Tax Strategy Group

Corporation Tax

1. Introduction

Ireland's industrial policy has been firmly focussed on attracting and retaining Foreign Direct Investment (FDI) for the last fifty years. Central to that policy is a competitive corporate tax (CT) regime. The Irish CT regime has evolved from one that gave explicit preferential treatment to exporting industries (through export profits tax relief up to 1980, then through a 10% rate of tax for the manufacturing and international financial services sectors) to one where a rate of 12.5% applies (to trading income) across all sectors. This relatively low rate is supplemented by incentives like the Research and Development (R&D) Tax Credit and the Intangible Asset regime which are designed to encourage high value-added activities to locate in Ireland which have strong positive spill-over effects in terms of the rest of the economy.

Ireland's corporate tax offering is best described by 3 key features:

a) **Rate:** The 12.5% rate is now akin to a brand. Government policy in relation to the rate is clear. As set out in the Programme for Government and as reaffirmed in his most recent Budget Speech, the Minister for Finance has stated that the 12.5% Corporation Tax Rate will not be changed.
b) **Regime:** This refers to the additional elements of the broader CT offering – e.g. R&D Tax Credit, Intangible Asset regime, effective Double Tax Relief.
c) **Reputation:** Ireland offers a transparent corporate tax regime accompanied by a rapidly growing network of international tax treaties with full exchange of information.

This policy has yielded significant success and, according to IDA Ireland, FDI accounts for nearly 150,000 direct jobs, an estimated 100,000 indirect jobs and over €6.9bn in payroll receipts. A report by Foreign Direct Intelligence Europe[1] states that job creation in the FDI sector in Ireland was up by 13% in 2011, with a 22% increase in the number of projects being undertaken. According to IDA Ireland, FDI is also estimated to generate more than €115bn in exports. According to the IBM Global Business Service Global Location Trends 2011 Report[2], Ireland receives the highest value from inward investment in the world.

The corporation tax system is exposed to a number of risks. These risks include the profitability of payers (e.g. business cycle effects) and losses carried forward, the risks associated with changes in the overall rate and reliefs, and changes in rates, reliefs and remittance rules in other jurisdictions. Revenue provided the percentage of the total 2010 CT

[1] http://ftbsitessvr01.ft.com/forms/fDi/report2012/files/The_fDi_Report_2012.pdf
[2] http://public.dhe.ibm.com/common/ssi/ecm/en/gbe03456usen/GBE03456USEN.PDF

liability by NACE-2 economic sector as well as the percentage of total CT liability accounted for by the five largest payers in each of those sectors. The liability of the five largest payers is one measure of the concentration risks that the CT base is exposed to. However, it may not an ideal measure and a more useful measure might be the liability of the largest single payer or the two largest payers. For confidentiality reasons this level of concentration was not provided.

Summary of Findings

A summary of the 2010 liability is as follows:

- Total CT liabilities for 2010 were €3.943bn
- 90% of liabilities came from five sectors – Manufacturing was the highest at 33% which took over from Financial Intermediation in 2009
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The Table below identifies the four largest sectors in 2010 in terms of the overall CT liability.

Sector	**Share of total CT Liability**	**Top-5 share of total CT liability**	**Top-5 share within sector**
Manufacturing (NACE C)	33%	xxx	xxx
Financial and Insurance (NACE K)	25%	xx	xxx
Information and Communication (NACE J)	15%	xxx	xxx
Wholesale and Retail (NACE G)	12%	xx	xxx

The sector with the largest liability was 'Manufacturing' which had a liability of 33% of the overall liability.
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The tax yields from corporation tax from 2003 to 2011 are set out below:

Year	**Yield €m**	**Proportion of total tax yield**
2003	5,161	16.1%
2004	5,332	15.0%
2005	5,492	14.0%
2006	6,683	14.7%
2007	6,391	13.5%
2008	5,066	12.3%
2009	3,900	11.7%
2010	3,940	12.4%
2011	3,520	10.3%

One of our key goals is to maintain (and if possible improve) our tax competitiveness in the short to medium-term without jeopardising our international reputation. In the current international environment, that's an increasingly difficult balancing act. In that regard, it's worth highlighting that certainty is a key factor for businesses when they are making investment decisions. This is particularly relevant to the discussion later in the paper about the possibility of introducing measures to increase revenue from CT.

