Revenue Commissioners

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Intangible Assets Scheme under Section 291A Taxes Consolidation Act 1997

1. Introduction

Section 43 of the Finance Act 2010 makes a number of amendments to the scheme of capital allowances for expenditure incurred on intangible assets under section 291A of the Taxes Consolidation Act 1997 in order to enhance the scheme's effectiveness and ensure that it operates as intended. The scheme was introduced in the Finance Act 2009 in line with the commitment included in the Government's Economic Recovery Plan "**Building Ireland's Smart Economy**". It is aimed at supporting the development of the knowledge economy by encouraging companies to locate the management and exploitation of their intellectual property in Ireland with the potential to create high-quality employment in the process. The purpose of this note is to outline the main features of the scheme and address certain questions arising.

2. Brief Summary of Scheme

Section 291A TCA 1997 provides relief in the form of capital allowances against trading income for companies incurring capital expenditure on the provision of intangible assets for the purposes of a trade. The scheme applies to a broad range of intangible assets (e.g. patents, copyright, trademarks, know-how) which are recognised as such under generally accepted accounting practice [1] and which are listed as 'specified intangible assets' in section 291A(1).

Specified intangible assets are treated as machinery or plant for the purposes of allowances provided under the scheme [2] so that the normal rules in regard to wear and tear allowances, balancing allowances and balancing charges for capital expenditure on machinery or plant also apply for capital expenditure on qualifying intangible assets, subject to the specific provisions of section 291A. Allowances available under section 291A are based on the amount charged to a company's profit and loss account, or income statement [3], for the accounting period in respect of the amortisation, and any impairment, of the specified intangible asset. However, companies can opt instead for a fixed write-down period of 15 years at an annual rate of 7% of qualifying expenditure, and 2% in the final year.

There is no claw-back of allowances where a specified intangible asset for which allowances have been provided is disposed of more than 10 years after the beginning of the accounting period in which the asset was first provided for the trade, except where the asset is transferred to a connected company which claims allowances in respect of the asset acquired.

A company must be trading to qualify for relief (although pre-trading expenditure is eligible for relief) and the specified intangible asset(s) on which capital expenditure is incurred must be used for the purposes of its trading activity. The expenditure must be incurred for bona fide commercial reasons and not as part of any tax avoidance scheme.

Certain restrictions apply to ensure that the scheme operates effectively. Activities (referred to in section 291A(5) as 'relevant activities') that are carried on as part of a trade and which

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- consist of managing, developing or exploiting specified intangible assets, for which allowances have been made,
- comprise the sale of goods or services that derive the greater part of their value from such assets, or
- contribute to the value of goods or services by using such assets.

are treated as a separate trade (referred to in section 291A(5) as a 'relevant trade'). Allowances may only be offset against income from such activities and not against any other profits. Where relevant activities are carried on as part of a wider business, an apportionment of receipts and expenses will be necessary to ensure that the correct amount of income is attributable to the relevant trade. For any accounting period, the aggregate amount of s.291A capital allowances, plus any deductions for interest on borrowings in respect of specified intangible assets, may not exceed 80% of trading income (before such allowances and interest) of the relevant trade for that period. This will ensure that at least 20% of trading income will remain in charge for the accounting period. Any excess allowances (and any related interest expense) not deductible in an accounting period are available for carry forward to succeeding accounting periods.

3. Finance Act 2010 Provisions

A number of amendments were made to the scheme in section 43 of Finance Act 2010, as follows:

- In order to provide greater flexibility for companies locating their intellectual property activities in Ireland, the period for which qualifying assets must be used in the trade to avoid a claw-back of allowances has been reduced from 15 to 10 years.
- A more coherent treatment of computer software is provided by distinguishing between
    1. computer software which is used within a business (i.e. software applications for computer systems or computer-operated equipment used in the operation of a company's business) – expenditure on such software will continue to qualify for the normal plant and machinery allowances under section 291, and
    2. computer software intellectual property which is commercially exploited (i.e. with a view to earning income from this activity) – expenditure on such software will qualify for allowances under section 291A.

