the ATAD ILR limits the net interest deductions of a company within the charge to Irish corporation tax to 30% of EBITDA.

In our view, imposing further restrictions on interest relief for funding costs of investments in circumstances where a participation exemption applies to the dividends derived from that investment would be unwarranted.

4.2.5. Close Company Surcharge

Q42. What are the considerations in relation to applying a close company surcharge in a regime incorporating a participation exemption for foreign dividend income?

We do not believe that exempt foreign earnings to which the participation exemption applies should be subject to the close company surcharge.

Notably, Section 434 TCA 1997 already provides that a dividend or other distribution by a company will not be regarded as “investment income” for the

purposes of the close company surcharge if the close company to which it is paid would be exempt from tax on any gains on the disposal of those shares under section 626B at the time the dividend or distribution is being made.

On the introduction of a participation exemption, policymakers could consider whether an amendment to the definition of investment income in Section 434(1) is necessary to ensure that any earnings to which the participation exemption applies would not be subject to the close company surcharge.

In addition, Section 434(3A) TCA 1997 provides that where a close company pays a dividend or makes a distribution to another close company, the companies may jointly elect for the dividend or distribution not to be treated as a distribution. Where an election is made, the dividend or distribution is treated for the purposes of Section 440 TCA 1997 as not being a distribution. This means that it is not taken into account as a distribution in determining the extent to which the dividend-paying company has distributed its profits.

Furthermore, the dividend or distribution is treated as not being franked investment income of the receiving company. As a result, in determining whether the receiving company is liable to a surcharge, the dividend or distribution is not counted as income of that company. Policymakers could also consider amending Section 434(3A) so that a similar approach is adopted in respect of income to which the participation exemption applies.

4.2.6. Specific Tax Regimes

Q43. 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.
Q44. What amendments, if any, would be required to those provisions in order to ensure their continued operation in conjunction with a participation exemption?

The Institute's Pre-Finance Bill Submission made in May this year identified a number of legislative provisions which may need to be reviewed if a participation exemption via Section 129 is implemented (as outlined in our response to Question 8). We have included these in Appendix I of this submission.

For example, Part 24A TCA 1997 provides an alternative method (called tonnage tax) for calculating the shipping related profits of a company for corporation tax purposes. While it is important that the tonnage tax regime is retained following the introduction of a participation exemption, the definition of 'relevant shipping income' in Section 697A TCA 1997, which includes dividends from overseas companies, may need to be reviewed if a participation exemption via Section 129 is implemented.

As a starting point, in considering any corporation tax legislative provisions that could be affected by a change in how foreign dividends are taxed, consideration would need to be given to those sections in the TCA 1997 which refer to Section 129 and may be applicable for any foreign dividend equivalent (for example, section 835E TCA 1997 refers to Section 129) and other references more generally in the TCA 1997 to receiving dividends chargeable to corporation tax (such as in Section 247(4A)(d) TCA 1997).

4.3. Anti-Avoidance Rules

Q45. What type of anti-avoidance provisions should be incorporated into a participation exemption in order to eliminate opportunities for tax avoidance?
Q46. Are there features of existing anti-avoidance provisions that could be enhanced in order to support this aim?

In addition to a general anti-avoidance rule (GAAR), Ireland has robust provisions to prevent the artificial diversion of profits to other jurisdictions and base erosion. Furthermore, Finance (No. 2) Bill 2023 introduces further measures, aimed at the prevention of double non-taxation, which will apply to outbound payments of interest, royalties and distributions (including dividends) towards jurisdictions on the EU non-cooperative list, no-tax, and zero-tax jurisdictions.

In light of the extensive protections which already exist in the corporation tax code, we believe that any anti-avoidance provisions to be included in the participation exemption should be kept to the very minimum. For example, policymakers may wish to consider imposing a condition which would deny the participation exemption in circumstances where the payor has received a tax deduction for the dividend. This approach would align with Ireland’s existing anti-hybrid mismatch rules.

As outlined in our response to Question 47 below, policymakers may also wish to consider a targeted amendment to Ireland’s CFC rules on the introduction of a participation exemption to ensure that they continue to operate as intended.

4.3.1. Controlled Foreign Companies

Q47. Are there other legislative amendments required to CFC rules in order to ensure they are robust enough in the context of a participation exemption?

