



Intellectual property as an economic asset

Session 1

New uses of IP and need for valuation

“Mastering the IP life cycle from A tax perspective”

Isabel Verlinden - Managing Partner Eurofirm Transfer Pricing Services PricewaterhouseCoopers

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Key messages

- I. Financial Markets value intangibles while accounting (and tax) practice fails to keep pace : there is a stringent need for comprehensive reporting of IP
- II. All is not what it seems. With a better grasp of the 'invisible' assets, investors can make wiser decisions : they therefore need careful tax and legal consideration throughout their entire life cycle
- III. If you can't measure something, you can't monitor or manage it: this illustrates the importance of inventorising, protecting, enforcing and enhancing the value of the IP portfolio.

Key message I : Stringent need for comprehensive reporting of IP

Context offers slam-dunk opportunities for tax authorities :

- who generated the profit ?
- what is it worth ?
- where is it made ?

- > 75% of fortune 500 market capitalization in IP
- US 1 trillion investment funds absorbed annually by IP
- Imperfect markets => soft target + limited possibilities for capitalization
- Fertile soil for tax litigation



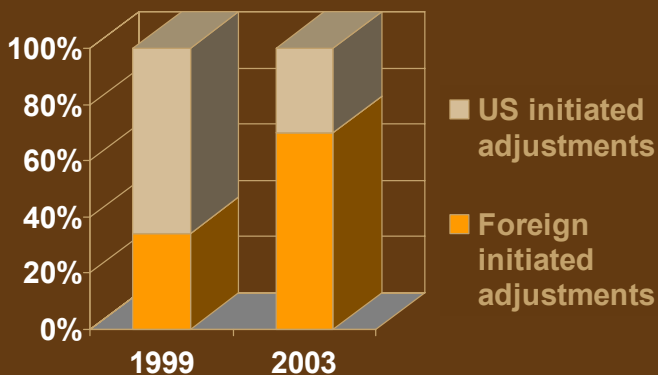
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Key message I : Stringent need for comprehensive reporting of IP

Some facts & figures



TOTAL TP allocations at stake US\$ 9,2 Bn (2004) (vs. US\$ 1Bn 2003)
 RESOLVED : US\$ 132,2 million (9 cases)

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Key message II : Careful tax and legal consideration throughout the IP life cycle

Illustration : Milestone court case : Glaxo (GSK)

- Huge amount at stake
- Disparity in underlying view of intangibles between US & UK : competent authority procedures broken off
- Ownership trail : how was the IP created ? How was it funded ? Who took ownership ?
- What are the drivers for healthcare professionals to prescribe Zantac ? Effective marketing channels vs. medicinal attributes ?
- US transfer pricing rules cause tax payers to be overly protective of the US

Key message II : Careful tax and legal consideration throughout the IP life cycle

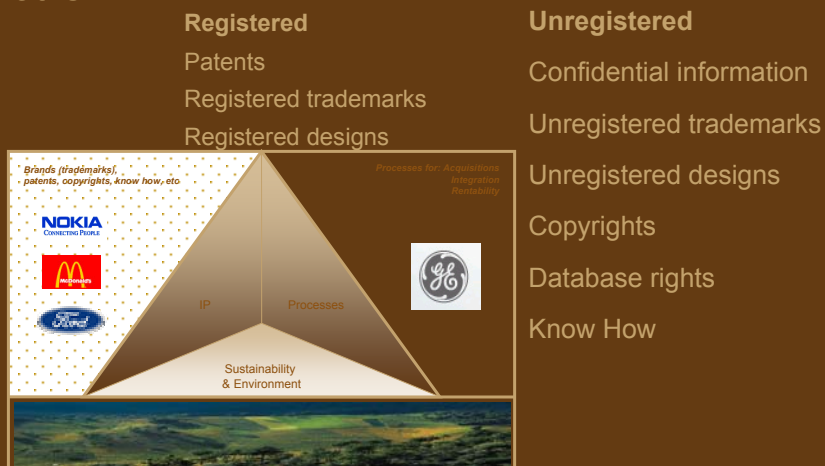
To retain :

- Burden of proof is (mostly) on tax authorities
- Roles & responsibilities : IP registration + active protection
- Drafting legal agreements : terms & conditions of agreement are critical in determining parties' intentions
- Active policing of (intercompany) use : allocations keys => fair rewards ?
- Active involvement in third party licensing deals negotiations
- Attribution of rights & costs to where you want the bulk of the profit to reside

⇒ Substance / Benefit test

Key message III : Inventorize, protect, enforce and enhance IP value

What is IP ?



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Key message III : Inventorize, protect, enforce and enhance IP value

How to structure ?

- single entity R&D
- internal collaboration :
 - active planning to reduce effective tax rate and increase shareholder value
 - contract R&D and cost sharing arrangements
 - licensing of existing IP <-> technology transfer
- external collaboration :
 - universities (fundamental research)
 - corporate partnering / open innovation
- acquisitions and subsequent integration

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Key message III : Inventorize, protect, enforce and enhance IP value

An effective IP planning strategy comprises the following:

Migration	At acceptable cost/risk to a tax-favoured jurisdiction. Ensure IP benefits from strong legal protection.
Exploitation	Ensure income flows to IP low tax HoldCo while managing PE/WHT risks. Implement robust transfer pricing policies.
Deferral	Ensure no attribution of income under anti-avoidance rules
Tax savings	Consider repatriation strategy if necessary, impact on tax rate in short and long term



Research & Development* An integrated approach

An integrated approach creates ultimate Research and Development value

Appropriate guidance from a tax, legal, financial, accounting and risk management point of view with respect to your R&D will help you to:

- structure and finance your R&D projects in the most efficient manner
- reduce your company's overall tax burden
- value your company's R&D portfolio and intellectual property
- increase stakeholder value by transparent accounting and reporting
- attract the most talented researchers
- obtain tax and other incentives for R&D projects
- protect your company's intellectual property in the most solid manner

In many cases, a company's innovation will be organised as some form of research and development (R&D). It often requires a significant investment in both time (in some cases up to 15 years or more) and resources (both manpower and significant funding).