Another longer-term goal is to seek to address our heavy reliance on the FDI sector by implementing policies that encourage growth in the indigenous sector. Tax is not the only (or even the main) policy tool that can assist in achieving that outcome but a number of tax options to assist the small and medium enterprise sector are being considered in the context of the Budget – these measures are the subject of a separate TSG paper.

2. International Developments Influencing the Development of Ireland's Corporate Tax Policy

There are two major forces at play in shaping the future development of Ireland's corporate tax regime.

The **first** is intensifying competition from other jurisdictions intent on winning greater shares of global FDI–xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx Such developments mean that that we must constantly review the competitiveness of elements of our CT regime apart from the rate.

The **second** is the increased focus of international organisations such as the OECD and the EU on what they see as 'aggressive tax competition'. This requires that we ensure that whatever 'enhancements' we introduce to our broader regime do not damage our international tax reputation. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxx.

What is driving these opposing forces (increased tax competition and increased international co-operation to counter 'aggressive tax competition') is the need for increased tax revenues to fund high deficit levels in many countries arising from the recent global economic and financial crisis.

In an increasingly globalised economy, peripheral countries with small domestic markets have typically leaned towards using their corporate tax systems as a policy tool for attracting highly mobile foreign direct investment. Larger countries with bigger domestic markets and the natural competitive advantages that flow from that have viewed their CT regimes primarily as a direct and growing source of tax revenue.

Countries are now increasingly at odds with each other in terms of their views on how to go about increasing their tax revenue from corporations. Some large core EU member states believe that international cooperation focussing on reducing the arbitrage possibilities for multinational companies is the best way to increase revenues. Other countries have decided to pursue policies to make their corporate tax offering more competitive. xxxxxxxxxx xxxxxxxxxxxxx:

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2.1 OECD Project on Base Erosion and Profit-Shifting

"...We reiterate the need to prevent base erosion and profit shifting and we will follow with attention the ongoing work of the OECD in this area" - **G20 Leaders Declaration of 19 June 2012, Los Cabos.**

The OECD is conducting a project looking at whether, and if so why, Multinational Enterprises (MNEs) taxable profits are being allocated to locations different from those where the actual business activity takes place. The project, which is called BEPS (Base Erosion and Profit-Shifting) is a direct response to growing international concern at what is sometimes referred to as 'aggressive tax planning' by MNEs.

The aim of the project is to provide comprehensive, balanced and effective strategies for tackling base erosion and profit shifting. An interim report is expected to be discussed by the OECD's Committee on Fiscal Affairs in 2013.

2.2 European Commission Work on 'Aggressive Tax Planning and Tax Havens'

In December 2012, the European Commission is preparing to publish a Communication, Impact Assessment and Action Plan in relation to Aggressive Tax Planning and Tax Havens. This work follows a request from the European Council in March 2012 to prepare a report on tax fraud and tax evasion. This proposal will be a high profile item during Ireland's Presidency of the EU Council in 2013.

2.3 The Fiscal Cliff and the potential for Significant US Tax Reform

Convergence of political decisions has led the US to the edge of a so-called "Fiscal Cliff," which is expected at the start of 2013. The contributing factors include: the expiration of tax cuts enacted under President Bush and which were extended and added to under President Obama; a compromise reached in the summer of 2011 increasing the US debt limit (to $16.4 trillion - it stands at approximately $16.079 trillion at present), but requiring substantial spending cuts or the activation of $1.2 trillion in automatic across-the-board cuts beginning in 2013 (referred to as sequestration); and the lack of a federal budget for the next fiscal year. All of these factors combined could tip the US into recession next year.

As the US election campaign moves into its final weeks, the debate on tax reform continues in its broadest sense. The debate addresses the ways in which *all* taxes, but particularly corporate and income taxes, might be reformed. As far as corporate tax reform is concerned, the debate centres on a territorial versus a worldwide system, with the Republicans favouring the former with a new lower corporate tax rate of 25%. President Obama has suggested a reduction in the corporation tax rate to 28%, with a minimum tax levied on foreign profits, excess returns on off shored and low taxed intellectual property. Both the President and Vice-President have sharply rebuked the Republican Presidential Candidate and his running mate for their support of a territorial system, as supporting the creation jobs overseas.

2.4 Common Consolidated Corporate Tax Base

On 16th March 2011 the European Commission, which has the right of initiative to bring forward legislative proposals, published its proposal for a Common Consolidated Corporate Tax Base (CCCTB).

