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Exploitation of Intellectual Property in Ireland

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Intellectual property and Irish tax

Ireland offers useful tax incentives for Irish resident companies which carry on a trade which involves the acquisition, development and licensing/exploitation of intellectual property ("IP"). Below is a brief overview of some of the main tax benefits that arise from such IP related activities.

Low corporation tax rate for trading activity

Ireland has a standard rate of corporation tax for Irish companies of 12.5% for all trading income. A higher rate of 25% applies to passive income such as interest, rental and other non-trading income. The corporation tax rate of 12.5% will apply to the trading profits generated by an Irish company where the required levels of substance and activity in Ireland are met. The 12.5% rate would probably not apply in cases where the income deriving from the IP is passive in nature e.g. a company that owns a brand or trademark and licences it at a pre-determined price to a single affiliated company. However the 12.5% rate could apply where a company which owns an IP asset actively seeks to derive income from the IP by actively seeking out customers who pay a "market rate" for the use of that IP.

The expenses incurred wholly and exclusively for the trading purposes by the company are tax deductible in calculating the taxable trading profits arising from the IP income.

Special capital allowances regime for the cost of acquiring IP

Capital allowances are available in respect of the cost of acquiring "specified intangible assets" if those assets are used for the purposes of a company's trade. Examples of specified intangible assets include patents, copyrights, trademarks, licences, copyrights, computer software, brands, know-how, **and goodwill** directly attributable to any of these intangible assets.

For tax purposes the acquisition of these assets is treated in a manner similar to the acquisition of items of physical plant and machinery and therefore capital allowances are available in respect of the cost of acquisition. However in the case of specified intangible assets, the allowances are not necessarily deducted from taxable profits of the trade over the course of an 8-year tax life. Instead, the amount of the allowance available for offset against each year's taxable profits can be calculated based on accounting depreciation or the tax-payer can opt to claim the allowances over a 15-year period. The allowances will reduce the company's trading profits arising from exploitation of the IP that are liable to corporation tax.

The amount of the allowances that can be offset depends on the date of acquisition of the intellectual property. Where a company has acquired qualifying IP both before 11 October 2017 and on or after 11 October 2017, the company shall be treated as having two separate IP related trading income streams. The "earlier income stream" is the IP trading income derived from the capital expenditure incurred on acquiring the qualifying IP before 11 October 2017 and the "later income stream" is the IP trading income derived from the capital expenditure incurred on acquiring the qualifying IP on or after 11 October 2017.

In the case of qualifying IP acquired before 11 October 2017, the extent to which the special capital allowances and related interest costs on this IP can be used will be capped at the total income of the "earlier income stream" for an accounting period, with the unused portion being available for offset against the "earlier income stream" that arises in future years.

In the case of IP acquired on or after 11 October 2017, the special capital allowances and related interest costs on this IP which may be offset will be restricted to 80% of the "later income stream"

for an accounting period, with the unused portion being available for offset against the "later income stream" that arises in future years.

Stamp duty exemption for transfers of IP assets

Irish tax legislation provides for a Stamp Duty exemption on the acquisition of IP by an Irish company. The relevant legislative provision uses the same definition of intellectual property as used in the provision relating to the specified intangible assets to which the special capital allowances regime applies i.e. the exemption from stamp duty can apply to patents, copyrights, trademarks, licences, copyrights, computer software, brands, know-how, **and goodwill** directly attributable to any of these intangible assets.

No VAT on certain transfers of intangible assets

Where intangible assets (which may include intellectual property) are transferred in connection with the transfer of the assets of a business and certain conditions are met, the transfer is deemed not to be a supply of services for the purposes of VAT. This can be very efficient from an administrative point of view and is also provides a cashflow benefit.

Research and development tax credit

If a company incurs expenses on research and development activities, the company may qualify for the R&D Tax Credit. The credit is calculated at *25% of qualifying expenditure* and is used to reduce a company's Corporation Tax (CT). This is in addition to the normal tax deduction of 12.5% obtained for the research & development expenditure, which means the company effectively obtains an overall 37.5% tax deduction for the research & development expenditure. Therefore the effective cost of a €100,000 investment in research and development activities, if the R&D tax credit is available, could be €62,500.

Where a company has offset the credit against current and previous years' CT liabilities, the unused portion of the credit **may be payable to the company in instalments**. It is also possible for a company to surrender an unused amount of the R&D tax credit to certain key employees, and a key employee can use the surrendered amount to reduce his or her income tax liability.

A company may qualify for the R&D Tax Credit if it is within the charge of CT in Ireland, it carries out qualifying R&D activities in Ireland or the European Economic Area (EEA) and the expenditure does not qualify for a tax deduction in another country.

To qualify for the R&D Tax Credit, a company must carry out research and development activities that involve systemic, investigative or experimental activities in the field of science or technology. The research must seek to make a scientific or technological advancement and must involve the resolution of scientific or technological uncertainty.

A company must claim the R&D Tax Credit within 12 months of the end of the accounting period in which it incurs the expenditure. However, expenditure on R&D related buildings and structures is not subject to this time limit. The R&D Tax credit is claimed through a company's Irish corporation tax return (Form CT1).

Knowledge Development Box (KDB)

The Knowledge Development Box regime allows for trading profits earned by an Irish company from certain forms of intellectual property to be taxed at a rate of 6.25% to the extent that those profits are related to any research and development undertaken by the company. The amount of profits

taxable at 6.25% is determined by the proportion that the Irish company's qualifying expenditure on qualifying assets (i.e. intellectual property assets) bears to the Irish company's overall expenditure on qualifying assets.

Where a company which qualifies for relief under the KDB regime, the company will be entitled to deduct an amount equal to 50% of its qualifying profits in computing the taxable profits of its specified trade. As a result of this deduction, the taxable profits arising from the qualifying assets are taxed at 6.25% rather than 12.5% i.e. the 12.5% rate is applied to half of the qualifying taxable profits only.

Other benefits for companies resident in Ireland

Other tax benefits for companies which are tax resident in Ireland include:

- An exemption from dividend withholding tax can be claimed where dividends are paid to companies which are resident in countries with which Ireland has a double tax treaty and certain conditions are met.
- Likewise it is possible for an Irish resident to claim double tax relief in respect of income (including dividend income) received from companies which are resident in countries with which Ireland has a double tax treaty. Generally speaking where the foreign tax exceeds the Irish tax, no incremental tax liability will arise in Ireland.
- It is possible to obtain an exemption from operation of Irish payroll taxes on the remuneration of certain non- Irish resident employees.
- Most of Ireland's tax treaties provide for nil or low rate of foreign withholding tax on royalties paid from another country to Ireland provided certain conditions are met.

Ireland offers many benefits to companies which are engaged in the development, acquisition and exploitation of intellectual property. It is therefore worth seeking proper and comprehensive advice as to how to maximise the available benefits.

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