Irish Tax Institute

May 2024

Participation Exemption for Foreign Dividends

Response to the Feedback Statement

Table of Contents

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

The Institute welcomes the publication of the Feedback Statement on a Participation Exemption for Foreign Dividends and the opportunity to further engage with the Department of Finance in relation to the design of a participation exemption.

The Minister for Finance, Michael McGrath T.D., confirmed that the introduction of a participation exemption for foreign dividends is intended to "*give confidence and foresight to key stakeholders, maintaining Ireland's reputation as a business-friendly destination and encouraging companies to establish and expand their operations in Ireland*."[1] To achieve this objective, we firmly believe that the rules governing the participation exemption for foreign dividends should be clear and simple with limited exceptions and have a broad territorial scope.

Multinational groups are more likely to choose Ireland as their headquarter location (regional or global) if such an approach is adopted by policymakers. This will result in key decision makers and significant business functions, such as treasury and IP management of multinational groups being based in the State.

The purpose of the Feedback Statement is to further progress the work on designing the key building blocks of the participation exemption for foreign dividends in Irish law. The Feedback Statement sets out a Strawman Proposal for the key structural elements of the participation exemption for foreign dividends. It is noted in the Feedback Statement that once policy decisions have been made on these elements, work can begin on the finer details required to fully realise a complete exemption system.

The Institute welcomes many of the elements of the Strawman Proposal. We have set out our observations and recommendations on each element of the Strawman Proposal in section 3 of this submission. However, there are a number of elements of the proposal which we believe should be reconsidered. These are:

Geographic Scope

- We firmly believe that the proposal to restrict the geographic scope of the participation exemption to dividends received from companies resident in the EU/EEA or jurisdictions with which Ireland has a double taxation agreement (DTA) is too restrictive. Such an approach would mean that dividends received from companies resident in some of Ireland's key trading partners, such as Brazil, Argentina, Indonesia, would not qualify for the exemption.

- Finance (No.2) Act 2023 transposed the EU Minimum Tax Directive into Irish law giving effect to the Pillar Two Global Anti-Base Erosion Rules (GloBE) Rules. This means the profits of global subsidiaries of Irish companies in scope of the Pillar Two Rules will be subject to a 15% minimum effective tax rate, in either the local

[1] Department of Finance press release, 5 April 2024. https://www.gov.ie/en/press-release/a7303-minister-mcgrath-publishes-feedback-statement-on-participation-exemption-in-irish-corporate-tax-system-for-foreign-dividends/

jurisdiction or via another group company. Therefore, it would be reasonable for distributions received by an Irish company from subsidiaries in a group which is in scope of the Pillar Two Rules to qualify for the participation exemption irrespective of where the subsidiary is resident for tax purposes.

- We strongly urge for the participation exemption for foreign dividends to apply on a global basis with appropriate safeguards included where necessary, such as excluding dividends received from jurisdictions 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).

- To allay any concerns policymakers may have regarding the potential for double non-taxation, for companies which are not in scope of Pillar Two, policymakers could consider the application of a subject to tax test, applied on a jurisdictional basis, for dividends received from non-EU/EEA or non-DTA jurisdictions. However, to ensure that the participation exemption is as straightforward as possible, it would be critical that any subject to tax test does not apply to dividends received from companies resident in the EU/EEA or jurisdictions with which Ireland has a DTA.

Duration of the Election

- In our view, the participation exemption should apply automatically where the necessary conditions are satisfied similar to section 626B TCA 1997 but with an option to elect out for an accounting period. As it is likely that most taxpayers will choose to apply the participation exemption, such an approach would mean the number of taxpayers making an election would be significantly lower, thus reducing the administrative burden.

- There does not appear to be any clear policy rationale for the proposal that the election would apply for a minimum period of three years. We believe the taxpayer should have the option to elect out of the participation exemption for each accounting period and the provisions of section 959V TCA 1997, which permit a taxpayer to amend their return within certain time limits, should apply in the usual manner so that it is possible for a taxpayer to amend the election, if necessary.

Anti-Avoidance Provision

- Ireland's corporation tax code has extensive base erosion protections, including the general anti-avoidance rule (GAAR), EU Anti-Tax Avoidance Directive[2] (ATAD) compliant controlled foreign company (CFC) rules, recently extended transfer pricing rules, Interest Limitation Rules (ILR) and anti-hybrid rules. Given these protections, we believe that including the proposed general anti-avoidance provision within the specific legislation governing the participation exemption is unnecessary and would introduce complexity and uncertainty into the regime. If there is a particular scenario

[2] 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.

which policymakers wish to address, a targeted anti-avoidance measure should be considered instead.

