Ireland: an attractive jurisdiction for businesses developing and exploiting IP assets

Insights - 27/07/2023

Ireland: a common law jurisdiction

There are plenty of reasons why Ireland is popular amongst visitors, from its jaw-dropping natural landscapes to its rich history. In the last decade or so it has also become an attractive jurisdiction for businesses of all sizes seeking to establish a base in Ireland from which they can manage, develop and exploit their valuable intellectual property (**IP**).

Ireland is a common law jurisdiction, familiar to North American, British and Commonwealth businesses. It has been named as the "best country for business" by a number of ranking publications over the years, including making the Forbes' top 15.[1] As well as providing a robust and reliable IP regime, Ireland also offers a favourable corporate tax system. Post-Brexit it is also the only remaining English speaking country in the European Union. For many, it is the perfect entry point to the EU, not only in terms of mid-shore geographic location, but also international relations-wise and in terms of opportunities for foreign investment. With a strong infrastructure in place, including an established workforce with experience in IP companies, that already supports some of the world's leading companies (think Apple and Google!) it is an attractive location from which to manage, develop and exploit IP.

An attractive and transparent tax regime

Some of the key incentives for developing and exploiting IP in Ireland are:

- A 12.5% corporate tax rate on trading profits;
- Full deduction available for capital expenditure on qualifying IP via capital allowances;
- Deductions available for financing costs in respect of qualifying IP;

- Double tax credits available for royalty withholding tax suffered on foreign royalties;
- A monetisable 25% tax credit on qualifying research and development (**R&D**) expenditures; and,
- A 6.25% corporate tax rate within the Knowledge Development Box (**KDB**) (more on this below) on profits on qualifying IP assets.

The standard corporate tax rate set of 12.5% applies to trading income from trading activities, which could include, for example, actively managing, developing, and exploiting IP in Ireland. To this end, there is a general requirement for "substance" in Ireland in the form of an adequate number of appropriately qualified and decision-making personnel. Furthermore, for businesses with adequate substance, it may also be possible to claim a form of tax depreciation (capital allowances) on expenditure used towards the purchase, development or exploitation of certain intangible assets, which may include, a range of intellectual property related intangibles, such as patents, trade marks, designs, domain names, copyrights, and more.

Businesses conducting R&D activities in Ireland involving systemic, investigative or experimental activities in the field of science or technology, which either seek to achieve scientific or technological advancement or involve the resolution of scientific or technological uncertainty, may also seek the benefit of a monetisable tax credit of 25% of qualifying R&D expenditure. The qualifying activities that may be captured under the 'science and technology' bracket, are wide ranging and could include e.g. software development and engineering, financial services, pharmaceutical and laboratory work, food and beverage production, to name but a few. Taking into account the 12.5% corporation tax rate and the 25% R&D credit, all in this could amount to a total tax deduction of 37.5%.

What's more, in 2016, Ireland introduced the 'Knowledge Development Box' (**KDB**) in order to further encourage local innovation through the application of a lower rate of corporation tax (6.25% as opposed to the usual 12.5%) on profits on IP assets (e.g. inventions protected by qualifying patents or computer software protected under the law of copyright). The IP assets must be the result of qualifying R&D activities. Note that the KDB does not extend to 'soft' IP assets, e.g. trade marks, brands, image rights or other forms of IP used to markets goods or services.

Adding to its attractiveness, Ireland has entered into comprehensive Double Taxation Agreements with 74 countries. This agreement supports the elimination of double taxation with respect to taxes on income.

Intellectual Property Transfers/Assignments

Introduced in 2010, Ireland's transfer pricing legislation follows the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. As such, IP-related transactions between associated parties must be 'at arm's length' and therefore priced at the same rate as if they were carried out between unrelated parties. The transfer pricing rules apply to both domestic and international trading transaction arrangements, but not to qualifying small and medium sized enterprises.

Irish law also provides that transfers of IP are exempt from stamp duty or transfer tax on the sale, transfer, or other disposition of IP. Whereas transfers to other jurisdictions may have significant stamp duty ramifications, IP transfers to Ireland benefit from this exemption.

In summary, Ireland offers a variety of incentives for businesses wishing to relocate to Ireland in order to further develop and exploit their IP. Notwithstanding its attractive tax regime and strong suite of IP legislation, Ireland's long-established relationship with the United States coupled with its strategic location within the EU and established, skilled workforce, makes the move advantageous.

[1] Best Countries for Business List (forbes.com)

About Ogier

Disclaimer

Meet the Author

Sophie Peat

Partner

Cayman Islands

E: sophie.peat@ogier.com

T: +1 345 815 1744

Key Contacts

Dominic Conlon

Partner

Ireland

E: dominic.conlon@ogier.com

T: +353 1 232 1075

Related Services

Legal

Intellectual Property

Related Sectors

Foreign direct investment (FDI)