Ireland’s CFC rules prevent the artificial diversion of profits from controlling companies to CFCs. The rules operate by attributing undistributed income of a CFC to a controlling company or a connected company in Ireland.

As highlighted in our response to Question 25 under the current CFC rules, if a participation exemption applies to a dividend which a company receives from its CFC, this could result in a CFC charge not applying to that income on the basis that the CFC has distributed that income. Therefore, policymakers could consider

amending the CFC rules to ensure a CFC charge cannot be averted solely on the basis that the CFC has no undistributed income in such circumstances.

We do not believe that any other amendments to the CFC rules would be required in adopting a participation exemption for foreign dividends in Ireland.

4.3.2. Anti-hybrids/ Non-deductibility in payor jurisdiction rule

Q48. 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?
Q49. 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?

ATAD anti-hybrid rules were introduced in Ireland in Finance Act 2019 and apply to payments made after 1 January 2020. The rules are intended to counteract tax mismatches, such as double deductions and deductions with no corresponding income inclusion, by denying a deduction for the payor or bringing a receipt into charge for the recipient. Although the anti-hybrid rules were introduced against the backdrop of a worldwide system of taxation, we do not believe that modification of the provisions would be required in order for the rules to remain ATAD compliant on the introduction of a participation exemption.

Section 835AJ TCA 1997 addresses deduction without inclusion mismatch outcomes which arise to the extent a payment, or part of a payment, is tax deductible in one jurisdiction without a corresponding amount being included in income in another jurisdiction. Where that deduction has not been denied in the payor territory then the exemption is not applied in Ireland and the payment becomes taxable here. As set out above, in line with the anti-hybrid rules, we consider that a participation exemption for dividends should not be available where the payor is entitled to a tax deduction in respect of the distribution.

As set out in our response to Question 25, in adopting a participation exemption for dividends, it would be important for Section 835AB TCA 1997 to be retained, as the application of the provisions would continue to be required in certain circumstances to ensure that the anti-hybrid rules are confined to actual economic hybrid mismatches.

4.3.3. Interaction with Pillar Two of the OECD Inclusive Framework

Q50. Are there features of the Pillar Two regime that should be considered and taken into account when designing a dividend participation exemption?

The Pillar Two GloBE Rules provide a GloBE income exclusion for dividend income from equity interests, other than short-term portfolio holdings. The rationale for excluding such dividends is that it avoids double counting of previously taxed

income and aligns with participation exemptions and similar relief common to many Inclusive Framework jurisdictions. Notably, the Pillar Two GloBE Rules do not require such excluded dividends to be paid out of trading profits.

For MNEs in scope of Pillar Two, ensuring an excluded dividend under the GloBE Rules also qualifies for a participation exemption from Irish corporation tax would avoid the imposition of multiple levels of taxation on the same underlying profits which would have been subject to a minimum level of tax. Such an approach would send a strong message to MNEs, who are considering the structure of their existing operations because of the implementation of Pillar Two, in terms of evaluating the benefits of establishing or retaining Irish entities in their structure.

4.3.4. Transfer Pricing

Q51. 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.

4.3.5. Multilateral Instrument Provisions

Q52. Do you foresee a need to adopt any provisions of the Multilateral Instrument in conjunction with a participation exemption?

We do not foresee a need to adopt any provisions of the Multilateral Instrument in conjunction with a participation exemption.

We do not believe that implementing a participation exemption into Ireland's domestic legislation would directly impact Ireland's tax treaty network as the intended purpose of such exemptions would be to avoid the incidence of double taxation.

The Dividends article in Ireland's tax treaties generally provides that dividends may be taxed in the payee jurisdiction and also taxed in the payor jurisdiction in the form of a withholding tax.

The Elimination of Double Taxation article provides for a credit against Irish taxes in respect of taxes paid in the payor jurisdiction where the double taxation of dividends arises. However, if a participation exemption in respect of foreign dividends applies under Ireland's domestic legislation, there would be no double taxation as the dividends would be exempt in Ireland meaning the Elimination of Double Taxation article should not apply in this regard. Where the conditions for a participation exemption for foreign dividends are not met, foreign tax credits should be available in line with the current system.