Effective Date

- It is our view that the participation exemption should apply in respect of any dividends received on or after 1 January 2025. Restricting the availability of the exemption to dividends received in accounting periods commencing on or after 1 January 2025 could result in companies whose accounting periods are not aligned with the calendar year delaying the repatriation of funds to Ireland. Where it is not commercially possible to delay the repatriation of funds, such companies would be unfairly penalised on account of their accounting year end.

As work on drafting the legislation progresses, we firmly believe an iterative process of consulting with stakeholders will help to minimise complexity involved in the participation exemption to the greatest extent possible and ensure the exemption can achieve its objective of providing much-needed administrative simplification and greater certainty for businesses.[3] In this regard, we welcome confirmation at the recent meeting of the Business Taxes Stakeholder Forum that a dedicated subgroup will be established to facilitate technical discussions with stakeholders.

We note the Department of Finance's confirmation that a second Feedback Statement will be published in mid-2024 which will contain draft approaches to the legislation required to introduce a participation exemption for foreign dividends in Finance Bill 2024. It would be important that sufficient time is given to stakeholders to fully consider the impact of the proposed legislative provisions and therefore, we urge that the early summer timeframe for the release of the second Feedback Statement is adhered to.

The Feedback Statement notes that the policy consideration of the merits of a foreign branch exemption are not yet as fully developed and further engagement with stakeholders on this matter is expected in 2024. 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 the head office and branches resulting in tax uncertainty and complexity. In our view, if Ireland is to remain an attractive location for foreign direct investment, a foreign branch exemption should be introduced in Finance Bill 2024 in tandem with the participation exemption for foreign dividends.

The Institute looks forward to further engagement on the introduction of a participation exemption as the consultation process continues. Please contact Anne Gunnell of this office at agunnell@taxinstitute.ie if you require any further information in relation to this submission.

[3] Roadmap for the Introduction of a Participation Exemption to Irish Corporation Tax including technical consultation, Department of Finance, September 2023.

3. Strawman Proposal

3.1. Scope of Relief

Relief will be provided in the form of an exemption from corporation tax. Where qualifying criteria are satisfied, 100% of the dividend will be in scope. Entities in scope – the regime will apply to companies within the charge to Irish corporation tax. This includes Irish resident companies and certain non-resident companies carrying on a trade in the State through a branch or agency.

We welcome the proposal that where qualifying criteria are satisfied, 100% of the foreign dividend will be in scope of the participation exemption. The proposed approach regarding the entities in scope of the exemption appears reasonable.

Qualification for the regime – companies will have flexibility to opt in to the participation exemption regime, with an election to apply for a minimum period of 3 years. The election would apply in respect of all potentially in-scope foreign dividends received by the company during the period in which it is elected into the exemption.

We welcome the proposal that companies will have flexibility in relation to availing of the participation exemption for foreign dividends. However, we firmly believe the participation exemption should apply automatically where the conditions for exemption are satisfied, similar to the position which exists for capital gains in section 626B TCA 1997 but with an option to elect out.

It is likely that most taxpayers will choose to apply the participation exemption given the existing administrative complexity associated with claiming double taxation relief under Schedule 24. Therefore, if the participation exemption applies automatically, the number of taxpayers making an election would be significantly lower, thus reducing the administrative burden for Revenue. Applying the participation exemption automatically would also reduce the compliance risk for taxpayers and their advisers in most cases, as an inadvertent failure to elect into the participation exemption could have very significant consequences for a taxpayer.

There does not appear to be any clear policy rationale for the proposal that the election would apply for a minimum period of three years. We believe that the taxpayer should have the option to elect out of the participation exemption for an accounting period.

In addition, it would seem disproportionate that if a taxpayer inadvertently failed to make an election that there would be no flexibility for the taxpayer to amend their return within the normal time limits. In our view, the provisions of section 959V TCA 1997, which permit a taxpayer to amend their return within certain time limits, should apply in the usual manner so that it is possible for a taxpayer to amend the election, if necessary.

Geographic scope – dividends received from companies that are resident for tax purposes in the EU/EEA or jurisdictions with which Ireland has a double taxation agreement will qualify.

