

Intellectual property and contracting

Protect and preserve strategic IP deals



Intellectual properties (“IP”) usually refer to various forms of intangible assets such as patents, brands, trademarks.

Why are intangible assets important?

- Provide a barrier to prevent entry of competition
- Differentiate a product
- Earn an international recognition
- Provide an easier entry into new geographic or product markets

Disputes and Litigation

Possible questions that the parties may have in an IP dispute:-

Where infringement of patents has occurred, can we measure the resulting loss in profits and/or IP value?

In bankruptcy, who owns the licenses and the intellectual property controlled by the company going bankrupt?

Am I receiving the royalty income I deserve?

Transactions and Licensing

Possible questions that an IP owner and licensees may have:-

- Should I sell/buy a piece of IP outright or license it?
- What is the right price/royalty rate?
- Should the licensing agreement be exclusive or non-exclusive?
- What is the correct balance between upfront fee and ongoing royalties?
- At which stage of IP development do we sell it? What is the upside potential and downside risk?

Taxation

Possible questions that an IP owner or licensees may have when considering taxation issues:-



Where IP is transferred within a group, how do we determine the appropriate disposal proceeds for tax purposes?



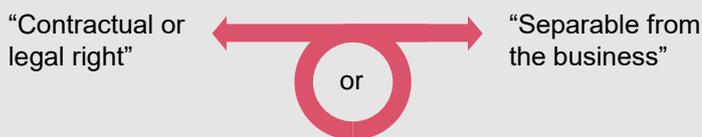
Can we establish the base cost of an intangible asset for the purposes of calculating a taxable gain on transfers, either within an international group or as a result of a third-party disposal?



How do we determine an appropriate arm's-length royalty rate?

Financial Reporting

- IFRS 3R compels companies to perform a purchase price allocation exercise for all acquisitions of businesses, which involves the identification, valuation and recognition of intangible assets
- Recognition criteria for intangibles:



- It is presumed that fair value can be reliably measured.

Key Considerations

Select an appropriate valuation methodology and cross-check against other approaches	In valuing IP, identify/carve-out the cash flows that it generates	“Rule of Thumb” should be used with care: a general rule of thumb associating royalty rates with operating profit.
The royalty rate in different geographical location could be different	Determination of economic useful life	Valuation of IP is a subjective area involving a high degree of technical complexity

How PwC can help

PwC is a leading global valuation practice with over 100 dedicated valuation professionals in China and Hong Kong, we can help you understand what your business, shares or assets are worth in the context of a dispute including:

- Acting as expert witness to:-
 - Prepare an expert report to assist a party in preparing an independent valuation of the intellectual property(ies)
 - Critique of counterparty's expert report
 - Prepare rebuttal reports; and
- Acting as a Single Joint Expert to assist the parties in providing an independent valuation report(s)

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