4.4. Any Other Issues

Q53. 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?

Simplification of Schedule 24

While the introduction of a participation exemption for dividends and a foreign branch exemption must be the priority, we would also urge for the simplification of Schedule 24 TCA 1997. Such simplification is necessary even following the adoption of a participation exemption for dividends and a foreign branch exemption as Schedule 24 would continue to apply to foreign income which is outside the scope of such exemptions. However, in simplifying Schedule 24, it would be important that any unrelieved tax credit carried forward would continue to be available for offset and the benefit of unilateral relief be preserved.

Simplify Ireland's interest deductibility rules

The introduction of a participation exemption for dividends and a foreign branch exemption would be a significant step towards the simplification of Ireland's corporation tax code.

Another area where simplification of the corporation tax code is required are the rules regarding the deductibility of interest. As we have highlighted in our response to Question 24, the ATAD ILR, introduced in Finance Act 2021, was simply layered on top of existing, already comprehensive interest deductibility provisions. As a consequence, Ireland now has one of the most complicated and onerous interest deductibility regimes in the EU.

We believe retaining two separate interest limitation regimes on a permanent basis increases the cost of borrowing for Irish businesses. We recommend that the reformed interest deductibility provisions should reflect a broad base for interest deduction against both trading and non-trading income, using the protection of the ATAD ILR against base erosion risks.

Review of Section 129A

Section 129A TCA 1997 disapplies Section 129 treatment to certain dividends of formerly non-Irish resident companies which became Irish resident. With the possible exception of companies resident in territories on the EU non-cooperative list, the rationale for retaining Section 129A post the introduction of a participation exemption for dividends would need to be reviewed.

5. Foreign Branch Exemption

5.1. General

Q54. 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?
Q55. What activity is carried out in the foreign branch structures? Responses should include, for example, sectoral information, whether activity is trading or passive, etc.
Q56. 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.
Q57. 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?

Branches are used by Irish companies in both regulated sectors and in unregulated sectors.

In regulated sectors, passporting means a financial firm can use its authorisation obtained in an EEA Member State to sell its products or services to consumers in another EEA State. This means that for regulated sectors in Ireland, such as the banking, insurance and reinsurance sectors, an Irish company which has been authorised by the Central Bank of Ireland, can passport this authorisation and sell its products or services to consumers in another EEA State via a branch.

In the unregulated sector, branches are often used for a variety of commercial reasons. For example, in the technology and software industry, branches are commonly used, particularly since the Covid pandemic, due to resources, personnel or infrastructure being located outside of Ireland.

For start-ups wishing to expand into a new geographic market, operating through a branch in the initial stage makes economic sense as it enables them to “test the waters” and read the conditions in a jurisdiction before deciding to establish a substantial presence in a jurisdiction.

Q58. Would a foreign branch exemption be of particular relevance to any sectors? If so, please describe the sector(s) and outline the relevant considerations.

A foreign branch exemption would be of particular relevance for regulated sectors. As Ireland does not have a branch exemption at present, there can be significant differences in the timing and measure of taxable income for Irish companies between head office and branches resulting in tax uncertainty and complexity.

This is because it can be unclear whether sufficient credit relief will be available for foreign taxes at a time when the related income and/or expense is recognised for Irish tax purposes. In contrast, companies in countries with a branch exemption do not face this uncertainty and complexity which places them at a significant competitive advantage.

Q59. 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.

In designing a foreign branch exemption, it will likely first be necessary to consider how a foreign branch will be defined for the purpose of the exemption. For example, consideration would need to be given as to whether it is necessary to define what is meant by permanent establishment (PE) for the purposes of Irish corporation tax.

In our view, Ireland should adopt a foreign branch exemption which applies automatically, with taxpayers given the opportunity to elect out of the exemption on a branch-by-branch basis. The automatic application of the branch exemption would provide ease of administration for taxpayers and would also align with the approach which we have proposed in this submission for the adoption of the foreign dividend exemption.

Where a company elects out of the branch exemption, it should not qualify for relief for foreign taxes paid on the branch profits. Where an election out of the branch exemption is made, the branch should remain taxable under the current system.