The Feedback Statement acknowledges that Ireland is currently a significant outlier, being the only EU Member State and one of a very small number of OECD countries that does not operate some form of participation exemption for foreign dividends. The introduction of a participation exemption for foreign dividends is intended to reflect Ireland's commitment to ensuring that the corporation tax code is competitive and attractive to business investment and aligns with international best practice.[4]

We firmly believe that the proposal to confine the scope of the participation exemption to dividends received from companies resident in the EU/EEA or jurisdictions with which Ireland has a DTA is too restrictive. Indeed, limiting the exemption in this narrow manner would mean that Ireland would continue to be an outlier.

After all, many EU Member States and other countries that Ireland competes with for foreign direct investment, which operate a full participation exemption for foreign dividends, do not limit qualification for their exemption by geography. These include Austria, Cyprus, Hong Kong, Hungary, Luxembourg, the Netherlands, Portugal, Singapore, Switzerland and the UK.

Similarly, EU Member States with a 95% participation exemption such as France, Germany Italy, Slovenia, and Spain do not restrict qualification for their exemption by geography, albeit dividends received from 'blacklist' jurisdictions are excluded by some states.

Critically, the proposed approach to restrict the exemption to EU/EEA and DTA countries would mean that dividends received from companies resident in some of Ireland's key trading partners and leading G20 countries, such as Brazil, Argentina, Indonesia, would not qualify for exemption because Ireland has not agreed a DTA with them nor is there a likely prospect of a DTA being concluded in the future. In addition to the aforementioned countries, Ireland has many other significant trading partners in South America, Asia and Africa for which there is no DTA in place.

It would appear from the Feedback Statement that the policy rationale for limiting the exemption to dividends received from EU/EEA or DTA jurisdictions only, is to protect against the use of the regime for double non-taxation. However, Ireland has robust measures in place to protect against base erosion including CFC rules, extended transfer pricing rules, ILR and anti-hybrid rules. Furthermore, Finance (No.2) Act 2023 introduced new defensive measures aimed at preventing double

[4] Department of Finance press release, 5 April 2024. https://www.gov.ie/en/press-release/a7303-minister-mcgrath-publishes-feedback-statement-on-participation-exemption-in-irish-corporate-tax-system-for-foreign-dividends/

non-taxation, which apply to outbound payments of distributions towards jurisdictions on the EU non-cooperative list, no-tax, and zero-tax jurisdictions. These outbound payments measures further protect against any potential scope for the artificial diversion of profits where Ireland is an intermediate holding company location.

The EU Minimum Tax Directive giving effect to the Pillar Two Global Anti-Base Erosion Rules (GloBE) Rules was also transposed into Irish law in last year's Finance Act. Consequently, the profits of global subsidiaries of Irish companies in scope of the Pillar Two Rules will be subject to a 15% minimum effective tax rate, in either the local jurisdiction or via another group company. Therefore, it would be reasonable for distributions received by an Irish company from subsidiaries in a group which is in scope of the Pillar Two Rules to qualify for the participation exemption irrespective of where the subsidiary is resident for tax purposes.

We strongly urge that the participation exemption would apply on a global basis with appropriate safeguards implemented where necessary. For example, we fully recognise that it would not be appropriate for the participation exemption to apply to dividends/ distributions received from jurisdictions on the EU non-cooperative list.

To further allay any concerns regarding the potential for double non-taxation for companies which are not in scope of Pillar Two, policymakers could consider the application of a subject to tax test for dividends received from non-EU/EEA or non-DTA jurisdictions. It would be preferable for any subject to test to be applied on a jurisdictional basis, i.e., the participation exemption would be available if the payor of the dividend is located in a jurisdiction that imposes a corporate tax at a threshold rate. In addition, if a subject to tax test is considered necessary, it should test the nominal rate, rather than the effective rate. To do otherwise, would import much of the complexity of a credit system.

However, to ensure that the participation exemption operates as straightforward as possible, it is critical that any subject to tax test does not apply to dividends received from companies resident in the EU/EEA or jurisdictions with which Ireland has a DTA. Notably, a similar approach has been adopted to the participation exemption in Spain. Under the Spanish regime, if the foreign subsidiary resides in a DTA country and the DTA contains an exchange of information clause, the subject to tax requirement is considered to have been met.

If policymakers continue to believe the participation exemption should apply to a definitive category of jurisdictions, then for companies which are not in scope of Pillar Two, consideration could be given to restricting the exemption to jurisdictions to which section 21B TCA 1997 applies. This would include EU Member States, countries with which Ireland has a DTA in force or with which Ireland has signed a DTA which has yet to come into force, and countries which have ratified the Joint Council of Europe / OECD Convention on Mutual Assistance in Tax Matters.

