

## Participation exemption for certain foreign distributions

### Part 35-02-11

This document should be read in conjunction with section 831B of the Taxes Consolidation Act (TCA) 1997

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## Introduction

This manual outlines the corporation tax exemption available under section 831B TCA 1997 for certain dividends and other distributions received by a parent company from a foreign subsidiary.

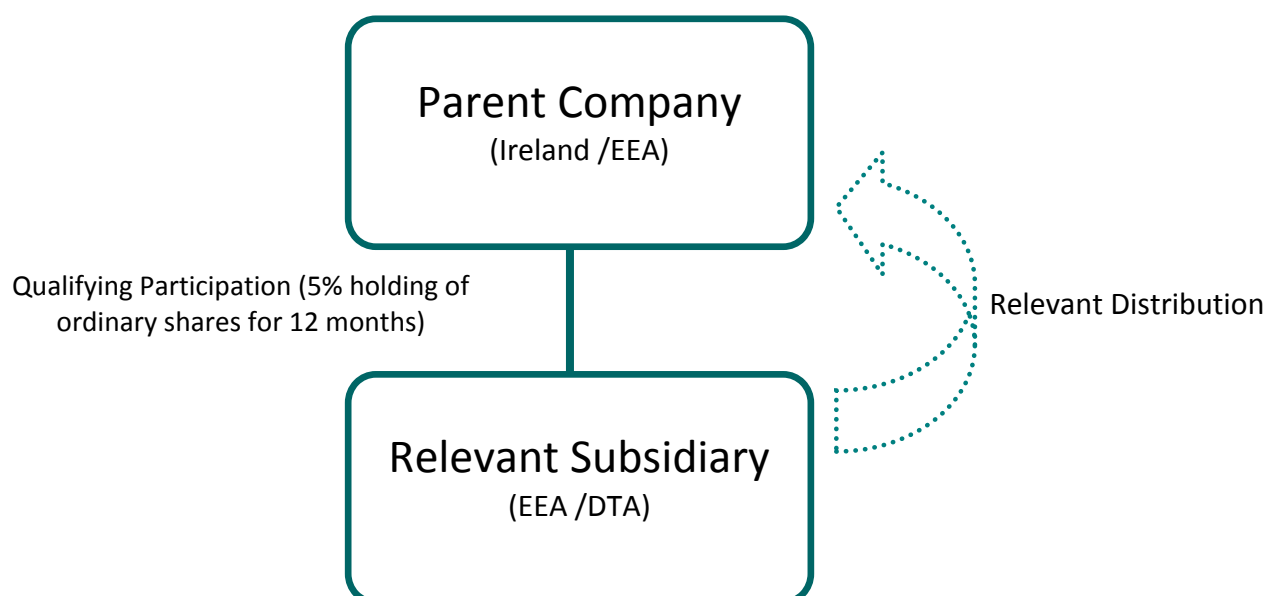
Ireland generally operates a “tax plus credit” approach in respect of double tax relief for foreign tax paid on foreign source profits up to the amount of domestic tax payable on the same income. The legislation underpinning this is largely contained in Schedule 24.

Section 831B provides for an alternative exemption method of double taxation relief for foreign distributions, referred to as a “participation exemption”, where a parent company holds a qualifying participation in a relevant subsidiary.

Companies have the option each year in their tax return to claim either the participation exemption or the “tax plus credit” method of double tax relief in respect of foreign dividend income, where qualifying conditions are met.

### 1 Executive Summary

The participation exemption in section 831B was introduced by Finance Act 2024 and applies to a “relevant distribution” made on or after 1 January 2025 by a “relevant subsidiary” to a “parent company”. The parent company must hold a “qualifying participation” in the relevant subsidiary. The relevant subsidiary must be tax resident in a “relevant territory”. Each of these key terms is defined in legislation.



- A **parent company** is (i) an Irish resident company or (ii) a company that is resident for foreign tax purposes in a European Economic Area (EEA) state.
- **Foreign tax** refers to a tax that corresponds to Irish corporation tax, that generally applies to income, profits and gains of a company and that is imposed at a nominal rate of tax greater than zero per cent. In order to be eligible for the participation exemption, an EEA resident company cannot be generally exempt from foreign tax.
- The parent company must hold a **qualifying participation** in the relevant subsidiary, which is a participation, through ownership of ordinary share capital, by virtue of which the parent company:
  - (i) owns a minimum of 5 per cent of the ordinary share capital of the relevant subsidiary,
  - (ii) is entitled to a minimum of 5 per cent of the profits available for distribution to equity holders of the relevant subsidiary, and
  - (iii) is entitled to a minimum of 5 per cent of the assets available for distribution to equity holders on a winding up of the relevant subsidiary.
- The qualifying participation must be held continuously for a minimum 12-month period, with that period including the date the distribution is made.
- The **relevant subsidiary** must be a company that is resident for foreign tax purposes in a relevant territory. A **relevant territory** is an EEA state, or a country with which Ireland has a double tax agreement (DTA), that is not on the [EU Code of Conduct Group list of non-cooperative jurisdictions](#). The relevant subsidiary cannot be generally exempt from foreign tax. The residence and general exemption conditions must be met both at the date the relevant distribution is made and throughout the five-year period prior to this date.
- The **relevant distribution** must be a distribution made by the relevant subsidiary in respect of its shares. The distribution must be made either (i) out of profits, or (ii) out of assets. If the distribution is made out of assets (but not out of profits), then the underlying shares if sold must qualify for exemption under section 626B. The distribution cannot be deductible for tax purposes and it must constitute income in the hands of the recipient.
- A relevant subsidiary may make a distribution to a parent company comprised of separately identifiable components. In such circumstances, only the part of the distribution which constitutes a relevant distribution will be eligible for exemption. For example, an amount of a distribution may be regarded as income in the hands of the recipient, with the balance regarded

as capital for Irish tax purposes. The amount that constitutes income may qualify as a relevant distribution.

