CREATING AN IP HOLDING COMPANY IN SINGAPORE

As the global economy becomes more reliant on innovation to create growth, it has become impossible to ignore the value of strategic intellectual property creation, registration and exploitation. Singapore has long been recognised as a jurisdiction of choice for a setting up a holding company for outbound investment, notably for investment in Asian emerging markets. Certain recent tax incentives announced by the Inland Revenue Authority of Singapore may make it more attractive to create and operate an IP Holding Company in Singapore.

Singapore Holding Companies as Gateway to Asia

Singapore currently enjoys a pre-eminent status as the preferred holding company jurisdiction in Asia. Given its strategic location at the centre of the major growing markets of India, China and the emerging economies of ASEAN, the Lion City offers tremendous opportunities in terms of markets, technologies, talent and business growth.

Some of the factors that have dictated such a preference include Singapore's sound infrastructure, one of the best business environments worldwide, political stability, extensive market connectivity and an educated, motivated and skilled workforce. In additional, pro-business policies and government incentives make Singapore even more attractive to be the gateway to Asia for global companies and growing Asian enterprises.

In addition, adopting the Singapore holding company structure to obtain access into the Asian emerging markets using Singapore's network of Double Taxation Agreements may present substantial tax savings for group companies (subject to demonstrating that commercial business motives, and not tax-driven motives, are the main consideration for adopting such structure).

Advantages of creating an IP Holding company

The creation of a special purpose holding company for holding intellectual property assets (an "**IP HoldCo**") can be an attractive structuring option for a number of reasons. Many multi-national corporations as well as start-ups consider such structures to centralise ownership of intellectual property ("**IP**"). In the case of an IP HoldCo, it would own intellectual property (i.e. patents, trademarks, copyright, design and trade secrets) which can then be held, managed, sold, licensed to other parties or exploited in some other manner.

The general benefits of such a structure (not including tax benefits) include the following:

(a) Efficient administration and management of the group's registered IP portfolio.

(b) IP asset protection from insolvency risks.

(c) Shifting IP infringement risk to an IP HoldCo, thereby protecting the operating assets of the business while IP is being developed and before the commercialisation phase (where IP infringement risk may be highest).

(d) Using IP holding companies may facilitate spin offs and capital raising for riskier new IP ventures, or specialised financing strategies such as a sale and licence back or securitisation of IP assets.

(e) Housing the group's IP assets in one entity may facilitate the disposal of those IP assets.

As with any structuring decision, any business looking to create an IP Holding Company must also consider any risks associated with housing all IP in one corporate entity. There may be some limitations that may affect the validly, value and enforceability of a corporate group's IP rights and any structuring decision needs to take account of these issues, to manage such risks.

Singapore Tax Incentives: The Productivity and Innovation Credit Scheme

All Singapore-registered businesses are eligible for a tax incentive called the Productivity and Innovation Credit ("**PIC**"). The PIC encourages businesses to invest in a broad range of activities along the innovation value chain to improve innovation and productivity. Applicable for Years of Assessments 2011 – 2018, the PIC currently covers spending on 6 business activities (the "**Qualifying Activities**") as follows:

(a) Research & development (R&D) - including R&D projects conducted outside Singapore;

(b) Registration of intellectual property rights (patents, trademarks, designs and plant varieties);

(c) Acquisition and In-Licensing of Intellectual Property rights (e.g. acquisition or licensing of a trademark);

(d) Acquisition or leasing of prescribed automation equipment;

(e) Training of employees; and

(f) Approved design projects.

Applying this to a Singapore business that operates as an IP HoldCo, two Qualifying Activities appear to be applicable. Under the category of "Registration of Patents, Trademarks, Designs and Plant Varieties", qualifying expenditure under PIC includes costs incurred to register patents, trademarks, designs and plant varieties, such as fees paid to IPOS to register trademarks and legal fees. Under "Acquisition and In-licensing of Intellectual Property Rights", qualifying expenditure under PIC includes any costs incurred to acquire any IP rights for use in a trade or business.

Specific Benefits under the PIC

Firstly, Singapore businesses can deduct **400% of their qualifying expenditure** on each of the 6 qualifying activities from their income, subject to:

(a) an annual expenditure cap of **S$400,000** for YA2013 and YA2014, and **S$600,000** for YA 2015, cumulating in a combined cap of **S$1,400,000** of expenditure for each activity (from YA 2013 – 2015); and

(b) an annual expenditure cap of **S$600,000**, cumulating in a combined cap of **S$1,800,000** of expenditure for each activity (from YA 2016 – 2018).

Secondly, such businesses will have the option to convert **S$400** to **S$100,000** of their qualifying expenditure for all 6 activities taken together into a cash payout. The conversion is done at a rate of **60%** up to **S$60,000** payout per year from YA 2013 – 31 July 2016; and **40%** up to **S$40,000** payout per year from 1 August 2016 – YA 2018.

The IP Hub Master Plan

In April 2013, the Ministry of Law announced that the Singapore Government had accepted the recommendations made by a steering committee that was formed to formulate the IP Hub Master Plan – a 10-year plan to guide Singapore's development into a global IP Hub in Asia. The recommendations include proposals for an IP financing scheme that will encourage banks to recognise IP as an asset class and allow IP-rich companies to raise capital more easily using IP assets, such as IP-backed loans, IP-securitisation and IP-funds. The IP Master Plan re-affirms that opportunities to monetize and maximize value of IP assets in Singapore will only increase; creating an IP Holding Company in Singapore to take advantage of such opportunities seems like a natural step forward for multi-nationals and Asian enterprises.

Conclusion

A recent report published in later 2015 seems to suggest that 95% of the patents filed in Singapore aren't of Singaporean origin. Clearly, overseas companies do consider Singapore as having huge market potential for their products that could get patent protection. The Singapore government also provides funding for R&D and for patent filing. Interestingly, almost 50% of the patents filed in Singapore originate from the USA – probably the most innovation-driven economy in the world. Singapore has cemented itself as the IP Hub of Asia.

If you require assistance on the subject matter of this note or any other practice areas, you may reach out to:

Azmul Haque
Managing Director
M: +65 9231 0035
E: azmul.haque@collyerlaw.com

COLLYER LAW LLC
38 Beach Road
Level 30
South Beach Tower
Singapore 189767

T: +65 6828 1018
F: +65 6208 0219
E: updates@collyerlaw.com
W: www.collyerlaw.com