



# What are the standard arguments pro and con on tax valuation of intangibles when going to court?

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## Types of Transactions

- Transfer of intangibles
- Transfer of combination of intangibles
- Transfer of intangibles in combination with other business transactions
- Transactions involving the use of intangibles in connection with sales of goods or performance of services



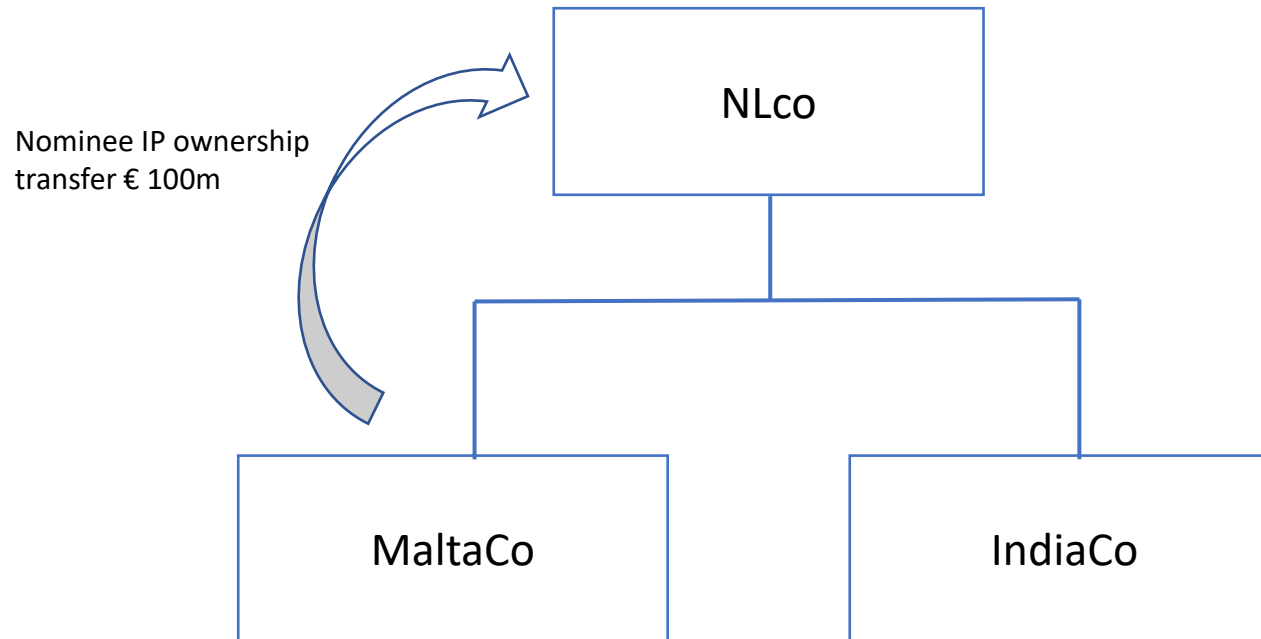
## Major variables

- Exclusivity
- Duration of Legal Protection
- Geographic Scope
- Useful Life
- Stage of development
- Rights to enhancement, revisions and updates
- Expectation of future benefits



## Lead considerations

- Which TP method selected
- Use of valuation techniques
- Special considerations (Accuracy of financial projections / Growth Rates / Discount rates / Useful life and terminal values / Assumption regarding taxes)



- NLco holds the shares of the two entities. MaltaCo acts as nominee holder (i.e. for IP law purposes) of the IP, which IndiaCo and NLco have been performing the DEMPE functions pre-IPO.
- Post IPO, MaltaCo sells the IP to the NLco for €250m (=DCF of future income – DEMPE costs).
- A nominee holder position only warrants say 5% of total IP value, which equals €12.5m.
- What are the consequences?

# What are the challenges when taking a valuation of intangibles to the courts?



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- Did you follow the checklist?
- How do you create an 'audit trail on conduct of parties'?
- Are each of the Special considerations 'market compliant'(i.e. projects, growth rates, discount rates, useful life and terminal value, assumption on tax)?
- What is the probability of a 'deal materializing', i.e. do both parties anticipate a benefit?
- How much Hard-to-value-intangible (HTVI) features are met, i.e. how to deal with 'information asymmetry between taxpayer and tax administrations'?
- Are you looking at 'ex ante' and/or 'ex post' positions?

# What are the challenges when taking a valuation of intangibles to the courts?



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However, more important challenges could be:

- Will the court address the technical side of the valuations at all?
- What will be the courts' approach to the burden of proof?
- What is your 'approach to evidence' to convince the court?
- Will the courts approve a bundled versus siloed/unbundled approach?

