IP Location Planning (Breakout AA)

33rd Annual TEI-SJSU – High Tech Tax Institute
November 14, 2017

Crowne Plaza Cabana

- Introduction and Key Considerations
- Netherlands Structures
- Irish Structures
- Singapore Structures

- Tax Rate and Incentives in IP Jurisdiction
- BEPS and DEMPE Functions
  - Operations inside and outside IP jurisdiction
- CbC Reporting
- Anti-Avoidance Legislation
  - UK DPT
  - Australia MAAL and DPT
  - RumblE-9( )0F.6(r)17.6 Iio(nd i)3.5(a)1-1(nP)6GRumR(Rum)4.5(a)1-T

IP STRUCTURING – AN UPDATE ON THE NETHERLANDS

The Netherlands – a short legislative update

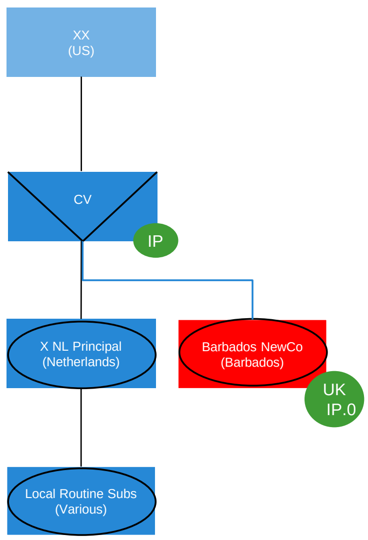
Tax Agenda of newly formed government/coalition (October 2017)

- Reduce tax rate to 21%
- Abolish dividend withholding tax
- Introduction of royalty and interest withholding tax in abusive situations

Other key legislative developments

- Dutch Cooperatives in certain situations subject to Dutch dividend withholding tax
  - Substance requirements for intermediate shareholders of Dutch Cooperatives
- Dutch Innovationbox updated with Nexus approach

Barbados IP Co: Manage UK Anti-Hybrid rules



Description

CV sets up new Barbados company

CV carves out UK IP to Barbados company

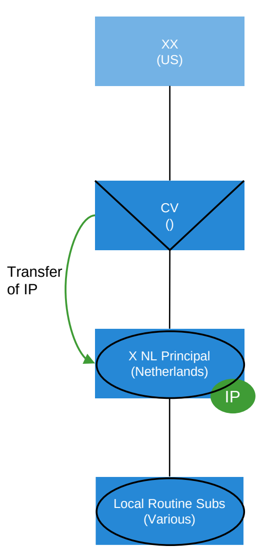
Barbados company licenses IP to NL Principal

Objectives and considerations

Primary aim to mitigate UK Anti-Hybrid provisions applicable as of January 1, 2017

Barbados subject to IBC regime and thus subject to sliding scale of tax in Barbados and therefore allows local UK subsidiary to stay outside of scope of UK anti-hybrid rules

On-shoring of IP to the Netherlands: Align IP and DEMPE



Description

CV transfers IP to NL Principal in return for a combination of equity and debt

NL Principal party to CSA going forward

DEMPE functionality build up in the Netherlands

Dutch Tax

Step up to FMV of IP in the Netherlands

IP is amortizable

Interest expense is deductible

Credit of withholding taxes available

Gain upon exit of IP taxable in the Netherlands

Combination of above elements manages ETR

On-shoring of IP to the Netherlands: Align IP and DEMPE

Objectives/Benefits

- Creates long term BEPS sustainable tax model
- Eliminates Stateless Entity in structure and CbC report (unless partly financed with debt then interest income in Stateless Entity)
- Allows for DEMPE functionality to be build up in the Netherlands
- Significantly improves beneficial ownership position of NL Principal

Other Considerations

- Dutch tax ruling available
- Financial and tax modelling is key
- Taxable gain recognition of IP upon exit of IP out of Netherlands

Timeline of Expected Changes

January 1, 2019

CFC Rules (ATAD)

January 1, 2020

Anti-Hybrid (ATAD)
Exit Taxes (ATAD)

January 1, 2021

IR/NR Grandfathering
2017 OECD TP Rules

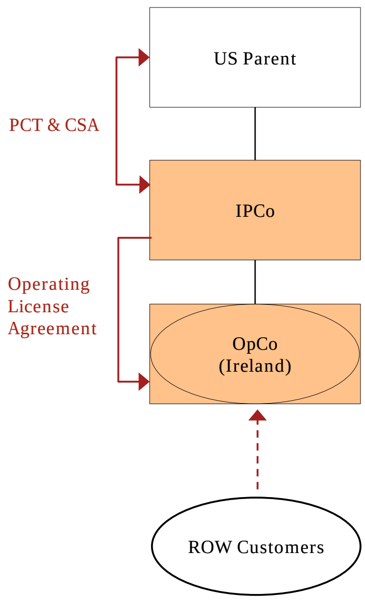
Update On Ireland’s International Tax Strategy

