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Consultation on Territoriality
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By email: intltax@finance.gov.ie

Response to Consultation on Territoriality

Dear Sir / Madam

EY welcomes the publication of the Consultation on a possible move to a Territorial System of Taxation ("the Consultation") by the Department of Finance.

About EY

EY is a global leader in assurance, tax, transaction and advisory services with almost 300,000 people based in over 730 offices in 150 countries.

In EY's capacity as tax advisors to our large and diverse client base (including large multinationals, domestic public limited companies ("PLCs"), small and medium-sized enterprises ("SMEs") and financial services organisations), we assist our clients on a variety of international tax issues. Our work includes assisting clients understand the impact of changes to tax law, including change arising from the ongoing OECD BEPS and OECD/G20 Inclusive Framework initiatives, implementation of the European Union ("EU") Anti-Tax Avoidance Directives, and helping those clients in meeting their tax compliance obligations around the world.

Many of our clients find synergies arising from the co-location of holding activities with core business operations and related treasury functions. As further discussed herein, a transition to a territorial system will aid competitiveness through removing barriers including complexity and compliance cost associated with profit repatriation where Ireland acts as a holding company. As things stand, dealing with those barriers is an important aspect of what we do. We are therefore well placed to comment on the relevant issues and welcome the opportunity to comment further on the Consultation in line with our participation in other public consultations.

Background

Ireland currently operates a worldwide system of taxation; whereby Irish tax resident companies are subject to Irish corporation tax on their total worldwide "profits", i.e., income and chargeable gains. This covers worldwide profits irrespective of where they arise and whether or not they are remitted to Ireland.

An Irish company is entitled to claim a credit for foreign taxes paid in respect of distributions received from non-resident companies and profits generated by foreign branches. Schedule 24 of the Taxes Consolidations Act 1997 (TCA 1997) contains the legislation setting out the detailed mechanism for computing double taxation relief.

Importantly, these rules apply even where the profits have already been taxed, including in some cases where they have already been taxed in Ireland.

As noted in the Consultation document, the Irish credit regime is highly complex and nuanced, and quite different from the regimes adopted by the majority of OECD countries. As a consequence, the Irish credit regime hinders Ireland's attractiveness and competitiveness as a holding company location and consequently as a place for businesses to invest, develop and thrive, relative to its OECD counterparts.

Ireland, as an OECD member territory, is currently navigating the most significant global corporate tax developments in a century, and it has significantly enhanced measures to protect its corporation tax base. Given the recent reforms, we believe that it is now an opportune time to remove the competitive disadvantage represented by the credit system and move towards a more straightforward territorial regime.

We have set out our responses to each of the Consultation questions in the Appendix, but we believe that the following points merit special emphasis.

- The credit system is no longer required as a protection measure for the Irish tax base, given recent reforms (e.g. CFC rules)

- Almost all developed countries have some form of exemption system, and they see little need for a credit system except to address very specific issues

- The credit system represents a significant competitive disadvantage for Ireland, as acknowledged in the Coffey Report.

Given the importance of the move from both Ireland's and the taxpayer's perspective, it is imperative that ongoing consultation occurs to avoid risks to competitiveness and reputation which would arise if the final rules do not provide the level of simplicity and certainty businesses seek and expect.

We look forward to continued dialogue as the process evolves.

We are at your disposal to discuss the matters raised in this submission in further detail.

Yours faithfully,

EY

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Appendix - Responses to Questions in the Consultation

1. ***What is your opinion of Ireland's corporate tax potentially moving from the current worldwide system with credit relief for foreign tax to a territorial system of double taxation relief, including participation exemption and/or branch exemption provisions?***

In our view this reform is overdue. Profits of foreign branches are generally taxed appropriately in the location of the branch. Profits of foreign subsidiaries are generally taxed appropriately in the country of residence of the subsidiary. More recently, a range of anti-abuse rules, including CFC rules, have been introduced to ensure that profits do not escape tax. These rules apply to subject the affected profits to Irish tax immediately rather than waiting for them to be repatriated.

Most OECD countries have some form of exemption for income from foreign branches and foreign participations. Each has its own set of rules and safeguards, but the EU's Anti-Tax Avoidance Directive sets a minimum standard for EU Member States, and its protections are fully compatible with a territorial system. We see no reason to believe that the Irish Exchequer is in need of any greater protection than other EU Member States.