The CCCTB proposal is intended to provide a single set of rules that companies operating within the EU could use to calculate their taxable profits. Essentially the intention is that a single company or group of companies operating within the EU would only have to comply with one system for the calculation of its taxable income. The Commission have proposed that the CCCTB would be optional for companies to join.

The draft Directive contains 136 Articles and is divided into eighteen different Chapters. As this proposed legislation falls into the direct taxation field it is covered by Article 115 of the Treaty on the Functioning of the European Union (TFEU) which obliges the Council to act unanimously in accordance with the special legislative procedure and after consulting the European Parliament and the European Economic and Social Committee.

According to the proposal by the Commission the CCCTB would make it possible for companies or groups of companies to consolidate all profits and losses across the EU. The single consolidated tax return would be used to establish the base of the company after which all Member States in which the company is active would be entitled to tax a certain portion of that base, according to a specific formula based on three equally weighted facts (assets, labour and sales by destination). This work would all be done through the tax authorities of the company's principal Member State in what the Commission call a 'one-stop-shop' approach.

The Commission argues that a Directive is needed to tackle the tax obstacles that are barriers to the completion of the Single Market and that place additional costs on businesses that trade across borders. It is worth reiterating that the CCCTB proposal is not about corporate tax rates and Ireland would not support any proposals on the harmonisation of corporate tax rates.

The publication of the proposal represented the beginning of a process that involves a detailed examination of the proposal, line by line, by all Member States at the Council Working Group level. Since the Commission's proposal has been published, Department of Finance officials, along with officials from the Revenue Commissioners have been attending the Working Party on Tax Questions which is the forum for discussions on the proposal.

This proposal has the potential to affect the economic interests of all Member States. Therefore the Government have made it clear that Ireland, like all other Member States, intends to constructively engage in that process because only in that way can we absolutely ensure that all of the arguments are brought to the table and our interests are protected.

Ireland's position on the CCCTB is that we remain sceptical of the proposal but we are 'constructively engaging' in the policy and technical debate. The package of measures agreed at the meeting of Heads of State and Government on 21 July 2011 formally enshrined Ireland's position and participation in the CCCTB dossier.

There are three aspects to our current engagement in the CCCTB process:

- Firstly, the Department of Finance has examined the detail of the proposal very closely and carried out an independent impact assessment of the proposal. This assessment was published in January 2011 and placed on the Department's web-site.

- Secondly, we are actively engaged in the Council Working group discussions and pose questions where we believe further clarity is required.

- Thirdly, we are consulting with business representatives as well as colleagues in other EU jurisdictions to give us a better picture of the likely impact of the proposal.

We are not alone among Member States who are sceptical about the CCCTB proposal but all member states are participating in the technical debate on the dossier.

This proposal will not receive full agreement before the end of this year which will inevitably mean that it will fall to the Irish Presidency to carry on the discussions during the first half of 2013. We will fulfil our Presidency role and facilitate the continued discussions.

3. Proposals for Enhancements to Ireland's Tax Offering

3.1 Special Assignee Relief Programme and Foreign Earnings Deduction

The introduction of the Special Assignee Relief Programme (SARP) and the Foreign Earnings Deduction (FED) in Finance Act 2012 were welcomed. However, the industry consensus is that the reliefs in their present form are not sufficient to attract the key high-level decision-makers necessary to stimulate new business and employment growth, and several industry groups have all stated that improvements to SARP and FED are key to improving the competitiveness of Ireland's overall tax offering. These issues are being considered separately as part of broader income tax policy.

3.2 Tax Credit for R&D Expenditure

Ireland has a tax credit scheme for Research and Development (R&D) which was introduced in Finance Act 2004.

Key features of the scheme include:

- A tax credit of 25% on incremental R&D expenditure – in addition to the normal 12.5% trading deduction

- The scheme is based on incremental spend and provides for expenditure on R&D that is in excess of that undertaken in the base year of 2003 to qualify for the credit

- The base year has been permanently set at 2003, making it effectively volume based for new entrants

- In line with the Programme for Government commitment, Finance Act 2012 provided that the first €100,000 spend on R&D can qualify for the credit on a full volume basis: any spend above €100,000 must be more than the 2003 base year spend

- There is no ceiling to the level of eligible expenditure over the 2003 base year

- Unused tax credits can be carried back for set-off against a company's prior year CT liabilities thus generating a tax refund

