

AUTOMATIC WRITING-DOWN ALLOWANCES FOR INTELLECTUAL PROPERTY RIGHTS

Introduction

It was announced during Budget 2003 that the writing-down allowances under Section 19B of the Income Tax Act on capital expenditure incurred in acquiring intellectual property rights (IPRs) will be granted automatically¹, subject to the condition that the legal and economic ownership of the IPR lies with the Singapore entity. This will apply to IPRs acquired on or after 1 November 2003.

Policy Objective

The global economy today has shifted to one that values creativity and innovation. Where the market values of the top companies in the old economy were primarily attributable to physical and financial assets; today, it is largely attributable to intellectual assets such as intellectual property. As such, it is Singapore's intent to increase Singapore's attractiveness as location for the creation, management and exploitation of IP. One such step is to align the tax treatment for acquisitions of IPR to the existing capital allowance provisions for acquisitions of physical assets such as plant and machinery.

Scope of Incentive

The automatic writing-down allowances is applicable to any acquisition of IPRs made during the period from 1st November 2003 to 31st October 2008, where a transferee² acquires the legal and economic ownership of the IPR from a transferor. The transferee will be able to claim writing-down allowances on a straight-line basis over a 5-year period on the capital expenditure incurred in acquiring the IPR. For this purpose, "capital expenditure" does not include legal

¹ This is a change from the previous policy, where only IPRs approved by the Economic Development Board (EDB) and the Infocomm Development Authority of Singapore (IDA) were granted writing-down allowances under Section 19B.

² A "transferee" refers to a company who acquires the IPR. A "transferor" refers to a person who sells the IPR to the "transferee".

fees, registration fees, stamp duty and other costs related to the acquisition of the IPR.

Categories of IPRs eligible for writing-down allowances

For the purpose of claiming the writing-down allowances, “intellectual property rights” means:

- (a) any patent, copyright, trademark, registered design, geographical indication or layout design of integrated circuit,
- (b) any trade secret or confidential information³, or
- (c) any know-how or information of commercial value.

Legal and Economic Ownership Requirement

In order to qualify for the writing-down allowances, the transferee must acquire the legal and economic ownership⁴ of the IPR from the transferor. For this purpose,

- Legal ownership means the legal assignment of the said IPR granted to the transferee.
- Economic ownership means the future economic benefits attributable to the IPR which will accrue to the transferee.

For any exceptions, please consult EDB for clarification.

³ For this purpose, 'intellectual property rights' would also include any right under the law of another country or jurisdiction outside of Singapore corresponding to, or similar to, a right within paragraphs (a) and (b).

⁴ Companies would have to submit the Declaration Form to confirm they have met the ownership requirements. One copy of the Declaration form is to be submitted with the Income Tax Return in order for the writing down allowance to be considered. Another copy is to be submitted to EDB. The Declaration Form is available on the IRAS and EDB websites.

Valuation Issues

Third-party independent valuation reports on the value of the IPRs acquired are required to be submitted to the Inland Revenue Authority of Singapore (IRAS) together with the Income Tax Returns (Forms C) when filing claims for the writing-down allowances for:

- All unrelated party transactions where the capital expenditure incurred in acquiring the IPR is equal to or greater than S\$2 million; and
- All related party transactions where the capital expenditure incurred in acquiring the IPR is equal to or greater than S\$0.5 million.

A transferor and transferee are considered to be “related parties” under the following circumstances:

- (i) where one person, whether directly or indirectly, has the ability to control the other or where both of them, whether directly or indirectly, are under control of a common person; or
- (ii) where one person has, directly or indirectly, at least 25% of the issued capital of the other person.

Acceptable valuation methods include, but are not limited to, the cost approach, income approach, and market approach methods⁵. Valuations of the IPR are to be done by qualified persons (e.g. Certified Public Accountant or Chartered Financial Analyst), who have no interest in the IPR acquisition, or business dealings with the transferor or transferee whatsoever.

⁵ Useful references:

- i. *Valuation of Intellectual Property and Intangible Assets*, Gordon V. Smith and Russell L. Parr, John Wiley & Sons, Inc., 3rd Edition (2000).
- ii. *Valuing Intangible Assets*, Robert F. Reilly and Robert P. Schweihs, McGraw-Hill Trade, 3rd Edition (1998).

In a case where a valuation report is submitted, the amount that is eligible for writing-down allowance would be the actual capital expenditure incurred by the transferee or the amount as stated in the valuation report, whichever is the lower.

The Comptroller reserves the right to require a second independent valuation or to adjust the amount eligible for the writing-down allowance, if there is reason to believe that the true value of the IPR (on an arm's length basis) is materially different from that which is presented in the valuation report.

Contacts

This information can be found at the IRAS website at <http://www.iras.gov.sg> and at the EDB website at <http://www.sedb.com>. For inquiries relating to filing of claims, please contact IRAS Helpline at 1800 356 8622. For any inquiries on the qualifying criteria, please contact EDB at 6832 6832.