Foreign investors may look unfavourably on Ireland's credit system due to its complexity and potential to produce surprising or anomalous results. This can lead to inconsistency with the objectives of simplicity and certainty for the tax regime.

Thus the credit system represents a disadvantage for Ireland as compared with competitor jurisdictions, due to its complexity, the uncertainty it produces, and importantly due to its potential effect on Ireland's attractiveness. It is vital that Ireland introduces improvements to our regime which aid competitiveness.

Our clients tell us that this is now urgent, and that a 1 January 2023 implementation date should be targeted. Whilst we appreciate that there are competing priorities, we share the view that the next 12 months represent a critical period for companies' structuring decisions. Therefore, if legislative resources prevent implementation in 2023, we believe that it remains important that a political commitment to change is made during 2022.

2. ***What would the broad benefits be for multi-national enterprises if Ireland were to move to such a system?***

A move to a territorial system of taxation should provide greater simplicity for businesses by confining the current complex methodology of calculating foreign tax credit relief to a tiny minority of cases.

Repatriation of profits need not be a contentious issue from an Irish tax perspective. The current level of complexity with respect to the credit regime outweighs any benefits derived for the Irish Exchequer. As noted per the consultation documentation; "*In practice, this often results in limited amounts of incremental tax becoming payable in Ireland on foreign earnings*". Accordingly, in moving to a territorial system of taxation, most taxpayers do not anticipate paying any less tax either in Ireland or globally. The attraction of a move to an exemption system does not lie in saving tax but in removing complexity and uncertainty.

Under the current regime, before an Irish holding company decides to repatriate or redeploy capital within a MNE group, it must make difficult judgments as to the nature of the activities in the foreign jurisdictions concerned, obtain granular detail as to how and when profits have been earned and related tax payments, often extending to dividends from several tiers lower down the structure. By way of contrast, a holding company located in an exemption jurisdiction is normally only concerned with non-tax matters on such decisions. If there are issues with how the profits have been taxed this will have been dealt with via CFC rules rather than being deferred until the point of repatriation to the holding company.

The introduction of a territorial system should provide a simplified process of returning cash to parent jurisdictions (including Ireland) for onward distributions to shareholders, an activity which of itself should not need to attract tax scrutiny given that another jurisdiction has been given a first opportunity to tax the profits in question. In any event, Ireland now has strong protection of its corporation tax base, including CFC rules.

3. Are there any particular drawbacks or concerns for multi-national enterprises which should be considered if Ireland were to move to such a territorial system of double tax relief, including any indirect consequences or risks?

Certain taxpayers may have a preference for dividend or branch income to be included in their taxable income, e.g., with respect to the application of the anticipated interest limitation rules. There may be other examples, so we recommend that any exemption be made optional.

4. Are there particular examples of best practice associated with a change to territoriality in other jurisdictions which could be considered, with a view to reducing compliance burdens without increasing avoidance risks?

As noted in the Consultation document, "*the great majority of OECD countries*" use some form of territorial system for taxing foreign dividends and branches. Naturally each country designs its system to suit its own circumstances, (although there are patterns from which lessons can be learned). Each country also adjusts its rules for its own reasons, including technical specifics of interactions with other domestic tax legislation.

It is much less common for a country to introduce a completely new credit system. The most obvious example of recent times is the United Kingdom, which in 2009 transitioned from a credit system of dividend taxation to a territorial system. The UK legislation is drafted such that all dividends, UK and foreign, are deemed to be exempt from tax unless they fall into one of a series of specific anti-avoidance rules. The rules also allow for a company to elect to disapply the exemption regime, such that the credit regime applies instead.

The UK anti-avoidance rules were specifically designed based on perceived risks to the UK Exchequer. On the basis that the UK rules were specifically tailored for UK circumstances, EY is not advocating that Ireland copies the design of the UK system, however a similar conceptual structure for the regime would be a sensible approach, i.e., Ireland should design a broad-based tailored system that

- works for Ireland and its tax code,
- avoids the use of legacy case law concepts to classify foreign income
- is relevant to modern international business.

Under the current Irish credit regime, it is necessary to apply certain specific Irish rules to determine the appropriate tax treatment of the distribution, i.e., whether the distribution should be regarded as a capital or revenue receipt and whether the profits out of which the distribution is paid should be regarded as trading profits in accordance with Irish domestic legislation.

For the purposes of qualifying for one of the UK exemptions, it is not necessary to assess the distribution in accordance with any such specific UK rules. EY believes that applying the same approach to the Irish regime will ensure an overall simpler system, providing greater certainty for businesses.

