

IP Planning

Background

- TPA outlines a BEPS compliant roadmap for intangibles
- This includes:
 - 1) provision of a holistic view on intangibles by using four functional variables per type of profession;
 - 2) labelling/identification of intangibles;
 - 3) defining ownership of company intangibles; and
 - 4) valuing/allocating residual profits attributed to intangible owners by applying a two-sided profit split approach.

IP Planning - the Roadmap

IP Planning Roadmap	Timeline/ Responsible parties					
	January 2016	February 2016	March 2016	April 2016	May 2016	June 2016
Step 1: IP strategy setting						
1.1. Review of historical legacy information on IP 1.2. Collection of additional information to determine the four functional variables of IP and group companies responsible for handling them. 1.3. Overview of MNE's market cap versus book value in comparison to other Top companies 1.4. 1 day workshop session 1.5. Preparation of follow-up materials/ deliverables Outcome: 'As is' analysis of the IP set-up and recommendations for IP planning strategy and execution	TPA & Client	TPA	TPA			
Step 2: Benchmarking analysis of branding fee						
2.1. Choice of transfer pricing method based on the information collected and analysed under Step 1. 2.2. Preparation of a benchmarking study Outcome: Benchmarking study documenting an arm's length branding fee		TPA	TPA			
Step 3: Overview of MNE's wall-to-wall margin and recommendations for the potential migration of IP strategy into the global business model						
3.1. Analysis of the overall wall-to-wall margin and assessment of which portion of the wall-to-wall margin can be allocated to MNE's IP portfolio. 3.2. Analysis of VAT leakages and VAT planning. 3.3. Analysis and advice on the best centralization strategies around IP. 3.4. Analysis and advice on the potential usage of home or other country's innovation box regime Outcome: Advise on best IP planning organizational & operational practices and the usage of preferential tax regimes			TBD	TBD	TBD	TBD
Step 4: Workshop with other stakeholders to select the most preferred IP setup going forward						
4.1. Preparation for the workshop session 4.2. Additional one day meeting at the premises of the client or TPA 4.3. Preparation of follow-up materials/ deliverables Outcome: Selected the most preferred IP planning scenario going forward				TBD	TBD	TBD
Step 5: Reporting of the final outcome to MNE's tax leadership team						
5.1. In this step, the conclusion of the above work will be reported to the tax leadership team. Outcome: Communication session to inform the leadership team on the changes with respect to IP planning						TBD

IP Planning – the Holistic view

	Label	Identification	Owner	Valuation
IP Management	Label	Identification	Owner	Valuation
Accounting	Label	Identification	Owner	Valuation
Tax/Transfer	Label	Identification	Owner	Valuation
Pricing				
IP Law	Label	Identification	Owner	Valuation
Antitrust	Label	Identification	Owner	
Bankruptcy			Owner	
Special				Valuation Software

- In addressing intangibles, a distinction can be made between the functional variables such as identification, ownership, label and valuation
- However, different professional groups have a different way of handling each of the variables
- IPR Matrix creates 24 different ways to address the topic of intangibles and allows a more structured and aligned discussion on this topic