- Where there is insufficient current or prior year CT liabilities, the company can claim unused tax credits in cash over three years

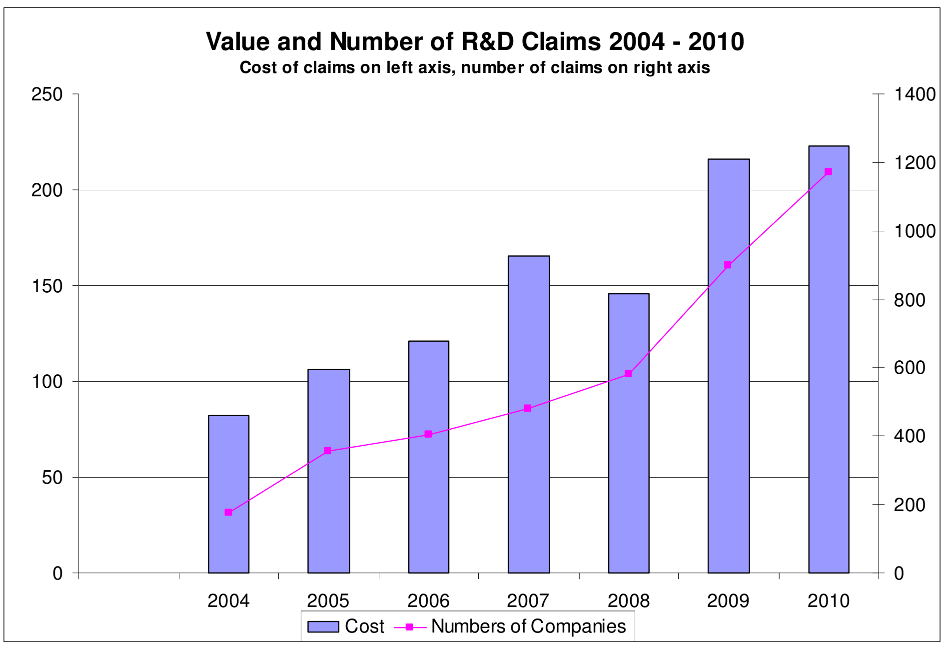
- Expenditure includes direct and indirect costs in addition to capital expenditure on related plant and machinery

- A proportion of capital expenditure on buildings used in part for R&D purposes now qualifies for a tax credit of 25% (previously expenditure on new or refurbished buildings would only qualify for the tax credit if used "wholly and exclusively" for R&D)

Tax credits available as cash refunds are particularly attractive to start-up companies or SMEs which are not making profits as the credit can effectively part-fund the R&D activity and acts as a valuable source of cash-flow.

3.2.1 Cost of the R&D Tax Credit

The cost of the scheme including value of tax credit claimed, administration costs and compliance costs has risen from €82m in 2004 to approximately €224m in 2010[3].



[3] The cost for 2010 includes the amount of credit allowed against 2010 tax together with the amount offset against tax of previous accounting periods and as payable credit. This information was not available for earlier years.

Given the length of time required for R&D activities to come to fruition, any significant benefit arising from the R&D tax credit scheme may only emerge in the medium to longer term.

3.2.2 Possible Options for enhancing the existing R&D regime

There are a number of options that could be explored to further enhance the R&D regime in Ireland. However, it should perhaps be noted that the scheme has been enhanced in most Budgets and Finance Acts since its introduction – this is making it difficult to accurately measure the success of the regime so far. That said, a recent independent study by Mazars[4] on the cost of global R&D initiatives after tax and other cost incentives has already placed Ireland among the world's most competitive locations in this regard.

Also, the Group may wish to note that it is intended that there will be a review of the R&D Tax Credit carried out by the Department of Finance in 2013 – 5 years after the last major changes to the scheme.

3.2.2.1 Base Year Options

The Department has received several proposals in relation to the provision that requires that a company spend more on R&D than they did in the base year 2003 in order to qualify for the credit. Concerns have been raised that this approach puts companies with a high R&D spend in 2003 at a competitive disadvantage and that it lessens the incentive for them to keep their R&D projects in Ireland. A number of groups have also highlighted the administrative burden on companies to retain their 2003 records indefinitely, in anticipation of a Revenue audit of their tax claim.

