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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
N° prev. doc.:	WK 9430/2018
Subject:	Member States responses to the questionnaire on monitoring of Guidance on rollback and standstill

Delegations will find attached addendum (Ireland) to Member States responses to the questionnaire on monitoring Guidance on rollback and standstill.

Appendix I

Section 626B of the Taxes Consolidation Act, 1997

Exemption from tax in the case of gains on certain disposals of shares

(1) (a) In this section, section 626C and Schedule 25A -

"investor company" and "investee company" have the meanings assigned by subsection (2);

"relevant territory" means -

(i) a Member State of the European Communities
(ii) not being such a Member State, a territory with the government of which arrangements having the force of law by virtue of section 826(1) have been made, or
(iii) not being a territory referred to in subparagraph (i) or (ii), a territory with the government of which an·angements have been made which on completion of the procedures set out in section 826(1) will have the force ofl aw;

"tax" in relation to a rel evant territory other than the State means any tax imposed in that territory which conesponds to income tax or corporation tax in the State;

"2 year period" means a period ending on the day before the second anniversary of the day on which the period began.

(b) For the purposes of this section, section 626C and Schedule 25A -

(i) a company shall only be a parent company in relation to another company at any time if that time falls within an uninterrupted period of not less than 12 months throughout which it directly or indirectly holds shares in that company by virtue of which -

(I) it holds not less than 5 per cent of the company's ordinary share capital,

(II) it is beneficially entitled to not less than 5 per cent of the profits available for distribution to equity holders of the company, and

(III) it would be beneficially entitled on a winding up to not less than 5 per cent of the assets of the company available for distribution to equity holders,

and for the purposes of this subparagraph -

(A) subsections (2) to (10) of section 9 shall apply with any necessary modifications, and

(B) sections 413 to 419 shall apply as they apply for the purposes of Chapter 5 of Part 12 but as if 'in a relevant tenitory' were substituted for 'in the State' in subparagraph (iii) of section 413(3)(a) and as if

paragraph (c) of section 411(1), other than that paragraph as it applies by virtue of clauses (I) and (II) of subparagraph (i), were disregarded ,

(ii) in determining whether the conditions in paragraph (a) of subsection (2) are satisfied, a company that is a member of a group shall be treated as holding so much of any shares held by any other company in the group and as having so much of the entitlement of any such company to any rights enjoyed by virtue of holding shares -

(I) as the company would not, apart from this paragraph, hold or have, and

(II) as are not part of a life business fund within the meaning of section 719,

and, for the purposes of this subparagraph, 'group' means a company which has one or more 51 per cent subsidiaries together with those subsidiaries,

(iii) in determining whether the treatment provided for in subsection (2) applies, the question of whether there is a disposal shall be determined without regard to section 584 or that section as applied by any other section: and, to the extent to which an exemption under subsection (2) does apply in relation to a disposal, section 584 shall not apply in relation to the disposal,

(iv) where assets of a company are vested in a liquidator under section 614 of the Companies Act 2014 or otherwise, the assets shall be deemed to be vested in, and the acts of liquidation in relation to the assets shall be deemed to be the acts ot: the company (and acquisitions from, and disposals to, the liquidator shall be disregarded accordingly),

(v) section 616 shall not apply.

(2) A gain accruing to a company (in this section referred to as the 'investor company') on a disposal of shares in another company (in this section referred to as the 'investee company') is not a chargeable gain if -

(a) the disposal by the investor company is at a time -

(i) when the investor company is a parent company of the investee company, or

(ii) within the 2 year period beginning on the most recent day on which the investor company was a parent company of the investee company,

(b) the investee company is, by virtue of the law of a relevant territory, resident for the purposes of tax in the relevant territory at the time of the disposal, and

(c) at the time of the disposal -

(i) the investee company is a company whose business consists wholly or mainly of the carrying on of a trade or trades, or

(ii) the business of -

(I) the investor company,

(II) each company of which the investor company is the parent company, and

(III) the investee company, if it is not a company referred to in clause (II), and any company of which the investee company is the pa.rent company.

taken together consists wholly or mainly of the carrying on of a trade or trades.

(3) The treatment of a gain, as not being a chargeable gain, provided by this section and section 626C shall not apply -

(a) to a disposal that by virtue of any provision relating to chargeable gains is deemed to be for a consideration such that no gain or loss accrues to the person making the disposal,

(b) to a disposal a gain on which would, by virtue of any provision other than this section or section 626C, not be a chargeable gain,

(c) to disposals, including deemed disposals, of shares which are part of a life business fund within the meaning of section 719,

(d) to a disposal of shares deriving their value or the greater part of this value directly or indirectly from assets specified in paragraphs (a) and (b) of subsection (3) of section 29 and subsection (6) of that section,

(e) to deemed disposals under section 627

(3A) (a) In this subsection 'relevant treatment of a gain' means the treatment, provided by this section or section 626C, of a gain as not being a chargeable gam.