The Feedback Statement refers to "*dividends received from companies*" being in scope of the participation exemption. It would be helpful to clarify that dividends received by an Irish company via a tax transparent entity, such as a partnership, would also qualify for the participation exemption.

Profits in scope – qualification will not be restricted to dividends derived from trading profits. Where the exemption is availed of, a tax credit will not be available in respect of foreign tax paid on the foreign dividend.

We welcome the proposal that qualification for the participation exemption will not be restricted to dividends derived from trading profits. We note that where the exemption is availed of a tax credit will not be available in respect of foreign tax paid on the foreign dividend.

3.2. Dividends/Distributions in Scope

The exemption will apply to foreign dividends and other types of distributions that represent income from shares or from other rights, not being debt claims, to participate in a company's profits. This includes income from other corporate rights which is subjected to the same tax treatment as income from shares by the laws of the State of which the company making the distribution is resident.

In broad terms, relief will apply to distributions in the nature of income, such that "capital distributions" within the meaning of section 583 TCA 1997 would not qualify (e.g. a distribution in the course of dissolving or winding up a company).

It is important that the definition of the type of distribution to which the participation exemption will apply is widely drafted. In our view, the participation exemption should apply to all distributions out of income and capital to the extent that they are categorised as income of the recipient for Irish tax purposes.

We understand capital distributions within the meaning of section 583 TCA 1997 which are subject to capital gains tax and therefore, may qualify for relief under section 626B TCA 1997 if the recipient company satisfies the conditions set out in that section, would not qualify for the participation exemption for foreign dividends.

Interestingly, the UK participation exemption did not include capital distributions when first introduced in 2009. However, the UK extended their participation exemption a year later to include capital distributions, with retrospective effect to 2009.

Qualification for the exemption will be established by reference to a minimum level of control over the ordinary shares of the foreign subsidiary. Where that qualification has been established, the exemption may also apply in respect of dividends received from that company on other types of shares, such as preference shares. This may require anti-avoidance provisions against artificial arrangements, similar to section 138 TCA 1997 for example.

We note that where qualification for the participation exemption has been established, the exemption will not be restricted to dividends received from that company in respect of ordinary shares. It will also apply to dividends received in respect of other types of shares, such as preference shares. The Feedback Statement observes that this may require anti-avoidance provisions against artificial arrangements, such as those contained in section 138 TCA 1997. We do not understand the policy rationale for the introduction of any additional anti-avoidance measures in this regard.

Given Ireland already has robust anti-avoidance provisions including the GAAR in section 811C TCA 1997 and the ATAD anti-hybrid mismatch provisions, it is unclear that additional anti-avoidance provisions would be necessary. However, if it is the preference of policymakers to include an anti-avoidance provision to further protect against any potential for artificial arrangements, it would be appropriate in our view to mirror the provisions in section 831(7) TCA 1997 as this would ensure that the anti-avoidance provision is in line with the requirements of the EU Parent Subsidiary Directive.[5]

Companies must control at least 5% of the ordinary share capital for an uninterrupted period of twelve months up to and including the date of the dividend. Dividends in respect of newly acquired participations may also qualify provided the shares are subsequently held for a period of up to twelve months after the date of the dividend (i.e. a minimum overall holding period of twelve months).

The Feedback Statement confirms that it is intended that the participation exemption will apply to foreign dividends and other types of distributions that represent income from shares and other corporate rights. It would be helpful to understand how it is intended to apply the 5% shareholding control test in circumstances where the exemption applies to a distribution from a corporate right other than shares. For example, how will the test apply to tax transparent entities such as partnerships and companies that do not have share capital, e.g., a Delaware limited liability company with membership rights?

We welcome the proposal that dividends in respect of newly acquired participations may qualify for the exemption provided the shares are subsequently held for a period of up to 12 months after the date of the dividend.

[5] 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 5% control test will be established by reference to up to four criteria; ownership of ordinary share capital (direct or indirect); holding of voting rights; entitlement to profits available for distribution; and entitlement to assets on a winding-up of the company.

