MAPLES GROUP

Irish Participation Exemption for Foreign Dividends: A Step Closer

10 September 2024

What You Need to Know

- The Department of Finance in Ireland has published a second feedback statement on the introduction of a participation exemption for qualifying foreign dividends.
- The proposed participation exemption would simplify the Irish corporate tax regime and align Ireland with many EU and OECD member states.
- There is likely to be a brief period of further consultation. The intention is to enact the legislation with effect from 1 January 2025.

Background

On 27 August 2024, the Irish Minister for Finance published a second feedback statement (the "Statement") incorporating possible draft legislation on the introduction of a participation exemption for qualifying foreign dividends.

The Statement follows the initial feedback statement issued in April 2024 (for more information see Irish Participation Exemption for Foreign Dividends: Consultation on Proposed Introduction in Finance Act 2024). The Statement details the structure of the participation exemption which is to be introduced in Finance Bill 2024 and become operational on 1 January 2025.

Ireland currently operates a corporate tax regime taxing worldwide income with a 'tax and credit' system for foreign dividends. A participation exemption would exempt qualifying foreign dividend income from Irish corporation tax in the hands of the recipient. The proposed participation exemption will simplify the current system and align Ireland with many EU and OECD member states that have adopted similar territorial elements in their corporate tax codes.

Key Points

The Statement outlines approaches to key elements of the legislation. The regime will apply to Irish tax resident companies and certain non-resident companies carrying on a trade in Ireland through a branch or agency.

The exemption will apply to relevant distributions made by a relevant subsidiary on or after 1 January 2025. Its geographical scope is limited to subsidiaries resident in EU/EEA states and tax treaty partner jurisdictions (of which there are 74+ jurisdictions).

In order to qualify, a parent company must hold a relevant participation in the relevant subsidiary for an uninterrupted period of at least 12 months that includes the date on which the relevant distribution is made. A relevant participation is defined as holding at least 5% of the subsidiary's ordinary share capital, being entitled to at least 5% of the profits available for distribution and being entitled to at least 5% of the assets on a winding up.

A parent company is one that holds a relevant participation in the relevant subsidiary, either directly or indirectly, and is resident in Ireland or an EEA state.

A relevant distribution is a dividend paid or other distribution made out of profits in respect of a relevant subsidiary's share capital, excluding redeemable share capital. It does not include distributions that have been deducted for tax purposes in any territory outside of Ireland, distributions in a winding up, interest or other income from debt claims, interest equivalent amounts, or dividends paid by offshore funds.

A relevant subsidiary is a company subject to tax in an EU/EEA state or tax treaty partner jurisdiction and resident for tax purposes in that territory at the time of making the distribution.

The exemption will not apply to arrangements put in place primarily to obtain a tax advantage and that are not genuine (i.e. not put into place for valid commercial reasons reflecting economic reality). It will also necessitate consequential amendments to other provisions in Irish tax legislation.

The primary simplification is that qualifying foreign dividends will be exempt from Irish corporation tax. This eliminates the need for complex calculations to determine foreign tax credits for offset against Irish corporation tax, reducing administrative burdens for businesses. It also reduces the need for detailed record-keeping and complex tax filings related to foreign income.

Companies can claim the participation exemption on their annual corporation tax return, applicable to all qualifying dividends received in the relevant accounting period. This annual election process avoids the need for multi-year commitments or complex opt-in/opt-out procedures.

A Welcome Development

The proposed participation exemption represents a significant step towards simplifying and enhancing Ireland's corporate tax regime. By exempting qualifying foreign dividends from tax and providing clear guidelines and definitions, the initiative reduces administrative burdens and aligns Ireland's tax system with international best practice.

This will also enhance Ireland's attractiveness as a destination for multinational investment and as a location for international corporate group holding companies.

Next Steps

The Maples Tax Group has made a submission on the Statement and welcomes any comments or questions that clients may have.

If you would like to discuss the topics considered here or require any further information, please liaise with your usual Maples Group contact or any of the primary contacts.