OHT Guide

Intellectual Property Rights and Irish Companies

Ireland is a popular location for holding and developing intellectual property.

A number of tax provision have been developed to make it attractive for foreign companies to locate here, including the 12.5% corporation tax rate, credits for research and development (R&D) costs, and the provision of capital allowances on intangible assets.

In his speech when launching Finance Bill 2014 the Minister for Finance Michael Noonan indicated that he would introduce a “Knowledge Development Box” scheme. This would involve a preferential rate of tax (6.5% has been mentioned) being levied on intellectual property assets such as patents which are managed from Ireland and located here. The Government announced a public consultation process to gather views on how the Knowledge Development Box should operate with a view to legislating in Finance Bill 2015.

12.5% Corporation Tax

The rate of corporation tax on active Irish trading profits is 12.5%. This rate applies to trading income from activities carried on in Ireland.

This 12.5% rate also applies to dividends from trading subsidiaries located in the EU (other than Ireland) and subsidiaries located in treaty partner countries provided that dividends are paid out of trading profits.

Profits from investments and similar activities in Ireland, and from non Irish trades and investments, are taxed at a rate of 25%.

A company which holds Intellectual Property (“IP”) and which carries on ancillary trading activities (such as management activities, sales etc) may be treated as trading. However it should be noted that there must be substantial trading activity in Ireland, which involves having personnel and operational backup in Ireland to allow the exploitation of and management of the IP. If the holding of IP is combined with related research and development work carried on in Ireland, the licensing of the IP may also be viewed as a trading activity.

It is possible to apply for an advanced ruling from Revenue to determine if the activities of the company would be regarded as trading. In addition Revenue have published “Guidance on Revenue Opinions on Classification of Activities as Trading” setting out a number of indicators to be looked at when considering the trading status of a company.

Transfer Taxes – Stamp Duty Exemption for IP

Irish tax law provides an exemption from stamp duty (transfer tax) on the sale, transfer or other disposition of IP including any patent, trademark, copyright, invention or brand.

Goodwill that is directly attributable to such IP is also covered by this stamp duty exemption.

Research & Development (“R&D”) Benefits

Ireland has an attractive Research & Development regime, with a tax credit (“R&D Credit”) of 25% available for qualifying Research and Development expenditure.

This credit may be set against a company's Corporation Tax liability and is available on a group basis in the case of group companies.

The credit is available where a company undertakes in-house qualifying research and development undertaken within the European Economic Area. To qualify, the expenditure must be incurred in respect of R&D activities in the EEA and must not qualify for tax relief in any other country. R&D activities are defined as systematic, investigative or experimental activities in a field of science or technology.

Activities will not be regarded as being R&D activities unless they seek to achieve scientific or technological advancement and involve a resolution of scientific or technological uncertainty. The activities must fall within one of the categories set out in the published Regulations.

Capital Allowances on IP

Capital allowances are available for the capital expenditure incurred in the creation and acquisition of intangible assets, including the acquisition of IP.

The tax deduction allowed is equal to the amount of accounting amortisation or impairment charged in the annual financial statements of a company. Alternatively, a company may elect to claim the tax deduction over 15 years (7% per annum and 2% in year 15).

No clawback of capital allowances will arise if the assets are sold after a period of 10 years.

The allowances granted may not reduce the income of the IP trade by more than 80% and the scheme is subject to some restrictions, particularly if the intangible assets are acquired intra group or the intangible assets were purchased or created using borrowed funds on which interest is payable.

It is no longer possible to claim both capital allowances for expenditure on specified intangible assets and to claim R&D credits on the same expenditure.

IP Holding Companies

There are tax benefits to locating an IP holding company in Ireland.

One benefit is the Capital Gains Tax (CGT) Participation Exemption which provides that, on meeting certain conditions, a holding company that disposes of shares in a subsidiary trading company resident in the EU is not liable to CGT on the disposal.

Another tax provision which benefits companies that are part of international groups is the taxation of foreign dividends. While there is no specific participation exemption for dividends, the active trading rate of corporation tax (12.5%) also applies to dividends received from companies resident in the EU or in a country with which Ireland has a tax treaty, where the dividends are payable out of the trading profits of such subsidiaries.

The ability of a holding company to finance its operations by means of borrowings is restricted in some countries which have thin capitalisation rules, requiring that companies be financed in part by equity rather than by 100 % borrowings. Typically such countries restrict the interest deduction available to a company which is thinly captialised (i.e. which has borrowing in excess of a level set by legislation). Currently Ireland does not have thin capitalisation legislation so there is no restriction on thinly capitalised companies operating in Ireland.

Some countries have controlled foreign companies' provisions which are directed at companies set up to benefit from low tax rates in other territories, or favourable regimes overseas. In general controlled foreign companies ("CFC") rules are triggered where a company controls an overseas company which pays overseas tax which is less than a certain fraction of the tax that would have been paid in the country imposing the CFC regime. For example, the UK legislation provides that CFC rules apply if an overseas subsidiary pays less than 3/4 of the tax which it would have paid on its income if it was resident in the UK. Under the CFC rules the UK company pays UK tax on its share of the overseas companies profits.

Ireland does not have controlled foreign company legislation, which may be an advantage in terms of locating IP holding companies here.

There is also limited transfer pricing legislation in Ireland which applies to transactions in accounting periods commencing after 01 January 2011. This legislation does not apply to small and medium-sized entities and is again less onerous than similar legislation in other countries. Small and medium-sized entities are defined as those with staffing levels below 250 employees with an annual turnover of €50 million or less or an annual balance sheet total of €43 million in assets or less.

Under domestic legislation, Ireland does not impose withholding taxes on dividend payments (DWT) made by an Irish resident company to individuals resident in either an EU or Tax Treaty jurisdiction. Similarly there is no DWT applied to dividend payments to non-resident companies which are not controlled (50% or more shareholding) by Irish residents.

Conclusion

There has been much discussion by government and policy makers about the "smart economy" in Ireland. In addition to its historically attractive corporation tax rate, Irish legislation has recently increased tax breaks for research and development activities with the aim of attracting foreign direct investment into the country. Simultaneously incentivising the purchasing and holding of intellectual property, including the intellectual property which arises from R&D, should assist in developing Ireland's smart economy.

If tax advice is required on any point raised in this article an email can be sent to info@ohanlontax.ie.

O'Hanlon Tax Limited
6 City Gate, Lower Bridge St., Dublin 8, D08F291
T: 01 6040280 F: 01 6865400 E: info@ohanlontax.ie W: www.ohanlontax.ie