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IP Holding Vehicles: Singapore vs. Hong Kong

With intellectual property playing an ever-increasing role in economic development, the need to harness, promote, and protect ASEAN innovation has become more urgent as integration progresses. Among its objectives, the AEC aims to transform the region into a hub of innovation and competitiveness and ensure that the region remains an active participant in the international IP community. With ASEAN member states gearing up toward increased IP generation and with further commitments to global IP regimes, the region may soon look to sophisticated IP ownership and holding structures.

IP Holding Companies

Recognizing the importance of securing IP rights in the upcoming era of AEC, a trend has developed among ASEAN-based companies to centralize ownership of their IP assets in offshore holding and licensing vehicles—an approach multinational companies have been using for a number of years. IP-intensive companies look to locate their IP portfolios in low-tax jurisdictions with strong IP registration and protection laws. The company then licenses the IP to operating companies in the group or to third party licensees, franchisees, agents, distributors, etc. in return for royalties or license fees. These special-purpose vehicles are typically referred to as IP Holding Companies.

IP Holding Companies are popular because they can help corporations to minimize tax, gain tax benefits/concessions, protect IP from bankruptcy or other claims against the parent company, and focus management attention on the IP portfolio in order to see it as an income generator.

Tax and Deciding on Your IP Holding Company

Tax is the primary reason most companies park their IP in separate IP holding vehicles. Sometimes, companies select a no-tax, low-tax, or preferred-tax jurisdiction in which to establish their IP Holding Company that is close to their home country.

The selected jurisdiction should also be a country with a large and well-established tax treaty network. Double tax treaties are key criteria in jurisdiction shopping. If the IP assets need to be pledged as a security for future borrowings or if they are to be included in the parent company's asset sheets prior to a public listing, having those IP assets in a respected, transparent country is always beneficial. Also, depending on whether any R&D might be planned, many countries have attractive tax benefits for such activities as a way to encourage local innovation and technology transfer into the country. If the parent has other business operations in the selected country, it very well may be that such items as development or operational costs, company losses in respect of certain activities, or amortization schemes may be available to offset against profit-generating activities.

Singapore

In the past few years, Singapore has emerged as one of the most IP-focused jurisdictions in Asia, with the government going to great lengths to encourage the transfer of technology and IP to the country. Generally, the IP tax incentives offered in Singapore apply to a wide range of qualifying expenditure incurred on qualifying activities, such as R&D done in Singapore (with additional possible deductions on some R&D done outside Singapore), registration of IP rights, acquisition of IP rights, investments in automation, training of employees, and investments in design done in Singapore.

One of the main factors why Singapore is fast becoming Asia's go-to place to hold a company's IP is the fact that Singapore has a long-standing and impressive double taxation treaty network with about 60 countries. Coupled with a comparatively low prevailing corporate tax rate of 17%, most businesses find Singapore an excellent location to house IP.

In making a decision regarding whether to remove an IP portfolio from Thailand to a more tax-efficient jurisdiction, it is important to study the potential income streams that the IP holder will receive from potential users/licensors of the IP, as well as the associated tax implications. The issue here is withholding tax. It will be expected that the tax regimes in most jurisdictions will impose withholding tax on the income streams derived from the IP exploitation (as would be the case here in Thailand). Withholding tax will be reduced under double taxation agreements between Singapore and those countries from where the royalties will be paid.

Hong Kong

Unlike offshore financial centers, Hong Kong is not a zero-tax jurisdiction. However, its 17.5% profits tax rate is relatively low compared to the rates of other jurisdictions in Asia.

Hong Kong taxes residents and non-residents only to the extent that they derive Hong Kong-sourced income from the carrying on of trade, profession, or business in Hong Kong. This territorial tax regime provides an opportunity to design the IP holding structure to reduce exposure to Hong Kong profits tax.

Hong Kong's profits tax system taxes royalty payments received by a Hong Kong company only if (1) the Hong Kong company is considered to carry on trade or business in Hong Kong, and (2) the royalty income is considered to arise in, or be derived from, that Hong Kong trade or business. If properly structured, Hong Kong's territorial tax regime can provide favorable tax planning opportunities.

Hong Kong generally does not impose withholding tax on outbound payments. But for outbound royalty payments, Hong Kong imposes a withholding tax if the amount paid is treated as income that is chargeable to Hong Kong profits tax under the criteria described above. Otherwise, no withholding tax is imposed.

If withholding tax is chargeable on royalty payments from Hong Kong, the payment would attract a withholding tax of either 5.5% or 17.5%. The higher rate applies if the royalty payment is made to an associate and the intellectual property has been owned, or partly owned, by a person carrying on business in Hong Kong.

Outlook

IP Holding Companies bring together three complex legal fields: (1) IP, (2) tax, and (3) corporate structuring and insolvency. Transactions are cross-border in nature, thus adding to the complexity. But with proper investigation and planning, synergies do arise and IP holding vehicles can offer significant advantages when an IP owner seeks to streamline royalty and licensing intakes from multiple licensees. ⚖️