We consider that the branch exemption should extend to profits in the nature of income or capital gains arising to the branch. For example, capital gains arising on the disposal of assets held by the branch or upon a sale or cessation of the branch business should come within the scope of the exemption. Post-cessation trading receipts should also come within the scope of the exemption.

The branch exemption should apply to profits arising in a foreign branch in any jurisdiction outside Ireland and should extend to profits in the nature of income or capital gains arising to the branch. For multinational groups in scope of the Pillar Two GloBE Rules, the profits of a foreign branch will be captured under GloBE income and subject to the global minimum effective tax rate of 15% at local branch level thus minimising any potential risk of base erosion.

Notably, under the UK foreign branch exemption, UK resident companies can elect for profits of their foreign branches to be exempt from UK taxation and the exemption applies to the branch’s trading profits, investment income connected with the branch and chargeable gains. There is no requirement for the foreign branch of the UK company to be located in a treaty jurisdiction.

Policymakers could consider restricting the availability of the branch exemption to circumstances where the profits of the branch are considered to be subject to tax in the foreign jurisdiction (i.e., the exemption would not be available if the branch is not recognised as a taxable presence in the branch jurisdiction). This approach could be aligned with the anti-hybrid mismatch measures that apply in respect of branches.

Transitional rules may be required to allow for circumstances where a branch has incurred losses for a number of years prior to electing into the branch exemption where these losses were set off against other profits. It may be appropriate to restrict the exemption for future branch profits in such circumstances.

In the UK, transitional rules apply to losses accruing prior to entry into the branch exemption regime. In addition, losses incurred after entry into the exemption regime are not relievable.

Q60. 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 Institute's response to the Department of Finance's 2022 public consultation on a Territorial System of Taxation and our Pre-Finance Bill Submission in May this year, outlined 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. We have outlined these considerations below.

Transfer Pricing Provisions

The Authorised OECD Approach (AOA) mechanism for the determination of profits attributable to a permanent establishment (PE) is contained in Article 7(2) of the OECD Model Tax Convention. Guidance on the application of the AOA is set out in the OECD's Report on the Attribution of Profits to Permanent Establishments published in July 2010.

The AOA seeks to attribute to a branch the profits that it would have earned at arm's length if it were a legally distinct and separate enterprise performing the same or similar functions under the same or similar conditions. Therefore, it incorporates separate entity and arm's length principles. The aim of the AOA is to

apply the transfer pricing principles that apply to inter-company transactions to intra-company 'dealings'.[7]

From a transfer pricing perspective, the AOA is a long-established practice for taxpayers and advisers in Ireland and other OECD Member States. Section 25A TCA 1997, which was introduced in Finance Act 2021, provides for the application of the AOA to the attribution of income to a branch of non-resident companies carrying on a trade in Ireland.

In considering the attribution of profit to the foreign branch of an Irish company for the purpose of the foreign branch exemption, a similar approach could be taken to that in section 25A. Such an approach would also be consistent with the approach adopted in the UK.

Anti-hybrid Rules

As set out in our response to Question 25, in adopting a participation exemption for dividends and/or a foreign branch exemption in Ireland, it would be important for Section 835AB TCA 1997 to be retained, as the application of the provisions would continue to be required in certain circumstances to ensure that the anti-hybrid rules are confined to actual economic hybrid mismatches. For example, if a company does not avail of a foreign branch exemption, the provisions of Section 835AB would still be relevant. In addition, Section 835AB would have application where another jurisdiction operates a worldwide system of taxation.

In moving to a territorial tax regime, some additional measures which policymakers may need to consider include:

- Payments that are disregarded, exempt or excluded from tax under the laws of the branch jurisdiction could be treated as if they had been received directly by the Irish head office (and therefore, outside of any foreign branch exemption).

- Payments or deemed payments from the branch to head office which are tax deductible in the branch location against non-dual inclusion income could be treated as taxable in Ireland. This change would be required to remain ATAD compliant.

- Third-party interest and other deductions which are offset against non-dual inclusion income in the branch location could be treated as non-deductible against Irish head office profits.

- The existing imported mismatch rules which carve out payments to EU jurisdictions could be amended to include situations involving tax exempt branches in such locations.

[7] Revenue Commissioners, Notes for Guidance, Taxes Consolidation Act 1997, Finance Act 2022 Edition, Part 2 at Section 25A.