Separately, the UK partially transitioned from a credit system of branch taxation to a territorial system in 2011. Under the UK rules, a company may elect as to which regime to apply. The election is irrevocable and is made on an “all or nothing” basis. Fully flexible optionality with respect to the application of a new territorial regime will be welcomed by certain Irish taxpayers.

Scope of Exemption Regimes

5. Taking account of the above, what in your view would be the potential impacts of moving to a participation exemption regime as set out in the Coffey Report?

As touched upon in previous responses, EY believes that transitioning to a territorial regime of taxation will have a number of impacts both from an Irish tax perspective and more generally, including the following:

- A simpler regime should provide greater certainty to businesses and allow a more cohesive approach to the management of reserves by multinational groups.

- A territorial system should also provide a simplified process of returning cash to parent jurisdictions (including Ireland) for onward distributions to shareholders, strengthening Ireland’s attractiveness as a headquarter location, which complements Ireland’s existing strengths as a regional operating hub, high end manufacturing and/or innovation centre for many MNEs. Over time we expect this to result in additional tax revenues due to the availability of high-quality employment in areas supporting holding activity such as in-house treasury, finance and legal functions.

- As noted in the Consultation document, “*the great majority of OECD countries*” use a territorial system of taxation. Ireland is an outlier in this regard, and as such the adoption of a territorial regime should level the playing field and remove a potential competitive disadvantage vis-a-vis its OECD counterparts as a place of doing business.

- As noted per the Consultation document; “*In practice, this often results in limited amounts of incremental tax becoming payable in Ireland on foreign earnings*”. On this basis, the transition is not expected to give rise to a cost to the Exchequer.

6. Are there particular considerations or design features that should be considered in reviewing the basis of the Irish corporation tax system?

EY is of the view that a move to a territorial system of taxation should be advanced as a matter of priority in order to ensure a timely transition is possible within the short term. On this basis the design of an appropriate system should be prioritised by the Department of Finance, notwithstanding other changes to be implemented in accordance with the OECD Inclusive Framework.

As discussed at question 4, EY is not advocating that Ireland copies the UK regime, however its conceptual approach has much to recommend it, and in our view the following features should be incorporated into the Irish regime:

- Ireland should adopt a broad-based exemption regime, i.e., broader than the current Irish substantial shareholding exemption rules for capital gains[1]. Similar to the UK, Ireland may look to incorporate anti-avoidance provisions as part of the new regime, however any such provisions should take into consideration the fact that Ireland already has extensive anti-avoidance rules and should be drafted so as to narrowly target the specific identified risks to the Irish Exchequer.

- The exemption should not be limited to trading dividends and trading branch profits. "Trading" is an Irish tax law concept which does not sit easily with how business is actually done in other countries. Under the current rules, the application of a "trading" clause requires Irish businesses to assess the foreign operations through the lens of Irish case law and make difficult judgments about facts from which they may be remote. The inclusion of a "trading" requirement therefore complicates any new regime, leading to uncertainty for businesses, both of which are directly counter to the key objectives of a territorial regime.

- The exemption should not be limited to treaty countries. For commercial and business reasons multinational groups operate in an extensive number of territories, including non-treaty and non-EU jurisdictions. The source country will have the first opportunity to tax the profits in question whether or not that country has concluded a tax treaty with Ireland. Accordingly, any new regime should not disregard the importance multinational groups place on the ability to repatriate profits from such territories by excluding them.

- The regime should provide some degree of optionality. Similar to the UK, Ireland may seek to provide a flexible "opt in" election to taxpayers, allowing them to select the sources to which the exemption applies.

The above are key design features which EY believes should be incorporated into any new regime. On the basis that this is the first consultation with respect to the move to a territorial regime of taxation, EY welcomes the opportunity to comment further on specific design features as the consultation process progresses and as we continue to examine the impact of the implementation of global international tax reform.

7. ***Taking account of, but not limited to, the design elements above, what in your view would be the best regime for Ireland to transition to, should a change take place? Please elaborate with consideration of the impacts, benefits and potential drawbacks both of (a) your preferred approach and (b) any approaches which you do not think would be beneficial.***

EY is of the view that Ireland should transition, as soon as feasibly possible, to a broad-based dividend and branch exemption regime. The regime should be specifically designed to fit with the existing Irish tax

[1] S626B TCA 1997

code, whilst so far as possible utilising concepts that are recognised internationally rather than just in Ireland.

