



Flynn O'Driscoll Legal Update

The Knowledge Development Box in Ireland – A Quick Overview.

Introduction

In 2016, Ireland introduced a new tax-based incentive for intellectual property generating Irish companies referred to as the **Knowledge Development Box**. The KDB is a corporation tax relief. Launched as “*best in class*” and the “*world's first OECD-compliant*” regime, the KDB provides that profits generated by an Irish company from the commercial exploitation of certain of its qualifying assets (including qualifying patents and copyrighted software) may effectively be taxed at a reduced rate of corporation tax.

At its core, the KDB is intended to further incentivize innovation and research and development activities in Ireland and complements other innovation incentives already in place, such as the R&D tax credit scheme in Ireland.

Summary details of these incentives are outlined below.

Knowledge Development Box (KDB)

The KDB rate (6.25%) is a lower rate of corporation tax in Ireland that may be applied to profits, including royalties and licence fees, to the extent generated by an Irish company from the commercialisation of its qualifying intellectual property assets (Qualifying Assets).

Qualifying Assets include patented inventions and copyright-protected material, but excludes design rights and trade marks. For qualifying micro, small or medium-sized companies, there are also certain provisions for unpatented inventions provided they are certified by the Controller of Patents as being patentable (i.e., novel, non-obvious, useful).

This relief is linked to qualifying research and development (R&D) expenditure incurred by the Irish company in generating its Qualifying Assets.

Typically, in calculating this qualifying R&D expenditure:

- Outsourcing costs may be included provided the qualifying R&D activity is carried on within the EU and by a non-related party;
- Acquisition costs (costs paid to a third party to acquire intellectual property or rights over intellectual property) are generally excluded. In some cases,



however, it may be possible to capture a portion of these otherwise excluded costs when calculating what is defined as “uplift expenditure” and ultimately the profits (or that portion of them) which would be taxable at the KDB rate.

- Complete and accurate records are required to track and substantiate all qualifying R&D expenditure and overall expenditure incurred on, as well as overall income arising from, the Qualifying Assets.
- The KDB rate, to the extent applicable, is normally claimed at the time the Irish company is submitting its annual corporate tax returns.
- It covers accounting periods beginning on or after 1st January 2016 and ending on or before 31st December 2020.

R&D Tax Credits

- This is a 25% tax credit in Ireland which may be available to Irish companies engaged in qualifying R&D activities within the EEA.
- It is based on qualifying R&D expenditure incurred in carrying out qualifying R&D activities.
- To fall within the scope of qualifying R&D expenditure and qualifying R&D activities, certain conditions must be met.
- As with the KDB, complete and accurate records are required to track and substantiate all qualifying R&D expenditure.
- As a credit, it may, to the extent applicable, be set off by an Irish company against its other tax liabilities (usually corporation tax).
- It is possible for an Irish company engaged in R&D activities to avail of R&D tax credits and claim the KDB rate

provided all qualifying and other relevant conditions are satisfied.

Potentially “Qualifying Assets”*

IP Type:	R&D Tax Credits:	KDB:
Patents	Yes	Yes , granted patents (excl. short term patents) and inventions certified as patentable.
Know-how/trade secrets	Yes	No
Copyright	Yes	Yes for copyright-protected computer programs.
Design Rights	Yes	No
Trade Marks	Yes	No

**Important: This assumes in all cases that the conditions for qualifying expenditure and qualifying R&D activities have been fully satisfied.*

Conclusion

Essentially if a company qualifies for KDB, it may be entitled to a deduction equal to 50% of its qualifying profits for tax purposes. This means its qualifying profits may be taxed at 6.25%.

As the qualifying profits flow from qualifying assets which result from qualifying R&D activities, there will be a detailed accounting exercise required to determine whether and to what extent your business may qualify for relief.

We would advise you to consult with your tax advisors in these important tax matters to identify and explore the incentives that might



be open to your business and how you can avail of them in the most tax efficient manner.

We would work with a number of external tax experts and are always happy to refer our clients, if needed.

Should you have any queries arising out of the foregoing please contact Barry Connolly who will be happy to assist.



Laura Myles

Head of Intellectual Property

E: lauramyles@fod.ie

P: +353 (0) 91 396541

Dublin:

1 Grants Row, Lower Mount Street,
Dublin 2, Ireland

Phone: +353 1 6424220

Fax: +353 1 6618918

Galway:

Unit 23, Galway Technology Centre,
Mervue Business Park, Galway, Ireland

Phone: +353 91 396540

Fax: +353 91 792649