



How onshoring of IP leads to a host of tax disputes

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Panellists:

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Agenda

- IP onshoring transactions – origin and developments
- Litigation drivers
- Litigation pinch-points

Origins and Development of IP Onshoring

- Substantial reversal of historic trend for IP off-shoring in recent years
- Drivers:
 - CBCR
 - R&D incentives
 - General BEPS discussions
 - Substance requirements
 - DEMPE principles
 - Tax residence changes e.g. in Ireland



Where do disputes arise?

- Onshoring itself
 - Transaction can create taxable events based on limited nexus
 - No treaty protection
 - CFC rules can apply
- Tax Treatment following onshoring
 - Royalty barrier rules
 - Anti- Hybrid rules
 - Allocation of IP ownership
- More scrutiny on pre - onshoring structure





Ways to shore and their tax risk areas

- Sales of IP rights
 - Potential taxing rights claims by countries, in which IP is registered
 - Is there a tax basis?
 - Which country can lay claim to what portion of the overall value of ip?
 - Impact of step-up on potential third country taxation?
- Cross-border restructuring
 - Do these constitute taxable events?
 - Is there room for roll-over relief?
- Transfer of IP owning entity
 - If opaque, likely no taxable event
 - Different situation for transparent entities

Ongoing tax treatment post onshoring



- Interest deduction limitations
 - Interest barrier rules
 - Low taxation due to patent boxes etc.
 - Anti-hybrid rules
- Transfer Pricing concerns post onshoring
 - IP rights not created by onshore jurisdictions itself
 - DEMPE functions locally?
 - Challenges to economic IP ownership and earned royalty rate

Where are crucial items in litigation?

- General fact pattern
 - Potential existence of third country taxing rights
 - Adequate enforcement of existing rules
- Transfer Pricing
 - Valuation of IP rights in on-shoring
 - Allocation of overall IP value to various jurisdictions
 - Arm's length nature of royalties etc.



Speaker:

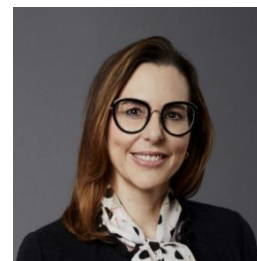


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