CFC Rules

As the income of a foreign branch of an Irish company is treated as the income of the company for Irish tax purposes under the worldwide tax system, the Irish CFC rules do not currently apply to foreign branches. However, ATAD recognises that a PE can be a CFC and notes that it is necessary for CFC rules to extend to the profits of PEs where those profits are not subject to tax or are tax exempt in the Member State of the taxpayer.

Therefore, in adopting a foreign branch exemption, Irish CFC rules would need to be extended, in line with ATAD, to ensure they apply to the undistributed income of foreign branches where the relevant conditions are satisfied and the foreign branch exemption applies. There are two possible approaches to this, as noted in the OECD's 2015 Report on Designing Effective CFC Rules[8]*:*

"...where a parent jurisdiction exempts the income of a PE, the income of that PE could potentially raise the same concerns as income arising in a foreign subsidiary. Where this is the case, the parent jurisdiction could address this either by denying the exemption or by applying CFC rules to the PE."

Should the Irish CFC rules be applied to a PE of an Irish resident company that is availing of the foreign branch exemption, it would be necessary to consider what constitutes undistributed income of a PE for the purposes of the CFC rules given a PE cannot issue dividends.

An alternative approach which policymakers could consider would be to restrict the profits that are within the scope of the foreign branch exemption. Such a restriction would operate to exclude any profits of a foreign branch which would have been subject to a CFC charge, had the branch been a subsidiary resident in the territory in which the branch is established, from the scope of the foreign branch exemption and would remain chargeable to Irish tax.

Interestingly, the UK adopted the approach of denying the exemption, i.e., the UK foreign branch exemption itself includes an 'anti-diversion rule' which effectively applies the CFC tests to the branch profits. In short, this means that any 'diverted profits', being profits that pass through the CFC and to which none of the CFC exemptions apply, are excluded from the branch exemption regime and remain chargeable to corporation tax in the UK.

HMRC guidance notes that where a UK enterprise has a PE in another country, the profits attributed to it should be such profits as it might be expected to make if it were a separate enterprise dealing at arm's length with the UK enterprise.[9]

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[8] OECD (2015), Designing Effective Controlled Foreign Company Rules, Action 3 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241152-en, at paragraph 28.
[9] INTM163050 - UK residents with foreign income or gains: income arising abroad: Branch profits - arm's length principle, HMRC International Manual.

Exit Tax Rules

As Ireland currently has a worldwide tax system, the exit tax rules contained in Section 627 TCA 1997 do not apply to foreign branches. However, ATAD envisages that exit tax should apply in circumstances where a taxpayer transfers assets from its head office to a PE in another Member State or in a third country insofar as the Member State of the head office no longer has the right to tax the transferred assets due to the transfer. Therefore, in adopting a foreign branch exemption, it would be necessary to amend the exit tax provisions contained in Section 627 TCA 1997 to ensure they are fully aligned with the ATAD provisions.

As set out in our response to the Public Consultation on a Territorial System of Taxation,[10] the transfer of assets by a head office to a foreign branch could result in a charge to exit tax arising in circumstances where the underlying capital gain has not been realised by the branch.

Providing the option to taxpayers to elect out of the exemption on a branch-by-branch basis would be important for companies that would not be in a position to pay an exit tax liability. As branches that do not avail of the foreign branch exemption would continue to be taxable in Ireland, the exit tax charge should not apply on the transfer of assets by head office to these branches.

In adopting a foreign branch exemption, it would be essential that chargeable gains arising to the foreign branch in respect of assets that are used for the purposes of the trade or business of the branch would be within scope of the exemption.

Policymakers could consider adopting the following approach to the legislation:

- The assets that are within the scope of the foreign branch exemption could be restricted such that they do not include any assets that remain chargeable to Irish tax in the hands of non-residents under Section 29 TCA 1997. A similar approach has been taken in the UK foreign branch exemption.

- Section 627(2) TCA 1997 would need to be amended to comply with the requirements of ATAD. This could be achieved by inserting a new paragraph (d) into Section 627(2) to impose an exit tax charge where a company transfers assets from its head office in Ireland to a PE of that company in another Member State or in a third country. It would be necessary to confirm that this new paragraph (d) would apply only in cases where the foreign branch exemption applies.