- The parent company can claim the corporation tax exemption where it would otherwise be taxable under Schedule D Case III on the income received, or under Schedule D Case IV in the case of certain dividends from preference shares (under section 138).
- The parent company must claim the exemption on its corporation tax return for the accounting period during which the relevant distribution is made. The claim is referred to as a “**relevant claim**” and, where made, applies to all relevant distributions made in that accounting period. A claim for the exemption cannot be made on a per dividend/distribution or per subsidiary basis.

The exemption operates by providing that corporation tax is not chargeable on the relevant distribution and that the relevant distribution is not taken into account in computing income for corporation tax purposes.

## 2 Conditions for parent company

In order for a company to claim the exemption, it must be a “parent company” that holds a qualifying participation in a relevant subsidiary. The parent company must satisfy certain conditions with regards to tax residence and the charge to tax.

### 2.1 Residence

The parent company must be either:

- (a) Irish tax resident, or
- (b) resident for foreign tax purposes in another EEA state by virtue of the law of that EEA state and not generally exempt from foreign tax.

An EEA state is a state which is a contracting party to the EEA Agreement and refers to Member States of the European Union, Iceland, Liechtenstein and Norway.

Foreign tax refers to a tax in the EEA state that corresponds to Irish corporation tax and that is imposed at a nominal rate greater than zero per cent. That tax must generally apply to income, profits and gains arising to a company that is tax resident in the EEA state. The company must not be generally exempt from foreign tax in the EEA state in which it is resident.

## 2.2 Charge to corporation tax

An Irish resident company is chargeable to corporation tax on its worldwide profits, including foreign-sourced dividends. A non-Irish resident company is within the charge to corporation tax if it carries on a trade in Ireland through a branch or agency [per section 25]. Therefore, an EEA resident company with an Irish trading branch may be subject to corporation tax on foreign-sourced dividends if, for example, it is income from property or rights used by, or held by or for, the Irish branch.

The participation exemption applies to parent companies who, in the absence of the exemption, would be taxed on the relevant distribution as Case III income, or as a Case IV preference-share dividend [section 831B(3)(b) refers].

### 2.2.1 Case III charge (non-trading)

In order to avail of the participation exemption, the parent company must otherwise be chargeable to corporation tax on the relevant distribution under Case III of Schedule D. In general, income arising from securities and possessions outside the State is chargeable to corporation tax under Case III by virtue of section 18.

Most foreign-sourced distributions are chargeable to corporation tax under Case III. If the income is a trading receipt, then the income would normally be chargeable under Case I of Schedule D and therefore excluded from the participation exemption<sup>1</sup>.

The amount of the relevant distribution which would otherwise be chargeable to tax under Case III cannot be computed by reference to the provisions applicable to Case I. This means that the participation exemption does not apply:

- to section 110 companies [see section 110(2)(a)], and
- in circumstances where a company is chargeable to corporation tax in respect of a trade under Case III and the distribution is income of that trade [see section 77(5)].

### 2.2.2 Case IV charge (preference share dividend)

The participation exemption is also available where the parent company would otherwise be chargeable to corporation tax on the relevant distribution under Case IV of Schedule D in accordance with section 138. This provision applies to dividends (not other types of distributions) paid in respect of preference shares of the payor company. Foreign-sourced dividends and other distributions in respect of preference shares which do not fall within section 138 are typically taxed under Case III and as such would meet the tax charge under Case III requirement in section 831B.

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<sup>1</sup> However, the portfolio exemption may apply in accordance with section 21B(4)(c) for certain dividends in respect of shareholdings of 5 per cent or less.

## 2.3 Exclusions

### 2.3.1 Life assurance companies

The participation exemption does not apply to a relevant distribution made to an assurance company where the relevant distribution is taxable in accordance with the provisions of Chapters 1 and 3 of Part 26. This means that life assurance companies subject to the “old basis business” rules (in relation to life policies written on or before 31 December 2000), and therefore taxed under the I-E (income less expenses) system, cannot avail of the participation exemption. The I-E tax computation in respect of old basis business is based on investment return (i.e. Case III, Case IV, Case V and Chargeable Gains) as opposed to trading profits.

The profits of “new basis business” for life assurance companies are taxed under Case I of Schedule D, meaning any distributions forming part of those profits are not eligible for the participation exemption. However, if a life assurance company subject to the new basis business regime has a foreign-source distribution which is chargeable to tax under Case III (as it does not form part of the new basis business profits), then that distribution may qualify for the participation exemption.

### 2.3.2 Undertaking for collective investment

The participation exemption does not apply to a relevant distribution made to a company which is an undertaking for collective investment within the meaning of section 738. Section 738 is a taxation regime for particular funds authorised before the gross roll-up regime (contained in Chapter 1A of Part 27) was introduced.

### 2.3.3 Section 110 companies

Section 110 companies cannot avail of the participation exemption.

The participation exemption applies where the parent company would otherwise be chargeable to corporation tax on the relevant distribution under Case III of Schedule D. Amounts chargeable to tax under Case III but computed in accordance with the provisions applicable to Case I of Schedule D, as is the case with section 110 companies [per section 110(2)(a)], are not eligible for the participation exemption.

Furthermore, the exemption in section 831B(3) applies “except where otherwise provided by the Corporation Tax Acts”. Section 110(2) does so otherwise provide, and section 110 companies are therefore chargeable to tax on foreign-source distributions.

## 3 Conditions for relevant subsidiary

The company making the relevant distribution must meet two key conditions in order to qualify as a “relevant subsidiary”:

- (a) The company must not be generally exempt from foreign tax, and



- (b) The company must be resident for foreign tax purposes in a relevant territory.