In considering such issues, it should also be borne in mind that the R&D credit is a tax expenditure which costs upwards of €200m per annum and, as yet, it has not been possible to robustly quantify the benefits arising from the scheme. Many of the proposals outlined below would increase the cost of the scheme. Therefore, careful consideration will have to be given to whether or not they are justified in the current economic climate.

Suggested changes include the following:

- Remove the base year provision and use a full 'volume-based' approach. This would mean that the full expenditure in any given year would qualify for the credit. The cost of this proposal is not currently available but is likely to be significant. It has also been suggested that the 2003 base year be phased out over time.

- Allow for an average spend over the years 2003-2005 (or another defined year) to be used as opposed to just 2003, in order not to discriminate against companies with an adversely high R&D spend in 2003 only.

- Increase the initial spend allowed to be taken on a full volume basis from €100,000 to €200,000. It is not possible to definitively cost this proposal at this stage as data is not yet available on the cost of the measure introduced in Finance Act 2012 which allowed the first €100,000 of expenditure on a volume basis.

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[4] Review of Global R&D Tax Incentives, July 2010

3.2.2.2 Outsourcing Limits

The R&D tax credit regime allows for a company to claim R&D credit for R&D that it outsources to an unconnected third party. This is restricted to 10% of the total R&D spend when outsourced to another company, and 5% to a third level institution. A number of groups have requested that consideration be given to:

- Removing or increasing the limit on R&D activity outsourced to 3rd parties and third level institutions

- Extending the provision to include contract workers in Ireland

It has been suggested that greater flexibility in this area would be of particular use for SMEs who are more likely to need to outsource.

It is intended to consider these proposals in more detail. However, it is worth highlighting that the rationale behind the R&D tax credit is to incentivise R&D activity in the State – it may not be possible to confine the tax credit for expenditure on outsourcing to parties carrying on the R&D activity within Ireland due to EU rules on the free movement of services. This needs to be borne in mind when considering the deadweight cost of these proposals.

3.2.2.3 Relief for Key Employees

Finance Act 2012 introduced a measure to allow a company in receipt of the R&D tax credit to be able to transfer this credit to a person identified as a 'key employee' in the R&D process. The rationale for this measure was to maintain our pool of skilled workers by giving companies in receipt of the R&D credit the option to use all or part of the credit to reward key employees who have been directly involved in the creation or development of the R&D process.

In order for an individual to be a key employee in a given period he/she must perform 75% or more of the duties of his or her employment in the conception or creation of new knowledge, products, processes, methods and systems. In addition, 75% or more of the cost of his or her emoluments from the company must qualify as expenditure on research and development in the accounting period for which the company surrendered the credit.

While the introduction of this measure has been broadly welcomed, a number of groups have identified practical difficulties in the application of the measure. One particular issue that has been highlighted is that the requirement to spend at least 75% of time on R&D may be particularly difficult for a SME, as smaller companies are less likely to be able to devote key personnel to R&D on a full-time basis.

Proposals received to date include:

- Changing the audit rules to remove the ability of Revenue to seek repayment of incorrectly claimed R&D credits directly from individuals and allow the Revenue to seek repayment of the credit only from companies. (The key employee option was introduced as a nil cost measure; therefore the employee does not receive a financial benefit from availing of the option. The employee can avoid the risk of a Revenue audit by simply avoiding using the key employee option.)

- Extending the key employee relief to loss-making companies (currently only profitable companies can claim the key employee option).

- Widening the scope of individuals that qualify for the key employee option by changing technical qualification criteria.

3.2.2.4 Possible Alignment of R&D Tax Credit with Grant Qualification Criteria

This Programme for Government for National Recovery 2011 – 2016 contains the following commitment in relation to the R&D scheme:

- *"To cut down on red tape in the applications process, companies in receipt of a Research, Technology and Innovation (RTI) grant from one of the development agencies will be automatically deemed as entitled to the R&D tax credit."*

This item raises issues of granting automatic tax entitlements on foot of unrelated grant aid.

Qualifying for the R&D tax credit generally requires a higher threshold than qualifying for grant aid. The rationale for the qualification criteria for the tax credit is set out as follows. The definition of R&D for the purposes of the tax credit is based on the OECD Frascati Manual and accords with international norms and definitions. Given the attention that Ireland receives owing to our competitive headline CT rate, there is considerable focus on any measure that has the potential to reduce the effective rate. Accordingly, it is important that the R&D tax credit matches international benchmarks.