  To accommodate companies with planned investments, a transition period of 2 years is provided, whereby a company may elect to claim normal wear and tear allowances under section 291 in respect of capital expenditure incurred up to 4 February 2012 on computer software used for commercial exploitation.

- The list of specified intangible assets [4] has been extended to include applications for patents, copyright etc.
- The definition of know-how, previously confined to industrial information and techniques, has been broadened to include commercial and scientific know-how in line with the requirements of the knowledge economy.
- Clarification is provided that the scheme will apply to expenditure incurred prior to the commencement of a trade on the provision of specified intangible assets for the purposes of the trade.

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- Provision has been made to ensure that companies availing of the accounts-based allowance are able to obtain relief for any impairment of a specified intangible asset where the resulting impairment charge to the profit and loss account is computed in accordance with generally accepted accounting practice.
- The legislation has been amended to specify the activities involving the use of specified intangible assets that constitute a separate trade (referred to in section 291A(5) as a 'relevant trade'). This is for the purposes of determining the trading income against which allowances under the scheme may be offset.

4. Frequently Asked Questions

Q.1 What assets qualify for relief under the scheme?

The scheme applies to intangible assets which:

- are recognised as such under generally accepted accounting practice [1], and
- re listed as "specified intangible assets" in section 291A(1).

Under generally accepted accounting practice, an intangible asset is defined as an identifiable non-monetary asset without physical substance and may be recognised in a company's accounts as an intangible asset only if the cost of the asset can be reliably measured and it is probable that future economic benefits attributable to the asset will flow to the enterprise. Certain requirements must be met before internally generated intangible assets may be recognised in the accounts and some internally generated assets, such as brands, publishing titles and goodwill, may not be recognised as intangible assets for accounting purposes.

The full list of specified intangible assets, which qualify for relief under the scheme, is given in the **Appendix** to this note.

Q.2 Are financial assets included in the scheme?

No. Financial assets are not regarded as intangible assets under generally accepted accounting practice and are therefore not included in the scheme

Q.3 How is goodwill treated under the scheme?

Goodwill is included in the scheme to the extent that it is

- recognised as an intangible asset under generally accepted accounting practice and
- directly attributable to any of the other specified intangible assets listed in section 291A(1).

Only goodwill that is externally acquired is recognised as an intangible asset under generally accepted accounting practice. Acquired goodwill is the amount by which the cost of an acquired business exceeds the fair value of the identifiable assets less liabilities of the business. Internally generated goodwill is not regarded as an intangible asset and is therefore not included in the scheme.

Q.4 Will Revenue provide an advance opinion on whether a particular intangible asset is eligible for relief under the scheme?

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Generally, it should be clear whether a particular intangible asset comes within the scheme or not. In situations where there is uncertainty, it is open to a company or its agent to refer the matter to Revenue which, on receipt of all the relevant details, will endeavour to provide an opinion on whether a particular asset comes within the scheme or not.

It is also open to a company to use the expression of doubt procedure under section 955(4) TCA 1997 if it has a genuine doubt about any item to be included in its annual CT 1 return. A formal, genuine expression of doubt protects the taxpayer from interest [5] and penalties, should Revenue take a different view of the tax treatment of the transaction at a later date.

Q.5 Are allowances available for capital expenditure on internally developed intangible assets as well as intangible assets which are bought in by a company?

To the extent that expenditure on the development of an intangible asset within a company is regarded as capital expenditure for the purposes of the company's trade, such expenditure will qualify for allowances under the scheme provided that the asset is recognised as an intangible asset under generally accepted accounting practice and is included in the list of specified intangible assets in section 291A. Where expenditure on an internally developed intangible asset is treated as a revenue expense and is incurred wholly and exclusively for the purposes of the trade, it is deductible in the accounting period in which the expenditure is incurred.

As already mentioned, there are certain requirements to be met under generally accepted accounting practice for an internally generated intangible asset to be recognised in the accounts. Also, certain internally generated assets - e.g. brands, publishing titles, goodwill - may not be recognised as intangible assets for accounting purposes and expenditure on such assets will not qualify for relief under the scheme.

Q.6 How is the accounts-based allowance computed?

