Making Tax-Efficient Use Of Your Assets

How your assets can attract tax perks and be structured to benefit your bottom line
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Introduction

As the saying attributed to Benjamin Franklin puts it: “In this world, nothing is certain except death and taxes!” However, for businesses that develop and exploit intellectual property (IP) assets, those inevitable tax bills can be reduced. This is because certain innovative activities and IP investments qualify for tax reliefs or deductions.

Your tax liabilities will be determined by three main considerations:

- How much taxable income you generate (as a result of your business activities);
- How many of your expenses are deductible against tax (some are, some aren’t);
- What capital allowances you can claim (broadly, the tax equivalent of depreciation).

Tax planning aims to ensure your taxable income is not over-reported and make the best use of all the deductions you are entitled to claim to offset it.

It should be stressed at the outset that this guide is not a substitute for proper professional advice. Every company’s situation is different. Accounting treatments that work for some companies are unsuitable for others; also, your entitlement to tax reliefs and deductions will vary depending on the activities in which you engage. Rather, this guide is intended to offer an overview of things you should be discussing with your accountant.

Chapter 1 sets the foundations by describing how IP investment is commonly taxed, and how research and development expenditure can be accounted for. Chapter 2 then looks at the specific incentives that are available linked to investment in IP, focusing in particular on offsetting elements of qualifying IP investment against tax and on R&D tax credits, which are likely to be relevant for the majority of innovative companies.

Chapter 3 considers how you can reduce the amount of tax you pay on the earnings you derive from your investment in IP. Singapore has introduced the IP Development Incentive (IDI), which offers reduced tax rates on directly IP-attributable income, including royalties. There are several conditions linked to this relief, including levels of investment made locally in innovation.

Where to locate and manage your IP is also a consideration for companies, especially as they grow. Chapter 4 looks at how tax might feature in your decision-making process, depending on the varying locations of your IP, operations and production processes. If you move your IP assets, you will also encounter the challenges of transfer pricing, which is under increasing scrutiny. An accompanying guide in this series—Uncovering your Hidden Value, can assist you further by setting out how your intangibles might be valued.

Produced by IPOS International, these intellectual property management (IPM) business guides aim to deliver a suite of IP solutions for enterprises based on industry best practices. As the expertise and enterprise engagement arm of the Intellectual Property Office of Singapore (IPOS), IPOS International helps enterprises and industries use IP and intangible assets for business growth. Some of these engagements may be eligible for Enterprise Singapore (ESG) funding, such as the intangible asset audit and strategy development aligned with business goals. IPOS International’s business portal www.iposinternational.com also contains case studies and videos of enterprises leveraging IP to gain a competitive edge in their innovations. Should you have questions on IPM matters or wish to speak with our Intellectual Property Strategists, do email us at enquiry@iposinternational.com or call +65 63308660.
How does IP investment affect tax?

01
1. How does IP investment affect tax?

**How is investment in IP reflected on my balance sheet?**

Depending on the activity to which it relates, IP expenditure may be dealt with in your accounts in one of two ways, with differing tax implications. It may be expensed through the profit and loss account or capitalised as an intangible asset on the company’s balance sheet.

Any intangible assets, like intellectual property, that you develop in-house can only be recognised (put on your balance sheet) if they conform to the strict criteria shown in the accompanying table. Where this is permitted, the cost of their development can be amortised (spread) over a specified number of years—the maximum for internally generated assets like patents, technologies and trade marks is five years.

In essence, the tax consequences of this accounting treatment are the same—either you can claim a one-off outright deduction against the expense in the year in which you incur it, or you spread this deduction over a period of time. The tax benefit is obtained by claiming writing-down allowances, explained below. However, there may be other benefits to capitalising development cost when permitted—principally, it aligns your costs more closely with their expected benefits, and mitigates the impact on your profits in the short term.