Overview

o

Resident/Non-

Modified Two-Tier Structure



Tax Resident in Tax Treaty Jurisdiction

- IPCo is incorporated in Ireland, but tax resident in another country that has a Tax Treaty with Ireland
  - Tax residency under a Tax Treaty generally is determined by the location of management and control
  - For example, Malta generally does not tax "passive income" not remitted to Malta (*e.g.*, royalties paid by OpCo to a bank account of IPCo outside Malta)

Incorporated Outside Ireland

- IPCo is incorporated and tax resident in a low-tax jurisdiction outside Ireland (*e.g.*, Barbados, Bermuda, or Cayman)

Considerations

- Anti-hybrid rules under ATAD by January 1, 2020
- 2017 OECD Transfer Pricing Guidelines expected by January 1, 2021 (*See* Coffey Report, Section 6.3.11)

19

Onshore IP Structure

Onshoring of IP

- **Entry**
  -

Onshore and Knowledge Development Box

Amortization under Section 291A						
Qualifying IP	**Transfer Required**	**Term of Amortization**	**Cap on Amortization**	**Carryover of Excess Amortization**	**Exit of IP Taxed**	**Claw-back on Exit**
Broadly Defined	Capital Expenditure (*e.g.*, Sale or Exclusive License)	Book Life for Irish GAAP/IFRS Elective 15-Year Term	80% "Cap" on Income Offset for a Tax Year	Yes (Indefinitely)	Capital Gains Taxed at 33% if Sell IP	Prior Capital Allowances if Exit Within 5 Years

Knowledge Development Box					
Qualifying IP	**Legal Ownership Required**	**Tax Rate**	**Qualifying Income**	**"Embedded Royalties"**	**Limitations**
Patents Copyrighted Software	No	6.25%	Net Income from Qualifying IP	Yes (Where Price for Goods or Services is Attributable to Qualifying IP)	Modified Nexus Approach*

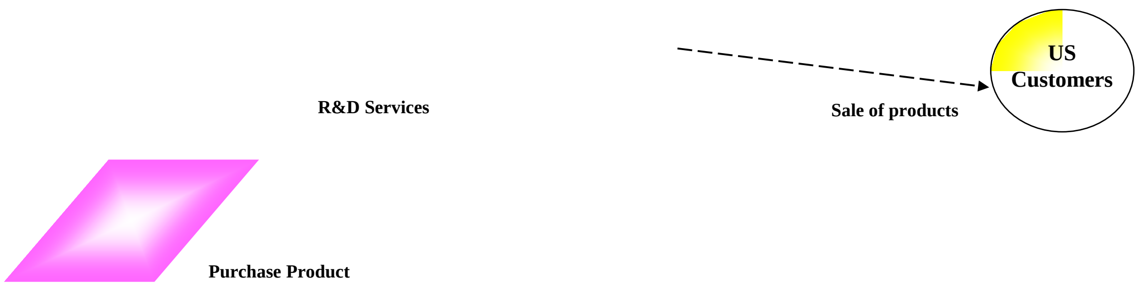
Singapore Structures

- Large tax treaty network including India, China, Taiwan, major Europeans
- Statutory rate of 17%
- Development & Expansion Incentive- reduced rates of 5 to 15% for qualifying activities (manufacturing, leading-edge activities)
- Productivity and Innovation Credit (PIC) which permits 400% tax deductions is soon expiring
- Intellectual Property Development Incentive proposed with 2017 Budget but was not included in the recent tax bill (was similar to a Patent Box)
- Draft tax bill introduces beneficial rules for foreign companies to re-domicile their IPCo's to Singapore and includes relief from exit taxes imposed by the other jurisdiction
- Writing down allowances (WDA) are granted for capital expenditure incurred in acquiring IP rights including patents, copyrights, trademarks and certain trade secrets that have commercial value
  - Straight-line basis over 5, 10 or 15-year period
  - Presently only applicable through end of Year of Assessment (YA) 2020 (so through end of year ending within 2019)