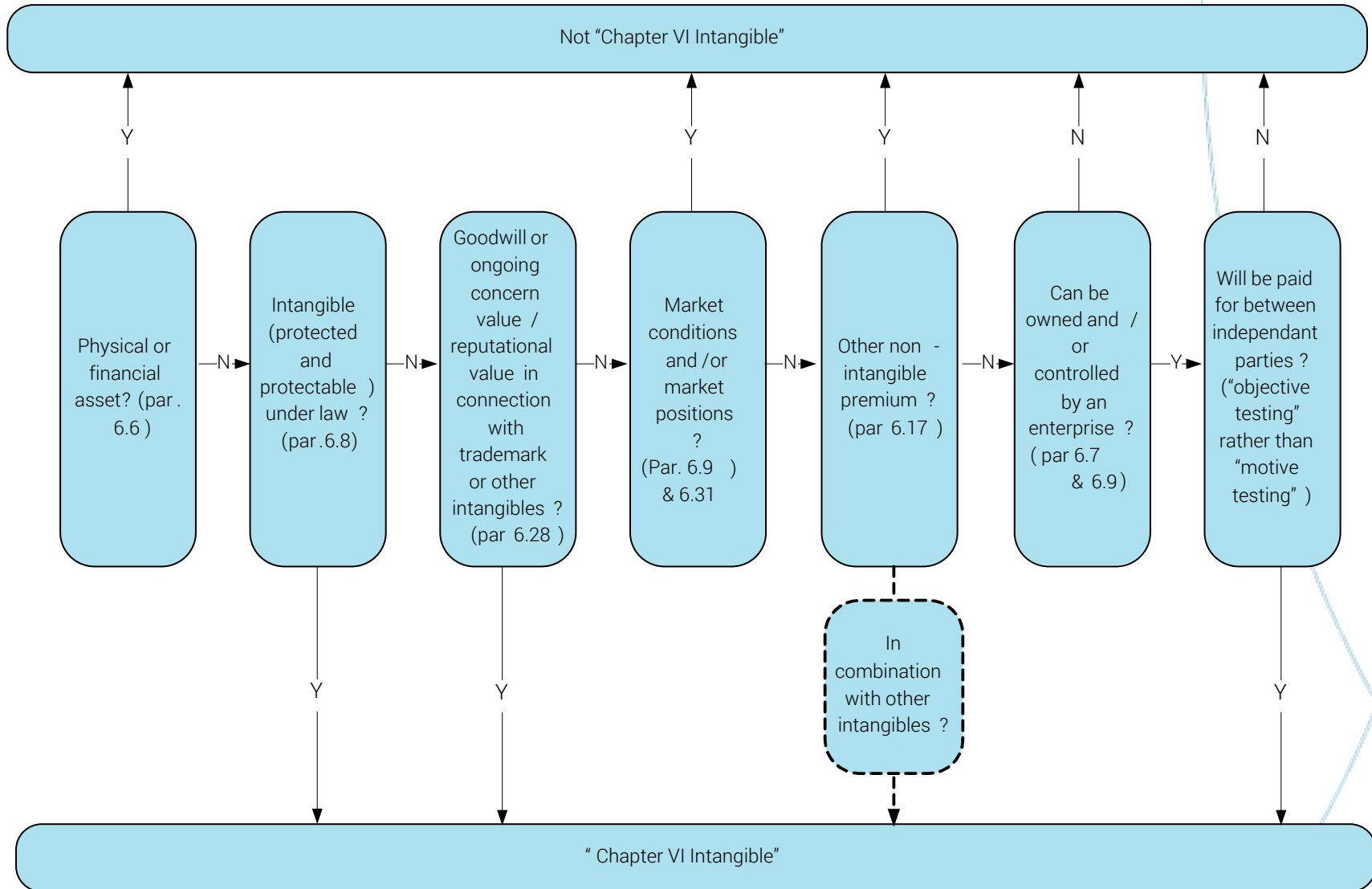
Variable 1: Label

Different professionals' approach to IP

IP Lawyers	Accountants	TP Professionals	Tax Professionals	IP Management
<ul style="list-style-type: none"> • Which entity would be the legal owner of the IP under the relevant IP Law? • Are the following elements in order to be patented under the EC Database Directive? <ul style="list-style-type: none"> • a collection of works, data or other independent elements; • arranged in a systematic and methodical way; • individually accessible by electronic or other means • obtaining, verification or presentation • Which of the Intangibles are protected / patented within the Group? • How are the trade secrets and tools protected under the IP Law? And what is the level of protection? • When does the already protected Intangibles expire and would they require renewal? 	<ul style="list-style-type: none"> • Is it probable that future economic benefits will flow to the entity as a result of the intangibles? • Who has the power to obtain benefits from the intangibles? i.e. which entities would report the future revenues on intangibles in their financial statements? • Has any major R&D cost been recorded under operating expenses that relate to developing and / or maintaining the IP? • With respect to an acquisition of a new business, was the cost of the acquisition greater than the fair value of the acquiring assets & liabilities? • Can potential intangibles be: <ul style="list-style-type: none"> • separated or divided from the entity and • sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, identifiable asset or liability, regardless of whether the entity intends to do so. 	<ul style="list-style-type: none"> • Which entities, through "people functions", perform important value-creating functions and assume the associated risk related to the DMEPE functions of the intangibles and can expect appropriate remuneration for those functions? • Is the legal owner identified under the IP Law different than the economic owners of the IP? • Are potential intangibles capable of being owned or controlled for use in commercial activities, and would their use or transfer be compensated had it occurred in a transaction between independent parties in comparable circumstances? • Do the R&D efforts add significant value to the MNE Group or are "unique and valuable". • Do the marketing efforts result in a marketing intangible as per the definition contained in the revised OECD TP Guidelines 	<ul style="list-style-type: none"> • Who is the ultimate beneficial owner of the potential revenues from the intangibles? • Is the R&D and related investment cost considered as an expense or an amortisable asset according to the tax laws? • Do potential intangibles satisfy the definition contained in Article 12(2) "Royalties" of the Double Tax treaties? • Is there a difference between the location where the intangibles are developed and the location of its legal owner? 	