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**Summary of balance sheet criteria**

<table>
<thead>
<tr>
<th>Criterion</th>
<th>Meaning</th>
<th>Test</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Identifiable</td>
<td>Distinct from goodwill</td>
<td><em>An asset is identifiable if it is capable of being separated from the company, or if it arises from contractual or other legal rights.</em></td>
</tr>
<tr>
<td>2  Controllable</td>
<td>The company must control the asset</td>
<td><em>An entity controls an asset if it has the power to obtain future economic benefits from it and prevent others from doing so.</em></td>
</tr>
<tr>
<td>3  Probability of future economic benefit</td>
<td>There must be a legitimate expectation that the assets will drive future performance</td>
<td><em>The economic benefits can be either enhanced revenues or cost savings.</em></td>
</tr>
</tbody>
</table>
Unlike tangible assets, where the usual concept in accounting is to represent fair value, intangible asset expenditure can only be ‘recognised’ (put on the balance sheet) initially at cost—and to be recognised, that cost must be capable of being measured reliably. Things like the costs of introducing a new product or conducting business in a new location, or general administrative costs of doing business are not regarded as part of the cost of an intangible asset.

More information on the accounting treatments applicable to IP rights are provided below and in the accompanying guide in this series—**Uncovering your Hidden Value.** Grants and other financial incentives are included in another guide—**Unlocking Your IP’s Financing Potential.**

Because of the ‘probability condition’ shown in the table above, expenses relating to the riskier research phase (of R&D) cannot be recognised as assets on the balance sheet. The same rule applies to other value-producing assets like branding and customer lists; this is because it is not considered possible to distinguish them from the general costs of developing your business.

The consequence of these rules is that your profits will be depressed by all this non-capitalisable expenditure in the accounting year in which it occurs, which will have an impact on your tax liability.

The **relevant accounting standard which sets out the rules governing permitted capitalisation (balance sheet recognition) of intangible assets is set out in Statutory Board Financial Reporting Standard 38.**

## What are the implications of capitalising IP costs?

<table>
<thead>
<tr>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓</td>
<td>Introduces an asset onto the balance sheet to reflect investments being made in expectation of future benefits</td>
</tr>
<tr>
<td>✓</td>
<td>Spreads the cost of eligible development over several years so the short-term impact on profitability is reduced</td>
</tr>
<tr>
<td>✓</td>
<td>Improves balance sheet optics</td>
</tr>
</tbody>
</table>
1. How does IP investment affect tax?

<table>
<thead>
<tr>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Amortisation reduces forward-looking tax burden</td>
<td>✓ Hardly any intangible assets can be revalued at market rates, as no transparent market is deemed to exist for them</td>
</tr>
<tr>
<td></td>
<td>✓ Over time, the value of the assets will appear to reduce, when in reality it should grow</td>
</tr>
</tbody>
</table>

Are there ways in which I can offset these costs against tax?

Recognising that investment in IP is a costly business, Singapore provides several useful tax perks to help innovative companies with expenses associated with obtaining national and international protection for qualifying rights like patents, trade marks and designs.

Chapter 2 of this guide provides more detail on the available benefits. These are quite comprehensive, covering not only the costs you incur in protecting your IP assets but also what you may have to pay to acquire rights from third parties or license them from other organisations. There are also opportunities under the IDI scheme to pay a lower rate of corporation tax on incomes directly associated with IP you own that has been developed in Singapore, and you can also claim tax credits on qualifying R&D-related expenditure.

This is very helpful if you are paying tax—although since there is no cash equivalent, companies that are at an early stage of development might think these are not worth claiming. However, nothing could be further from the truth. Under Singapore tax law, these benefits can last for an indefinite period once they have been validly claimed if the company’s circumstances do not change.

What this means is that, while you may not feel the benefit now, these perks will reduce or even eliminate the tax liability you would otherwise face once you start to generate profits. This means you will have more cash available to continue investing in your business at the time it may need it most when you know that you have a successful business model. Alternatively, of course, you could share it with your supportive shareholders by way of a dividend!

“Tax perks last indefinitely but have to be claimed in a timely fashion.”