Please see above at question 6 specific design elements which EY believes should feature as part of any new regime. Each of the features listed should ensure the development of a simpler regime, a regime that provides greater certainty to businesses, a regime that strengthens Ireland's attractiveness as a headquarter location and a regime that brings Ireland's competitiveness as a holding location in line with its OECD counterparts.

Interaction with CFC Rules

8. Please outline your view of whether Ireland's CFC rules would be adequately aligned with participation exemption and/or branch exemption regimes should these be introduced. What synergies or risks, if any, do you foresee arising?

Ireland introduced CFC rules on 1 January 2019 in accordance with the European Union Anti-Tax Avoidance Directive (EU Directive 2016/1164). Therefore, on the basis that Ireland's rules are ATAD compliant, it is not envisaged that material change should be necessary. Irish CFC rules are similar to those of other European jurisdictions that have exemption systems.

Prior to the introduction of CFC rules in Ireland, the rationale for retention of the credit system was the absence of sufficient other safeguards for the Exchequer. The CFC rules however provide for a charge to tax with respect to income arising from "non-genuine" arrangements which have been put in place for the essential purpose of obtaining a tax advantage and for which significant people functions are carried on from Ireland with respect to relevant assets and risks of the CFC. The central protection now provided by the CFC rules to the Irish Exchequer, should mesh coherently with a move to a territorial regime.

In passing we note that the Appendix to the Consultation document contains a comprehensive list of all of the reforms of Ireland's international tax rules that have taken place since 2013. We submit that the protections afforded by these reforms mean that any vanishingly small remaining benefits of the credit system are completely outweighed by the burdens it creates for ordinary business.

9. Please identify any particular design features of these exemption regimes that could have positive or negative impacts in this context? Please elaborate.

See the response to question 8 above.

10. Please identify any adaptations to Ireland's CFC rules that should be considered in conjunction with the introduction of such exemption regimes.

Where the profits of a branch are exempted under a branch exemption regime, ATAD requires that the CFC regime applies to such profits in the same way that it applies to those of foreign subsidiaries. We acknowledge therefore that a technical change to Ireland's CFC rules would be required so as to achieve this alignment – as is the case in other European countries.

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We also believe it would be appropriate to simplify the treatment of the remittance to Ireland of profits that have already been subject to tax under Ireland's CFC rules. The present position[2] is that where a distribution is subsequently made out of income that was previously subject to a CFC charge, then an amount equal to the Irish CFC charge (as well as any foreign tax under the normal Schedule 24 rules) is allowed as a credit against any tax arising in Ireland on the distribution. A more appropriate treatment would be to simply provide an exemption from Irish tax for the remittance of profits that have previously been subject to Irish CFC rules.

Interest Charges associated with Exempt Income

11. In your view, should tax relief for funding costs of investments be reviewed, with a view to restrictions, if foreign income from such investments were to be exempted? What EU law or tax treaty constraints, if any, might impede such restrictions?

Ireland's interest deductibility rules are highly complex and nuanced in ways that are completely unrelated to the matter at hand. A review of interest deductibility should be separately carried out especially given the recent introduction of interest limitation rules. The December 2020 Feedback Statement on interest limitation rules acknowledged that the existence of these rules might present opportunities for simplification for the existing rules on interest deductions. Any changes necessary to the current rules should be identified, discussed and implemented under this separate review process.

Exit Tax

12. Please outline what in your view the impacts, if any, of participation exemption and/or branch exemption regimes might be on Ireland's Exit Tax rules. Do you foresee any synergies or risks in this space?

Ireland introduced an ATAD compliant exit tax in Finance Act 2018, which took effect from 10 October 2018. On the basis that Ireland's rules are ATAD compliant, it is not envisaged that material change should be required. We however acknowledge that certain minor technical adjustments may be necessary in order for the rules to remain ATAD compliant post the adoption of a territorial regime, and more specifically the adoption of a branch exemption. As with other ATAD items discussed in this Consultation the adjustments involved are fully contemplated by ATAD as all other EU countries have exemption systems.

13. Please identify how particular design features of the exemption regimes could have positive or negative impacts in this context.

EY's view on this matter is outlined in response to question 12 above.

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[2] Under s835X TCA 1997

Schedule 24

14. Do you believe that a review and simplification of Schedule 24 could be feasible and sufficient, instead of changing to participation exemption and/or branch exemption regimes? How might this simplification be achieved?