<ul style="list-style-type: none"> • Are the different intangibles / IP within the Group segregated into the various types of IP (such as soft or hard intangibles, routine or non-routine, trade intangibles, market intangibles)? • Has the IP management team assessed & quantified the risks of the different classes of IP within the group, whether protected or not? • Has the IP Budget defined the costs for future R&D efforts that may have the potential to generate intangibles of significant economic value to the group in the context of its industry? • What is the predefined level of investment for planning and developing IP? • Does investment in intangibles impact entity's value on the stock exchange?

Variable 2: Identification

BEPS compliant Decision tree for the identification of intangibles



Variable 3: Ownership

Mapping IP functions and risks post BEPS

	Risk 1: Failure of R&D, marketing and/ or investment efforts	Risk 2: Product obsolescence	Risk 3: Infringement of rights/ claims	Risk 4: Product liability	Risk 5: Exploitation risk	No Cost absorbed
Function 1: Development	[.....]	[.....]	[.....]	[.....]	[.....]	[.....]
Function 2: Enhancement	[.....]	[.....]	[.....]	[.....]	[.....]	[.....]
Function 3: Maintenance	[.....]	[.....]	[.....]	[.....]	[.....]	[.....]
Function 4: Protection	[.....]	[.....]	[.....]	[.....]	[.....]	[.....]
Function 5: Exploitation	[.....]	[.....]	[.....]	[.....]	[.....]	[.....]
No FTEs on payroll	[.....]	[.....]	[.....]	[.....]	[.....]	[.....]

Variable 4: Valuation - Who is eligible to IP residual?

A value chain analysis after BEPS



- In depth functional analysis to understand the contributions to the entire value chain - done, except for Global Risk Carriers
- Legal Ownership and funding “in isolation” could result in only a routine return.
- Not all R&D expenses or marketing efforts result in value creation of intangibles
- Assuming an overall operating margin (OM) of 25% residing in the value chain of the group, the allocation of profit to various functionalities could be illustrated as follows

Overall Hypothetical Operating Margin	25%
Compensation for routine contributions	
Services	< 1% >
Sale & Marketing services	< 2.3% >
Production	< 2% >
Other services	< 1% >
Hypothetical Residual profits	18.7%

IP Planning – Observations and Considerations

- Global IP Identification Process Needed
- Business Case Assessment inclusive of ETR impact (Benefits and Risk) as well as Indirect Tax Considerations.
- Assess Potential Impact on Business Operating Model (ie People Functions, etc.)
- Define Project Approach (Scoping)



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