While you can preserve the tax losses referenced above for an indefinite period, you only have a short period of time in which to claim your entitlement to them. There are very limited opportunities to amend tax returns that have already been submitted.
How can I gain tax perks from my investment in IP creation?
2. How can I gain tax perks from my investment in IP creation?

What incentives are available to offset my costs?

Singapore has a range of schemes to stimulate investments likely to lead to IP creation through various tax deductions/capital allowances when qualifying activities are undertaken and appropriately documented.

Three main areas provide tax deductions which are specifically related to intellectual property assets. Even if you are not yet paying tax, these perks are worth claiming, as they can be preserved as tax losses and carried forward, subject to certain conditions set out in the Income Tax Act.

Under Singapore’s tax system, tax deductions are allowed until Year of Assessment 2025 on the following items:

- Protecting IP you have created in-house
- Licensing-in IP from third parties
- Buying IP from third parties

There are also incentives linked to qualifying upfront R&D investment and high-tech products and services. All of these are explained further in the following sections.

It is important to note that, under the current rules, the benefits available provide a reduction in a company’s current or future tax bill. Loss-making businesses do not have the option of cash conversion.

Outside of the taxation system, there is also RISC—a Government cash grant fund to assist in setting up R&D centres, generally covering between 30% and 50% of total qualifying cost. The awards are discretionary and are made to certain projects deemed to be strategic by the Government. Further information on grants of this nature is available from the Economic Development Board (EDB Singapore).

What tax perks are available to help me protect my own IP?

Recognising that IP protection can be an expensive business, especially when this is international in scope, there is a special tax deduction available to help offset the costs associated with filing for rights, both in Singapore and overseas.

Under section 14A of the Income Tax Act, the first $100,000 of annual IP protection costs are eligible for an enhanced 200% tax deduction. Above this ceiling, you can still claim deductions, but at 100%. These perks apply to patents, trade marks,
designs and plant varieties you need to register for your trade or business and cover specified professional fees as well as official fees.

‘Official’ fees mean the sums you pay to Singapore’s registries when applying for these different types of rights and their international equivalents. ‘Professional’ fees relate to advice you seek from advisers or people acting as your agent in the course of your application, described in more detail in the checklist below.

You do not need to submit supporting documents with your application, but you do need to prepare and retain information in case the Comptroller of Income Tax asks to see it. You will be required to keep records describing the IP, the countries in which it is registered, the registration costs (broken down by type) and confirmation of legal and economic ownership for at least five years.

It’s important to be aware that if you subsequently sell any qualifying IP rights for which you have claimed enhanced tax deductions, a claw-back provision could apply, depending on when the sale happens. If circumstances arise where it would be preferable to dispose of these rights, consult your tax advisor.

### CHECKLIST

### Which activities can be offset against tax?

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>You can claim against official fees relating to:</td>
<td>Filing an application for a patent, trade mark, design or for a grant of protection for a plant variety.</td>
</tr>
<tr>
<td></td>
<td>A search and examination report on a patent application, or an examination report on an application for a grant of protection for a plant variety.</td>
</tr>
<tr>
<td></td>
<td>Grant of a patent.</td>
</tr>
<tr>
<td>You can claim against professional fees relating to:</td>
<td>Applying for any patent, registration of a trade mark or design, or grant of protection for a plant variety, in Singapore or elsewhere.</td>
</tr>
<tr>
<td></td>
<td>Preparing specifications or other documents in support of applications for any of the four specified types of IP rights in any country.</td>
</tr>
<tr>
<td></td>
<td>Giving advice on validity or infringement of any of the four specified types of IP rights.</td>
</tr>
</tbody>
</table>
2. How can I gain tax efficiencies from my investment in IP creation?

Can I claim writing-down allowances on IP I buy from other people?

If you have a requirement to purchase intellectual property assets from a third party, it is good to know that there is a special writing-down allowance available to help offset your capital expenditure costs on these important assets.

Under section 19B of the Income Tax Act, you can now elect to write down the IP rights you have acquired on a straight-line basis over a 5-, 10- or 15-year period. This is done using a one-off election submitted when you start claiming your allowances; it reflects the varying lifespans that IP rights may have.

