

Technology

Our Team



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Today's Budget Statement contained some welcome initiatives for the technology sector.

1. Research and Development (R&D) tax credit

The Minister proposes the following improvements to the R&D tax credit scheme:

Volume basis versus incremental basis

At present, the R&D credit is available on incremental expenditure over and above that incurred by the relevant company in 2003. This was generally regarded as a flaw in the regime and as particularly inappropriate in recessionary times where R&D expenditure decisions are carefully taken and value is expected from both a tax and commercial perspective for each cent of expenditure.

The Minister today proposed that the first €100,000 of qualifying R&D expenditure will benefit from the 25% R&D tax credit on a volume basis. This change is particularly targeted at SMEs. The tax credit will continue to apply to incremental R&D expenditure in excess of €100,000 as compared with such expenditure in the base year 2003.

Outsourcing limits

Under the current regime, the maximum R&D subcontracting expenditure for credit purposes is 10% of total expenditure or 5% where such subcontracting was made to third level institutions. This was seen as particularly disadvantageous for the SME sector which is likely to have greater sub-contracting requirements than larger firms and large multinationals which may have greater internal R&D resources.

It was announced today that the outsourcing limits for sub-contracted R&D expenditure is being increased to the greater of 5% or 10% as appropriate or €100k. It is envisaged that this will result in a higher level of qualifying expenditure for R&D tax credit purposes within the SME sector.

Use of R&D tax credit to reward key R&D employees

It is proposed that companies in receipt of the R&D credit may use a portion of the credit to reward key employees of the company who have been involved in the relevant R&D activities. The Minister advises that this should not result in additional costs to the Exchequer, as such bonuses would be derived from the R&D credit already received by the company, and the employees concerned will still be liable to their normal tax liability on their other income. It has been stressed that the operation of this initiative will be closely monitored and will be removed if abused.

2. Three Year Tax Relief for Start-up Companies

Finance (No 2) Act 2008 introduced a corporation tax exemption for new companies commencing to trade since 2009. The exemption applies to the profits of qualifying trades and to the disposal of assets used for the purposes of the new trade. The exemption operates by reducing the corporation tax attributable to such profits to nil where the total amount of corporation tax payable by the company for an accounting period does not exceed €40,000. Marginal relief applies where the total corporation tax payable by the new company is between €40,000 and €60,000. The exemption applies for three years from the commencement of the trade, subject to conditions. Finance Act 2011 extended the exemption to trades commencing in 2011. However it also linked the exemption to employers' PRSI paid in the relevant accounting period.

The Minister today announced that the exemption will be extended to new start-up companies for the first three years of trading where such trades commence in 2012, 2013 or 2014.

3. Other measures of relevance to the technology sector

Other measures which will be of relevance to the technology sector which were announced today were:

- The Minister's latest commitment to Ireland's 12.5% corporation tax rate. Specifically he said that "there will be no change in Ireland's 12.5 per cent corporate tax rate". This latest reaffirmation of the position is welcome.

- The Minister announced his intention to introduce a "Special Assignee Relief Programme", with the aim of assisting multinational and indigenous companies attract key people to Ireland. The envisaged benefits of this will be jobs creation and the further development and expansion of businesses in Ireland.
- The Minister also intends introducing a Foreign Earnings Deduction to support Ireland's export objectives. This targeted income tax deduction will apply where an individual spends 60 days a year developing markets for Ireland in Brazil, Russia, India, China and South Africa.

4. Employment Incentive Scheme ("EIS")

Although the EIS was announced by the Minister for Finance in his Budget 2011 speech, it has only recently been approved by the European Commission, and is therefore perhaps worth briefly highlighting in this bulletin.

In brief, the EIS is a tax relief incentive scheme that provides tax relief for investment in certain corporate trades. The scheme has replaced the Business Expansion Scheme (BES). It enables an individual investor to obtain income tax relief on investments up to a maximum of €150,000 per annum in each tax year up to 2013. Relief is initially available to an individual at 30%, and a further 11% tax relief will be available where it has been proven that employment levels have increased at the company at the end of the holding period (3 years) or where evidence is provided that the company used the capital raised for expenditure on research and development. This additional 11% will not be subject to the high earners restriction.

An investor who is not in a position to obtain relief on all his/her investment in a year of assessment, due to either because his/her investment exceeds the maximum of €150,000 or his/her income in that year is insufficient to absorb all of it, may carry forward the unrelieved amount to following years up to and including 2013, subject to the normal limit of €150,000 on the amount of investment that can be relieved in any one year.

This scheme is available to the majority of small and medium sized trading companies and covers most trades. The maximum investment by all investors in any one company or group of companies is €10,000,000 subject to a maximum of €2,500,000 in any one twelve month period. There must be no condition which would eliminate the risk to the investor.

The replacement of the BES and Seed Capital Scheme with the EIS has been broadly welcomed. Its improvements over its predecessors include the extension of the definition of trading activities in respect of which relief will now be available, the reduced holding period for investors, and the increased lifetime and annual funding limits for the beneficiary company.

5. Finance Act 2012 wish list

The legislation governing the proposed changes to the R&D tax credits regime, the extension of the three year start up, the introduction of a Special Assignee Relief Programme, and the reintroduction of a Foreign Earnings Deduction will be contained in Finance Bill 2012 which we can expect to see early in the New Year.

There are other areas of relevance to the technology where we would welcome improvements, and hopefully some or all of the following measures will also be included in the Bill:

- Introduction of Irish "Patent Box" tax regime - Finance Act 2011 abolished tax exemptions for patent royalties and dividends from a qualifying patent with effect from 24 November 2010. In our view this move is regressive in the current international climate as many countries are increasing their ranges of tax incentives to attract innovation to their jurisdictions. We would welcome the introduction of a reduced tax rate for companies on profits generated from patents, similar to some of the "Patent Boxes" which currently exist in some other jurisdictions.
- The above Patent Box could be complemented by a special dividend regime in relation to amounts paid to shareholders who are directly involved in the innovation activities.
- The incremental 2003 base year approach should be replaced in its entirety with a volume based approach. While the Minister's initiative today is welcome, it does not go far enough in our view.
- The manner in which R&D tax credits may be used could be improved upon and hopefully we will see further progress in this regard in Finance Bill 2012.
- Improvements could be made to Ireland's IP tax deduction regime by reducing the tax amortization period, and removing the 80% cap on deductibility.

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