Relief for Capital Expenditure on Intangible Assets

Companies within the charge to Irish tax may now 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.

Existing 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 without paying capital gains tax

As asset values have fallen worldwide in recent months, reduced exit charges should arise if IA are transferred to Ireland. Presently, many multi-nationals are reassessing their global operations so the introduction of this regime is timely.

Relief available

A trading company that incurs capital expenditure on the provision of certain intangible assets (IA) described below for the purposes of its trade will be entitled to write off the expenditure for tax purposes. The company may claim a writing down allowance over a period of 15 years (7% for years 1 to 14 and 2% for year 15) or follow the accounting treatment of the intangible asset whereby the allowance will equal the amount amortised to the P&L account. 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,

• the development of IA internally

• the enhancement of externally acquired IA

Qualifying IA

The intangible assets that will qualify for relief include the following

(a) patents, registered designs, design rights or inventions,
(b) trade marks, trade names, brand names, domain names,
(c) copyrights
(d) know-how
(e) certain plant breeders rights
(f) authorisations to sell medicine
(g) certain plant breeders rights
(h) any licence in respect of an intangible assets referred to above,
(i) any foreign rights similar to those outlined above
(j) goodwill to the extent that it is directly attributable to anything referred to above.

Computer software

Capital expenditure on computer software will continue to be written off over an eight year period and these new provisions will not change that position.

Patents and knowhow

The existing provisions available for the acquisition of patent rights and know-how will be discontinued but companies may elect to fall under the old regime until 7 May 2011 if they make an election within 12 months of the end of the relevant accounting period.

Acquisition from connected persons

The consideration attributable to IA acquired from a connected person must be at an arms 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 claim these reliefs 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 15 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 of 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

	ACCOUNTING PERIOD 1	ACCOUNTING PERIOD 2
Income from relevant trade before allowances	10 m	11 m
Capital allowances available under scheme	9 m	9 m
Allowances carried forward from previous AP:	NIL	1 m
Calculation of restriction		
80% of income from relevant trade	8 m	8.8 m
Computation of Income		
Income from relevant trade before allowances	10 m	11 m
Capital allowances [restricted as above]	8 m	8.8 m
Income chargeable	2 m	2.2 m
Allowances carried forward to next AP	1 m	1.2 m

Limits also apply where instead of the company exploiting the IA borrowing directly to acquire the IA, another company provides funds to by way of subscription for shares or lending of monies and the company that receives the funds uses them to acquire the IA. In these circumstances the allowances are also restricted in a manner that ensures that the interest relief granted in this company does not exceed the interest that would have been paid if the company had incurred the interest expense directly

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For further information contact: Marie Bradley, Managing Director BT Consulting**,**
Address: 30 Pembroke Street Upper, Dublin 2
Tel: + 353 1 400 4123 **Fax**: +353 1 234 2400 **Mobile:** + 353 86 2856880
E-Mail: marie.bradley@btconsulting.ie