There is a particular definition to ‘acquiring’ rights. Unless a waiver has been granted by the Economic Development Board, you need to have obtained both the legal and economic ownership of these rights to be eligible for writing-down allowances. The transfer of legal ownership will normally require an assignment; the economic ownership means that as transferee, you will be receiving the future economic benefits from the rights.

To claim these allowances, an additional declaration is required setting out the cost, which is used as the basis for the calculation. In addition, a third-party valuation report will be required if the capital expenditure involved is more than $500,000 (for a related party transaction) or $2m (for an unrelated party transaction). This needs to be produced by an independent specialist who is suitably qualified and experienced and is required to confirm that the cost is not greater than the open market price—if it is, the available allowance may be restricted.

CHECKLIST

What assets are eligible for writing-down allowances?

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patents</td>
</tr>
<tr>
<td>Copyrights</td>
</tr>
<tr>
<td>Trademarks</td>
</tr>
<tr>
<td>Registered designs</td>
</tr>
<tr>
<td>Geographical indicators</td>
</tr>
</tbody>
</table>
Do tax perks apply when I license-in IP from other people?

Sometimes it may be necessary or desirable to license IP rights from third parties. If this applies to your business, the good news is that there are deductions available on the costs of doing so, provided they relate to a qualifying research and development project.

Under section 14 and 14D of the Income Tax Act, the first $100,000 of annual IP licensing costs are eligible for an enhanced 200% tax deduction. Above this ceiling, you can still claim deductions, but at 100%.

These perks apply to a wide range of IP, including patents, most copyright materials, registered designs, geographical indicators, integrated circuit layouts, trade secrets and plant varieties. There are some exclusions, most notably in respect of trade marks, which are set out in the following checklist.

CHECKLIST

Are the rights I am licensing eligible for tax perks?

<table>
<thead>
<tr>
<th>Exclusion</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade marks</td>
<td>Licensing of trade marks does not qualify for the enhanced 200% deduction. However, you can still claim 100% relief.</td>
</tr>
<tr>
<td>Copyright</td>
<td>Any rights to the use of software are not eligible for tax deductions.</td>
</tr>
</tbody>
</table>
2. How can I gain tax efficiencies from my investment in IP creation?

<table>
<thead>
<tr>
<th>Exclusion</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade secrets and information that has commercial value</td>
<td>This has some specific exclusions concerning customer lists and information on customer requirements. Information that is likely to assist in manufacturing or processing goods and materials does qualify, but other work processes (such as standard operating procedures) does not. Also, fees for compiling excluded information are not eligible.</td>
</tr>
<tr>
<td>Related party licensing</td>
<td>You cannot claim a deduction for IP licensed from another part of your business.</td>
</tr>
<tr>
<td>‘Double-dipping’</td>
<td>If you have claimed a writing-down allowance under s19B of the Income Tax Act, you cannot claim deductions for licensing as well. Similarly, if you have obtained a grant or subsidy from the Government or a statutory board in relation to the IP, that part of your expenditure is not eligible.</td>
</tr>
<tr>
<td>Costs of ownership transfer</td>
<td>If you have paid money to have the rights transferred to you, this expenditure is not eligible.</td>
</tr>
<tr>
<td>Legal fees</td>
<td>The deduction relates to the actual cost of licensing, not to the cost of preparing the legal documentation associated with the licensing deal.</td>
</tr>
</tbody>
</table>

This is not an exhaustive list—you should check the latest guidance with IRAS, or your tax advisor, to make sure you qualify.

What are the rules for R&D tax credits?

The requirements for qualifying for R&D tax credits are quite specific. Projects are required to have a clear objective, contain novelty and/or technical risk, and be a systematic, investigative and experimental study. Supporting documentation to demonstrate all of these steps needs to be produced and retained.