Along this path, companies face multiple challenges, ranging from selecting and valuing the right projects, the financing and tax-effective structuring of their set-up, hiring and payrolling the right people while at the same time clearly owning their developments, obtaining the best legal protection, and reporting the R&D results in the accounts, to name but a few.

PricewaterhouseCoopers has developed a holistic approach to dealing with all these challenges in an integrated fashion.



An excellent way to identify possible issues and opportunities is to set up a multidisciplinary workshop for company officers (in various departments) involved in the R&D process, and R&D experts of PricewaterhouseCoopers. Once the challenges are identified, the different modules on which assistance is required can be defined.

*connectedthinking™

Challenges Research and Development companies are faced with

At times multiple R&D projects are up and running, the challenge is to apply financial modelling techniques to determine which R&D projects should be continued and which could better be stopped or sold.

R&D is expensive and the challenge is to finance projects in the most efficient manner, via in-house financing, joint ventures, bank financing, etc.

R&D companies are faced with questions as how to structure R&D projects within local or multinational groups. What about collaborative engineering with competitors or universities, accelerators and spin-offs?

What about various regional, national and European incentives for R&D, which can have a significant impact on determining the feasibility of an R&D project?

How to attract the most talented researchers while securing legal ownership of their developments and avoiding competition when they leave?

Should costs incurred by R&D be capitalised or expensed? Can efficient and transparent accounting and reporting increase shareholder value? What about the difference between local GAAP and IAS/IFRS or US GAAP?

What valuation methodologies are most suited for valuing the company's R&D portfolio and intellectual property?

How to protect company data and secure internal and external communication methods? How can regulatory compliance be a competitive advantage rather than a burden?

How can my company legally protect its intellectual property in the most solid manner? What about licensing in and licensing out, etc? Is your company still aware of its R&D portfolio?

What if a competitor infringes my intellectual property rights or vice versa? What if an employee divulges trade secrets to the competition?

How to proactively tackle current or envisaged legislation that has a negative impact on the R&D you perform?

Assistance PricewaterhouseCoopers can provide you with

- Analysis of investment alternatives
- Analysis of your R&D investment portfolio

- Analysis of different financing scenarios and determination of the most (tax) effective financing scenario
- Assistance with third party financing (e.g. contacting potential investors, assistance with negotiation and contract drafting)
- Assistance with analysing the best possible tax structure
- Assistance with incubators, accelerators, technology transfer and alliances
- Assistance with set up of transfer pricing policy and documentation

- Analysis of possible national, regional and/or European tax incentives
- Assistance with obtaining these benefits (e.g. drafting and negotiation of agreements with funding authorities)

- Analysis of most beneficial remuneration package (e.g. beneficial regime for expatriate researchers)
- Analysis of labour law and intellectual property law issues that come into play as well as the drafting and negotiation of labour agreements

- Analysis of the preferred reporting framework based on industry knowledge
- Assistance with US GAAP or IAS/IFRS conversions
- Accounting advice and attestation services
- Best in class reporting (www.valuereporting.com)

- Standard valuation analysis (e.g. DCF)
- Real option valuation, which is deemed ideal for the analysis of R&D portfolios

- Compliance risk management and technology value management
- Data management/retention, implementation of data retention procedures
- Development of disaster recovery plans or business continuity plans
- Regulatory compliance assistance

- Performance of a tax and legal Intellectual Property Audit
- Assistance in identifying the appropriate protection structure and registration format
- Drafting of license and/or technology transfer agreements
- Review of tax treatment of royalty payments

- Assistance in litigation, mediation, arbitration and alternative dispute resolution (public as well as international anti-counterfeiting procedures)
- Fraud investigation
- Review of internal control for ethical behaviour

- Proactive approach towards policy makers both in Belgium and internationally (e.g. European Union)
- Drafting of research papers in this respect (e.g. project management for both the Belgian Research And Innovation Network)

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Our experts

Asel Smits
Tax Director - overall coordinator R&D
Tel: +32 3 259 31 20
e-mail: asel.smits@pwc.be

Wilfried Dhaese
Tax Partner
Tel: +32 3 259 31 02
e-mail: wilfried.dhaese@pwc.be

Isabel Verlinden
Transfer Pricing Services Partner
Tel: +32 2 710 44 22
e-mail: isabel.verlinden@pwc.be

Patrick Boone
Transfer Pricing Services Director
Tel: +32 2 710 43 86
e-mail: patrick.boone@pwc.be

Bart Lieben
Legal Counsel
Tel: +32 3 259 31 35
E-mail: bart.lieben@pwc.be

Philippe Raquin
Corporate Finance Director
Tel: +32 2 710 73 49
E-mail: philippe.raquin@pwc.be

Beatrijx Van Liedekerke
Risk Management Senior Manager
Tel: +32 2 710 64 34
E-mail: beatrijx.van.liedekerke@pwc.be

Wolfgang Cramer, Wolfrum & Wöhrle
1000 Brussels/Wolffstraat 1

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