These conditions must be met both on the date on which the distribution is made and throughout the preceding five-year period ending on the date on which the distribution is made. This period is referred to in legislation as the “relevant period”.

Scenarios where a company has only been incorporated or where a group reorganisation or merger has occurred in the last five years are also addressed in the legislation.

### 3.1 Definitions

Section 831B(1) sets out a number of important definitions which are used to establish when a company is a relevant subsidiary.

#### 3.1.1 Company

Only a company can be a relevant subsidiary for the purposes of section 831B. A company, as per the definition in section 4, refers to a body corporate.

Guidance on the meaning of a body corporate, and the classification of a foreign entity for Irish tax purposes, is available in [Tax and Duty Manual 35C-00-02](#).

#### 3.1.2 Relevant period

The “relevant period”, in relation to a relevant distribution, is the five-year period ending on the date on which the relevant distribution is made. For example, the relevant period in respect of a relevant distribution made on 31 January 2025 is from 1 February 2020 to 31 January 2025.

If the relevant subsidiary was only incorporated or formed during the five-year period prior to making the distribution, then the relevant period begins on the date the relevant subsidiary was incorporated or formed and ends on the date on which the relevant distribution is made. For example, the relevant period in respect of a relevant distribution made on 31 January 2025 and where the relevant subsidiary was incorporated on 1 July 2022, is from 1 July 2022 to 31 January 2025.

#### 3.1.3 Foreign tax

Foreign tax, in relation to a territory other than the State, means a tax which-

- (a) corresponds to Irish corporation tax,
- (b) generally applies to income, profits and gains arising to a company that is resident for the purposes of tax in that territory, and
- (c) is imposed at a nominal rate greater than zero per cent.

A top-up tax applied under Pillar Two rules is not regarded as a foreign tax for the purposes of the participation exemption.

### 3.2 Not generally exempt

The relevant subsidiary must not be generally exempt from foreign tax both on the date it makes the relevant distribution and throughout the relevant period.

The company only needs to be not generally exempt from foreign tax in the relevant territory in which it is resident. In circumstances where the company has changed residence during the relevant period then the company's tax status in each territory of residence must be considered.

This requirement is at the company level. The provision does not exclude companies which are generally subject to tax but that can claim an exemption for particular sources of income.

For example, a company subject to a foreign corporate tax may claim an exemption for dividends received under an equivalent participation exemption regime. Other sources of income, if acquired, would not be generally exempt from foreign tax. Even if that company receives no other income, and consequently effectively pays no corporation tax, the company would still, in principle, not be generally exempt from foreign tax.

In contrast, a company that is in principle subject to tax at a nominal rate greater than zero per cent, but in effect does not pay any tax because of the existence of a foreign tax provision which generally exempts all or most of its sources of income, would not satisfy this requirement. For example, a foreign company is regarded as generally exempt from foreign tax where the company is within the corporate tax regime of its country of residence, but is exempt from tax on most or all of its sources of income, and would also be exempt from tax on additional sources of income, if acquired.

#### Example

The applicable tax treatment of various income sources in Company A's country of residence (and which treatment also applies to Company A) is as follows:

Trading profits (non-branch)	Taxable
Foreign branch profits	Exempt if satisfies conditions for exemption, otherwise taxable
Dividends	Exempt if satisfies conditions for participation exemption, otherwise taxable
Interest	Taxable

Royalties	Taxable
Rents	Taxable
Offshore fund gains	Taxable
Disposals of shares	Exempt if satisfies conditions for holding company relief, otherwise taxable
Disposals of other assets	Taxable
Other income	Taxable

Company A is not generally exempt from tax in its country of residence and can qualify as a relevant subsidiary if it also satisfies the residence test. This would be the case even if, for example, most (or all) of Company A's actual income in a particular period happened to be from income sources that are exempt.

### 3.3 Residence in a relevant territory

The relevant subsidiary must be, by virtue of the law of a relevant territory, resident for the purposes of foreign tax in the relevant territory both on the date it makes the relevant distribution and throughout the relevant period.

A "relevant territory" is:

- (a) an EEA state other than Ireland,
- (b) a country with which Ireland has a double tax treaty in force<sup>2</sup>, or
- (c) a country with which Ireland has signed a double tax treaty which has yet to come into force.

A relevant territory excludes any of the above countries which is a "listed territory".

Ireland is not a relevant territory. Distributions from one Irish resident company to another are generally exempt from corporation tax under section 129.

#### 3.3.1 Listed territory

A listed territory is a country on the EU list of noncooperative jurisdictions for tax purposes. The Revenue website contains details of the current [EU list of non-cooperative jurisdictions](#).

The EU list is legislated for in section 835YA (in Controlled Foreign Companies provisions). Section 831B modifies the definition of a listed territory in section 835YA

<sup>2</sup> This is a territory with the government of which arrangements having the force of law by virtue of section 826(1) have been made and the relevant order is listed in Part 1 of Schedule 24A.

by substituting references to “an accounting period beginning” with references to “the making of a distribution”.

Therefore, a listed territory for the purposes of the participation exemption means, in relation to the making of a distribution on or after 1 January 2025, a territory included in Annex 1 of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes<sup>3</sup>, as legislated for and applied by section 835YA. This list includes Russia and Panama, which means that companies resident in those jurisdictions during 2025 are not relevant subsidiaries for the purposes of the participation exemption.

### 3.3.2 Newly signed double tax treaties

Where a double tax treaty has been signed with another territory, but has yet to come into force, that territory will be a relevant territory from the date that agreement has been signed by both jurisdictions.

For example, the double tax agreement between Ireland and Kenya was signed on 23 July 2021 but has not yet come into effect. Therefore, Kenya became a relevant territory on 23 July 2021 for the purposes of section 831B and considering whether a company has been resident for foreign tax purposes in a relevant territory throughout the relevant period.