Qualifying R&D activity that is undertaken in a discrete project (one with clearly pre-defined start and end and objectives) can gain up to a 150% deduction if certain strict criteria are met. This rises to 250% for staff costs and consumables. To qualify, the project must satisfy all three of the criteria set out in the accompanying checklist.
## CHECKLIST

**Key criteria to qualify for R&D tax credits**

<table>
<thead>
<tr>
<th>No</th>
<th>Criterion</th>
<th>Test</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Objective</td>
<td><em>There must be a clear objective stated at the outset to acquire new knowledge, create new products or processes or improve an existing process.</em></td>
</tr>
<tr>
<td>2</td>
<td>Novelty/technical risk</td>
<td><em>The R&amp;D must involve a degree of novelty or technical risk (i.e. it must not be capable of being readily resolved by a competent professional)</em>.</td>
</tr>
<tr>
<td>3</td>
<td>Systematic, Investigative and Experimental (SIE)</td>
<td><em>The R&amp;D process must be a systematic, investigative and experimental study in science or technology and be clearly defined and documented as such. This documentation must be structured and typically includes: plans, testing, the team, records, analysis, testing and evaluation.</em></td>
</tr>
</tbody>
</table>

Routine data collection, sales and marketing activities, stylistic changes and projects in the social sciences and humanities would not qualify as R&D for these purposes. The scheme also excludes expenditure relating to government grant-funded schemes or separately covered by subsidies, depreciation, land and machinery (although capital allowances apply on the latter).

*In Singapore in 2016, around 770 companies claimed enhanced R&D benefits, with SMEs making up about 85% of that total.*

There are strict rules governing projects that are eligible for R&D tax credit benefits.

To gain the maximum 150%, the qualifying expenditure needs to have been undertaken in or partly in Singapore and entirely in-house. If it has been outsourced, then the eligible amount for the additional 50% deduction (over the usual 100%) is applied to 60% of the fee paid for the outsourced R&D.

If all the R&D has taken place outside Singapore, then the additional 50% does not apply. If it has been done partly outside Singapore, then only the portion undertaken in Singapore is eligible, under the same conditions for outsourcing as noted above.

It is important to create and retain documentation for all stages of an R&D project that you believe qualifies for tax perk. IRAS will evaluate your claim and may request further information if required; there is also a technical advisory panel that can evaluate referred cases.

*The Pioneer Tax Incentive applies to companies manufacturing approved products or services which contain high technological content. This allows for tax exemption for 5-15 years on each qualifying project, followed by a reduced tax rate afterwards. Singapore’s Economic Development Board (EDB) approves applications for this incentive.*
How can I make my IP-related earnings more tax-efficient?
Many countries have offered tax incentives to encourage investment in R&D activity over an extended period (the first tax credit scheme in the US started in 1981). In recent years, attention has also been focused on whether societies are deriving the expected benefits from innovation investment. This has led to several countries introducing tax concessions linked to income as well as expenditure.

Variously called ‘Patent Box’, ‘IP Box’ or ‘Innovation Box’ (after the ‘tick-box’ that appears on the relevant tax form), this type of incentive is not a new idea; it was first introduced in Ireland in 1973. The thinking behind this type of incentive is that the additional profits resulting from successful innovation (over and above ‘normal’ profits that are not connected with it) should be taxed at a reduced rate. This may encourage companies not only to spend money creatively and inventively, which improves their own knowledge and bank of intangibles, but also to bring the results to market, benefiting productivity and society more widely. It also compensates firms for the extra costs of operationalisation and marketing.

These schemes began to be subject to criticism in the 2010s, owing to their connection with perceived tax avoidance by large corporations. Accordingly, in 2014, a new ‘modified nexus’ approach was agreed, which has subsequently been approved by the OECD and which is progressively being adopted by most Patent Boxes and similar schemes: it is also the principle informing Singapore’s IP Development Incentive scheme.

The ‘modified nexus’ approach means that there has to be a connection between the reliefs offered and the place where the inventive or creative activity originally took place. A ratio (the ‘nexus ratio’) determines the allowable proportion of each income stream by comparing the ratio of qualifying expenditure to overall expenditure. Broadly, this means that a substantive part of the R&D activity that has resulted in the qualifying IP rights needs to have been conducted in the country where the tax benefit is being claimed.