The accounts-based allowance is based on the amount charged to the profit and loss account, or income statement [6] , of the company for the accounting period in respect of the amortisation, and any impairment, of the specified intangible asset relative to the actual cost of the asset (or if greater, the value of the asset on which such amortisation or impairment charge is computed). The amount charged is to be computed in accordance with generally accepted accounting practice.

Under generally accepted accounting practice, the cost less residual value of intangible assets with finite lives should be amortised over the useful life of the asset. The amortisation method should reflect the pattern of benefits deriving from the asset but if this cannot be reliably determined, a straight-line method should be used. An intangible asset with an indefinite useful life (e.g. a product brand) should **not** be amortised in the accounts. Impairment of an asset is recognised in the accounts when the carrying (i.e. written-down) value of the asset in the balance sheet exceeds its recoverable amount (i.e. the net selling price or value in use whichever is the greater). Amortisation and impairment should be reviewed annually.

The accounts based allowance is determined in accordance with the formula:

(A/B x 100) % of Actual Cost

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Where:

A - is the amount charged to the profit and loss account of the company for the accounting period in respect of the amortisation, and any impairment, of the specified intangible asset in accordance with generally accepted accounting practice.

[Note: An accounting period for corporation tax purposes may not exceed 12 months, so if, for example, a company's accounts are for a 15 month period, an apportionment of 12/15ths of the amortisation/impairment charge in the accounts will be required in computing an allowance for expenditure on an intangible asset which is in use for the entire period.]

B - is the actual cost of the asset or, if greater, the value of the asset by reference to which the amortisation charge, plus any impairment charge, in the accounts have been computed.

[Note: Actual cost is defined by reference to paragraph (ad) of section 284(2) TCA 1997 and is the amount of capital expenditure incurred on the provision of the asset including any capital expenditure in respect of renewal, improvement or reinstatement of the asset.]

Example

Smart Ltd. incurs capital expenditure of €1m on the acquisition of a product design for the purposes of its trade. For accounting purposes the asset is amortised over 10 years on a straight-line basis.

€100k/€1m x 100 = 10%; so the allowance is 10% of €1m = €100k.

Accordingly, in the accounting period in which the intangible asset was first acquired an allowance of 10% of the cost of the asset is available under the scheme. A similar allowance will be available in Year 2 and subsequent years if there is no change to the amortisation charge in the audited accounts in those years. Generally accepted accounting practice allows for a change in the amortisation period following an annual review so, where the amortisation amount is revised in these circumstances, there will be a corresponding adjustment to the writing-down allowance available under the scheme.

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Q.7 Can a company opt for a fixed-rate allowance?

Yes, as an alternative to using accounts-based depreciation, companies can opt for a fixed write-down period of 15 years, with capital allowances provided at 7% per annum of the actual cost of the asset and 2% in the final year. This option is likely to be used in the case of non-depreciating assets having an indefinite useful life and for which no amortisation charge to the profit and loss account is allowed under generally accepted accounting practice. Companies opting for a fixed-rate allowance are required to make an election to this effect in the corporation tax return for the accounting period in which the expenditure on the provision of the specified intangible asset was first incurred. An election for a fixed write-down period is irrevocable and applies to all capital expenditure incurred on the asset. It is not possible for a company claiming an accounts-based allowance in respect of an asset to switch to a fixed-rate allowance for that asset.

Q.8 Will companies be required to provide Revenue with the basis by which accounting depreciation and allowances are computed?

Companies will be required to indicate the amount of capital allowances claimed in respect of specified intangible assets in their annual corporation tax return. However, an explanation of the method by which intangible assets are depreciated for accounting purposes need not be included in the return. Normally the basis on which assets are depreciated in a company's accounts will be set out in the notes to the company's accounts and, where necessary, Revenue may seek further information on the computation of allowances claimed.

Q.9 Can capital allowances be provided if an asset does not depreciate in value?

Under generally accepted accounting practice certain assets are non-depreciating assets having an indefinite useful life. As accounting rules do not permit non-depreciating intangible assets to be amortised, capital expenditure incurred on the provision of such assets would not qualify for an accounts-based writing-down allowance. However, a company has the option to elect for the fixed-rate allowance over 15 years in respect of capital expenditure incurred on non-depreciating specified intangible assets acquired for the purposes of a trade.