Although it may not be feasible to amend the criteria for the R&D tax credit, Revenue are working with Enterprise Ireland in order to see if there may be opportunities to streamline the processes, particularly in the area of the records to be maintained and to see if any administrative changes can be made to achieve greater synergies.

3.2.2.5 Other Issues relating to the R&D Tax Credit

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- As already mentioned, the R&D tax credit scheme in Ireland allows a loss making company carrying on R&D activities to claim a cash credit. This credit is payable in 3 instalments: generally, the first instalment is payable 9 months after the end of the accounting period in which the expenditure was incurred. The second is payable one year later and the third a year later again. Given that such companies are making losses, it is likely that some of these companies may cease trading. Even after they have ceased trading, they are still entitled to the refund. It has been suggested that as this credit was given to encourage R&D, it is hard to reconcile the existence of such a refund to a company that has ceased trading. Revenue has proposed that a condition be inserted in the legislation that a company must be trading at the time for payment of an instalment of a payable credit for that payment to be made.

3.3 Intangible Asset Regime

A tax relief scheme for Intellectual Property was introduced in Finance Act 2009 providing capital allowances for expenditure incurred by companies on the provision of intangible assets for the purposes of a trade. The relief applies to a broad range of assets (e.g. patents, copyright, trademarks, know-how) which are recognised as intangible assets under generally accepted accounting practice.

Allowances are based on the amount charged to the profit and loss account of the company for the accounting period in respect of the amortisation or depreciation of the intangible asset, but companies can opt instead for a fixed write-down period of 15 years at a rate of 7% per annum and 2% in the final year. Certain restrictions apply to ensure that the scheme operates on an effective basis. Allowances may only be offset against income of the trade in which the intangible assets are used, with the trade treated as a separate trade. Also, for any accounting period, the aggregate amount of allowances, plus interest on any related borrowings, may not exceed 80% of trading income (before allowances and interest) of the relevant trade, and any excess is carried forward for offset against trading income of the trade in subsequent accounting periods.

This provision ensures that at least 20% of trading income will remain in charge for an accounting period, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. There is no claw-back of allowances where an intangible asset is disposed of more than 10 years after the beginning of the accounting period in which the asset was first provided, subject to the disposal not resulting in a connected company claiming allowances in respect of capital expenditure on the asset.

3.3.1 Income-Based IP Regimes in Other Countries: 'Patent Box'

Over the past decade, a number of EU countries have introduced special tax incentives for Intellectual Property (IP) in order to attract high-value business activities involving R&D, innovation and commercialisation of IP. Typically the incentive, described as a patent box or innovation box, provides a low effective rate of tax on income derived from patents and other IP, generally by deducting or excluding a certain percentage of income from the tax base. For example, the Netherlands has a regime which disregards 80% of income from patents and other qualifying IP and thereby provides an effective tax rate of 5% on such income. Similar regimes are available in Belgium and Luxembourg, while Hungary and Spain have regimes which provide a 50% deduction for qualifying IP income. France offers a reduced corporation tax rate of 15% on income or gains from the licensing, sale or transfer of patents and other qualifying IP. In the UK, provisions for a patent box scheme have been included in the Finance Act 2012, which will provide an effective corporation tax rate of 10% on qualifying patent income to be phased in over a four-year period commencing 1 April 2013.

3.3.2 Calls for Ireland to move to an Income-Based IP Regime

Generally, countries that have introduced special IP regimes have corporation tax rates that are significantly higher than our 12.5% rate. Nonetheless, it has been suggested that the Government should consider introducing a similar type of incentive here to enhance the competitiveness of Ireland's tax offering for IP activities. It has been suggested that the existing expenditure-based relief, under which capital allowances are provided for expenditure on IP, does not provide a sufficient incentive for commercially successful, high-value IP where a widening gap between expenditure and income can arise over time resulting in an increasing effective tax rate.

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3.3.3 Possible Options for enhancing the Intangible Assets tax regime

There are a number of options that can be explored in order to make the existing capital allowances regime more attractive by modifying current restrictions/ limitations, e.g.

(i) Reduce or remove the 10-year claw-back period in certain circumstances, for example, where IP assets are transferred as part of a business transfer undertaken for bona-fide commercial reasons. For companies with accounting policies that require potential balancing charges to be recognised as a contingent/ deferred tax liability, an easing or removal of the claw-back provision would facilitate a lower effective tax rate on investment in IP projects here.

