

MEDIA & IP

PHILIP LEE

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Welcome to our media and IP law e-bulletin focusing on the introduction of tax reliefs for purchase of intellectual property. We hope you find it interesting and informative.

If you would like to know more about anything we have covered, or indeed any other media or IP law matter, please do not hesitate to contact us. Our contact details can be found below or on any page of this publication.

ABOUT US

Philip Lee is a leading business law firm with offices in Dublin and Brussels.

Our approach to our clients is simple. Their goals are our goals. Working in partnership, we deliver strategic legal services to support our clients in achieving their business goals.

We provide first class legal advice to clients on all aspects of media and entertainment law and in a variety of other specialised sectors. Our continuous involvement in complex matters of all kinds, including many large-scale public infrastructure projects and a wide range of commercial transactions, ensures that we are constantly enhancing and adding to our skills.

For further information please contact us at +353 (0) 1 237 3700 or at info@philiplee.ie

NEW IRISH TAX RELIEFS FOR PURCHASING INTELLECTUAL PROPERTY

It was not all doom and gloom yesterday when the Irish Minister for Finance delivered his emergency interim budget, designed to counter falling tax revenues and balance Ireland's financial books. Economic stimulus for the R&D and innovation sectors remains high on the Government's agenda with the announcement of two new measures designed to enhance the prospects of what it has termed Ireland's "Smart Economy".

Firstly, the Government intends to introduce a new tax relief for capital expenditure incurred in the purchase of intellectual property assets. The precise details of the scheme are yet to be worked out between the Department of Finance and the Irish Revenue. They will be outlined in the forthcoming Finance Bill which, when enacted in about three weeks' time, will give effect to all of the budgetary changes announced yesterday.

Secondly, the Government has committed to increasing R&D spend to 2½% of GNP by 2013. This is designed to supplement the Government's measures over the last ten years of having trebled its R&D spend, to a current level of approximately €2.5 billion per annum.

Existing Intellectual Property tax reliefs

Yesterday's measures are a welcome addition to Ireland's existing tax incentives for intellectual property creation and exploitation. In addition to the Ireland low corporation tax rate of 12.5% for IP exploitation activities which are carried on as an Irish trade, other taxation measures which already form part of Ireland's intellectual property regime include the following:

Patent Income Exemption

In general, profits or gains arising from a patent (whether received in the form of royalties or as a capital sum) are taxed as income. However, Irish legislation provides a tax exemption (limited to €5 million per annum) for income derived from "qualifying patents" when received by an individual or company resident in Ireland.

A “qualifying patent” is defined as a patent in relation to which the research, planning, processing, experimenting, testing, devising, designing, developing or similar activity leading to the relevant invention was carried out in the European Economic Area. It is not necessary that the patent itself be registered in Ireland or indeed in another country of the EEA. However, the recipient of the royalty income must be Irish resident.

The exemption is generally available from the date on which the patent is granted. A retrospective exemption may be available for income arising in the period between the date of filing of the final patent specification and the date on which the patent is granted.

Where the patent holder is a company, Irish legislation also provides for a tax exemption in respect of dividends paid by a company which is in receipt of tax-free patent income, subject to certain restrictions where the royalty income is received from a related company.

One of the main advantages of holding patents in Irish corporate structures is this ability to provide an opportunity to persons other than the "original inventors" to share in tax free dividends. As there is no requirement that the patent royalty be payable in respect of an invention used for an activity located in Ireland, this exemption has been traditionally very attractive to large international groups, making Ireland a popular location for IP holding companies.

Stamp Duty Exemption

Irish tax law also provides an exemption from stamp duty on the sale, transfer or other disposition of intellectual property, including patents, trade marks, copyright, designs, inventions, domain names, supplementary protection certificates and plant breeder's rights.

Goodwill is also expressly included in the exemption to the extent that it is directly attributable to IP. This represents a huge tax saving for companies engaged in the licensing of IP or other hi-tech business and therefore acts as a further incentive to locate IP rights in Ireland.

Research and Development Tax Credits

Tax credits are available on research and development on up to 25% of qualifying expenditure. The credits can be carried back one year as well as forward. Where a company has insufficient corporation tax to absorb the credits, they can instead be set off against payroll taxes over three years.

The new tax relief on capital expenditure incurred in the acquisition of intellectual property and the Government's commitment to increased R&D spending as announced yesterday will enhance these existing provisions and should be welcomed by Ireland's innovators and IP holders. It is hoped that these measures will stimulate further inward investment in Ireland by increasing its attraction as a jurisdiction in which to locate intellectual property exploitation activities. They may prove invaluable at a time when Ireland is in urgent need of attracting new investment and new sources of employment.

Note:

We will provide a further update on these new measures in our forthcoming Summer 2009 Media & IP Newsletter, and following the publication of the Finance Bill in the next few weeks. For any information and advice which you might require in the meantime, please contact our Corporate and IP partners Jonathan Kelly, Andy McConnell or Anne Bateman.

AUTHORS:



Name: Jonathan Kelly **Practice Area:** Media and entertainment, technology, corporate and commercial, projects, PPPs and finance. **E-Mail:** jkelly@philiplee.ie **Role:** Partner

Jonathan heads the firm's corporate, commercial and finance units. He specialises in project and structured finance and in a range of corporate and commercial transactions, including joint ventures, acquisitions and media/entertainment matters. He is a leading practitioner in the area of film and television finance.



Name: Anne Bateman **Practice Area:** Intellectual property, dispute resolution
E-Mail: abateman@philiplee.ie **Role:** Partner

Anne heads the firm's IP and Pharma-Regulatory practices. She is a recognised Irish expert in intellectual property law, information technology law, and in pharmaceutical, regulatory and food law, both as a litigator and an advisor on corporate deals, contractual issues and for general advisory work.



Name: Andreas McConnell **Practice Area:** Corporate and commercial, finance, joint ventures, mergers and acquisitions **E-mail:** amcconnell@philiplee.ie **Role:** Partner

Andy acts on a very broad spectrum of transactions including venture capital investments, project finance deals, tax based investment schemes, joint ventures, mergers, acquisitions, management buy outs and restructurings. His expertise spans many sectors including life sciences, pharmaceuticals, healthcare, logistics, energy, media, franchising and investment services.

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