UPDATE

Irish Participation Exemption for Foreign Dividends: Consultation on Proposed Introduction in Finance Act 2024

What you Need to Know

- The Irish government has published a consultation on the potential introduction of a participated exemption for qualifying foreign dividends from Irish corporation tax from 1 January 2025
- The consultation outlines the possible key features of the participation exemption
- We believe the planned participation exemption will benefit international business and investment funds
- Maples Group will be making a submission to the public consultation closing 8 May 2024, so please contact us with your comments

Background

On 5 April 2024, the Irish Minister for Finance published a Feedback Statement on the introduction of a participation exemption for qualifying foreign dividends to the Irish corporation tax system.

Currently, Ireland operates a "tax and credit" system for foreign dividends, and a participation exemption would exempt qualifying foreign dividend income from Irish corporation tax in the hands of the recipient.

The Minister stated that *"the introduction of a participation exemption for foreign dividends reflects Ireland's commitment to ensuring that our corporation tax code is competitive and attractive to business investment and aligns with international best practice"*.

The purpose of this consultation is to further progress work on the structure of the participation exemption in line with the 2023 Irish Government commitment to introduce such an exemption in the Finance Act 2024 to come into effect from 1 January 2025.

Strawman Proposal

The feedback statement includes a strawman proposal ("Strawman Proposal") which sets out a potential (but not definitive) approach to the participation exemption.

The key points are as follows:

- The regime would apply to Irish tax resident companies and certain non-resident companies carrying on a trade in Ireland through a branch or agency.
- Companies must control and own at least 5% of the foreign subsidiary making the dividend.
- The foreign subsidiary must be tax resident in the EU/EEA country or a country with which Ireland has a tax treaty (this covers more then 75 countries).
- Dividends from any income, not just trading income, will qualify for the exemption.

- The participation exemption would be an optional "opt in" regime for three-year periods, so companies could remain within the existing Irish worldwide corporate "tax and credit" system.

- Continuation separately of the existing participation exemption for certain portfolio investments.

Our View of the Strawman Proposal

We believe that this participation exemption will benefit international businesses doing business in Ireland where Irish companies hold foreign subsidiaries, in a similar way to the introduction of a participation exemption for capital gains some 20 years ago for the sale of shares in qualifying subsidiaries.

The OECD Global Minimum Tax rules are now in effect in Ireland since 31 December 2023 for large multinational groups. In cases where a large multinational group is headquartered in the country that has not yet introduced the Global Minimum Tax rules (e.g. the US, China and India), it has become important that they have an intermediate holding company in a Global Minimum Tax implementing jurisdiction in their structure to manage the Global Minimum Tax obligations centrally for that group. We think that Ireland will become a jurisdiction for consideration in that regard with the introduction of the participation exemption.

Finally, we also think that the new regime will increase the options available for locating private equity funds in Ireland. For example, the new Irish investment limited partnership fund could hold an Irish investment holding company that qualifies for this new participation exemption.

Next Steps

We believe there are very positive features in the Strawman Proposal and sensible proposed anti-avoidance measures.

We also feel there are measures that could be considered further – for example, the location of the foreign subsidiary. While the current proposal covers a wide number of eligible territories, we think there would be good policy and technical grounds to say that the subsidiary may be located in any country if the profits dividended have been subject to tax (similar to the new Irish "outbound payments measures") or otherwise if the foreign subsidiary is located in a country which has implemented the Global Minimum Tax / Pillar Two rules.

The consultation period on the statement will run to 8 May 2024 and a second feedback statement is to be published in mid-2024 with further stakeholder consultation envisaged.

We will be working with clients and other stakeholders in preparing our submission to the Department of Finance and we would welcome comments for the submission.

Further Information

For further information, please liaise with your usual Maples Group contact or any of the persons listed below.

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