

# Knowledge Development Box (Certification of Inventions) Bill 2016

BRIEFING

The Government has published the Knowledge Development Box (Certification of Inventions) Bill 2016 which will allow small and medium sized companies engaged in research and development activities to avail of the Knowledge Development Box. The Bill, which is expected to be enacted by the end of the year, will enable companies who comply with its conditions to avail of a 6.25% corporate tax rate on income generated from commercialising certain intellectual property.

## Special tax treatment for certain intellectual property

Introduced in Budget 2016, the Irish Knowledge Development Box is the first Knowledge Development Box or Patent Box available worldwide to meet the OECD “modified nexus” standard. It was designed as part of Ireland’s competitive offering to attract foreign direct investment and to support Irish owned companies to innovate and to compete effectively on international markets.

The intellectual property qualifying for the Knowledge Development Box includes certain patented inventions<sup>1</sup>, copyrighted software, plant breeders’ rights, supplementary protection certificates for medicinal products and plant protection certificates.

The Bill permits small and medium sized companies (defined for this purpose as companies with annual income from intellectual property not in excess of €7.5 million, which employ less than 250 people

and which have a turnover of less than €50 million or a balance sheet of less than €43 million) to expand the definition of intellectual property to include inventions that are certified as being novel, non-obvious, and useful.

## Knowledge Development Box Certificates

Under the new scheme, companies must obtain a Knowledge Development Box Certificate (a “**KDB Certificate**”) from the Controller of Patents, Designs and Trade Marks (the “**Controller**”) in order to avail of special tax treatment for such inventions. To qualify for a KDB Certificate, the invention must: (i) not be publicly available in any manner prior to the application, (ii) not be obvious to someone ‘skilled in the art’, and (iii) have a specific, credible and substantial utility, *ie* be capable of being made or used in one or more industries. It is notable that innovations which are not patentable, such as scientific theories or schemes, rules or methods for doing business are excluded.



<sup>1</sup> The Knowledge Development Box specifically excludes short-term patents.

An application for a KDB Certificate must contain a full description of the invention and be accompanied by an opinion from a patent agent that the invention is novel, non-obvious and useful. If the Controller is satisfied that the invention meets all the requirements it will qualify for the Knowledge Development Box. It is important to note that a KDB Certificate does not confer any additional intellectual property rights or protections on the invention.

#### **Provisions in relation to Patents**

The Bill will also amend the Irish Patents Act 1992. With effect from 1 January 2017, patent applications must be accompanied by a report incorporating a written opinion

as to as to the patentability of an invention (a “**Patentability Report**”). The proposed amendment envisages the making of rules specifying who shall prepare the Patentability Report, however, it seems likely that the Patentability Report would be provided by a patent agent.

#### **Conclusion**

The Bill is intended to incentivise companies to undertake innovative activities in Ireland across a broad range of industry sectors. Irish small and medium sized companies which are engaged in research and development activities should consider whether they may be in a position to avail of the Knowledge Development Box.

*Further information is available from:*

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**Michael Ryan**

*Head of Tax Group*

DDI +353-1-611 9130

EMAIL michael.ryan@mccannfitzgerald.com



**Adam Finlay**

*Partner, Technology & Innovation Group*

DDI +353-1-607 1795

EMAIL adam.finlay@mccannfitzgerald.com



**Deirdre Barnicle**

*Senior Associate, Tax Group*

DDI +353-1-607 1323

EMAIL deirdre.barnicle@mccannfitzgerald.com



**Sadhbh O'Sullivan**

*Associate, Technology & Innovation Group*

DDI +353-1-607 1234

EMAIL sadhbh.osullivan@mccannfitzgerald.com

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

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## **Principal Office**

Riverside One  
Sir John Rogerson's Quay  
Dublin 2  
D02 X576  
Tel: +353-1-829 0000

## **London**

Tower 42  
Level 38C  
25 Old Broad Street  
London EC2N 1HQ  
Tel: +44-20-7621 1000

## **New York**

Tower 45  
120 West 45th Street  
19th Floor  
New York, NY 10036  
Tel: +1-646-952 6001

## **Brussels**

40 Square de Meeûs  
1000 Brussels  
Tel: +32-2-740 0370

## **Email**

[inquiries@mccannfitzgerald.com](mailto:inquiries@mccannfitzgerald.com)

[www.mccannfitzgerald.com](http://www.mccannfitzgerald.com)