It is proposed that the 5% control test for the purpose of the participation exemption will be established by reference to up to four criteria; ownership of ordinary share capital (direct or indirect); holding of voting rights; entitlement to profits available for distribution; and entitlement to assets on a winding-up of the company. This proposed approach contrasts with the position for the purposes of the EU Parent Subsidiary Directive, where a parent company is defined by reference to ownership of 5% of the share capital of another company. In some cases, where there is a DTA in place, this ownership test may be replaced by a voting right requirement.[6] However, there is no additional winding up or distribution right tests.

In particular, we do not believe it is appropriate for the 5% control test to be established by reference to the holding of voting rights. Consideration of voting rights would introduce undue complexity into the participation exemption, particularly for larger corporate investors.

Notably, such an approach would also be a divergence from the position under section 626B TCA 1997 which does not require consideration of voting rights. Defining the 5% control test by reference to the holding of voting rights for the purpose of the participation exemption for foreign dividends could result in peculiar scenarios whereby a company may not qualify for the exemption in respect of dividends from the subsidiary, but it would qualify for the exemption for gains under section 626B in respect of the same subsidiary.

In our view, having additional requirements over and above what is acceptable for the EU Parent Subsidiary Directive risks over-complicating the participation exemption regime, especially in the context of the new outbound payment defensive measures. At a minimum, it would be preferable if the 5% control test for the purpose of the participation exemption for foreign dividends could be established by reference to three criteria, i.e., direct or indirect ownership of ordinary share capital, entitlement to profits available for distribution and entitlement to assets on a winding-up of the company, similar to section 626B.

The availability of a participation exemption as set out above is not intended to impact existing provisions relating to portfolio investments in section 21B TCA 1997.

We welcome the proposal that the availability of the participation exemption is not intended to impact the existing provisions relating to portfolio investments in section 21B TCA 1997.

[6] Section 831(1)(a) TCA 1997

3.3. Anti-Avoidance

The dividend must not be deductible for tax purposes in any other jurisdiction. Dividends received from a jurisdiction on the EU list of non-cooperative jurisdictions for tax purposes, as reflected in the TCA 1997 on the date of the dividend, will not qualify for relief.

In principle, the proposal that the dividend must not be deductible for tax purposes in any other jurisdiction is reasonable and aligns with Ireland's existing anti-hybrid mismatch rules. However, when drafting the legislative provisions, it is important that care is taken to ensure this restriction does not give rise to any unintended consequences. For example, the deductibility of the dividend for certain purposes, such as by reducing an amount that would otherwise be subject to a surcharge similar to the close company surcharge, should not result in a disapplication of the participation exemption.

Similarly, we consider the intention to exclude dividends received from a jurisdiction on the EU list of non-cooperative jurisdictions, as reflected in the TCA 1997, on the date of the dividend, makes sense. However, such a restriction should not apply where the group is within scope of the Pillar Two Rules, as in such circumstances the underlying profits from which the dividend is paid will be subject to the 15% minimum effective tax rate.

Notably, the French participation exemption for foreign dividends is not applicable to dividends paid from subsidiaries located in a 'blacklist' jurisdiction unless the parent company can demonstrate that the subsidiary's activities are real, and it does not seek to locate profits in the 'blacklist' jurisdiction.

Relief will apply only in respect of the payment of a dividend where it would be reasonable to consider that the payment is made for bona fide commercial purposes and does not form part of any arrangement or scheme of which the main purpose, or one of the main purposes, is the avoidance of tax.

Robust provisions already exist in Ireland's corporation tax code to protect Ireland's domestic tax base from the artificial diversion of profits and base erosion. On the introduction of ATAD, Ireland's existing GAAR in section 811C TCA 1997 was considered sufficiently robust so that it was not necessary to amend the existing provision. Therefore, it is preferable for reliance to be placed on the GAAR as the inclusion of a general anti-avoidance provision within individual sections in the tax code can make the tax code difficult to navigate and create uncertainty for taxpayers.

Furthermore, Finance (No.2) Act 2023 introduced new defensive measures aimed at the prevention of double non-taxation, which apply to outbound payments of distributions towards jurisdictions on the EU non-cooperative list, no-tax, and zero-tax jurisdictions. Where Ireland is an intermediate holding company location, these measures further protect against any potential scope for the artificial diversion of profits.

After all, the participation exemption is intended to be a simplification measure which reflects Ireland's continued efforts to promote a business environment characterised by certainty and clarity. However, we believe that the inclusion of the proposed anti-avoidance provision would introduce further complexity and uncertainty into the participation exemption regime.