The double tax agreement between Ireland and Ghana was signed on 7 February 2018 but has not yet come into effect. Ghana became a relevant territory on 7 February 2018 for the purposes of section 831B.

### 3.3.3 Change of residence during relevant period

A company could move its tax residence between relevant territories throughout the relevant period and still qualify as a relevant subsidiary. However, a company cannot be a relevant subsidiary where at any point during the relevant period it is tax resident in a country that is not a relevant territory.

### 3.3.4 Company reorganisations and mergers

Section 831B contains anti-avoidance rules to prevent the exemption of a distribution sourced from a company resident in a country that is not a relevant territory, through means of a group reconstruction or merger arrangement.

The legislation requires consideration of whether during the “reference period”, the company making the distribution, firstly, acquired the business or business assets of, or secondly, was formed through a merger with, a company that is not resident in a relevant territory. The reference period, in relation to a relevant distribution, is the period of five years immediately before the date on which the relevant distribution is made.

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<sup>3</sup> OJ C, 2024/6322, 18.10.2024.

A company will not be considered a relevant subsidiary where the company, at any point in time during the five-year reference period, acquired either:

- (a) another business, or part of another business, or
- (b) the whole or greater part of the assets used for the purposes of another business,

where that business was carried on by another company that was not resident for foreign tax purposes in a relevant territory throughout the following period:

- (i) from the beginning of the reference period up until the date of the acquisition of the business or business assets, or
- (ii) if the other company from which the business or business assets were acquired was only incorporated or formed during the reference period, from the date the other company was incorporated or formed up until the date of the acquisition of the business or business assets.

**Example (*Business acquisition during reference period*)**

Spain Co makes a relevant distribution on 1 June 2025. Spain Co has been resident for foreign tax purposes in Spain since its incorporation in 2010. Spain is an EEA state and is a relevant territory for the purposes of section 831B. However, on 1 April 2022, Spain Co acquired the business of Fiji Co. Fiji Co has been resident for foreign tax purposes in Fiji since its incorporation in 2012. As Ireland does not have a tax treaty with Fiji and as it is a listed territory, Fiji is not a relevant territory for the purposes of section 831B.

The reference period in relation to the relevant distribution is the five-year period from 1 June 2020 to 31 May 2025. During the reference period, Spain Co has acquired a business that was previously carried on by another company (Fiji Co), that was not resident for foreign tax purposes in a relevant territory from the date the reference period commenced (1 June 2020) until the date of the business acquisition (1 April 2022). Spain Co is therefore not a relevant subsidiary for the purposes of section 831B.

A company will not be considered a relevant subsidiary where the company, at any point in time during the five-year reference period, was formed through a merger where a party to the merger was another company that was not resident for foreign tax purposes in a relevant territory throughout the following period:

- (i) from the beginning of the reference period up until the date the merger takes place, or

- (ii) if the other company that was a party to the merger was only incorporated or formed during the reference period, from the date the other company was incorporated or formed up until the date the merger takes place.

In this context, only the merging entities are considered a party to the merger. For example, a parent company giving authorisation for the merger in its capacity as a shareholder would not be regarded as a party to the merger.

**Example (*Merger during reference period*)**

NewCo is a company that was formed on 20 February 2025 through a merger between France Co and Paraguay Co. NewCo has been resident for foreign tax purposes in France since its formation. NewCo makes a relevant distribution on 1 March 2025. Paraguay Co was resident for foreign tax purposes in Paraguay since its incorporation in 2012 up until the date of the merger in 2025. As Ireland does not have a tax treaty with Paraguay, it is not a relevant territory for the purposes of section 831B.

The reference period in relation to the relevant distribution is the five-year period from 1 March 2020 to 28 February 2025. During the reference period, NewCo was formed through a merger where a party to the merger was another company (Paraguay Co), that was not resident for foreign tax purposes in a relevant territory from date the reference period commenced (1 March 2020) until the date of the merger (20 February 2025). NewCo is therefore not a relevant subsidiary for the purposes of section 831B.

**Note**

If in the above example Paraguay Co was only incorporated on 1 January 2021, then the period of residence to be considered is from the date Paraguay Co was incorporated (1 January 2021) until the date of the merger (20 February 2025). NewCo would not be a relevant subsidiary for the purposes of section 831B in this scenario either.

A company that acquires a business from, or that was formed through a merger with, another company that has been resident for foreign tax purposes in a relevant territory throughout the reference period, is not excluded under this provision.

### 3.4 Date on which a distribution is made

The participation exemption applies to a relevant distribution made on or after 1 January 2025. Furthermore, the definitions of a relevant subsidiary, reference period and relevant period all refer to the date on which a relevant distribution is made.

The legislation refers to a distribution being “made”, in recognition of the fact that while dividends are typically referred to as being “paid”, other forms of distribution may not necessarily involve a payment and as such a broader term is used.

The date on which a distribution is made needs to be determined on the particular facts and circumstances, and will be clear in most cases. Generally, it refers to the earliest date on which there is an obligation on a company to make the distribution, with a corresponding entitlement for the shareholder to receive that distribution.

Broadly, a relevant distribution in the form of a dividend will be treated as made on the date it is paid, which in accordance with section 4(5), is when it becomes due and payable. When a dividend is “due and payable” or “made” will be determined on the facts. This may depend on the company law of the jurisdiction in place and the powers the company relies on in making the distribution.

For example, a final dividend may be declared by a company at a general meeting and if a date for payment is not specified then this could create an immediately enforceable debt. Therefore, the dividend could be due and payable on a date that is earlier than the date the dividend is actually paid. Alternatively, if the dividend is declared under terms that it is payable on a future date, then the debt will only become enforceable and the dividend will be due and payable on that future date. In contrast, an interim dividend potentially may be varied or rescinded at any time before payment and may therefore only be regarded as due and payable when it is actually paid.

