



**MOORE**

# INTELLECTUAL PROPERTY

CREATING VALUE - VALUING CREATIVITY





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# INTELLECTUAL PROPERTY

## MOORE AND INTELLECTUAL PROPERTY (“IP”)

For a number of years Moore has been nurturing and developing a growing level of expertise within the firm to advise clients on how best to maximise and commercialise their IP potential. Intellectual property refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. IP is generally categorised into four areas; patents, trade marks, designs and copyright.

We take a commercial approach and our aim is to set up structures which maximise profits while at all times securing the integrity of the IP. We have assisted many international companies establish operations in Ireland to develop, register and license IP around the globe.

## IRELAND AND IP – PAST, PRESENT AND FUTURE

Ireland has been long recognised as an excellent location to develop and exploit IP. In addition Ireland is a respected legal jurisdiction with a favourable tax code and is party to many international treaties. Accordingly, Ireland has been a preferred base for leading creators of IP for decades. Ireland is home to 8 of the top 10 global technology companies as well as 8 of the top 10 global pharmaceutical companies.

The use and exploitation of IP is of growing importance in the global economy. The Irish Government recognised this in a strategy paper published in December 2008 Building Ireland’s Smart Economy, a Framework for sustainable Economic Renewal. A progress report was released in March 2010, and the commitment to the Smart economy has been renewed with favourable amendments to Irish tax law, the most recent of which were contained in Finance Bill 2012. This framework is designed not only to attract foreign direct investment but also to encourage domestic enterprise.

The current government strategy of placing Ireland to the forefront of excellence on the world stage in research and development means that international and national companies have an opportunity to win financial supports in the form of grant aid and incentives which our team can secure for your business. Businesses can also benefit from a variety of tax incentives which are designed to foster the smart economy.

## 12.5% CORPORATION TAX RATE

Ireland’s 12.5% corporate tax rate may be applied to the exploitation of intellectual property, to the extent that (a) the company is trading, and (b) the Company has a sufficient Irish presence (i.e. Irish office and employees).



## CAPITAL ALLOWANCES IN INTANGIBLE ASSETS

Capital allowances may be claimed on the provision or acquisition of intangible assets for the purpose of a trade.

- Intangible assets include patents, brands, tradenames, copyrights and associate rights, and know-how. It does not include marketing intangibles, such as customer lists.
- Excess allowances may be carried forward.

## RESEARCH AND DEVELOPMENT (R&D) CREDIT

Ireland has a favourable R&D credit regime.

### Valuable:

- A credit of 25% will be given on R&D expenditure expended on or after 1st January 2009.
- **NEW:** From 2012 credit will be granted on the first €100,000 of qualifying expenditure regardless of previous expenditure. Prior to this, and still in relation to expenditure in excess of €100,000, credit was only given on expenditure which was incremental, ie in addition, to a base level of expenditure. The base level is determined

by reference to the level of expenditure in 2003. Therefore for companies which had no expenditure in 2003, the base level is nil.

### Extensive:

In general, credit is given for all R&D related expenditure that consists of:

- royalties (but not where payable to connected parties);
- expenses deductible for trading purposes,
- plant and machinery entitled to capital allowances;
- revenue and capital expenditure on scientific research; and
- buildings entitled to capital allowances.



### Flexible:

Ireland has demonstrated a commitment to the “Smart’ economy model by continually seeking to improve its attractiveness to R&D intensive industries. The R&D credit may be used flexibly:

- **Use by Company:** The credit must first be used to reduce corporation tax in the current period, then to reduce corporation tax in the preceding period. If an excess remains, the credit may be reclaimed from the Revenue Commissioners.
- **NEW:** Rewarding Key Employees – Under the Finance Bill 2012 an employer will be able to utilise part of its R&D credit to reduce a key employee’s income tax (subject to a minimum effective tax rate of 23%). Key employees are employees who perform 75% or more of their employment on R&D activities;
- **NEW:** Sub-Contracting R&D: the existing 5% (third level institutions) and 10% limits will be supplemented with a basic €100,000 threshold. The greater of the limits or threshold will now qualify for the credit.

### DOUBLE TAXATION AGREEMENTS

Ireland has an extensive network of Double Taxation Agreements (DTAs). These agreements contain favourable provisions for royalty payments. Ireland also provides relief for excess foreign tax on royalties which was deducted in non-Treaty countries. This deducted tax will now be pooled and used to reduce the amount of such royalties which are subject to Irish tax. Any excess may be utilised to reduce the amount of royalties which have not suffered a foreign deduction and are subject to Irish tax.

### EXEMPTION FROM STAMP DUTY

Stamp Duty is not chargeable on instruments which transfer intellectual property. ‘Intellectual property’ is defined in this context as meaning any:

- patent, trademark, registered design, design right, invention or domain name;
- copyright or related right (within the meaning of the Copyright and Related Rights Act 2000); and
- grants, registrations, licences equivalent rights or goodwill which relate to the above.

## IMAGE RIGHTS

Moore has developed a particular expertise advising on the exploitation of image rights, particularly relating to professional sports players.

## ARTISTS' EXEMPTION

Individuals may claim an exemption from income tax (up to €40,000) on the exploitation of a work of cultural or artistic merit. 'A work' is an original and creative work being, a book/writing, a play, a musical composition, a painting or a sculpture.

## IRELAND – KEY FACTS

Population	4.4m
Capital	Dublin
Currency	€uro
Population under 25	34%
Language	English

## IRELAND IS HOME TO:

- 8 of top 10 global technology companies;
- 8 of top 10 global pharma companies;
- 50% of global financial services companies;
- €1.8 trillion of hedge funds; and
- 50% of world's leased aircraft fleet.

Ireland exports more software than any other country bar one.

Source: IBEC/IDA/Enterprise Ireland

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## CONTACT INFORMATION

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