

# Tax and legal update

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- recent legal updates - Companies (statutory audits) Act 2018; and
- revised Revenue guidelines published 31 July 2018 - VAT transfer of business provisions.

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## Knowledge Development Box (KDB) credit deadline fast approaching

The deadline for making your company's 2016 KDB submission is fast approaching. Claims are to be made no later than 24 months from the end of the relevant accounting period. If your company's year-end is 31 December 2016, the claim is due for submission by **31 December 2018**.

### What is it?

The KDB is an Intellectual Property (IP) tax incentive that offers a reduced rate of corporate tax of 6.25% on profits from qualifying assets.

The relief is linked to the Irish Research and Development (R&D) activities and in particular, to companies availing of the R&D tax credit. If your company is already claiming R&D tax credits, there is a strong possibility that it may be eligible to claim the KDB relief.

### What are qualifying assets?

A qualifying asset is one that is created from R&D activities and protected by a qualifying patent. Additionally for SMEs, IP certified by the controller of patents as patentable but not patented, can be deemed to be a qualifying asset.

### Is your company eligible to claim this credit?

At Grant Thornton, we will review if your company is eligible for the credit. We discuss the vital elements of the KDB, including scope to claim the relief, the manner in which the claim should be calculated and the documentation needed to support the claim.

## Recent legal updates - Companies (Statutory Audits) Act 2018

The Companies (Statutory Audits) Act 2018 has recently been enacted, which makes a number of changes to the Companies Act 2014 mostly in relation to statutory auditor provisions and Part 15 of the Act. However, the citation of the Companies Act 2014 does not change. Please note that this Act has not commenced and we will feature the changes in detail in future editions of our Tax and Legal update.

## New Companies Registration Office (CRO) forms – Form FS1 and Form PR1

Pursuant to Section 1401a Companies Act 2014 and Regulation 42a European Communities (Undertakings for Collective Investment in Transferable Securities (UCITS)) Regulations 2011, all Investment Companies and UCITS are now required to submit financial statements to the CRO following the introduction of changes set out in the Companies (Accounting) Act 2017. The financial statements are required to be filed within eleven months of the financial year end, commencing with the first financial year commenced on or after 1 January 2017, annexed to the CRO FS1 Form and a filing fee of €15 will be payable.

Under changes introduced in the Companies (Accounting) Act 2017, a report of payments to governments is required to be submitted by certain companies (usually those involved in mining, quarrying or logging industries) under Part 26 Companies Act 2014 by completion of CRO Form PR1, again with a filing fee of €15.

The reports are required to be filed within 11 months of the financial year end, commencing with the first financial year which commenced on or after 1st January 2017.

### Update on the Central Register of Beneficial Owners (RBO)

The Department of Finance has advised that the drafting of legislation to establish a Central RBO is at an advanced stage and is expected to be concluded soon and it is intended that these transposing measures will be in place before the end of 2018.

This legislation is expected to assign separate legal responsibility to the Registrar of Companies for the establishment and maintenance of the Central RBO of companies and Industrial and Provident Societies (I&Ps).

It is envisaged that there will be an extended time-frame, of possibly six months, for companies and I&Ps to make their beneficial ownership filings which will commence after the anticipated launch of the register.

### Revised Revenue guidelines published 31 July 2018 - VAT Transfer of Business (TOB) provisions

#### When do the provisions apply?

The TOB provisions can apply to the transfer to an accountable person (ie a VAT registered entity) of a freehold or freehold equivalent interest in property or the transfer of a 'legacy' leasehold interest.

The TOB provisions will apply where that property forms a component of a mixture of assets being transferred, which together are capable of being operated as a business on an independent basis.

#### What is the VAT treatment of the sale?

Where the TOB provisions apply, the sale is outside the scope of VAT, ie no VAT applies. As such, it is not appropriate for the vendor to issue a VAT invoice to the purchaser.

### What was the position prior to the revised Revenue guidelines?

Prior to the updated Revenue guidelines published on 31 July 2018, the TOB provisions could have applied to a vacant property, provided the property has been let in the past on a continuing basis.

### Examples of the application of TOB going forward

The new guidelines have curtailed the availability of these mandatory provisions to transfers of let properties. Examples of the application of the TOB provisions to properties going forward include the below.



A transfer of an immovable good which is subject to:

1. an existing letting agreement;
2. an agreement to lease; or
3. a licence to occupy.

Comes within TOB provisions, as together those assets are capable of constituting an independent business or undertaking.



A transfer of an immovable good of itself, without any additional assets (such as a letting agreement), which together with the immovable good, would constitute an independent undertaking cannot come within TOB, regardless of how the immovable good had been used prior to its transfer.



The transfer of a let property to the tenant will not be regarded as coming within TOB provisions as the only asset being transferred in those circumstances is the property itself and the transfer of a property without any additional assets, together with the property would constitute an independent undertaking, cannot come within TOB regardless of how the property had been used prior to its transfer.



The transfer of a retail premises together with the stock and fittings used in that retail business falls within the provisions of TOB.



The transfer of the assets of a letting business which includes property, which is part let, part vacant and part undeveloped, by a single vendor in one transaction to a single purchaser, falls within the TOB provisions, the assets in question must be shown to be assets of the letting business rather than assets of a separate business, such as a development business.



Where a number of persons co-own a property which is let, the transfer by one of the co-owners of an interest in the property, whether to another co-owner or to a third party, is treated as falling within the scope of TOB.



Where an option to acquire an immovable good is purchased the VAT treatment of that option will follow the treatment of the transfer of the immovable good to which the option applies so that, if the transfer of the immovable good falls within the TOB provisions, so too will the sale of the option to acquire those immovable goods.

It is important to remember that the TOB provisions can have significant implications under the capital goods scheme which may result in a VAT liability for your client.

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