Q.10 If a company incurs additional capital expenditure subsequent to acquiring an intangible asset, can this be taken into account?

Yes. Allowances are available for additional capital expenditure incurred by a company on the provision of a specified intangible asset subsequent to its acquisition, e.g. enhancement expenditure. Where an accounts-based allowance is claimed, such additional expenditure will be written off at a rate and over a period of time in accordance with the accounting depreciation for the expenditure. Where a company opts for a fixed-rate allowance, the expenditure will be written off over a 15-year period commencing in the accounting period in which the additional expenditure was incurred.

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Q.11 Where the acquisition cost of an intangible asset includes annual royalty payments (e.g. based on sales) in addition to an upfront payment on acquisition, can an allowance be claimed under section 291A on the capitalised value of such payments as shown on the balance sheet?

Royalty payments are **current** or **revenue** expenditure for tax purposes and, notwithstanding their treatment for accounting purposes, such payments would accordingly not qualify for allowances under section 291A, which are made by reference to capital expenditure.

For example, a company which pays an upfront fee of €15m together with an annual royalty of 5% of sales for the acquisition of a licence to sell a patented drug with an expected life of 10 years will be entitled to claim an accounts-based allowance under section 291A of €1.5m where the expenditure is written off over 10 years in the accounts, while the annual royalty payments, even if capitalised in the accounts, will be allowable as charges on income for the accounting periods in which the payments are made in accordance with sections 243, 243A and 243B TCA 1997.

Q.12 Will a balancing charge or balancing allowance apply on the disposal of an intangible asset?

Subject to the exception outlined below, the normal capital allowances rules in relation to balancing allowances/charges apply where a specified intangible asset is disposed of or ceases to be used for the purposes of the trade. A balancing charge applies where the net

proceeds or consideration received from the disposal of the intangible asset exceeds the amount of expenditure unallowed.

However, no balancing charge will arise where an intangible asset is disposed of, or ceases to be used in the trade, more than 10 years after the beginning of the accounting period in which the asset was first provided for the trade, to the extent that the disposal, or cessation of use in the trade, does not result in a connected company claiming allowances in respect of capital expenditure on the asset.

Q.13 Does the scheme apply to capital expenditure on the acquisition of intangible assets from a connected person as well as from a third party?

Yes. Relief is available for capital expenditure on the acquisition of specified intangible assets whether these are acquired from a third party or from a connected person. The following provisions of section 291A are of relevance in this regard:

- Allowances are based on the amount of capital expenditure incurred on the acquisition of the assets.
- An **arm's length rule** applies so that qualifying expenditure may not exceed the amount that would have been paid or payable for the asset between independent parties acting at arm's length.
- In the case of transfers of intangible assets from one group company to another, allowances are not available to the acquiring company where the transfer is subject to capital gains tax group relief under section 617 of the TCA (i.e. where there is no capital gains tax charge on the transfer of the asset and the acquiring company is treated as having acquired the asset for a consideration of such an amount that neither a gain nor a loss accrues to the transferring company on the transfer of the asset). However, the companies involved may jointly elect not to avail of group relief under section 617, in which case the acquiring company can claim an allowance under the scheme while the transferring company will be chargeable to capital gains tax on the transfer. [A balancing charge may also apply where the transferring company had been claiming capital allowances on the assets transferring.]

Amounts claimed under the scheme are to be included in the company's self-assessed corporation tax return for the relevant accounting period. Where claims for relief are being verified by Revenue, a company may be required to provide supporting information/documentation in relation to expenditure incurred on the provision of intangible assets. It will be up to the company claiming relief to demonstrate, where requested by Revenue, that the value attributed to a particular asset acquired is the appropriate arm's length value. In addition, Revenue may engage the services of an expert, where necessary, to provide advice to it in determining or validating the amount of allowable expenditure on the basis of arm's length values.

Q.14 Does a company have to be carrying on a trade to qualify?