- Any exit tax charge should continue to be subject to the provisions of Section 627(3) TCA which provides for an exclusion from an exit tax charge where Ireland retains taxing rights on a subsequent disposal of assets.

[10] Consultation on a Territorial System of Taxation, Department of Finance, December 2021, at page 7.

In our view, availing of the foreign branch exemption should not in itself be considered an event which comes within the scope of Section 627 TCA 1997 as it would not involve a transfer either of assets or of place of residence.

We understand that on the introduction of the UK foreign branch exemption, a policy decision was taken that the making of the election would not be considered an exit event in its own right. Consequently, branch assets which had built in gains at the time of making the election would be exempt on future disposal by the branch if those assets were always used by the branch.

Other provisions in the Irish tax code

The Institute's Pre-Finance Bill Submission in May summarised some further suggested legislative amendments to the TCA 1997 relating to the introduction of a foreign branch exemption. For ease of reference, we have included these suggested legislative amendments at Appendix II.

Q61. 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?

Previously, the policy rationale for not adopting a territorial tax system was that Ireland did not have CFC legislation to prevent the artificial diversion of profits to other jurisdictions. However, ATAD compliant CFC rules were introduced into Irish law by Finance Act 2018. In addition, the introduction of extended transfer pricing rules, the ATAD ILR and anti-hybrid rules further protect Ireland's domestic tax base from the artificial diversion of profits and base erosion.

For multinational groups in scope of the Pillar Two GloBE Rules, the profits of a foreign branch will be captured by the GloBE Rules and subject to the global minimum effective tax rate of 15% at local branch level. This means that that the profits of a foreign branch are effectively exempt from tax in the Irish head office. Consequently, the adoption of an exemption in respect of foreign branch profits is in line with Pillar Two.

Pillar Two reduces Ireland's scope to compete for FDI based on its corporation tax rate. As a result, it is now imperative for policymakers to consider other ways to improve the Irish tax system in order to safeguard Ireland's future competitiveness. Adopting a foreign branch exemption alongside a participation exemption into the Irish corporation tax code would significantly reduce the administrative burden for Irish companies with foreign branches. It would also copper fasten Ireland's position as a competitive and attractive location for business investment.

6. Appendix I

Participation Exemption for Foreign Dividends

If a participation exemption for foreign dividends is to achieve the objective of ensuring Ireland remains an attractive location for FDI, it would be critical for the regime to be easily understood to provide certainty to investors.

One approach to legislating for a participation exemption for dividends could be to facilitate Section 129 treatment for certain dividends/ distributions from shares in foreign resident companies.

If such an approach were adopted, consideration would need to be given to amending certain other provisions of the TCA 1997 (in addition to those outlined in the body of this submission). We have summarised these suggested legislative amendments in the table below.

Summary of the provisions of the TCA 1997 which may need to be amended if a participation exemption is adopted		
Provision	**Purpose**	**Potential Amendment**
Section 110	Section 110 deals with the taxation of securitisation and other structured finance transactions.	Confirmation that the exemption of foreign dividends, if introduced on an optional basis, will be accessible to Section 110 entities on the same optional basis as other Irish resident companies.
Section 129A	Section 129A disapplies section 129 treatment to certain dividends of formerly non-Irish resident companies which became Irish resident.	With the possible exception of companies resident in territories on the EU non-cooperative list, the rationale for Section 129A post the introduction of a participation exemption for dividends would need to be reviewed.
Section 138	Section 138 TCA 1997 is an anti-avoidance measure that aims to remove certain tax advantages attaching to 'artificial' preference share arrangements.	If policymakers wish to exclude certain distributions (e.g. fixed rate distributions on 'debt-like' shares) from the participation exemption, we believe this could be achieved with minimal amendments to Section 138. Given the scope of Section 138 can often be ambiguous, policymakers may wish to take the opportunity to refine Section 138 to give clarity regarding the type of distributions (both domestic and foreign) for which Section 129 treatment is to be disapplied.