Countries are still permitted to incorporate an uplift on the qualifying expenditure, but under OECD guidelines this cannot be more than 30%.

Singapore offers an IP Development Incentive (IDI), providing a means of recognising the wider benefits that arise to society when companies not only invest in research and development locally but also bring products and services to market as a result. Available subject to individual application, it provides tax benefits to qualifying firms.

The IDI scheme is specifically linked to the successful exploitation of IP rights. It is administered by EDB Singapore. In line with international rules (the ‘modified nexus’ approach defined by OECD), it also requires this tax incentive to be linked with investment made locally in R&D.
3. How can I make my IP-related earnings more tax-efficient?

IDI allows for the income relating to qualifying IP rights, after being subject to nexus ratio, to be reduced from the usual corporate rate of 17%. The starting rate for a five-year award is either 5% (where the company commits to investment of S$10m or more) or 10% (where the investment is at least S$6m), plus commitments to increase skilled jobs (respectively, by a headcount of 20 or 15).

Two types of intellectual property fall within the scope of IDI: patents and copyrights subsisting in software. For the scheme, the incomes that are subject to the tax incentive can either be royalties received for licensing IP rights, or other income that is directly attributable to the use of the rights in question. Non-qualifying income (i.e. which has no connection with the IP itself) must be accounted for separately.

This incentive involves an election to treat taxable incomes as being subject to IDI, which is irrevocable and is limited to an initial 10-year period. There is also a provision under income tax law to increase the concessional rate paid in respect of qualifying profits by 0.5% at intervals.

CHECKLIST

Is the activity in which I engage likely to be eligible for the IP Development Incentive?

<table>
<thead>
<tr>
<th>Question</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is your business a qualifying taxpayer based in Singapore?</td>
<td>Under the 'modified nexus' approach there are not usually restrictions on the type of business that can qualify as long as other conditions are met.</td>
</tr>
<tr>
<td>Do your intangible assets qualify?</td>
<td>The IDI scheme is focused on patents and software copyright. Marketing-related intangibles such as brands are currently excluded. You may need to have legal ownership of these assets (licensing them in may not be sufficient, though this may also depend on where they were developed).</td>
</tr>
<tr>
<td>Do you have qualifying income?</td>
<td>The benefit from IDI is a reduced rate of tax on the proportion of income attributable to the use of the qualifying assets—therefore it will be of most benefit if you are making substantial profits from your R&amp;D investments. However, both direct income and royalty income can qualify.</td>
</tr>
<tr>
<td>Are you making, or have you made, the necessary level of investment?</td>
<td>IDI qualification includes conformance with a set of criteria regarding minimum levels of R&amp;D investment to be made (the text above shows a five-year illustration only). These need to be incurred by the company itself or to have been paid for by it on an arm’s length basis. The amount of investment made in Singapore is a material consideration.</td>
</tr>
<tr>
<td>Are you creating the ‘right kind’ of employment?</td>
<td>As well as levels of expenditure, IDI eligibility involves consideration of the quality of jobs that are being created as a result of your R&amp;D activity.</td>
</tr>
</tbody>
</table>
How can tax considerations inform my export/import and location strategies?
4. How can tax considerations inform my export/import and location strategies?

What impact might tax have in determining locations of subsidiaries?

Tax incentives and effective tax rates can be an important consideration in planning where you want to have a physical market presence, and where you wish your IP to be located. International tax treaties and national rules governing aspects such as withholding tax can play an important role in determining what effective tax rate is.

The tax incentives described in the preceding chapters are, collectively, a key factor in deciding where to place a subsidiary. If you are considering locating your businesses in different locations, say an R&D function in Singapore where there are enhanced-deductions on R&D, and a production facility in Vietnam for instance, then you will wish to consider how to structure your activities to comply with international tax standards (i.e. BEPS / transfer pricing) and avail yourself of the tax perks offered. Similarly, if you wish to move the location of where your R&D is conducted, say for instance because you can access better tax incentives elsewhere or that IP protection is better in another country, you need to consider the impact of transferring your IP carefully.