(ii) Provide that a subsequent transfer of a relevant IP trade out of the jurisdiction (for bona-fide commercial reasons), e.g. on relocation of business, will not be subject to a capital gains tax exit charge.

(Note – options (i) and (ii) may require anti-avoidance provisions to prevent abuse)

(iii) Reduce the write-down period for the fixed rate allowance, e.g. from 15 to 10 years.

(iv) Remove or increase the 80% limit on aggregate allowances in an accounting period – this, however, could result in allowances offsetting income from the IP trade such that there would be little or no chargeable income in an accounting period.

(v) Relax the separate trade ring-fence so that excess allowances could be offset against other non-IP trade profits – this, however, could significantly erode the tax base with consequential adverse impact on corporation tax receipts.

(vi) Provide for enhanced allowances with a higher amount of income in charge. However, this may not fully address certainty issues around fixed effective tax rates.

3.3.4 Cost of the Existing Regime

Preliminary data provided by Revenue for 2010 shows that approximately €154.4m in capital allowances and interest were claimed by 113 companies. The tax foregone for the amount claimed is roughly €19.3m (i.e. 12.5% of total capital allowances claimable). The table below summarises the main features of scheme take-up in 2010.

Summary of scheme take - up – 2010

	2010
Claimants	118
Capital allowances claimed	€145.5m
Interest claimed as a trade deduction	€8.9m
Total allowances and interest	€154.4m
Annual cost foregone @12.5%	€19.3m

While data is not yet available for 2011, early estimates indicate that there has been a very significant in the amount of allowances claimed in 2011.

4 Corporate Losses – Impact on CT Yield

Ireland provides tax relief for trading losses incurred by companies which is a standard feature of CT regimes in all OECD countries. Losses in one accounting period can be carried back for offset against profits of the immediately preceding accounting period, generating a tax refund. A three year carry-back of losses incurred in the last 12 months of trading applies in the case of a termination of trade. Losses can be carried forward indefinitely for offset against income of the same trade arising in future accounting periods. Group companies can use losses in the accounting period in which they arise.

The economic environment in which Irish businesses currently operate means that a large number of companies are not generating enough profits for a tax liability to arise. This is reflected in the CT yield which has been falling in recent years and may not recover for some time to come.

Corporate losses have increased significantly in all OECD countries as a result of the economic crisis. In Ireland, the biggest losses have been incurred in the banking, construction and property-related sectors. The significant increase in corporate losses will have an impact on CT receipts in the years ahead but it is not possible to estimate the full extent of this, as the use of loss relief will depend on the capacity of companies with accumulated losses to generate sufficient profits to absorb such losses. This will vary from sector to sector and it is likely that some companies will not be able to utilise much of their losses because of insufficient profits or the cessation of their business. While the domestic banking sector (now largely loss-making) was in the past a major contributor to corporation tax, a very significant proportion of CT yield continues to come from a relatively small number of consistently profitable companies, mainly multinationals - the yield from these companies will be unaffected by losses.

Apart from affecting corporation tax yield, the significant increase in corporate losses arising from the recent financial and economic crisis poses tax compliance risks which will need to be monitored. While there are various restrictions under existing legislation to counter the transfer of losses from one company to another, it will be necessary to remain vigilant to any aggressive tax planning schemes that may emerge which seek to circumvent existing restrictions on the use of losses.

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Provisions already exist in the case of banking institutions participating in the NAMA process under which only 50% of such institutions' taxable trading income in any year can be sheltered by losses carried forward by those institutions. There are, however, very particular circumstances applying in the case of the NAMA-participating banks.

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5 'Non-trading' rate of corporation tax

The standard rate of corporation tax is 12.5% and it applies to trading profits. The non-trading rate of corporation tax is 25% and it applies to investment, rental and other non-trading profits and profits from certain petroleum, mining or land dealing activities.

Consideration could be given to increasing this rate to 30% in line with the rate applying to capital gains. The estimated yield from such a measure is tentatively estimated at €70m.

It should be emphasised that while this estimate is technically correct it does not take into account any possible behavioral change on the part of taxpayers as a consequence, which could be significant.

As highlighted earlier in the paper, certainty is a key factor for businesses making investment decisions. Increasing the non-trading corporation tax rate could undermine our long-held stance in relation to the 12.5% rate and the resulting uncertainty for businesses may negatively impact on investment decisions in the medium term and outweigh any short-term revenue gain.

The Tax Strategy Group may wish to consider these issues.