(b) Notwithstanding any provision of section 590, the relevant treatment of a gain shall not apply for the purposes of section 590, but this is subject to paragraph (c).

(c) The relevant treatment of a gain shall apply for the purposes of section 590 where the participator (within the meaning of that section) is a company.

(3B) (a) In this subsection -

'arrangement' includes any agreement, understanding, scheme, transaction or series of transactions;

' relevant assets' means the assets specified in subsection (3)(d).

(b) In calculating the portion of the value of shares attributable directly or indirectly to relevant assets, account shall not be taken of any arrangement that

(i) involves a transfer of money or other assets (apart from re lev a nt assets) from a person connected with the comp,my in which those shares are held,

(ii) is made before a disposal of relevant assets, and

(iii) the main purpose or one of the main purposes of which is the avoidance of tax.

(4) Schedule 25A shall have effect for the purposes of supplementing this section and section 626C.

Appendix II

F49/127/96

Mr Matthias Mors
European Commission
Rue de la Loi 200
B-1049 Brussels
Belgium

31 March 2005

Code of Conduct Group (Business Taxation): Standstill

Dear Matthias

I refer to the request from the Chair to the Code of Conduct Group to notify the Commission of any new measures which potentially fall within the scope of the Code and which have been enacted between 31 January 2004 and 31 January 2005.

In this regard, I would draw to your attention a new Irish fiscal measure - Irish Holding Company measure - that was introduced during the above referenced timeframe. Details of the measure along with the relevant legislation, as revised following an EU State Aid query, are contained in the annex to this letter.

In considering this measure, I would also point out that the EU Commission has confirmed that the measure is a non-selective measure and therefore does not constitute state aid within the meaning of Article 87(1) of the EC Treaty. In this regard you may wish to note the EU Commission State Aid N 354/04 of 22 September 2004 where it was decided that approval of the measure was granted without opening proceedings on the basis of "no aid".

Finally, in relation to the Irish holding company regime it is also relevant to note the fact that it is similar to regimes that currently exist in many other Member States and which have been found not to be harmful by the Group. In this context I refer attention to paragraph 24 of Council Document 15317/04 FISC 249 of 26 November 2004 where the Group upon notification of other holding company regimes concluded that the regimes in question did not require assessment.

I trust that this clarifies the position.

Yours sincerely

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Donal McNally
Second Secretary-General

Annex

Irish Holding Company Regime

The Irish Holding Company regime applies to both domestic and foreign companies.

Capital Gains Tax Exemption
The capital gains tax rate in Ireland is 20%.

Section 626B of the Taxes Consolidation Act, 1997 as amended by Section 54 of Finance [Act) 2005 provides for an exemption from Capital Gains Tax for certain disposals by an investor company of shares held by it in an investee company.

Both gains and losses on such disposals are ignored for tax purposes, thus adhering to the criteria of where gains are exempt the corresponding losses are not deductible.

In order to benefit from the Capital Gains Tax exemption, the following conditions apply:

- The subsidiary must be resident in the State, another EU State or a country with which Ireland has a Double Taxation Convention.
- The company making the disposal must be resident in the State, as capital gains tax is applied on the basis of residency.
- The business of the subsidiary, or the group taken as a whole, must be trading (i.e. active)
- The company making the disposal must hold at least a 5% shareholding in the subsidiary and the shareholding must have been held for a continuous period of 12 months in the 3 years prior to a disposal of shares in the subsidiary.

Treatment of Dividend payments
Dividends distributed by Irish companies are liable to a flat 25% dividend withholding tax, but corporate parent shareholders resident in the EU and in countries with which Ireland has a tax treaty are normally exempt. Dividends distributed to Irish resident parent companies by their foreign subsidiaries are liable to tax in Ireland when received but, under the Parent/Subsidiary Directive, a relevant tax treaty or unilateral credit relief, such tax carry a credit equal to the amount of taxes paid abroad on the profits distributed.

Section 831 of the Taxes Consolidation Act, 1997 implements EU Council Directive 2003/123/EC which amends an earlier Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and their subsidiaries of different Member Stats (known as the "Parent/Subsidiaries Directive"). The directive is concerned with eliminating double taxation of cross border dividend flows within the EU.

Under the Directive Member States are obliged to reduce the shareholding threshold from 25% to I 0%. However, it is up to any Member State to allow for a lower threshold and a number of jurisdictions have already allowed for a 5% threshold. The Irish legislation as amended in Section 34 of Finance Act 2004 provides for a 5% threshold.

Schedule 24 of the Taxes Consolidation Act, 1997 as amended by Section 31 of Finance Act 2004 modifies the existing unilateral tax relief to achieve the same effect in cases in which double taxation is not relieved by tax treaties. Ireland will generally allow relief where the subsidiaries are owned directly or indirectly to the extent of at least 5% by the parent company. In providing relief for foreign tax on the foreign income concerned - by credit against the relevant Irish tax - Schedule 24 ensures that the fullest account is taken of such foreign tax by crediting it, without restriction, against the Irish tax on such foreign income.

March 2005