



MAY 2022

INTA

Report on the Taxation of Trademarks and Complementary Rights in Europe



**International
Trademark
Association**

Acknowledgements



This report has been prepared for general guidance on matters of interest only and does not constitute professional advice. You should not act upon the information contained in this report without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this study, and, to the extent permitted by law, PwC does not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this report or for any decision based on it.

Contents

Executive Summary

Foreword

Setting the Scene

Trademark Lifecycle

 Introduction to Trademark Lifecycle

 Creation and Acquisition of Trademarks

 Exploitation and Commercialization of Trademarks

 Transfer of Trademarks

Outlook/Trends & Changes

Closing Remarks

Glossary of Terms and Abbreviations



Executive Summary

Introduction

In January of 2020, INTA President Ayala Deutsch requested that INTA investigate more closely the intersection of trademarks and complementary rights on the one hand and taxation on the other. This research aligned with the Association's previous Strategic Plan and continues to support two out of the three Directives of INTA's 2022–2025 Strategic Plan, i.e., to support the development of IP professionals, and to promote and reinforce the value of brands. INTA commissioned the International Tax Services department of the Düsseldorf, Germany, office of PricewaterhouseCoopers (PwC) to prepare the Report. PwC partnered with INTA's Project Team consisting of Zeeger Vink (MF Brands and current INTA President), Jeff Marowits (Keystone Strategy), Scott Phillips (Epsilon Economics), and Caroline Chicoine (Husch Blackwell LLP). Numerous conference calls, emails, and extensive discussions, including a presentation to the INTA Board Directors in March 2022, facilitated the preparation of the Report.

Key policy changes, such as the extensive commentary on the Global Anti-Base Erosion Model Rules, published by the OECD in March 2022 to address the tax challenges arising from the digitalization of the economy, were incorporated during the preparation process to ensure that the Report is current.

Motivation

An understanding of tax policy as related to trademark and complementary rights issues is vital for brand legal practitioners. Looking at the tax implications within the trademark lifecycle in the European Union, the United Kingdom, and Switzerland, INTA's 2022 Report on the Taxation of

Trademarks and Complementary Rights in Europe covers a breadth of topics so as to provide a framework to strengthen collaboration between trademark practitioners and tax professionals.

Methodology

The Report provides the reader with enough breath to understand tax considerations in various European jurisdictions and sufficient depth to provide a foundation for further study of European taxation policy regarding trademarks. Hence, tax considerations are considered through the lens of the trademark lifecycle and general tax principles in Europe, the United Kingdom, and Switzerland. Moreover, the Report uses examples to illustrate specific vital considerations, and specific jurisdictional differences are called out in comment boxes. Finally, most tax-related terms are explained in the Report in the commonly used section to guide the reader.

Report Overview

The Report addresses multiple themes. First, it shows that trademark professionals and tax professionals often perceive their role in an organization differently. However, the Report goes on to illustrate how the two groups can collaborate throughout the trademark lifecycle.

During the creation and acquisition of trademarks, for example, brand legal professionals and tax professionals need to consider which jurisdictions are most suitable for the location of a trademark holding entity. The Report shows the role of the statutory corporate income tax rate, special tax regimes, and advance tax rulings, and compares various European jurisdictions. Moreover, during the licensing process of trademarks, a trademark professional must consider how

tax rates can affect the trademark licensing structure.

The Report also covers various nuances that should be considered when determining the taxation of trademarks. Trademark practitioners and tax practitioners can often have different views of trademarks and related issues and this can have an impact on how they consider them in their work. An example is that trademark practitioners and legal practitioners view legal ownership and beneficial ownership differently.

Another nuance regarding the taxation of trademarks is that when a **trademark** can be recognized in the tax or accounting balance sheet depends not on the classification of the trademark itself but on the lifecycle of the trademark. In practice, even if trademarks are defined as assets, they will not be recognized as assets on the tax or accounting balance sheets unless acquired or transferred. Similarly, goodwill is only realized on balance sheets if there is an excess between the purchase price and fair market value of net assets.

The Report also compares the tax implications of licensing and trademark transfer. It suggests that licensing can serve as an alternative to a trademark transfer if such transfer is considered unfeasible due to its tax implications, such as when a trademark transfer would generate large capital gains taxes.

How royalty payments are taxed is also discussed, with the Report giving an overview of the arm's length principle and describing how to determine the beneficial owner of the license.

Finally, the Report gives an overview of the outlooks and trends expected in the EU. An extensive overview of the history of OECD tax changes is presented, and the two pillars of the OECD Digital Tax Project are presented. The new rules affect the application of the global minimum taxation, particularly with a view to scope, calculation of the tax basis, and application of the tax and procedure rules.

This section is extremely timely, with policy changes from April 2022 incorporated and predictions about how these will change in 2023.

Implementation Considerations

INTA's Commercialization of Brands Committee is looking forward to developing resources in the 2022–2023 term that will help trademark and tax professionals.

Conclusion

The IP and Taxation Project Team members thank INTA for the opportunity to contribute to this Report. They remain at the disposal of the Board, CEO, or future teams to answer any questions and provide any further insights about the above-mentioned findings and recommendations.