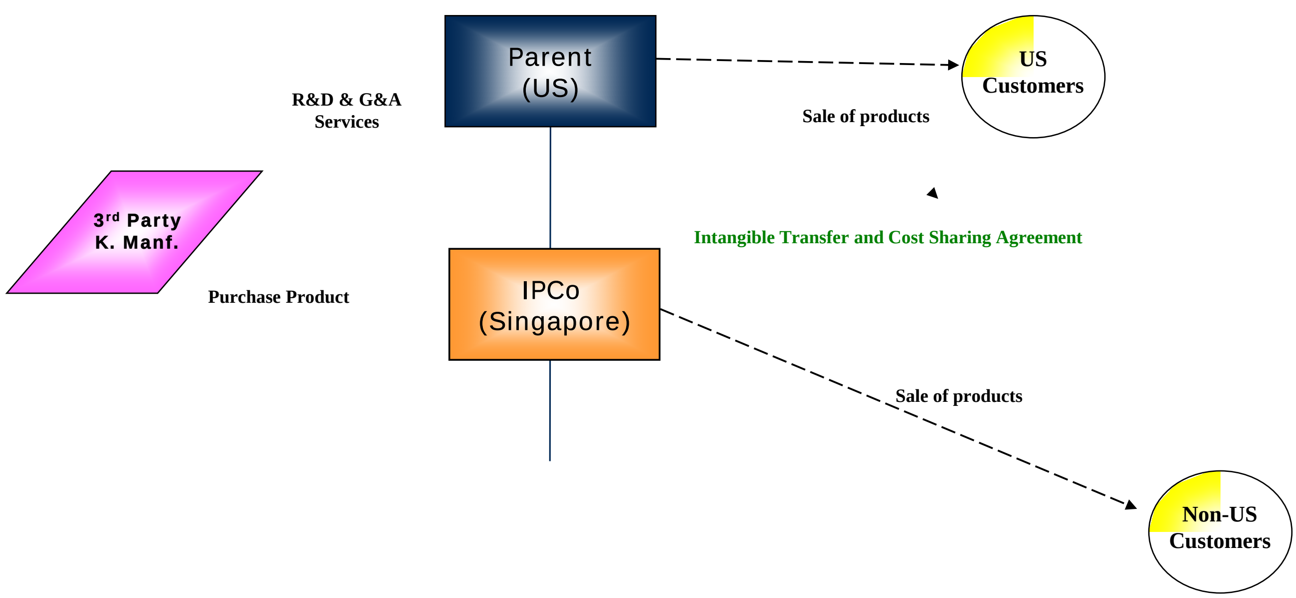
Advantages of Singapore IP Holding Structure

- Cost Sharing Agreements are recognized and deductions generally are permitted for R&D payments made under the CSA
  - Under current rules, the breakdown of expenditures is examined to ensure excluded costs are not expensed
  - New safe harbor has been introduced allowing for 75% deduction for qualifying R&D projects rather than providing the breakdown
- Costs of registering patents, trademarks, designs and certain other IP, including professional fees, can qualify for 100% deduction until last day of YA 2020
- No dividend withholding tax
- The Forum on Harmful Tax Practices (FHTP) released a report on preferential regimes concluding that Singapore's tax incentives satisfy BEPS Action 5
- Instituted CbC reporting for financial years starting on or after 01/01/2017 and signed the Multilateral Competent Authority Agreement for auto exchange of CbC reports
- Volunteered to undergo peer review on implementation of MAP for effective dispute resolution, one of only a few Asian countries to do

Singapore Structure #1: Transactions



Singapore Structure #2: Transactions



IP Development and Monetization
US Perspective

US Intangibles Rules in the Global Environment

- Despite US involvement in, and stated commitment to, the OECD BEPS initiatives, US rules are increasingly divergent from international standards
- Examples
  - Transfer pricing rules—Section 482 development v. BEPS Actions 8-10
  - Taxation of nonresidents—US ECI rules v. BEPS Action 7
  - Hybrids—US CTB rules v. BEPS Action 2
- This divergence creates both challenges and opportunities, particularly for companies with significant U.S. development activities
- Prospects for US tax reform add further uncertainty

US Transfer Pricing Developments and BEPS

- US (Section 482)
  - A “corporate finance” approach
    - Investor model
    - Income method
  -

Uncertainty from Different Treatment—Example 16

- BEPS Report 8-10 Example 16
  -

Treatment of Nonresidents

- US (ECI and Subpart F)
  - US rules attribute IP-related income (e.g., royalties) to an office or fixed place of business where the office is a material factor:
    - "Soliciting, negotiating, or performing other activities required to arrange the license" is a material factor
    - No material factor where office "develops, creates, produces, or acquires and adds substantial value to, the property"
    - *Grecian Magnesite*
  - Subpart F active royalty rules require "adding substantial value" and earning third party royalties
- OECD standards
  - Reduced emphasis on contract formation activities
  - Attribution of IP ownership based on DEMPE, functions suggests that R&D activities should attract substantial value

US rules unlikely to treat activities that are critical to OECD/DEMPE analysis as generating ECI, even if they also support Subpart F position

Combining these Differences—US Branches

Intended Treatment

- US branch activities satisfy DEMPE

Impact of U.S. Tax Reform

- TBD…