EY is of the view that a simplification of Schedule 24, without changing to a territorial regime, will not be sufficient in meeting the needs and objectives of both Ireland and the taxpayer.

As acknowledged in the Consultation document, the legislation governing double tax relief is very complex, having evolved over many years in response to changes in policy and to accommodate principles established by European case law.

As regards the legislative language[3] that addresses EU law, we do not believe that the language in Schedule 24 can be meaningfully simplified without offending against EU law.

Other complexities in Schedule 24 are there for particular policy reasons and intended to address a variety of situations where the credit system might produce anomalous results in the absence of a specific rule. We fear that reducing the volume of rules while retaining the credit system would result in restoring those anomalies and/or create uncertainty.

15. What in your view are the relevant considerations in terms of any simplification of Schedule 24?

EY is of the view that Ireland should move to a territorial regime. The case for simplifying the credit regime for dividends and branch profits should be seen as confined to those cases which do not fall within the scope of the new territorial regime (i.e., where the exemption criteria are not satisfied, an anti-avoidance provision is triggered, or the taxpayer chooses not to “opt in”).

16. In the event of Ireland moving to participation exemption and/or branch exemption regimes, what simplifications, if any, could be considered for the remaining credit system of double taxation relief - including in respect of foreign-source interest and royalty income and out-of-scope dividend, branch income and capital gains?

This is clearly a very complex topic and one which EY believes is worthy of its own consultation.

EY is of the view that Ireland’s rules for the double taxation of interest, royalty and leasing income are similarly very complex and less beneficial than those in competitor jurisdictions. On this basis, these rules should also be revisited and relaxed, for example through greater use of pooling, and at minimum providing for relief by deduction. However, we do not believe this should be seen as contingent on a territorial regime for branches and dividends.

[3] E.g. Section 21B TCA 1997 or Schedule 24 par 9I

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Interaction with Anti-Hybrid rules

17. Please outline how territorial participation exemption and/or branch exemption regimes could impact on Ireland's Anti-Hybrid rules. Do you foresee any synergies or risks arising from the change?

As noted in the Consultation document, "*the great majority of OECD countries*" use a territorial system of taxation. Many such OECD countries have anti-hybrid rules aligned with Ireland's, and as such there is a foundation of examples in which the anti-hybrid and dividend/branch exemption rules operate cohesively. A couple of specific points to note for consideration include:

- With respect to dividends, ATAD 2 requires that no exemption should be available in Ireland where the distribution is regarded as a deductible payment in the local jurisdiction. The Irish anti-hybrid rules contain provisions[4] dealing with a financial instrument deduction without inclusion mismatch outcome which should capture such a payment.

- The definition of a branch for the purpose of the exemption regime should include branches in a non-treaty jurisdiction, provided that the branch meets the OECD definition and the foreign jurisdiction recognises the existence of the branch. It is a moot point whether other such cases are to be addressed via the exemption itself or an adjustment to Ireland's anti-hybrid rules.

- Section 835AB TCA 1997 details the provisions relating to a worldwide system of taxation. If Ireland chooses to move to a participation/branch exemption regime, it prompts a question as to whether this section may need to be changed. For now, our view is that we do not see a pressing need for change to s835AB given that in its terms the section would simply cease to apply to exemption cases in the Irish tax system, while it would need to be retained to deal with certain other countries' CFC rules.

18. Please identify any specific design features of exemption regimes that could have positive or negative impacts in this context? Please elaborate.

EY's view on this matter is outlined in response to question 17 above.

19. Please identify any adaptations to Ireland's Anti-Hybrid rules that should be considered in conjunction with a transition to such exemption regimes.

EY's view on this matter is outlined in response to question 17 above.

[4] TCA 1997 s835J

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Interaction with the Two-Pillar Solution

20. Do you foresee potential impacts, arising from moving to participation exemption and/or branch exemption regimes, for the way in which the two pillar solution is implemented in Irish tax law? Are there any potential synergies or risks with the implementation of the two-pillar solution and such exemption regimes?

As noted above, the Irish credit regime was historically seen by policymakers as a back stop against the possibility that another jurisdiction may not exercise its taxing rights or that profits may be artificially diverted away from Ireland. The two-pillar solution however provides a further safeguard by way of removing the incentive for companies to engage in such activities, thereby further supporting the case for a move to a territorial regime.