### 3.5 Hong Kong and US companies

Hong Kong operates a territorial system of taxation where corporate profits tax is generally imposed based on the source of the income, profit or gain. Corporate residency is not relevant in determining the tax treatment of a company, except in a tax treaty context. A company therefore cannot be resident in Hong Kong “by virtue of the law of” Hong Kong as domestic law does not include a concept of residence.

Similarly, the requirements for a company to be regarded as a relevant subsidiary may also give rise to difficulties for US companies.

However, it is not the policy intention of the participation exemption to exclude companies based in territories such as Hong Kong and the US simply because they do not have a domestic concept of residence. Consequently, Revenue is prepared to accept that the definition of a relevant subsidiary can be met where a company is:

- (a) a resident of Hong Kong or the US, as the case may be, under the relevant double tax agreement with Ireland, and
- (b) not generally exempt from corporate income tax in Hong Kong or the US on the income, profits and gains arising in Hong Kong or the US, as the case may be, where that tax corresponds to Irish corporation tax and that tax is imposed at a nominal rate greater than zero per cent.

These conditions must be met on the date the relevant distribution is made and throughout the relevant period.

Similarly, a company will not be prevented from being a relevant subsidiary where there has been a business acquisition or merger during the reference period involving a company that has been a resident of Hong Kong or the US under the relevant double tax agreement with Ireland, from the start of the reference period (or since formation/incorporation) until the date of the business acquisition or merger.

## 4 Qualifying participation

A company must hold a qualifying participation in a relevant subsidiary in order to be a parent company. Broadly, this is a 5 per cent or more holding of ordinary shares, held continuously for at least 12 months.

### 4.1 Minimum shareholding condition

A qualifying participation is established by reference to a 5 per cent direct or indirect holding of ordinary share capital in the relevant subsidiary. Specifically, the company must:

- (a) own not less than 5 per cent of the ordinary share capital of the relevant subsidiary,
- (b) be beneficially entitled to not less than 5 per cent of the profits available for distribution to equity holders of the relevant subsidiary, and
- (c) be beneficially entitled on a winding up of the relevant subsidiary to not less than 5 per cent of the assets available for distribution to equity holders of the relevant subsidiary.

“Ordinary share capital” in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate, but have no other right to share in the profits of the company (per the definition in section 2).

If a relevant subsidiary does not issue ordinary share capital in accordance with this definition, then a qualifying participation cannot be established. The legislation does not extend the meaning of a qualifying participation to the holding of a unit or interest that might be issued by various types of investment undertakings or partnerships, other than a holding of ordinary share capital.

Provisions from section 9 are applied in determining the amount of ordinary share capital of one company which is owned directly or indirectly by another company (for example, where a holding of shares is owned through a chain of several intermediary companies).

Provisions from sections 413 to 419 (which deal with group relief for companies) are also applied. These sections provide for the definition of and interpretation of terms used in conditions (a), (b) and (c) above, such as what is meant by an equity holder



and the profits available for distribution. The purpose of this group of sections is to identify the real and ultimate equity interest in a company.<sup>4</sup>

Section 411(1)(c) is disregarded in so far as it relates to applying sections 413 to 419. This means the different territorial scope and definition of a 'relevant territory' for the purposes of section 411 do not apply to section 831B<sup>5</sup>.

References in sections 413 to 419 to the "relevant accounting period" should be read as references to the accounting period current at the time in question.

## 4.2 Exclusions

A holding of ordinary share capital in a relevant subsidiary cannot be established by reference to share capital that is owned on a trading account of the holder.

Specifically, the following is not included for the purposes of determining whether a company holds a qualifying participation in a relevant subsidiary:

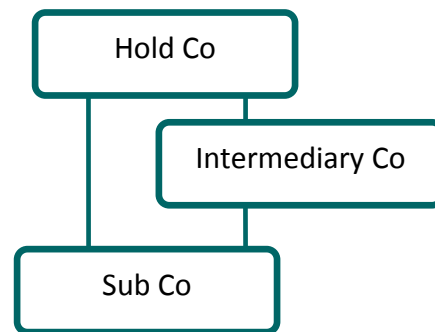
- share capital in the relevant subsidiary that the company owns directly if a profit on a sale of those shares would be treated as a trading receipt of the company's trade [per section 831B(2)(b)(ii)(I)], and
- share capital in the relevant subsidiary that the company owns indirectly and which is owned directly by another company for which a profit on the sale of the shares in the relevant subsidiary by that other company would be a trading receipt of that other company [per section 831B(2)(b)(ii)(II)(B)].

Furthermore, the holding of a qualifying participation in a relevant subsidiary cannot be determined by reference to share capital in the relevant subsidiary that the company owns indirectly and which is owned through another company that is not Irish resident or that is not, by virtue of the law of a relevant territory, resident for the purposes of foreign tax in the relevant territory [per section 831B(2)(b)(ii)(II)(A)].

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<sup>4</sup> Further guidance on these provisions can be found in Revenue's [Notes for Guidance on Chapter 5 of Part 12 TCA 1997](#).

<sup>5</sup> Note, some of the other provisions in section 411(1)(c) are instead applied by virtue of section 831B(2)(b)(ii).

**Example**

Hold Co directly owns 3% of the ordinary shares of Sub Co, a relevant subsidiary. Hold Co owns 100% of the ordinary shares of Intermediary Co. Intermediary Co in turn directly owns 97% of the ordinary shares of Sub Co. A profit on the sale of the directly held shares in Sub Co would not be treated as a trading receipt of Hold Co or of Intermediary Co.

