

CRUICKSHANK WARNS GOVERNMENT ABOUT FLAWED PATENT TAX LAW CHANGE

"This will just turn Ireland into a corporate patent tax haven, with no value created here, as R&D can be carried out in the lowest cost country." Ireland faced with R&D slump unless government moves patent tax incentives from the corporate tax environment into the personal tax realm

Cruickshank, Ireland's leading firm of patent and intellectual property attorneys, has warned the Irish Government that unless it urgently revisits its recent changes to patent tax laws, Ireland could be turned into a corporate tax haven, without creating any local value. It could also be faced with an economically disastrous drain of research and development activities to offshore locations.

The warning comes in light of the fact that Ireland has broadened its rules on patent tax exemptions to include patents where the work leading to the invention has been carried out in any state of the European Economic Area (EEA). This is contrary to the previous rules, which positively incentivised development works to be carried out in Ireland.

The taxation amendment - made by way of a report stage amendment to the 2007 Finance Act - is believed to have been a reaction to The European Commission's threat to bring the Irish Government to the European Court of Justice unless it changed the Irish patent royalty tax exemption. The provision was deemed to dissuade companies from contracting out research to other EEA member states and was thus seen as contrary to the principal of free movement of goods.

Donal O'Connor, Cruickshank managing partner commented:

"We believe that the main concern of our European partners is the fact that the Irish law is currently seen as a way for companies to repatriate funds to lower corporate tax environments. This careless Government response just deletes the requirement for the R&D to be carried out in Ireland. While this may appease some of our EEA partners, it will just turn Ireland into a corporate patent tax haven, with no value created here, as R&D can be carried out in the lowest cost country."

"The current response leaves us exposed to further future objections from our EU partners and critically eliminates one of the most important incentives we can offer to encourage companies to undertake R&D work in Ireland. It is also going to put a huge dent in our national enterprise policy to encourage research and development. For these reasons, the government must act fast to change our patent tax laws again."

Cruickshank's O'Connor proposed a solution:

"We believe that the only effective action is to take the operation of the incentive out of the corporate tax system and place it into the Irish resident personal taxation system. Here, it can be directed solely to inventors and individual patentees, and to shareholders of R&D or patent-holding companies who are resident for tax purposes. This way, there can be no incentive for a corporate to use this as a tax reduction measure, as they have no personal tax against which they can offset tax free royalty earnings."

"We believe that this reinforces the purpose of the incentives which were to encourage innovation investment in Ireland. We also believe that it will be acceptable to the European Commission and more importantly will also be acceptable to other member states."

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