

Case Study VIII:

Structuring Intangibles in a MNE - Using an Intangibles Management company (IPCo) and license arrangements (License Model)

Modul 6

Facts:

German based **Techno AG**, a globally operating company, reviews its management, ownership and funding structures for its various “**product related research and development activities**” and related **intangibles**.

In consultation with research-, legal-, tax- and finance experts, **central ownership** with license arrangements (**Licence model**) using a **Swiss based IPCO** is proposed.

Within the proposed solution, Techno AG management wants to ensure the following:

- **legal ownership** of R&D results (“Intangible ownership”) to be concentrated in IPCO
- **research & development work** to be carried out by the respective “centres of excellence” or most suitable laboratories/locations within the Group, i.e. using the best and cost efficient resources
- **comprehensive technology transfer group wide**, i.e. full access by each Group company, also the companies in Brazil, China and India (if businesswise required)
- IPCO to be entitled to **all intangible related income** and to the **use of Swiss tax treaty network**

The questions:

You are now asked to comment on the tax requirements of a **License model** with an **IPCO** focussing on **Techno AG** management's targets.

Please consider the impact of the new OECD guidance OECD TPG 2017 Chapter VI (BEPS Actions 8-10).

1. What is the targeted **functional analysis** of an Intangible Property company (IPCO) used by Techno AG? Is this a **routine** activity or an **entrepreneurial** activity?
2. What is the purpose of a **patent box** to be used by a Swiss IPCO? What are the restrictions under the "**modified nexus**" – please consider the new BEPS standard Action 5?
3. How to achieve **legal, economic and functional** ownership on **all R&D results and being entitled to full Intangible related results** – please consider the new OECD Guidance OECD TPG 2017 chapter VI para B pages 257-273 (BEPS Action 8)?
4. How to price the **outsourcing of R+D work**, if the research & development work is carried out on order by IPCO as **contract R+D** by the respective "centres of excellence" or most suitable laboratories within the Group, i.e. using the best available resources?
5. How to set the **prices on the royalties** (license model) – what pricing method(s) are to be used?

Literature:

- Skript Modul 6 License model
- VPR Tz 102-111
- OECD TPG 2017 chapter VII
- **Fellinger Michaela**, Zurechnung von immateriellen Werten nach dem VPDG, in TPI 2018 ,S 144-147
- **Koch/Küttel/Trüssel**, Die Schweizer Patentbox, in TPI 2018, S. 154-164
- **Stocker/Schmid**, Entschädigung immaterieller Vermögenswerte: Auswirkungen des Updates 2017 der OECD Verrechnungspreisleitlinien, in TPI 2017, S 92-97
- **Stocker/Schmid**, Markenrechte: Entschädigung des rechtlichen Eigentümers vs Ausübung von DEMPE Funktionen, in TPI 2018, S. 216-222.