Hold Co will be regarded as having a qualifying participation in Sub Co provided Intermediary Co is either Irish tax resident or resident for foreign tax purposes in a relevant territory.

Revenue is prepared to accept that a qualifying participation will not be prevented from being established in accordance with section 831B(2)(b)(ii)(II)(A) where a company owns share capital in the relevant subsidiary indirectly through another company that is a resident of Hong Kong or the US under the relevant double tax agreement with Ireland.

### 4.3 Minimum holding period

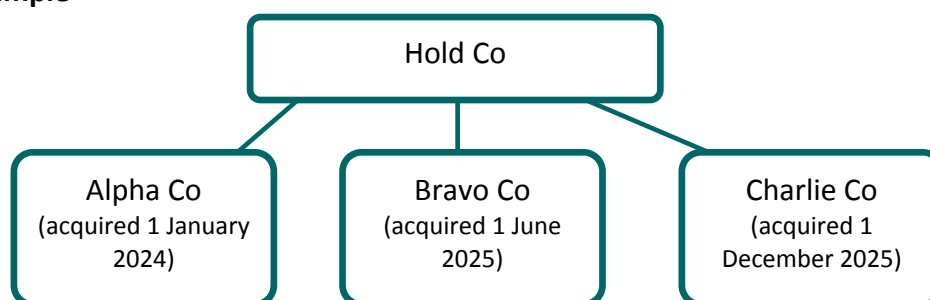
In order for the exemption to apply to a relevant distribution from a relevant subsidiary, the parent company must hold a qualifying participation in that relevant subsidiary for an uninterrupted period of not less than 12 months. That period must include the date on which the relevant distribution is made by the relevant subsidiary.

Where a relevant distribution is made shortly after a 5 per cent qualifying participation is acquired, the parent company may still claim the exemption provided the 12-month holding period is subsequently met and provided all other conditions for the exemption are satisfied.

In circumstances where the qualifying participation is acquired near the accounting year end and the parent company has not yet held the qualifying participation for the 12-month continuous period at the time of filing its corporation tax return, but reasonably expects that it will do so and has satisfied all other qualifying conditions for the exemption, then the parent company may claim the exemption in its tax

return. This is provided the parent company subsequently satisfies the minimum holding period requirement. If the parent company does not subsequently satisfy the minimum holding period requirement then the exemption under section 831B does not apply and the company must correct its tax affairs accordingly, in line with Revenue's Code of Practice for Revenue Compliance Interventions and normal self-assessment rules.

### Example



Hold Co has three wholly-owned subsidiaries, Alpha Co, Bravo Co and Charlie Co. The direct shareholdings in Alpha Co, Bravo Co and Charlie Co were acquired by Hold Co on 1 January 2024, 1 June 2025 and 1 December 2025 respectively. Each of the subsidiaries is a relevant subsidiary and each company makes a relevant distribution to Hold Co on 31 December 2025. Hold Co files its tax return for the accounting period ending on 31 December 2025 on 1 September 2026.

At the time of filing its tax return, Hold Co has satisfied the 12-month minimum holding period in respect of its qualifying participations in Alpha Co and Bravo Co and can avail of the exemption for the relevant distributions made on 31 December 2025. Hold Co has only held the shares in Charlie Co for 9 months. However, Hold Co has no plans to dispose of its shares in Charlie Co and has satisfied all other qualifying conditions under section 831B. Therefore Hold Co can also avail of the participation exemption for the relevant distribution from Charlie Co provided it holds the qualifying participation until December 2026.

## 5 Relevant distribution

The participation exemption provides an alternative form of double taxation relief for dividend income which would otherwise be taxable as Case III income<sup>6</sup> and potentially eligible for a foreign tax credit. Accordingly, in order for a dividend or other type of distribution to be considered a relevant distribution, it must constitute income in the hands of the recipient for the purposes of corporation tax. Distributions which are characterised as capital for Irish tax purposes in the hands of the recipient are not eligible.

<sup>6</sup> Or as Case IV income under section 138 in the case of certain preference share dividends.

Furthermore, the distribution must be made by a relevant subsidiary in respect of its share capital, either:

- (a) out of the profits of the relevant subsidiary, or
- (b) out of the assets of the relevant subsidiary (other than out of profits) where the cost of the distribution falls on the relevant subsidiary.

Where the relevant distribution falls under category (b) above, the underlying shares in respect of which the distribution is made must qualify for exemption under section 626B on disposal on the date the distribution is made.

While a qualifying participation is established by reference to holdings of ordinary share capital, a relevant distribution can be made in respect of any type of share capital of the relevant subsidiary. For example, this includes dividends paid in respect of ordinary shares and preference shares but does not include payments on debt instruments.

A distribution may be comprised of separately identifiable parts. Any part of the distribution which meets the eligibility criteria will be considered a relevant distribution. For example, an amount of a distribution may be regarded as income in the hands of the recipient, with the balance regarded as capital for Irish tax purposes. The amount that constitutes income may qualify as a relevant distribution.

## 5.1 Distribution out of profits

A relevant distribution includes a distribution made out of the profits of the relevant subsidiary. Profits, for this purpose, takes its meaning from section 21B(1)(a). Broadly, this is the amount of after-tax profit as shown in the profit and loss account or income statement. This refers to:

- the profits in the accounts that are required to be laid before shareholders at the annual general meeting of the company, or
- if there is no such requirement, the profits per accounts prepared in accordance with an accounting framework that, in the territory in which the company is incorporated, is generally accepted as presenting a fair view of the profits for that period.

The company law framework of the foreign jurisdiction, as well as any specific restrictions imposed on a particular company, will determine if such profits are distributable by the relevant subsidiary.

