Budget 2009

BUDG€T 2009

Intellectual property tax regime

In a very welcome move for business, the Irish Minister for Finance has announced the introduction of a scheme of tax relief for the acquisition of intellectual property (IP) in his Budget Speech delivered today, 7 April. The Minister gave little detail in his speech; the detail is however expected to be contained in the Finance Bill which will be published in the coming weeks.

While the announcement of an IP regime was flagged in the previous Budget and does not come as a surprise, the timing is unexpected as it had been understood that measures would not be introduced until the Commission for Taxation had reported back to the Minister in July.

Existing IP Incentives

A number of taxation measures setting the groundwork for an IP regime have already been introduced in previous budgets, including:

- A corporation tax rate of 12.5% on the active exploitation of IP
- R&D tax credits of 25% of incremental expenditure on R&D over 2003 levels
- Stamp duty exemption for IP

which, taken together with grants for R&D activities and the existing pro-business taxation framework (no thin capitalisation or CFC rules, extensive DTA network, participation exemption on gains) have laid a solid bedrock on which to develop a world-class IP regime.

What new measures can we expect?

Notwithstanding the benefits of the current regime, if Ireland Inc is to develop a knowledge economy, further enhancements to the taxation of IP will need to be introduced to encourage companies to develop, own, and exploit their IP from an Irish base.

The current Irish tax regime discriminates between tangible and intangible assets, with tax relief on the acquisition of the latter only available in limited circumstances. The Minister has indicated in his speech that measures will be introduced to provide for tax relief on the acquisition of IP. It is hoped that the IP will be broadly defined to include various categories of IP such as marketing intangibles which might otherwise be regarded as goodwill. The tax relief available may follow the existing capital allowances regime (which allow a deduction over 8 years), could involve a new capital allowances regime (with a deduction over a longer period of time), or could involve following the accounting treatment of amortisation of the IP.

It would be expected that the Minister will not discriminate between IP acquired from related parties and IP acquired from third parties, and that in both scenarios a tax deduction will be available.

It is also hoped that the Minister would be innovative in his thinking, and perhaps introduce a form of credit in conjunction with a deduction – similar to the R&D credit regime – which would significantly enhance the benefit of the deduction.

Another anomaly which it is hoped that the Minister will take the opportunity to address in this context is the vexed question of the base year in relation to R&D credits, whereby the credit is restricted to incremental expenditure over the relevant spend in 2003, which has been causing issues in some specific industry sectors. The abolition of the base year is something which would significantly enhance the attractiveness of Ireland Inc as a location for incremental R&D spend for those companies whose R&D spend was asymmetrically high in 2003.

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Other measures

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