



Grant Thornton

An instinct for growth™

Knowledge Development Box

Utilising it for maximum benefit

10 February 2016



GRANT THORNTON

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**KNOWLEDGE DEVELOPMENT BOX – UTILISING IT FOR
MAXIMUM BENEFIT**

THE LEGAL PERSPECTIVE

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KNOWLEDGE DEVELOPMENT BOX

■ INTRODUCTION

■ BACKGROUND

- Other jurisdictions provide or operate knowledge or patent box type reliefs
- October 2014 first announcement
- OECD – modified nexus approach
- Public consultation
- Department of Finance Feedback Statement
- Finance Act 2015
- Qualifying Assets

WHAT IP ASSETS QUALIFY?

- Definition of Qualifying Asset

‘qualifying asset’ means an asset “which is intellectual property, other than marketing-related intellectual property, and which is the result of research and development activities”.

INTELLECTUAL PROPERTY

- Definition of intellectual property

‘intellectual property’ other than for the purposes of the definition of ‘acquisition costs’ or ‘marketing-related intellectual property’ in this subsection and without prejudice to section 769R, means-

- (a) a computer program, within the meaning of the Copyright and Related Rights Act 2000, but, where a computer program is a derivative work or adaptation, the portion of the computer program that represents the derivative work or the adaptation of the original work and the original work shall be treated as two separate computer programs, or
- (b) an invention protected by-
 - (i) a qualifying patent,

INTELLECTUAL PROPERTY CONT'D.

- (ii) Any supplementary protection certificate issued under Council Regulation (EC) No. 469/2009 of 6 May 2009 concerning protection for medicinal products or any such certificate extended in accordance with Article 36 of Regulation (EC) 1901/2006,
- (iii) Any supplementary protection certificate issued under Regulation (EC) No. 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning protection for plant protection products, or
- (iv) any plant breeders' rights within the meaning of section 4 of the Plant Varieties (Proprietary Rights) Act 1980;

COMPUTER PROGRAM

- Definition of Computer Program

“a computer program, within the meaning of the Copyright and Related Rights Act 2000, but, where a computer program is a derivative work or adaptation, the portion of the computer program that represents the derivative work or the adaptation of the original work and the original work shall be treated as two separate computer programs,”

- 2000 Act – program which is original i.e. author’s own intellectual property creation and includes any design material used for the preparation of the program
- Literary work
- Computer generated work

COMPUTER PROGRAM CONT'D.

- ‘Derivative’ not a clearly defined term-a work based on or derived from an existing work.
- ‘Adaptation’ includes translation, arrangement or other alteration of the original work.
- ‘Translation’ includes the making of a version of the computer program in which it is converted into or out of a computer language or code or into a different computer language or code.
- Importance of records.

A QUALIFYING PATENT

- ‘Qualifying patent’ means –
 - (a) a patent granted following substantive examination for novelty and inventive step, or
 - (b) a patent, other than a short term patent within the meaning of section 63 of the Patents Act 1992, or an equivalent provision in another jurisdiction, where –
 - (i) the Patents Office in the State, or equivalent Office elsewhere, has caused a search to be undertaken in relation to the invention and a search report (within the meaning of section 29 of the Patents Act 1992) prepared, and
 - (ii) either -

A QUALIFYING PATENT CONT'D.

- (I) the patent was granted prior to 1 January 2016, or
 - (II) the patent was granted on or after 1 January 2016 and before 1 January 2017 and a patent agent, within the meaning of section 106 of the Patents Act 1992, certifies that in his or her opinion such a patent meet the patentability criteria, in that the invention is susceptible of industrial application, new and involves an inventive step,
- but this paragraph is subject to section 769I(6)(a)(i)(VII)

A PATENT GRANTED FOLLOWING SUBSTANTIVE EXAMINATION FOR NOVELTY AND INVENTIVE STEP

- National patents – Ireland
 - Short term
 - Full or long term

- Short term Irish patents
 - 10 years
 - New, susceptible of industrial application and not clearly lacking in inventive step
 - Not examined against existing state of the art
 - Section 66 – necessity to request a search before suing for infringement
 - Not appear to qualify

PATENT GRANTED FOLLOWING SUBSTANTIVE EXAMINATION FOR NOVELTY AND INVENTIVE STEP CONT'D

- Full term Irish patent
 - 20 years
 - new, susceptible of industrial application and involve an inventive step
 - evidence of novelty system – foreign search report or granted patent
 - foreign search report – certification by patent agent
 - foreign granted patent – conformity of claims
 - request UK Intellectual Property Office to carry out a search
 - certification by patent agent
 - questionable if qualify

PATENT GRANTED FOLLOWING SUBSTANTIVE EXAMINATION FOR NOVELTY AND INVENTIVE STEP CONT'D

- Patents obtained via European Patent Office
 - Extended European Search Report
 - appears to qualify

- European Patent with Unitary Effect

A QUALIFYING PATENT CONT'D.

- (b) a patent, other than a short term patent within the meaning of section 63 of the Patents Act 1992, or an equivalent provision in another jurisdiction, where –
 - (i) the Patents Office in the State, or equivalent Office elsewhere, has caused a search to be undertaken in relation to the invention and a search report (within the meaning of section 29 of the Patents Act 1992) prepared, and
 - (ii) either –
 - (I) the patent was granted prior to 1 January 2016, or

A QUALIFYING PATENT CONT'D.