Yes, a company must be carrying on a trade to qualify for relief and the specified intangible assets for which capital allowances are claimed must be used in the course of the trade. The scheme is focussed on companies engaged in the active management, development and exploitation of intangible assets in a trade, as distinct from passive holding of such assets. The mere holding of an intangible asset by a company from which licence fee or royalty

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income is received would not be regarded as a trading activity and capital expenditure incurred by the company on an asset for such purpose would not qualify for relief under the scheme as the asset is not used in a trade.

Q.15 Will Revenue give an advance opinion on whether activities involving intangible assets qualify as trading?

Yes. In accordance with established practice, Revenue are prepared to give an advance opinion on whether activities involving the management and exploitation of intangible assets would constitute trading for the purposes of the 12½% corporation tax rate. It should be borne in mind, however, that the position in relation to any proposed activity on which an advance opinion is sought can only be known with certainty after the events have taken place and the facts are established.

Q.16 If expenditure on intangible assets is incurred prior to the commencement of a trade, will that expenditure qualify for relief?

Yes. Where a company incurs expenditure prior to the commencement of a trade on specified intangible assets for use in a trade that it intends to carry on, allowances may be claimed once the trade is commenced and the asset is brought into use in the trade. The company can start claiming such allowances from the accounting period in which the asset was first brought into use.

Q.17 Does a company have to incur capital expenditure to qualify for relief under the scheme? Will an acquisition of specified intangible assets involving the issue of shares by the acquiring company qualify for relief?

The availability of capital allowances in respect of plant or machinery is subject to capital expenditure being incurred by the person claiming the allowances. The same principle applies in relation to a company claiming capital allowances on the provision of a specified intangible asset for the purposes of a trade. Capital expenditure on the acquisition of such an asset is the amount due and payable by the company for the asset acquired and expenditure is incurred once the acquiring company becomes liable to pay this amount.

While such liability to pay may be discharged in cash or otherwise, an acquisition of intangible assets involving the acquiring company issuing shares will only qualify for allowances where the company incurs capital expenditure in the course of that acquisition.

Q.18 Are there restrictions on the offset of capital allowances against trading profits?

There are two important restrictions on the offset of capital allowances against trading income.

Firstly, allowances for specified intangible assets may only be offset against income from trading activities in which the assets are used and not against any other income. Such activities (referred to as "**relevant activities**") are deemed to form a separate trade under section 291A(5) (referred to as a "**relevant trade**"). **Relevant activities** are activities that

- consist of managing, developing or exploiting specified intangible assets for which allowances have been made under the scheme,

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- comprise the sale of goods or services that derive the greater part of their value from such assets, or
- contribute to the value of goods or services by using such assets.

Where **relevant activities** are the only trade carried on by a company there should be no difficulty in ascertaining the profits from such activities. However, where **relevant activities** are carried on as part of a wider business, an apportionment of receipts and expenses will be necessary to ensure that the correct amount of income is attributable to the **relevant trade**. The company should make the apportionment on a just and reasonable basis and the amount of income attributed to the **relevant trade** should be in accordance with what would be earned from the **relevant activities** if they were conducted by a separate, independent company dealing with the company on an arm's length basis. While this provision will operate on a self-assessment basis, companies should be in a position to demonstrate, if required by Revenue, that the apportionment made fairly and accurately reflects the income earned from the relevant activities. In examining instances of the practical application of this provision, Revenue will be seeking to ensure that the provision is operating as intended.

The **second restriction** is that the aggregate amount of capital allowances for specified intangible assets, plus any deductions for related interest (i.e. interest on borrowings in respect of expenditure incurred on such assets), for an accounting period shall not exceed 80% of trading income (before such allowances and interest) of the **relevant trade** for that period. This means, in effect, that at least 20% of income from the **relevant trade** is left in charge for any accounting period and that a tax loss cannot be created by such allowances (or interest expense).

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In applying this provision, capital allowances for expenditure on the provision of specified intangible assets are to be restricted before interest on related borrowings is restricted. Where, by virtue of the 80% limit, it is not possible to utilise all the capital allowances available for an accounting period, the excess allowances will be carried forward and added to any allowances which are available for offset against trading income of the **relevant trade** for the next accounting period and so on for each succeeding accounting period. Similarly, any excess interest expense arising in an accounting period will be carried forward and added to any interest deductible against trading income of the trade for the next accounting period and so on for each succeeding accounting period.

