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INDEPENDENT TAX CONSULTING



LES Scandinavia – Taxation of IP

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Taxation of IP

- IP rights are becoming increasingly important also for tax purposes
 - Reflected in the initiatives of individual states and the OECD
 - Fighting tax planning while ensuring tax incentives
- What is IP in the context of tax? – Determining a taxable asset?
 - The notion of *intangibles*:
 - Typically broader than within IP law (goodwill, marketing intangibles etc.)
 - Being pushed even further by tax authorities, e.g. employees as knowhow
 - The notion of *royalties*:
 - Being challenged e.g. by the digital business models

Taxation of IP

- Disposal and acquisition of IP
 - Disposal ctr. Right to use
 - Exit taxes
- Depreciation/Amortization
- Computation of gains and losses
 - Timing (special rules postponing taxation of capital gains)
 - Earn out
 - Valuation
- Licensing and royalty income
 - Taxation of income
 - Deduction of payment
 - Withholding tax on royalty (e.g. 22% in Denmark) – reduced or eliminated according to tax treaties (e.g. 5-15%) or according to EU Interest-/Royalty Directive (0%)



Taxation of IP

- Trend: Patent/Innovation/IP Boxes (favorable taxation regimes ensuring low taxation on IP income)
- IP tax planning in its simplest form:
 - Timing:
 - In the start up phase
 - Development of IP
 - Migration of existing IP rights
 - Tax and other incentives
 - A tax-friendly structure (model):
 - Low taxation of income (Patent Boxes)
 - CFC and other parent-issues?
- Many advanced tax planning techniques involve IP rights (Google, Amazon, Starbucks etc.)



Taxation of IP

- OECD/G20 Project (BEPS action 8) on intangibles:
 - Align transfer pricing outcomes and value creation
 - "Vulnerable to manipulation"
- Four issues are analyzed:
 1. Identifying intangibles (broad category)
 2. Ownership of intangibles (legal owner as the starting point – moving towards actual functions performed)
 3. Transfer of intangibles
 4. Arm's length test of intangibles



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