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INTELLECTUAL PROPERTY

# Think Inside the Box: The Knowledge Development Box

by **Ruairí Mulrean**

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## The Knowledge Development Box is a corporation tax incentive for the development of intellectual property, which is intended to attract foreign direct investment to Ireland.

The introduction of a Knowledge Development Box in Ireland was announced in October 2014 by the Irish Minister for Finance in conjunction with the publication of the Budget for 2015.

## Public Consultation on Knowledge Development Box

In January the Department of Finance launched a public consultation process on the introduction of the Knowledge Development Box . Interested parties were invited to submit their views on how the Knowledge Development Box should be designed and implemented by 8 April 2015. It is intended that the Knowledge Development Box will be the "most competitive in class" while complying with international, EU and OECD standards for these types of tax incentives. A Consultation Paper was also published to stimulate discussion and to target the areas of interest to the Department of Finance. It achieved a high level of engagement by industry and professional services.

The EU and OECD are working on new rules for the design of these types of tax incentives and they are expected to be finalised by the end of this year.

## Scope

While the scope of the Irish Knowledge Development Box regime has yet to be defined, it is clear it will provide a preferential corporate tax rate for certain types of intellectual property income. A key element of the Knowledge Development Box regime will be the range of intellectual property that it will cover. The Consultation Paper suggests that patents and assets that are "functionally equivalent to patents" will be covered, while brands and trade marks are likely to be excluded. The definition of "functionally equivalent to patents" has yet to be determined, and is the subject of many of the submissions that were made to the Minister.

In addition, the type of income that will qualify for preferential treatment, and the basis of the calculation, have yet to be defined. The approach currently under consideration, and the approach commentators believe is most likely to be adopted by the OECD, is the "modified nexus" approach. One of the main requirements of the modified nexus approach is that the intellectual property has to be created in the jurisdiction where the preferential treatment is applied. If this approach is adopted in Ireland, the benefits of the incentive may not apply to companies where significant R&D activity does not take place in Ireland. For that reason, it is likely the Government will also focus on stimulating activities that result in the creation of intellectual property, within the definition of intellectual property, for the Knowledge Development Box regime.

The Government also invited submissions from interested parties regarding the interplay between the Knowledge Development Box regime and other domestic tax regimes, in particular tax credits for R&D, and capital allowances for intellectual property assets.

Growth in OECD economies is increasingly driven by investment in intangible assets. Therefore the aim of the Irish Knowledge Development Box regime to be "best in class" is crucial for Ireland's continued success in attracting FDI.

## Further Developments

As lawyers active in providing assistance to clients who create and use intellectual property in business we will continue to monitor the Knowledge Development Box developments. Care needs to be taken by businesses creating intellectual property or planning R&D in Ireland to structure their business to take advantage of the Knowledge Development Box regime once it is introduced, and where it makes business sense to do so. We are already factoring the likely introduction of the Knowledge Development Box into our advice to clients.

## About the Author

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