In addition to acting as a safeguard against the artificial diversion of profits away from Ireland, the interaction of the Pillar 2 rules with the current Irish domestic rules may lead to additional complexities, thereby further supporting a move to a territorial regime. For example:

- The Pillar 2 rules assume that all countries operate a participation exemption. In this regard, the rules do not include dividend income from foreign subsidiaries as part of the constituent entities' GLoBE income and as such, any tax on such dividend income is not regarded as a covered tax. On this basis, if Ireland continues to operate a worldwide system of taxation and imposes tax on such dividend income, this tax would also not be expected to qualify as a covered tax.

- Top-Up Tax under Pillar 2 (except in the case of a Domestic Top-Up Tax) will be levied on an entity other than the entity that earned the profits in question, i.e. on the Ultimate Parent Entity via the Income Inclusion Rule, or on some other Constituent Entity via the Undertaxed Payments Rule. Schedule 24 – if retained – will need to be amended to address whether Top-Up Tax under Pillar 2 is creditable at all and if so, which Constituent Entity is to be regarded as having paid the tax.

- The creditability of any tax charge arising under the Pillar 1 rules would also need to be considered. At this point we have insufficient information as to the Pillar 1 mechanism allowing us to articulate how it might impact on a retained Schedule 24.

On the basis of each of the complexities noted above and the fact that the two-pillar solution was drafted in the context of an exemption regime, this further supports the argument for a move to a territorial regime in Ireland.

Ireland's Double Taxation Treaty Network

21. Do you foresee potential impacts, arising from moving to participation exemption and/or branch exemption regimes, for Ireland's tax treaties?

EY does not foresee any material adverse impact, arising from moving to a participation and/or branch exemption regime, for Ireland's tax treaties. The exemption regime is common practice and as such, the vast majority of our treaty partners should be familiar with it. Given the regime is so commonplace, it is not expected that Ireland's treaty partners will have a concern with the move.

22. Should the renegotiation of Ireland's tax treaties, as respects the Elimination of Double Taxation article, be considered in the event of the enactment of participation exemption and/or branch exemption regimes? Would this be necessary? If so, how might it be feasible to accomplish this in a targeted and efficient manner?

As a courtesy to our treaty partners, they should be notified in advance of the changes to be enacted. Over time it would seem appropriate for the Elimination of Double Taxation articles in Ireland's tax treaties to be amended to give effect to the exemption method, but we believe most treaty partners will take the view that it is acceptable for domestic law to provide a relief that is more favorable than the treaty. Of course, some treaty partners may wish to re-examine the language of their respective treaties, however EY is of the view that this can be managed through the ordinary course of treaty renegotiation.

23. Would any amendment of Ireland's worldwide tax system to allow for exemption of foreign dividends, gains or branch income necessitate a review of specific tax treaties in Ireland's network, where previously Ireland's worldwide charge would have ensured taxation of such dividends, gains or branch income? Alternatively, could such taxation be ensured by limiting the scope of any exemptions enacted in domestic law?

EY is not aware of any specific treaty in which the source country has agreed to give up taxing rights in the first instance and as such, whereby Ireland's worldwide charge would have ensured taxation of such income. On this basis, it should not be necessary to limit the scope of any exemptions enacted in domestic law.

Transitional Arrangements

24. Do you foresee impacts in relation to the matters identified above or any other matters related to transitional arrangements?

EY foresees a number of points to be considered / action items to be initiated between now and the point of transition. Specifically, an early commitment to a 1 January 2023 transition period would be very welcome.

We do recognise that this may be difficult given current legislative resources. Therefore, if a 2023 implementation is not feasible, we strongly recommend that a political commitment should be made that the change will happen as soon as is feasible, so that investors can plan with certainty.

Consideration should also be given as to what relief should be provided to taxpayers holding foreign tax credit carry forward balances as at the effective date of transition.

Other Issues

25. In your view, what other relevant considerations should be taken into account? You may wish to consider this question in the context of the recent OECD Inclusive Framework Two-Pillar agreement.

As noted previously, Ireland, as an OECD member territory, is currently navigating the most significant global corporate tax developments in a century. In light of these developments, companies are actively reviewing their corporate structures and operations to assess what changes are required. If Ireland has not transitioned to a territorial regime, these assessments will be informed and made on the basis that

Ireland operates a competitively sub-optimal credit regime. As such, the timing of the move should be a key priority for the Department of Finance such that Ireland does not lose out on opportunities to attract foreign direct investment.