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Relief for Capital Expenditure on Intangible Assets

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Companies within the charge to Irish tax may claim tax relief for capital expenditure incurred after 7 May 2009 on acquiring intangible assets ("IA"). The amortisation of IA acquisition costs is another useful measure that the Irish tax system offers to encourage multi-national companies to locate and exploit intellectual property in Ireland.

Other measures in the Irish tax code that enhance the attractiveness of Ireland as an international IA holding location include the following:

- 12.5% rate of corporation tax for trading activities
- R&D tax credits for expenditure on R&D
- Attractive holding company regime whereby qualifying shareholdings may be sold free of Irish capital gains tax

Relief available

A trading company that incurs capital expenditure on the provision of certain IA, as described below, for the purposes of its trade will be entitled to write off the expenditure against its trading income for Irish corporation tax purposes. The write-off may take the form of a fixed writing down allowance over a period of 15 years (7% for years 1 to 14 and 2% for year 15) or the write-off may follow the accounting treatment of the intangible asset whereby the allowance will equal the amount charged to the P&L account in respect of the amortisation or impairment of the IA. Where a company opts for the fixed writing down period, it must make an election to do so in the accounting period in which the expenditure on the provision of the specified intangible asset was incurred.

The relief applies to capital expenditure incurred on -

- the acquisition of IA from third parties and from connected persons,
- the development of IA internally which is regarded as capital expenditure for the purposes of the company's trade, and
- the enhancement of externally acquired IA.

Qualifying IA

The scheme applies to IA which –

- are recognised as such under generally accepted accounting practice, and
- are listed as "specified intangible assets" in the relevant tax legislation.

The “specified intangible assets” listed in the relevant tax legislation include the following -

(1) patents, registered designs, design rights or inventions,
(2) trademarks, trade names, brand names, domain names,
(3) copyrights,
(4) computer software intellectual property which is commercially exploited (i.e. with a view to earning income from this activity),
(5) know-how,
(6) certain plant breeders rights,
(7) applications for patents, copyrights, etc,
(8) authorisations to sell medicine,
(9) any licence in respect of an intangible assets referred to above,
(10) any foreign rights similar to those outlined above, and
(11) goodwill to the extent that it is directly attributable to anything referred to above.

Computer software

Capital expenditure on computer software which is used within the business (i.e. software applications for computer systems or computer-operated equipment used in the operation of a company’s business) will continue to be written off over an eight year period and these provisions will not change that position.

Acquisition from connected persons

The consideration attributable to IA acquired from a connected person must be at an arm’s length rate and any amount paid in excess of this amount will not qualify for relief. Where the IA are acquired from another company and the transfer qualifies for capital gains tax group relief, then no allowance is available unless a joint election is made not to avail of the capital gains tax relief within twelve months of the end of the accounting period in which the assets are acquired. If this election is made the transferee will be entitled to claim an allowance for the acquisition of the IA while the transferor will be subject to capital gains tax on the disposal.

Balancing allowance or charge on disposal

No balancing allowance or charge will arise on the disposal of the intangible assets to unconnected persons where the disposal takes place more than 10 years after the beginning of the accounting period in which the asset was first used in the trade.

Ring-fencing of allowances

The tax allowance is available for offset against income generated from exploiting the IA and this is to be regarded as a separate trading activity. This also applies where the activity comprises the sale of goods or services that derive the greater part of their value from the IA. Therefore, the trade that exploits the IA is treated as a separate trade and the tax allowance is ring-fenced against this category of income.

Limit on relief available

The total amount of capital allowances and interest on borrowings used to fund the acquisition of the IA for which capital allowances are available is restricted to 80% of the gross trading income of the trade (income excluding allowances and interest) for that accounting period. A minimum rate of corporation tax of 2.5% is therefore payable in respect of IA trading income. To the extent that there are excess allowances or interest in an accounting period, capital allowances on IA are to be restricted before interest on the associated borrowings. Any excess capital allowances or interest for which relief is not available in the current period may be carried forward and added to capital allowances arising and interest payable in the next accounting period.

Example 1[1]:

	Accounting Period 1 € million	Accounting Period 2 € million
Income from relevant trade before allowances and interest:	10	11
Capital allowances at fixed rate of 7% p.a.:	7	7
Interest deductible:	3	3
Allowances carried forward from previous Accounting Period:	NIL	2
80% of income from relevant trade, before allowances and interest:	8	8.8
Interest deductible:	3	3
Capital allowances [restricted]:	5	5.8
Income chargeable:	2	2.2
Allowances available for carry forward:	2	3.2

Restrictions also apply where, instead of the company exploiting the IA borrowing directly to acquire the IA, another company (the "investing company") borrows the funds which it provides to the company by way of a subscription for shares or a loan and the company that receives the funds uses those funds to acquire the IA. In these circumstances, the interest relief available to the investing company will be restricted in a manner that ensures that the interest relief granted cannot exceed the amount of interest that would have been deductible in the hands of the company that acquired the IA if that company had incurred the interest expense. Any interest restricted in this manner can be carried forward and treated as interest paid in the next accounting period.

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