IP Development in Other Countries

40th Annual TEI-SJSU High Tech Tax Institute

Let's dive into tax considerations of where IP is developed and used. How does tax factor into decision on location.

Topic 1: scoping the issue

I. What are we trying to solve for?

The underlying question is the extent to which activities undertaken in other countries develop IP

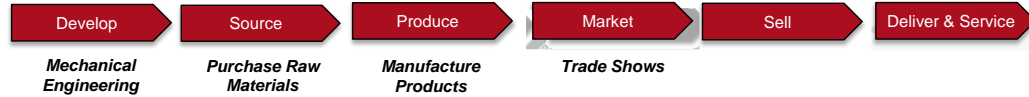You will want to plan for / manage those activities that develop IP

Election outcome

II. What is IP?

Historically defined as technology hardware, software and marketing IP as defined by 936(h)(3)(b)

More recently, there is added focus on data, consumer networks, multi-sided market places

Question: how to "group" items of IP (e.g., is hardware with AI that itself generated data used by other applications 1, 2 or 3 items of IP)

Develop	Source	Produce	Market	Sell	Deliver & Service
Mechanical Engineering	**Purchase Raw Materials**	**Manufacture Products**	**Trade Shows**		

Topic 4: operational drivers of IP location determination

I. Centralized IP vs multiple IP hubs

IP monetized; what are the envisioned value chain or supply chain flows that are involved

Tractability of IP segments vs highly integrated bundle of IP

Relationship of IP location, how it is utilized in the business, and integrated/utilized in ancillary businesses (e.g., App product license and pull-through services)

II. Velocity of IP creation and refreshment

III. Treasury / repatriation flexibility

IV. Ease of repositioning IP (e.g., onshore or near-shoring)

V. Acquisitiveness and integration strategy

VI. Future of cost sharing arrangements

Topic 5: controversy management

Globally Centralized
One single group entity owns the subject IP on a global basis

Regionally Centralized
A small number of group entities own the subject IP for their respective regions

Example of a **Taxpayer's point of view** of which entities own IP

Example of a **Tax Authority's point of view** of which entities own the same IP

The question for taxpayers then becomes how to approach establishing its position?

I. Alignment of (i) business objectives, (ii) location of DEMPE and (iii) tax authority aggression

II. Consider fit for purpose IP structure

Historically IP structures predominately were comprised of centrally located IP (in a single jurisdiction) or cost-shared IP (i.e., centrally located in two jurisdictions)

Centrally located IP has retained its attractiveness, although some weight may be given to DEMPE and whether IP can be reasonably separable

Topic 6: questions and concluding