

Ireland an attractive location for venture capital

Ronan MacNioclais, Partner, PricewaterhouseCoopers outlines how the recent Finance Bill's new Intellectual Property tax regime, allied to our 12.5% corporate tax rate and recently improved R&D tax credit provisions, means that Ireland is well placed as a centre for IP creation and exploitation.

Contact

IVCA
Irish Venture Capital Association
 3 Rectory Slopes,
 Bray,
 Co. Wicklow.
 T: +353 1 276 4647
 E: secretary@ivca.ie

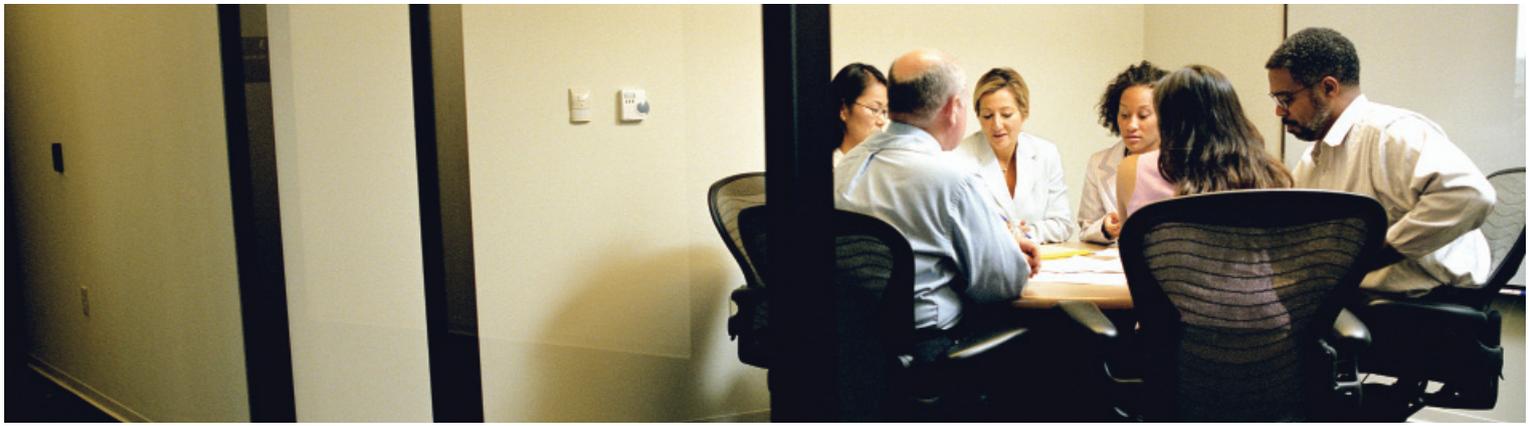
Ronan MacNioclais
PricewaterhouseCoopers
 Partner
 T: +353 1 792 6006
 E: ronan.macnioclais@ie.pwc.com



Ireland – tax measures enhance Ireland's position as a centre for innovation

Taxation incentives in the areas of intellectual property (IP) and research and development (R&D) have ensured that Ireland is now well placed as a centre for IP creation and exploitation. Taken together with the Irish government's commitment to the 12.5% corporate tax rate, these incentives have positioned Ireland to the forefront of countries for IP development and management.

The patent royalty income exemption has been a key feature of Ireland's IP regime for many years. Currently, Irish resident companies can earn up to €5m of patent royalty income from qualifying patents each year, which is entirely exempt from corporation tax (CT). However, new tax reliefs on IP assets and venture fund gains, as well as enhancements to the existing R&D tax credit system have positioned Ireland as a primary location for IP investment.



Venture fund incentives

Favourable incentives in relation to the tax treatment of carry where the investments are involved in R&D type activities have recently been introduced.

A reduced rate of capital gains tax of 15% (for individuals holding interests through a partnership) and 12.5% (for corporates) in respect of such investments has now been introduced. The relief applies to carry made on or after 1 January 2009 in new businesses for a period of at least 6 years. The new business must be engaged in research, development or innovation activities (i.e. the development of new technological, telecommunication, scientific or business processes).

Where the incentive is not available, typically gains on carry are subject to capital gains tax (currently 25%) rather than income tax (the top rate of which is currently 41%).

Individuals who are not Irish domiciled can avail of a very beneficial regime as they are only liable to Irish tax on foreign income and gains if they are remitted into Ireland. Members of the international investment community locating to Ireland who avail of the remittance basis of taxation can therefore realise a substantial part of the gains on carry and co-invest free of Irish tax.

Intellectual property tax regime

Until now, the Irish tax regime has discriminated between tangible and

intangible assets, with tax relief on the acquisition of the latter only available in limited circumstances. However, recent measures have been introduced to redress this imbalance. A tax deduction (either by reference to the accounting tax life of the asset or over a 15 year period) has been introduced for capital expenditure incurred on the acquisition of a wide variety of intangible assets, including:

- patents and registered designs
- trademarks and brand names
- know-how (which itself is widely defined)
- 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)
- goodwill (to the extent that it directly relates to the assets outlined above)

The tax deduction is available against income generated from exploiting these assets or as a result of the sale of goods or services deriving the majority of their value from the IP.

The deduction is restricted to 80% of the relevant IP profits of the company but any excess deductions can be carried forward and set against future IP profits, reducing CT liabilities in future years. The new legislation has application in both

inter-group and 3rd party situations. The existing stamp duty exemption has also been broadened to ensure that the exemption applies to the types of assets listed above.

Research and development incentives

Ireland operates a generous R&D tax credit system for in-house R&D activities, and recent enhancements have made this system even more attractive. The rate of the tax credit available has been increased from 20% to 25% on incremental expenditure over a 2003 base period, resulting in an effective CT deduction of 37.5%. In a very welcome move, the R&D tax credit on qualifying buildings has been enhanced to permit a company claim the full credit in the year the relevant expenditure is incurred rather than spread over four years as was previously the case.

While typically the credit reduces CT payments, for financial years commencing on or after 1 January 2009 the tax credit will be refunded, over a 3 year period, where companies are not in a CT paying position.

The definition of R&D for the purposes of this relief is particularly wide-ranging and covers “systematic, investigative or experimental activities in a field of science or technology... seeking to achieve scientific or technological advancement and involving the resolution of scientific or technological uncertainty”.

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