It is important to bear in mind, however, that while tax is an important consideration, it should not drive your company strategy—certainly not in isolation. There will be good practical business reasons informing your choice of location (access to natural resources, to a suitably skilled workforce, proximity to clusters and supply chain partners and access to finance, to name a few).

In Singapore, losses and capital allowances can be carried forward indefinitely, provided that the shareholding of the ultimate holding company remains substantially the same. The company will also need to consider any taxation treaties between Singapore and other countries, to ensure that losses can be used between the two jurisdictions, and importantly, withholding tax on payments in/out of each country (in this example, royalty payments to Singapore where the IP is held).

There are certain specific exemptions from withholding tax that are available to companies where manufacturing is taking place in Singapore.

“Tax is a consideration but is unlikely to be the main driver of a good location strategy.”
Roarty payments by licensees and franchisees represent a highly effective expansion strategy. However, depending on the tax treaties that are in place, withholding tax is a possible consideration for non-domestic franchisors. If due, it is payable directly to IRAS.

International withholding tax is a government measure intended to combat evasion and is payable on certain types of income which often include royalties. Where withholding tax applies, the payer of the royalty will be obliged to remit a specified percentage of the royalties that are due to its local tax authority.

However, withholding taxes can be reduced where there is a tax treaty or Avoidance of Double Taxation Agreement (DTA) is in place between the two countries involved in the transaction, provided both parties are tax residents of their respective countries. Singapore has treaties of this type in place with over 80 nations, including many in the region.

Withholding tax of 10% is generally payable by local franchisees on royalties for the right to use IP paid to non-resident licensors and franchisors, and these rates vary quite widely—from as little as 5% in Laos to as much as 30% in the Philippines. The actual rates will be mitigated if there is a double tax treaty in the franchisor’s home country.

Withholding tax is a ‘final’ tax, meaning that no deductions for expenses allowed against it. The mechanism of the tax is that when making a qualifying payment to a non-Singaporean payee, the relevant tax amount must be withheld from the payee and then sent to the IRAS by the 15th day of the following month. There are penalties for non-payment of withheld amounts, failure to inform the IRAS and failure to deduct the amounts.

The outright sale of IP is not subject to withholding tax, and in Singapore, franchisees may make royalty payments to franchisors without any authority approval, which can be freely converted to foreign currencies.

A dedicated guide to IP considerations in licensing and franchising is available in this series called Making Money from your IP.
4. How can tax considerations inform my export/import and location strategies?

**CHECKLIST**
Withholding tax rates on royalties for other countries in the region

<table>
<thead>
<tr>
<th>Country</th>
<th>Rate of withholding tax on royalty payments</th>
<th>Effect of DTA where present</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei</td>
<td>10%</td>
<td>0-10%</td>
</tr>
<tr>
<td>Cambodia</td>
<td>14%</td>
<td>0-10%</td>
</tr>
<tr>
<td>China</td>
<td>10%</td>
<td>0-10%</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>4.95% (non-associates) 16.5% (some associates)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>India</td>
<td>20%</td>
<td>0-15%</td>
</tr>
<tr>
<td>Indonesia</td>
<td>20%</td>
<td>0-15%</td>
</tr>
<tr>
<td>Laos</td>
<td>5%</td>
<td>0-5%</td>
</tr>
<tr>
<td>Malaysia</td>
<td>10%</td>
<td>0-8%</td>
</tr>
<tr>
<td>Myanmar</td>
<td>20%</td>
<td>0-10%</td>
</tr>
<tr>
<td>Philippines</td>
<td>30%</td>
<td>0-15% for certain copyright assets 0-25% for other rights</td>
</tr>
<tr>
<td>Thailand</td>
<td>15%</td>
<td>0-5% on copyright 0-8% on other IP rights</td>
</tr>
<tr>
<td>Vietnam</td>
<td>10%</td>
<td>0-5% for most IP rights 0-15% for some copyright items</td>
</tr>
</tbody>
</table>

It is highly recommended to consult your tax advisor for further information on whether withholding taxes apply to your business, and at what level.
How might the location of my R&D or manufacturing facilities affect my tax liabilities?

