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# Ireland's Tax Regime for Investing in Intellectual Property

Conor MacNamara delivers a brief overview of the incentives and tax reliefs available for Irish business in relation to Intellectual Property (IP) and intangible assets.

## Introduction

As part of Irish Government policy of supporting Ireland's 'smart economy', significant tax incentives were brought into effect by Finance Act 2009 in relation to the provision of intangible assets. These incentives have significantly increased Ireland's competitiveness as a location for businesses to invest in intellectual property ("IP").

An Irish corporate business is generally subject to the 12.5% rate of Irish corporation tax in respect of the taxable profits derived from its trade. In calculating the taxable trading profits, the business may generally deduct expenses that are revenue in nature and are wholly and exclusively incurred for the purposes of the trade. Capital expenditure is generally not deductible in arriving at taxable trading profits although capital allowances may be claimed on the provision of certain assets such as plant and machinery and computer software.

## Incentives Relating to Intangible Assets

The incentives in relation to intangible assets now allow companies to claim capital allowances on the acquisition or development of specified intangible assets after 7 May 2009 by either:

- Deducting for tax purposes the amortisation or depreciation charge included in the accounts, or
- Electing to claim the tax deduction over 15 years, namely 7% in the first 14 years and 2% in the final year.

The provisions only apply to companies, i.e. they do not extend to individuals. A claw

back of capital allowances may arise where the specified intangible asset is not used in the company's trade for at least ten years.

The definition of specified intangible assets is similar to the definition of IP assets that are exempt from Irish stamp duty and include the following:

- Patents and registered designs,
- Trademarks,
- Brand names,
- Know how,
- Domain names, copyrights, service marks and publishing titles,
- Authorisation to sell medicines, a product of any design, formula, process or invention (and any rights derived from research into same),
- Certain computer software, and
- Goodwill, to the extent that it directly relates to the assets outlined above.

Further information about the different categories of Intellectual Property (IP) and in particular those which may be entitled to tax relief can be found in the Law & Regulation section of this journal on page 14.

## Writing Off Intangible Assets

The rate on which specified intangible assets are written off will vary from asset to asset and will depend on a number of factors. For tax purposes, as a general rule of thumb, where the capital expenditure incurred by a company is written off over a period of less than 15 years, then it would not be worthwhile for the company to make the 15 year election.

In order for an asset to be recognised as a specified intangible asset it must be

regarded as an intangible asset for accounting purposes and the company incurring the capital expenditure must prepare accounts under IFRS or Irish GAAP.

### Capital Allowances

Under normal tax rules for capital allowances, the specified intangible asset must be in use for the purposes of the company's trade at the end of the accounting period for which the capital allowances are being claimed and the expenditure must be capital rather than revenue in nature. However, any expenditure incurred by the company that is revenue (rather than capital) in nature may be deductible under normal tax rules whereby the expenditure may be deductible in full for the accounting period in which the expenditure is incurred. In instances where a range of IP is being acquired by a company, care should be taken to ensure that the proceeds are allocated to the various assets to achieve the optimum result, e.g. from a tax perspective this may be done by allocating as much of the proceeds as can be justified to the specified intangible assets.

Where a company manages, develops or exploits specified intangible assets in respect of which capital allowances have been claimed, these activities are regarded as being a separate trade for the company for tax purposes. This provision should be carefully considered in the context of its interaction with other provisions contained in Irish tax law.

### Tax Relief

Tax relief may be available in respect of any interest incurred by the company on borrowings applied to acquire specified intangible assets. The capital allowances and related interest relief are capped at 80% of the taxable trading income derived from the company's 'IP trade'. Any unused capital allowances or interest relief may then be carried forward by the company against any future taxable profits arising in respect of the 'IP trade'.

The regime may apply to both third party and connected party acquisitions. However, certain arm's length rules are in existence. A company may not claim capital allowances on capital expenditure incurred on the provision of a specified intangible asset where the expenditure exceeds the amount that would have been payable for the asset if the transaction was between persons acting at arm's length with one another.

The incentives were welcomed by many stakeholders within the Irish business community when they were introduced and they will no doubt attract significant inward investment in IP into Ireland. It is hoped that these incentives will not be a one off and that further measures that will attract IP investment to Ireland will be introduced in the near future.

A further article entitled **"Intellectual Property (IP) Rights"** can be found in the Law & Regulation section of this journal on page 14.

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