

Knowledge Development Box

BRIEFING

The Department of Finance recently published the attached public consultation on the 'Knowledge Development Box' ("**KDB**"), inviting submissions before 8 April 2015. This regime was widely publicised in connection with the 2015 Budget and is intended to play a key role in Ireland's corporate tax regime, as outlined in the 'Road Map for Ireland's Tax Competitiveness'. Since the KDB may have a significant impact on our clients in a broad range of industry sectors, we intend to make general submissions to the Department of Finance in relation to the Consultation Paper, together with assisting clients in relation to particular submissions that they would like to make.

The Consultation Paper states that it is the Irish Government's intention to offer a 'best in class' KDB regime, which will offer a low, competitive and sustainable rate on qualifying income in a manner that is compliant with OECD and EU principles and requirements. The recently published OECD Report on Base Erosion and Profit Shifting (BEPS) Action 5 and further developments at an OECD level in the coming months will have a major bearing on knowledge development box regimes generally. Bearing this in mind, the consultation process offers Irish businesses an important opportunity to engage with the Government to seek to ensure that the Irish regime is as favourable to existing businesses and as attractive to foreign direct investment as possible, whilst remaining within internationally accepted parameters.

Although the scope of the Irish KDB regime has yet to be defined, it is certain that it will provide a preferential rate of corporate tax for 'qualifying income'. It will therefore be of potential interest to any business whose

income is attributable, in whole or in part, to the commercialisation of 'knowledge based capital'. This may include businesses across a wide range of industry sectors including pharmaceuticals, medical devices, life sciences, food and agriculture, manufacturing, ICT, etc.

A key element of the KDB regime which has yet to be determined is the range of intellectual property that it will cover. The Consultation Paper indicates that patents and "*IP assets that are functionally equivalent to patents*" are likely to be covered, however, trade marks and other marketing intangibles will be excluded. Submissions are invited as to what types of IP, in addition to patents, could be covered on the basis that they are "*functionally equivalent to patents*". Any business that derives material income from the commercialisation of IP other than patents and trade marks (such as trade secrets, know-how, rights in data, rights in software, industrial designs, copyright, etc.) will be hoping that as broad a range of IP as possible will be covered by the Irish regime.

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In addition to the range of IP that will be covered, the type of income that will qualify for preferential treatment has also yet to be defined. Again, Irish businesses will be keen to ensure that the KDB regime is designed in such a way that an appropriately broad range of income streams will qualify, subject to complying with the 'modified nexus' principles which seem likely to be favoured by the OECD. Ideally, the definition of qualifying income should also support other Government programmes intended to foster and reward R&D activities being carried out in Ireland, including the State's strategy for developing world-leading research centres and hubs in specific fields.

Furthermore, the Government has sought suggestions regarding the interaction between the KDB regime and other existing IP related tax reliefs, such as tax credits for R&D expenditure and capital allowances for the acquisition of intangible assets. To be 'best in class', the Irish KDB regime will need to be integrated with these existing reliefs in a way that appropriately rewards businesses that invest in the creation and commercialisation of 'knowledge based capital' in Ireland.

If there are any particular aspects of the proposed regime that you would like us to address in our general submissions, or if you would like us to assist you in preparing your own submissions, please get in touch with your relevant McCann FitzGerald contact.

Further information is available from:



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Alternatively, your usual contact in McCann FitzGerald will be happy to help you further

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This document is for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting on any of the matters discussed.

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