The profit and loss account of a relevant subsidiary for an accounting period will be finalised after the end of that accounting period. In most cases it will be known whether there were sufficient profits in order for the distribution to be regarded as “out of profits”, either at the point in time of making the distribution to the parent company, or by the time the parent company files its corporation tax return for an accounting period and seeks to claim the exemption.

If a parent company cannot determine whether a distribution is made out of profits, then it should consider whether the distribution was made out of other assets of the relevant subsidiary.

## 5.2 Distribution out of assets

A relevant distribution also includes a distribution made out of the assets of the relevant subsidiary, provided there is a cost to the distribution that falls on the relevant subsidiary. For example, there is no cost to a company when there is a capitalisation of reserves (bonus issue) and such transactions do not give rise to a relevant distribution. A distribution out of the assets of a company will result in the total assets of the company being reduced.

A distribution out of the assets of a relevant subsidiary can generally be taken to mean the provision of assets or value from the assets of the company. This is potentially broad in scope and will vary between jurisdictions depending on, for example, the reserve from which a relevant subsidiary can legally make a distribution. The company's articles/ constitution, a contract the company is a party to, or some other arrangement may also impose a particular restriction on what the company can distribute. A distribution out of the assets could include a distribution in cash or otherwise from, for example, the share premium account or a group reconstruction or merger reserve. Where such a distribution constitutes income in the hands of the recipient for Irish tax purposes, it may qualify as a relevant distribution.

The eligibility for a distribution out of assets of the relevant subsidiary is subject to an additional requirement in section 831B(5)(b). This additional requirement does not apply where the distribution is made out of profits within the meaning of section 21B.

If a distribution is made in respect of the relevant subsidiary's share capital out of the assets of the relevant subsidiary (rather than out of profits), any gain on the disposal of that share capital by the parent company must qualify for relief under section 626B.<sup>7</sup> Eligibility for such relief must be determined on the date on which the distribution is made.

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<sup>7</sup> Further guidance on section 626B is available in [Tax and Duty Manual 20-01-14](#).

**Example**

SubCo is a relevant subsidiary which is resident for foreign tax purposes in a relevant territory that permits the making of a distribution from the share premium account. SubCo makes a distribution on 1 March 2025 from the share premium account to HoldCo, its Irish resident parent company. Due to the specific facts and circumstances of the case, the distribution constitutes income in the hands of HoldCo. HoldCo has owned 100 per cent of the ordinary share capital of SubCo for over ten years. SubCo is a trading company.

The distribution is a relevant distribution for the purposes of section 831B. In order for the participation exemption to apply to the distribution, HoldCo must determine whether any gain on a disposal of its shares in SubCo on 1 March 2025 would qualify for exemption under section 626B.

### 5.3 Exclusion for deductible amounts

A relevant distribution does not include a distribution, or that part of a distribution, that has been, or may be, deducted for tax purposes in any territory outside the State under the law of that territory. The distribution cannot be deductible in any period. For example, where a foreign subsidiary has not taken a tax deduction for the amount of the distribution, but has the option of doing so, then that distribution will not be a relevant distribution.

The fact that one part of a distribution is deductible will not prevent another separately identifiable part of the distribution from being a relevant distribution, where that other part is not deductible.

### 5.4 Exclusion for distributions from offshore funds

A relevant distribution does not include any dividend paid or other distribution made by an offshore fund. For the purposes of the participation exemption, “offshore fund” is construed in accordance with section 743<sup>8</sup>.

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<sup>8</sup> Note that the location of the offshore fund and whether it is an ‘equivalent’ or ‘non-equivalent’ fund is not relevant in construing the meaning of an offshore fund in accordance with section 743. As explained in [Tax and Duty Manual Part 27-04-01](#), there are different rules for taxing income from ‘equivalent’ and ‘non-equivalent’ offshore funds located in the EU, EEA, or an OECD member state with which Ireland has a double tax agreement. However, those offshore funds remain offshore funds (within the meaning of section 743).

Under section 743(1), a reference to an offshore fund only relates to a foreign company, unit trust scheme or co-ownership arrangement in which a person has a “material interest”. Further guidance on the meaning of a material interest in an offshore fund is available in [Tax and Duty Manual Part 27-02-01](#). Without a “material interest” existing in the relevant foreign concern, it will not be regarded as an offshore fund for the purpose of section 743.

## 5.5 Other exclusions

A relevant distribution also does not include the following:

- (a) a distribution in a winding up,
- (b) any interest or other income from debt claims providing rights to participate in a company's profits (with profits taking its meaning from section 21B(1)(a)), or
- (c) any amount considered to be interest equivalent (within the meaning of the interest limitation rules in section 835AY)<sup>9</sup>.

## 6 Anti-avoidance

Section 831B(7) contains a targeted anti-avoidance rule. It prohibits the exemption of a relevant distribution which arises in respect of an arrangement, or part of an arrangement, which-

- (i) has been put in place for the main purpose of, or one of the main purposes of which is, obtaining a tax advantage, and
- (ii) is not genuine having regard to all the facts and circumstances.<sup>10</sup>

An arrangement, or part of an arrangement, as the case may be, is regarded as not genuine to the extent that it is not put into place for valid commercial reasons which reflect economic reality.

## 7 Claiming the exemption

The participation exemption applies to relevant distributions made on or after 1 January 2025.

A parent company must claim the participation exemption in the corporation tax return (Form CT1) for the accounting period during which the relevant subsidiary makes the relevant distribution to the parent company. The claim is referred to as a "relevant claim" in section 831B(8).

If a parent company claims the participation exemption then that company is not entitled to a deduction, reduction, credit or other relief for tax paid under the laws of a relevant territory in respect of the relevant distribution.

If a parent company does not claim the exemption then the foreign distribution remains subject to corporation tax. A claim for a reduced rate of corporation tax under section 21B and/or a claim for a double tax credit in respect of foreign tax paid may also be available.