Example

A company established to actively manage, develop and exploit product brands and trademarks, which it has acquired for €100 million, earns income of €10m in year 1, with income expected to rise by €1m per annum thereafter. The €100m acquisition is funded by inter-company borrowings with interest payable at 3% per annum. The company claims a fixed-rate allowance of 7% per annum (2% in year 15) in respect of the capital expenditure incurred. The position in relation to offset of allowances and interest for the first two accounting periods is as follows:

	Accounting Period 1 €million	**Accounting Period 2 €million**
Income from relevant trade before allowances and interest:	10	11

Capital allowances at fixed rate of 7% p.a.:	7	7
Interest deductible :	3	3
Allowances carried forward from previous Accounting Period:	NIL	2
80% of income from relevant trade, before allowances and interest:	8	8.8
Interest deductible :	3	3
Capital allowances [restricted]:	5	5.8
Income chargeable:	2	2.2
Allowances available for carry forward:	2	3.2

Q.19 Is there a restriction on the deduction of interest on borrowings in respect of expenditure on the provision of specified intangible assets?

As indicated above, where a company claiming allowances on capital expenditure incurred on the provision of a specified intangible asset also incurs an interest expense on borrowings to fund such expenditure, the amount of such interest is included in the 80% limit on the aggregate amount of such allowances and deductions for interest which may be set against trading income of the **relevant trade** for the accounting period.

The scheme also provides for a restriction on the amount of interest deductible by an investing company under section 247 of the TCA where that company provides funds it has borrowed to a company engaged in the **relevant trade**, either by way of subscription for share capital or a loan, and the latter company uses the funds to provide, for use in the trade, specified intangible assets for which an allowance is to be made under section 291A. The restriction will be applied to the interest paid by the investing company on the borrowed funds - less any **chargeable** distributions (i.e. **not** franked investment income) or interest received from the other company in respect of the moneys advanced. The restriction ensures that such interest cannot exceed the amount of interest that would have been deductible in the hands of the company engaged in the **relevant trade** had that latter company incurred the interest expense. Any amount of interest that has been restricted under the scheme may be carried forward to be treated as interest paid in the next accounting period of the company and so on for each succeeding period.

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Q.20 Is relief available where intangible assets are acquired as part of the acquisition of a trade or business?

Yes. Allowances are available, subject to the provisions of section 291A, for specified intangible assets acquired as part of a trade or business acquisition, including any goodwill of the trade or business to the extent that such goodwill can be directly attributed to other specified intangible assets listed in section 291A(1).

Restrictions apply where a business containing specified intangible assets transfers from one company to another as part of a company reconstruction and where the transfer is subject to capital gains tax relief under section 615 TCA 1997. No capital allowance will be available for specified intangible assets acquired where capital gains tax relief is claimed on the transfer under section 615. However, the two companies can elect not to avail of capital gains tax relief under section 615 in order to obtain capital allowances under section 291A instead.

In this situation the acquiring company will be entitled to claim an allowance for specified intangible assets acquired while the transferring company will be subject to capital gains tax on the transfer of those assets at market value.

Q.21 What stamp duty provisions apply to the transfer of intangible assets?

Section 101 of the Stamp Duties Consolidation Act 1999 provides that stamp duty is not chargeable on an instrument for the sale, transfer or other disposition of intellectual property. The definition of "intellectual property" for stamp duty purposes is broadly in line with the definition of "specified intangible asset" in section 291A TCA 1997.

Q.22 How does expenditure incurred under the new intangible assets scheme interact with expenditure incurred for the purposes of obtaining a tax credit in respect of R&D activities under Section 766 of the TCA?

The intangible assets scheme contains a provision, in section 291A(7)(a), to ensure that capital expenditure on the provision of a specified intangible asset for the purposes of the trade will not qualify for an allowance under the scheme where relief is provided for the same expenditure under any other provision of the Tax Acts. This means that a company claiming an R&D tax credit under section 766 TCA 1997 for expenditure on research and development will not be able to claim an allowance under section 291A for such expenditure. Furthermore, it should be noted that expenditure incurred on a specified intangible asset within the meaning of section 291A would not be regarded as expenditure on plant and machinery for the purposes of qualifying for relief as research and development expenditure under section 766, since intangible assets are treated as machinery or plant for the purposes of Chapters 2 and 4 of Part 9 of the TCA only.