- (II) the patent was granted on or after 1 January 2016 and before 1 January 2017 and a patent agent, within the meaning of section 106 of the Patents Act 1992, certifies that in his or her opinion such a patent meet the patentability criteria, in that the invention is susceptible of industrial application, new and involves an inventive step,

but this paragraph is subject to section 769I(6)(a)(i)(VII)

- Excludes short term patents
- Where Irish Patents Office requests a report
- What if it is an existing report?

INTELLECTUAL PROPERTY FOR SMALL COMPANIES

- Inventions that are certified by the Controller of Patents, Design and Trade Marks as being novel, non-obvious and useful
- Short term patents?
- Anything else?

SPCs

- (ii) any supplementary protection certificate issued under Council Regulation (EC) No. 469/2009 of 6 May 2009 concerning protection for medicinal products or any such certificate extended in accordance with Article 36 of Regulation (EC) 1901/2006,
- (iii) any supplementary protection certificate issued under Regulation (EC) No. 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning protection for plant protection products, or
- (iv) any plant breeders' rights within the meaning of section 4 of the Plant Varieties (Proprietary Rights) Act 1980

MARKETING RELATED IP

‘marketing-related intellectual property includes trademarks, brands, image rights and other intellectual property used to market goods or services;

- what is not available for relief;

designs

other aspects of copyright e.g. database rights

confidential information and know-how.

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Section 30 – Knowledge Development Box

- OECD preferential tax regime
- based on "modified nexus" approach
- linked to Irish R&D activities
- 6.25% tax rate on qualifying profits
- effective 1 January 2016



Section 30 – Knowledge Development Box

- qualifying assets:
 - patented inventions
 - copyrighted software
 - planter breeders' rights
 - supplementary protection certificates for medicinal products
 - plant protection certificates
- must be as a result of R&D activities
- possible grouping of assets – "family of assets"
- more relaxed criteria for SMEs – see later slide



Section 30 – Knowledge Development Box

- separate trade – profits from qualifying asset
- formula applied to profits of specified trade to determine qualifying profits
- deduction of profits = 50% of qualifying profit
- losses similarly restricted by 50%



Section 30 – Knowledge Development Box

Formula:

$$\frac{QE + UE}{OE} \times QA = \text{Qualifying Profits}$$

QE = Qualifying Expenditure

UE = Uplift Expenditure

OE = Overall Expenditure

QA = KDB trade profit (before KDB relief)



Section 30 – Knowledge Development Box

- specified trade consists of one or more of the following:
 - managing, developing, maintaining, protecting, enhancing or exploiting Intellectual Property (IP)
 - researching, planning, processing, experimenting, testing, devising, developing or other similar activity leading to an invention or creation of intellectual property
 - sale of goods or the supply of services that derive part of their value from activities described above



Section 30 – Knowledge Development Box

- profits of specified trade:
 - royalty and licence fee income for use or exploitation of qualifying asset
 - embedded sales
 - need to attribute expenses



Section 30 – Knowledge Development Box

- qualifying expenditure:
 - expenditure on qualifying assets wholly and exclusively incurred in the carrying on of R&D activities in European Union (EU)
 - the R&D activities must lead to development, improvement or creation of the qualifying asset
 - must be tax deductible in Ireland
 - outsourcing to non-group companies (anywhere)



Section 30 – Knowledge Development Box

- **exclusions** from qualifying expenditure
 - acquisition costs
 - interest
 - group outsourcing costs
 - any costs that may be tax deductible outside the State
- **uplift in qualifying expenditure** based on lower of:
 - 30% of qualifying expenditure or
 - total of acquisition and group outsourcing costs



Example 1:

	€
Royalty Income	1,000
Costs/expenses	(200)
	<hr/>
Net Profit	800
KDB deduction	(400)
Taxable profit	400
Tax @12.5%	50
	<hr/>
Effective tax rate	<u>6.25%</u>



Example 2:

Irish R&D expenditure	1,000
R&D outsourced by Irish Co to group companies	5,000
R&D outsourced by Irish Co to non-group Co's	2,000
Assumed Net Profits	10,000

$$\text{Qualifying profits} = 10,000 \times \frac{1,000 + 2,000}{8,000} = 3,750$$



Section 30 – Knowledge Development Box

- apportionments:
 - transfer pricing for large companies
 - apportionment on just and reasonable basis for small companies
- relief available for accounting periods commencing on or after 1 January 2016 and before 1 January 2021
- claim to be made within 24 months



Section 30 – Knowledge Development Box

Transitional rules

- profits pre 31 December 2019:
 - include pre 2016 acquisition costs and group outsourcing costs
 - include qualifying expenditure for that year and preceding three years
 - can also include pre 1 January 2016 qualifying expenditure where appropriate documentation is in place
- post 1 January 2020 can't include qualifying expenditure pre 1 January 2016 [but can with appropriate documentation]



Section 30 – Knowledge Development Box

- additional relief for micro SMEs
- companies with annual IP income < €7.5m
- total group annual turnover < €50 million
- expansion of definition of IP to include:
 - inventions certified as being novel, non-obvious and useful



Section 30 – Knowledge Development Box

- potentially valuable relief where all/most of the R&D activities are taking place in Ireland
- may be of limited use for MNCs where R&D activities occur globally [and through group companies]
- Revenue guidance to issue over coming months
- collaborative approach being encouraged by Revenue
- embedded sales calculations may need consideration



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Questions & feedback