Section 697A	Part 24A TCA 1997 provides an alternative method (called "tonnage tax") for calculating the shipping related profits of a company for corporation tax purposes. The definition of 'relevant shipping income' in Section 697A includes dividends from overseas companies.	The definition of 'relevant shipping income' may need to be reviewed if a participation exemption via Section 129 is implemented.
Section 816	Section 816 charges foreign scrip issues to tax under Schedule D Case III.	If a participation exemption via Section 129 is implemented, it would be expected that foreign scrip issues would fall outside the charge and therefore, an amendment to Section 816 may be required. In cases where an election not to apply a participation exemption is made, then it is expected that Section 816 would continue to apply as normal for companies to any scrip issues in such cases.
Section 831	Section 831 transposes Council Directive No. 90/435/EEC concerning the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. The Directive seeks to relieve double taxation in the case of cross-border dividend flows within the EU from a subsidiary to its parent company (generally referred to as the Parent/ Subsidiaries Directive).	Consideration would need to be given to whether it is necessary to amend Section 831 to reflect the existence of a participation exemption in Irish legislation. The Directive provides for both an exemption and credit relief approach to its implementation. Therefore, if optionality exists regarding the application of the participation exemption for dividends, Section 831 could be amended to reflect that effect could be given to the Directive via the exemption or the credit regime, as relevant. Exemption via Section 831 might apply instead of via the Section 129 type approach in relation to income distributions from EU/ EEA resident entities. Alternatively, policymakers could take the view that Section 831 in itself does not require amendment and that implementing the participation exemption via Section 129 gives effect to the Directive.
Schedule 24	Schedule 24 contains the rules for computing a foreign tax credit available on foreign source income where there is a double taxation	It may be necessary to amend the credit relief measures within Schedule 24 to confirm that a credit would not apply to foreign taxes payable in respect of an

	treaty in force. It also includes unilateral relief provisions which apply where there is no double taxation treaty.	exempt dividend. The provisions of Schedule 24 will remain applicable to dividends in respect of which an election out of the dividend exemption regime is made.

7. Appendix II

Foreign Branch Exemption

In our view, Ireland should adopt a foreign branch exemption which applies automatically, with taxpayers given the option to elect out of the exemption on a branch-by-branch basis. Where an election is made to opt out of the exemption, the branch should remain taxable under the current system.

Where companies avail of the branch exemption, the profits (including capital gains attributable to the branch) would be attributed to a relevant PE under the AOA and disregarded for Irish corporation tax purposes.

If such an approach is adopted, we anticipate that consideration would need to be given to amend certain provisions of the TCA 1997 (in addition to those outlined in the body if this submission). We have summarised these suggested legislative amendments in the table below.

Summary of the provisions of the TCA 1997 which may need to be amended if a branch exemption is adopted		
Provision	**Purpose**	**Potential Amendment**
Section 4	Section 4(1) defines a “branch or agency” for the purposes of the Corporation Tax Acts.	Consideration may need to be given to including a definition of ‘permanent establishment’ within Section 4 TCA 1997. The definition could then be used to assist in defining what is considered to be a qualifying PE for the purposes of the foreign branch exemption. An alternative approach could be for the definition of a PE to be included as part of a standalone Part of the TCA introducing the regime. Regardless of which approach is taken, we would anticipate that a company would have a PE in a territory only if it has a fixed place of business there through which the company carries on its business, or an agent, acting on behalf of the company, has and habitually exercises there authority to do business on behalf of the company (i.e., a dependent agent).
Section 5	Section 5(1) defines a “branch or agency” for the purposes of the Capital Gains Tax Acts.	Similar to Section 4 above, it may be necessary to define ‘permanent establishment’ for the purpose of the Capital Gains Tax Act.

