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