- OECD – use of intangibles remunerated on economic value-add by use of the brand
- Higher Willingness to Pay (WTP0):
  - best basis to determine royalty
  - refers to the additional revenue and incremental profit generated
  - from use of the brand
- Estimate economic value add based on a WTP survey
- Higher WTP
  - traceable to branding and marketing efforts
  - being the differentiators from competitors

# Determine brand price premium

- Telecom products = differentiated products
- High degree of differentiation = higher prices
- Branding allows capture of customers
- Price depends on how close customers consider other products
- Difference between profits of a branded and non-branded products
  - = value of the brand
  - all else being equal

- Only in 43% of jurisdictions
- Unbranded product is in fact a hypothetical entrant
  - Provide same product offerings
- Performed in 2020
  - only 49,94% was customers for tested period 10 years ago
- Customers were asked: Which of 2 plans will they choose
  - Products offered were exactly the same
- But had no knowledge about the hypothetical entrants:
  - Customer service
  - Reliability to deliver the services under the products
  - Accessibility to repurchase the products
  - Other people also using its products
  - Products and service offerings (B2B only)



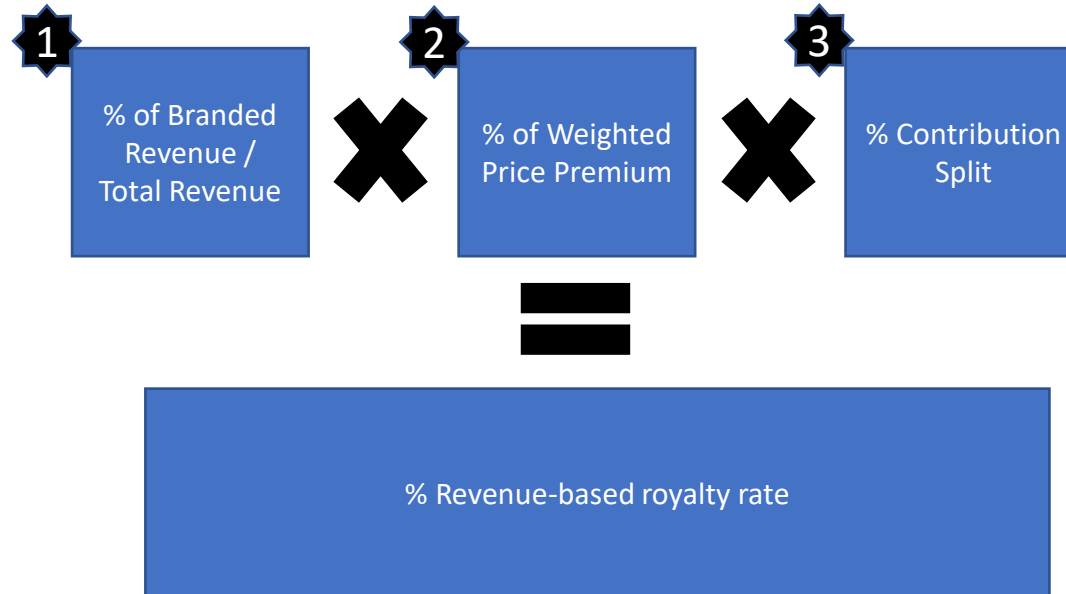
- Determine price premium for branded product over hypothetical unbranded product per product category per tested country
  - Eg. Country A
    - B2C 62.7%
    - B2B 68.9%
  - Included data where no price was given to the unbranded product
  - Used simple average – not median?
- Determine weighted average price premium calculated per product category for tested countries based on revenue split per product category
  - B2C 42.8%
  - B2B 34.8%
- Determine branded revenue split for each subsidiary per product
  - B2C 89.4%
  - B2B 10.6%
- Determine single weighted price premium for each subsidiary
  - $42.8\% \times 89.4\% = 38.26\%$
  - $34.8\% \times 10.6\% = 3.68\%$
  - = 41.94%

# Subsidiary royalty rate

- Brand building costs used to split based in contribution
- Subsidiary contribution = 4.1%
- $41.94\% \times 4.1\% = 1.7\%$  royalty
- Each subsidiary has a different royalty rate

# Calculate royalty rate

- A revenue - based royalty rate





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# Appendix

## Case study – Pink Cross Brand Valuation

Pharmat BV wishes to value its pharmaceutical brand Pink Cross. Pink Cross is a non-acidic analgesic compound marketed predominantly in Belgium and Holland to alleviate headaches, toothaches and other chronic pains. Introduced in Flanders in the early years of the 20th century, Pink Cross commands a price premium over unbranded analgesics, and the evidence is that its market penetration in the Benelux region is also higher due to the branding.

How to apply the Relief-from-Royalty Method? What kind of data points do you need?

# Appendix

## Case study Income based – Pink Cross Brand Valuation



The relief-from-royalty method determines the value of an intangible asset by reference to the present value of the royalty payments which the transferee is relieved from given its ownership of the intangible. The following table demonstrates the process.

		1	2	3	T	
Firmwide sales		450,000	480,000	493,000	485,000	
% brand sales		38%	35%	30%	25%	
Brand sales		171,000	168,000	147,900	121,250	
Royalty income	7%	11,970	11,760	10,353	8,488	
Taxes @ 35%	35%	-4,190	-4,116	-3,624	-2,971	
Net royalty		7,781	7,644	6,729	5,517	
Discount factors	15%	0.8696	0.7561	0.6575	4.3834	
Present value		41,153	6,766	5,780	4,425	24,183