Taking into account the protections that already exist in the Irish tax code, we firmly believe that the proposed anti-avoidance provision is unnecessary, and it would be preferable for reliance to be placed on the GAAR. Indeed, it is difficult to envisage the type of scenario the anti-avoidance provision is intended to capture, especially in the context of a dividend, given there are usually strict company law requirements that must be fulfilled before a dividend may be paid.

If it is the preference of policymakers to include a general anti-avoidance clause within the legislative provisions governing the participation exemption, we consider it would be appropriate to mirror the anti-avoidance provision in section 831(7) TCA 1997. This approach would also ensure that the provision is in line with the requirements of the EU Parent Subsidiary Directive. Alternatively, if there is a particular scenario which policymakers wish to tackle, the inclusion of a targeted anti-avoidance provision within the legislation governing the participation exemption may be appropriate.

3.4. Administration

Relief will be available in respect of dividends received in accounting periods commencing on or after 1 January 2025.

It is our firm view that the participation exemption should apply in respect of any dividends received on or after 1 January 2025. We consider that restricting the availability of the exemption to dividends received in accounting periods commencing on or after 1 January 2025 could result in companies whose accounting periods are not aligned with the calendar year delaying the repatriation of funds to Ireland. Where it is not commercially possible to delay the repatriation of funds, such companies would not be at a significant disadvantage. Allowing the participation exemption to apply in respect of dividends received on or after 1 January 2025 would ensure that companies whose accounting periods are not aligned with the calendar year are not unfairly impacted.

We do not believe that applying the participation exemption to dividends received on or after 1 January 2025 rather than to dividends received in accounting periods commencing on or after 1 January 2025 would result in any added complexity from an administration perspective. Given the criteria necessary to qualify for the participation exemption (e.g., geographic scope, 5% control, etc.), most multinational groups will likely have a pool of dividends which qualify for the participation exemption and a pool of dividends which do not qualify. Therefore, the legislation will require a mechanism to cater for non-qualifying dividends regardless of whether the exemption is restricted to dividends received in accounting periods commencing on or after 1 January 2025.

Notably, when other changes to the tax treatment of inbound dividends were made, they applied from 1 January for all taxpayers. For example, when section 21B TCA 1997 was introduced in Finance Act 2008, the rules applied retrospectively to dividends received by a company on or after 1 January 2007.

The election to avail of the participation exemption will be made via the Form CT1 corporation tax return and will apply for a minimum period of 3 years in respect of all qualifying dividends received by the company. An election cannot be revoked once made. Companies will be required to report foreign dividends subject to exemption as part of the CT1 return.

As set out above, we welcome the flexibility that a company may qualify for the participation exemption or continue to claim double taxation relief under Schedule 24. However, we believe the participation exemption for foreign dividends should apply automatically once the relevant conditions are met but with an option for the taxpayer to elect out from the regime for an accounting period, instead of the option to elect for the proposed minimum period of three years.

In addition, we consider that the taxpayer should have the flexibility to make or revoke an election via the Form CT1, should the need arise. The provisions of section 959V TCA 1997 which permit a taxpayer to amend their return within certain time limits, should apply in the usual manner so that it is possible for a taxpayer to amend the election if necessary.

The existing Schedule 24 provisions will continue to operate as normal for distributions not in scope of the exemption.

As the provisions of Schedule 24 TCA 1997 will continue to operate as normal for distributions not in scope of the participation exemption and also for distributions where a taxpayer elects not to apply the participation exemption, we would urge that Schedule 24 is simplified.

As previously highlighted by the Institute, Schedule 24 has been amended on a piecemeal basis over time since 1997 to reflect policy changes and European case law which has resulted in the operation of the relief for foreign credits becoming increasingly complex and administratively burdensome for taxpayers. A rewrite of Schedule 24 is necessary to make the provisions easier to read and more straightforward to administer in practice. For example, the rules regarding the pooling and carry forward of credits are exceptionally complex and differ depending on the category of income even though there does not appear to be any clear policy rationale for this differing treatment.

A company that elects into the participation exemption may have an amount of unrelieved foreign tax credit carrying forward at the time of the election. This credit would remain available for offset under Schedule 24 provisions against distributions not in scope of the exemption, or for use in future years if the company ceases to elect into the participation exemption regime.

We welcome the proposal that where a company which elects in to the participation exemption has unrelieved foreign tax credit carrying forward, such credit would remain available for offset under Schedule 24 against distributions not in scope of the exemption, or for use in future years if the company ceases to elect into the participation exemption.