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<sup>9</sup> Further guidance on interest limitation rules and the definition of an interest equivalent is available in [Tax and Duty Manual Part 35D-01-01](#).

<sup>10</sup> Further guidance on main purpose tests is contained in [Tax and Duty Manual Part 33-01-01](#).

Where a relevant claim is made in relation to an accounting period, it applies in respect of all the relevant distributions made to the parent company in that accounting period, from all relevant subsidiaries in which that parent company holds a qualifying participation. As such, a claim for the participation exemption cannot be made on a dividend by dividend, or subsidiary by subsidiary basis. A parent company can however, opt to claim the exemption or not from one accounting period to another.

The facility to amend a tax return is also available to a parent company in accordance with Part 41A. For example, a parent company may file a return claiming the exemption, and subsequently amend the return to instead tax the income and claim double tax relief in the form of a credit, or vice versa.

The Form CT1 requires separate reporting of the amount of relevant distributions made from profits and those made from other reserves of the relevant subsidiary.

## 8 Interaction with other TCA provisions

### 8.1 Double tax relief under Schedule 24

Prior to claiming the participation exemption, a company may have unused foreign tax credits carried forward from earlier accounting periods in respect of foreign dividends. These credits are not forfeited if the participation exemption is claimed. The credits remain available for offset against corporation tax on dividend income which does not qualify for the exemption, or against corporation tax on future dividend income if no claim for the exemption is made for that accounting period.

Where a claim for the participation exemption is made in respect of an accounting period, no additional relief is available for any foreign tax paid in respect of relevant distributions in that accounting period. In other words, foreign tax on the relevant distributions cannot be used to shelter corporation tax on non-qualifying dividends in the accounting period, or corporation tax payable in future periods.

### 8.2 Expenses of management

Section 83 permits investment companies to take a deduction for expenses of management when computing total profits for an accounting period. The expenses of management are reduced by the amount of any income derived from sources not charged to tax.

The participation exemption provides that corporation tax shall not be chargeable on a relevant distribution and that the relevant distribution shall not be taken into account in computing income for corporation tax. As such, an investment company that claims the participation exemption must deduct the amount of exempt relevant distributions from its computation of expenses of management under section 83.



## 8.3 Franked investment income

Distributions between Irish-resident companies are typically exempt under section 129. Section 129A is an anti-avoidance provision that disapplies the exemption where the companies are connected and the profits out of which the dividends are paid were earned by the paying company while it was resident outside the State.

However, section 129A will not apply to the extent that the distribution paid out of foreign profits would have qualified for the participation exemption, if that distribution had been paid on the last date before the paying company became Irish tax resident and if a relevant claim had been made [see section 129A(6)].

## 8.4 Controlled foreign companies

The Controlled Foreign Company (CFC) rules are an anti-abuse measure designed to prevent the artificial diversion of profits from controlling companies to offshore entities in low or no-tax jurisdictions (the CFCs).<sup>11</sup> These provisions apply a charge on a portion of a CFC's undistributed income. Section 835Q sets out the rules for determining the undistributed income of a CFC.

Income of a CFC that is considered 'undistributed income', for the purposes of the CFC rules, can be reduced where an amount is distributed to a person resident in the State. However, this is only in circumstances where that person has not made a relevant claim for the participation exemption in respect of that amount [see section 835Q(4)].

## 8.5 Interest deductibility

### 8.5.1 Section 247 interest relief

Section 247 allows relief for interest as a charge on income, where certain conditions are met.<sup>12</sup> Subsections (4A) and (4B) contain anti-avoidance provisions which deny interest relief under section 247 in specified circumstances relating to connected party borrowings or borrowing to provide specified intangible assets within the meaning of section 291A.

There are exceptions to these restrictions to the extent certain conditions are met, which, inter alia, take into account dividends or other distributions chargeable to corporation tax being received. As a relevant distribution is not chargeable to corporation tax under the participation exemption in section 831B, a relevant distribution will not mitigate the restriction on interest relief under subsections (4A)(d) and (4B)(b)(i) of section 247.

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<sup>11</sup> Further guidance on CFC rules is available in [Tax and Duty Manual Part 35b-01-01](#).

<sup>12</sup> Further guidance on the application of section 247 is available in [Tax and Duty Manual 08-02-01](#).

### 8.5.2 Interest Limitation Rules

Companies can claim tax relief for interest expenses in certain circumstances. The Interest Limitation Rule in Part 35D limits the maximum net interest deduction to 30% of Earnings Before Interest, Taxes, Depreciation and Amortisation (EBITDA). Subject to certain exceptions, any interest above that amount is not deductible in the current year. Instead, interest deductibility is deferred until such time as there is sufficient interest capacity to allow deduction. The calculation of Earnings for this purpose takes into account the “relevant profit” for an accounting period and the amount of profits on which corporation tax falls finally to be borne. The exemption of relevant distributions from the charge to corporation tax under the participation exemption will reduce the relevant profit for the period.

## 8.6 Allowance of charges on income

Section 243(5) includes a provision that charges on income paid by a company to a non-resident person will only be deductible against the total profits of the period in specified circumstances. One such circumstance is that the payment is payable out of income brought into the charge to tax under Case III of Schedule D and which arises from securities and possessions outside the State. Where the participation exemption is claimed, the amount of income brought into the charge to tax under Case III will be reduced.

## 8.7 Real Estate Investment Trusts (REITs)

A Real Estate Investment Trust under Part 25A that receives a relevant distribution as part of its residual business is eligible for the participation exemption.

## 8.8 Close company surcharge

Sections 440 and 441 provide for surcharges on the undistributed income of close companies. Where a close company makes a claim for the participation exemption in respect of a relevant distribution, then the relevant distribution is not included in the amount subject to the close company surcharge.