The previous chapters have dealt with the tax implications of where R&D may be conducted. The key issue to consider in respect of production or manufacture is likely to be withholding tax (see above), although some exemptions are available for certain, quite specific activities.

A manufacturing entity basing itself in Singapore needs to consider where the owner of the IP rights that it intends to use is based, and (if not in Singapore) ensure that its jurisdiction has a double taxation treaty in place.

As the rules around withholding tax are quite complex and are just one set of considerations in what can be a complex overall picture, you are very likely to need professional advice to confirm whether the location arrangements you have in mind are tax-efficient.

There are also some withholding tax exemptions to consider. If your company is manufacturing in Singapore using non-domestic IP rights, and your activities fall within the scope of one of the specified exemptions, you would not have to withhold tax as described above. These exemptions include ‘shrink-wrap’ software, downloadable software, software bundled with computer hardware, among others. However, these exemptions only apply if the company is not going to commercially exploit the IP or duplicate it, so the exemptions may have limited usefulness.

Can I transfer IP between companies and countries?

IP is a highly mobile asset and is regularly transferred between entities and territories, for a variety of reasons. However, when deciding whether to move intangibles, it is important to consider how well your IP will be protected and to be aware of international efforts led by the OECD to ensure transactions are based on economic substance.

Many multinational companies find it preferable to locate substantially all their IP assets in a single jurisdiction from an ownership viewpoint, often using a holding company structure. This can have several operational benefits, including easier oversight of vital matters such as IP renewals.

When thinking about the optimum geographical location, tax is far from the only IP-related consideration: attention needs to be given regarding the quality of the local IP regime and availability of protection and enforcement routes, including arbitration and mediation (aspects where Singapore has a very strong hand to play).

When IP needs to be moved between tax jurisdictions, or transferred between companies within a single country, consideration needs to be given to the value placed on the IP. This will depend in part on the type of transfer—whether substantially all of the IP rights are to be
4. How can tax considerations inform my export/import and location strategies?

transferred (an ‘outright sale’) or less than substantially all (in which case it may be possible to structure a move as being a licensing transaction that generates royalty income). It is also important to bear in mind that defining the IP and intangibles that are within scope is not always easy (and is an area of particular focus for tax authorities).

Recent work by OECD and the G20 on Base Erosion and Profit Shifting, (BEPS for short) is starting to streamline approaches across international tax systems. The underlying philosophy is that companies should report profits (and hence incur taxation) where the economic activities that create them are based—in other words, wherever the ‘real’ value is created. It prevents taxation only by applying to a convenient ‘shell’ company in an advantageous tax regime away from value creation.

The BEPS guidance encourages the use of income-based methods of valuation to ensure consideration of future economic benefits when setting transfer pricing. The rules are quite complex, and specialist valuation assistance will be required to minimise the chances that undesirable liabilities may arise at a later date.

Issues around IP valuation and the methodologies available to conduct it are covered in detail in an accompanying guide in this series—Uncovering your Hidden Value.
Where do I get help?

05

GETTING RIGHTS GRANTED
IPOS: www.ipos.gov.sg/resources

GETTING PATENTS RIGHT
• Patent search and examination (for both national and international PCT applications)
• Patent analytics
• Customised search services

GETTING IP ADVISORY
• Intangible asset audit
• Intangible asset strategy and management
• Business and technology intelligence
• Commercial analytics on patents
• Due diligence on intangible assets
• Bespoke advisory services

DEALING WITH DISPUTES
IP Legal Clinic (IPOS): www.ipos.gov.sg/e-services

GETTING IP TRAINING
• Executive programmes
• Certifications
• Undergraduate and postgraduate courses
• Regional training

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