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Q.23 How will the scheme interact with the 3-year tax relief for new start-up companies? Will a new start-up company be able to claim relief under the scheme for intangible assets?

Section 486C TCA 1997 provides relief from corporation tax in the first 3 years of trading by new companies commencing a new trade [7] in 2009 or 2010 where the corporation tax payable by the company for an accounting period does not exceed €40,000. Marginal relief is available for companies with corporation tax payable between €40,000 and €60,000. The exemption is granted by reducing to 'nil' the corporation tax payable in respect of income from the trade and chargeable gains on the disposals of assets used for the purposes of the trade. Income from the trade for which relief is claimed under section 486C, and for the purposes of the €40,000 limit, is computed after taking account of any allowances due under section 291A in respect of capital expenditure on the provision of specified intangible assets.

APPENDIX

List of Specified Intangible Assets Included in Scheme

1. any patent, registered design, design right or invention,
2. any trade mark, trade name, trade dress, brand, brand name, domain name, service mark or publishing title,
3. any copyright or related right within the meaning of the Copyright and Related Rights Act 2000,

    - (ca) computer software or a right to use or otherwise deal with computer software other than such software or such right construed in accordance with section 291(3),
4. any supplementary protection certificate provided under Council Regulation (EEC) No. 1768/92 of 18 June 1992 [8],
5. any supplementary protection certificate provided for under Regulation (EC) No. 1610/96 of the European Parliament and of the Council of 23 July 1996 [9],
6. any plant breeders' rights within the meaning of section 4 of the Plant Varieties (Proprietary Rights) Act 1980, as amended by the Plant Varieties (Proprietary Rights) (Amendment) Act 1998,
    - (fa) any application for the grant or registration of anything within paragraphs (a) to (f),
7. secret processes or formulae or other secret information concerning industrial, commercial or scientific experience, whether protected or not by patent, copyright or a related right, including know-how within the meaning of section 768,
8. any authorisation without which it would not be permissible for—
    1. a medicine or
    2. a product of any design, formula, process or invention

    to be sold for any purpose for which it was intended, but this paragraph does not relate to a licence within the meaning of section 2 of the Intoxicating Liquor Act, 2008,

9. any rights derived from research, undertaken prior to any authorisation referred to in paragraph (h), into the effects of—
    0. a medicine or
    1. a product of any design, formula, process or invention,
10. any licence in respect of an intangible asset referred to in any of paragraphs (a) to (i),
11. any rights granted under the law of any country, territory, state or area, other than the State, or under any international treaty, convention or agreement to which the State is a party, that correspond to or are similar to those within any of paragraphs (a) to (j), or
12. goodwill to the extent that it is directly attributable to anything within any of paragraphs (a) to (k).

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Footnotes

[1] In section 291A and in this tax briefing note, generally accepted accounting practice comes within the definition provided in section 4 TCA 1997 and includes accounts prepared in accordance with international accounting standards (IAS) and accounts prepared under Irish GAAP.

[2] i.e. for the purposes of Chapters 2 and 4 of Part 9 of the TCA 1997

[3] under IAS

[4] Also, an amendment to paragraph (h) of section 291A(1) makes it clear that the scheme does not apply to liquor licences within the meaning of section 2 of the Intoxicating Liquor Act 2008.

[5] Protection from interest applies as long as any additional tax that may be due on the amendment of an assessment following resolution of the expression of doubt is paid when due.

[6] under IAS

[7] A new trade qualifying for relief under section 486C TCA 1997 does not include:
a trade which was previously carried on by another person or formed part of another person's trade,
a trade of dealing in or developing land or exploration and extraction of natural resources, or
a trade consisting of "service company" activities as defined in section 441 of the TCA 1997.

[8] OJ No. L182, 2.7.1992, p.1

[9] OJ No. L198, 8.8.1996, p.30

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