Section 25A	This section provides for the application of the AOA mechanism for the attribution of income to a branch or agency of non-resident companies carrying on a trade in the State through such a branch or agency. The AOA seeks to attribute to a branch (or agency), the profits that it would have earned at arm's length if it was a legally distinct and separate enterprise performing the same or similar functions under the same or similar conditions. Therefore, it incorporates separate entity and arm's length principles. The aim of the AOA is to apply the transfer pricing principles that apply to inter-company transactions to intra-company 'dealings'.	Section 25A could be amended to allow a similar approach in respect of foreign branches to be taken as that which is taken for Irish branches. This would be consistent with the approach taken in the UK. From a capital gains perspective, as a starting point, where a double tax treaty is in force, it is expected that the attribution of profits and gains for these purposes is done in accordance with the relevant tax treaty. We would anticipate gains attributed to a PE based on the AOA approach would fall within the scope of the exemption, notwithstanding that a double tax treaty may not necessarily allocate taxing rights over assets solely by reference to attribution to a PE. For instance, gains on immovable assets may not be attributed under a tax treaty to a branch but such property may nonetheless be used by the branch and should therefore be eligible for the branch exemption.
Capital Allowances		An amendment in relation to capital allowances would be necessary on the introduction of a foreign branch exemption. For example, if the exemption applies, a deemed disposal event for capital allowances purposes may need to arise to ensure it does not give rise to either a balancing allowance or balancing charge (i.e., it could be a deemed disposal at tax written down value). Where a company has availed of the branch exemption, any trade carried on through an exempt permanent establishment could be treated as a separate, non-chargeable activity for capital allowance purposes, so that it may not claim capital allowances in respect of an asset which is being used for a PE activity. This would mean that the existing capital allowances provisions should operate as normal thereafter in respect of the assets which are in use for the purposes of the part of the trade that is within the charge

		and the part of the trade which is not within the charge (i.e. the branch).
Losses		Once a company avails of a foreign branch exemption, losses attributable to a PE would not generally be expected to be relievable. Transitional rules may be required to allow for circumstances where a branch has made losses for a number of years prior to availing of the branch exemption where these losses were set off against other profits. It may be appropriate to restrict the exemption for future branch profits in such circumstances. In the UK, the loss transitional rules only apply to losses accruing prior to entry into the branch exemption regime. Losses which are incurred after entry into the exemption regime are not relievable. In our view, a similar approach to that adopted in the UK could be considered in Ireland.
Section 617 & Section 623	Section 617 provides that the disposal of a chargeable asset (other than trading stock) within a group of companies is treated as having been for a consideration of such an amount that neither a gain nor a loss accrues to the company making the disposal. Section 623 sets out the charge to tax on one or more group members leaving a group of companies in respect of assets the company leaving the group acquired from the other group companies within a period of 10 years immediately preceding the time the company leaves the group.	On the transfer by a company of a chargeable asset attributable to an exempt foreign branch to another Irish resident group company, the usual no gain/no loss provisions in Section 617 may need to be amended to ensure the consideration is treated as market value. In line with the policy rationale underlying the branch exemption, the amendment would need to ensure that the element of the gain accruing during the period of ownership by the exempt foreign branch is not taxed on the eventual disposal of the asset. It would be expected that assets transferred intra-group to the exempt foreign branch of a group company for use in its branch trade which were used otherwise than for the business of an exempt PE would be eligible for group relief under Section 617. However, on the ultimate disposal of any such assets by an exempt foreign branch, it

		would likely be necessary to apportion part of the gain to the branch, as exempt and part as being taxable. A similar approach can be taken to the de-grouping provisions in Section 623.
Section 626B	Section 626B provides for an exemption from tax in the case of certain capital gains from the disposal of holdings in subsidiaries.	Once a branch exemption is introduced, it would make sense to amend Section 626B so that the treatment of gains on the disposal of foreign trading subsidiaries are on a par with the treatment of gains in respect of foreign PEs. This could be achieved by the removal of the requirement for investee companies to be resident in a treaty country. Policymakers may wish to retain some restrictions that the exemption would not be available in respect of investee companies resident in territories on the EU non-cooperative list at the time of the disposal. Such a change would bring the Irish regime in line with other countries, such as the UK.
Patent Rights		For consistency, policymakers may wish to consider extending the foreign branch exemption to capital sums received for the sale of patent rights where those patent rights are attributed to a branch for use in its branch business.
R&D Tax Credit		We would not anticipate that R&D activities carried on by an exempt foreign branch would be eligible for the R&D Tax Credit on the basis that the costs are not deductible in computing profits within the charge to corporation tax. If this is the case, consequential technical amendments to the R&D Tax Credit may be necessary.
Schedule 24	Schedule 24 sets out the rules concerning relief from double taxation on foreign earnings.	For the avoidance of doubt, it may be necessary to amend credit relief measures within Schedule 24 to confirm that credit would not apply to foreign taxes payable in respect of an exempt foreign branch.