Singapore’s Tax Incentives for Intellectual Property Rights Explained

The Singapore government has always been keen to promote the country’s role as a haven for innovation in high-tech and emerging industries. A key initiative in this strategy to attract new investment and encourage spending in these industries at a time of slowing economic activity has been the introduction of a range of tax incentives. The Productivity and Innovation Credit ("PIC") Scheme was first introduced in 2010 and further enhanced in 2011 and 2012. It has particular benefits for those who want to invest in or develop Intellectual Property Rights ("IPRs") in Singapore. Smaller companies with an emphasis on innovation have already seen the benefits of the scheme with more than 25,000 having taken advantage of it by March 2012. With tax deductions of up to 400%, options for tax deferral and even cash payouts, the PIC can make a real difference to companies planning for the next phase of investment and growth in Singapore.

What Activities Qualify for Tax Savings?

The PIC scheme offers a number of incentives but the focus of this article is on benefits for IPR related activities, specifically:

- Registration of IPRs i.e. patents, trademarks, designs and plant varieties.
  - This includes professional fees and official fees incurred for the registration of the IPRs, for example fees paid to the Intellectual Property Office Singapore ("IPOS").
  - The fees qualify for the incentives regardless of the outcome of the IPR application.

- Acquisition of IPRs
  - Acquisition of IPRs for use in a trade or business, for example payment made to buy a patented technology for use in a biotech process, or price paid for acquiring a trademark to enhance business branding.
  - EDB approved IPRs and IPRs related to media and digital entertainment content are excluded.

- Research and Development ("R&D") activities
  - Qualifying expenditure includes salaries for R&D personnel or fees to an R&D institute for creating a novel product – it even extends to R&D work carried out overseas if it is done in relation to the taxpayer’s Singapore trade or business.

• Investment in approved design projects
  o This is administered by the Design Council Singapore, and covers costs incurred in creating new products and industrial designs so long as the activities are primarily done in Singapore, for example fees to engage eligible designers for approved design activities done in-house, or fees paid to outsourced eligible design service provider.
  o The applicant must be the sole owner of the new IPRs, whether in the form of a registered design or a patented invention resulting from such design projects.
  o Not all final product designs qualify. Excluded from the scheme are engineering designs, interior, landscape and architectural designs, computing and programming designs, user interface, graphic, multimedia, communication and information designs, bio-design, and process and service designs.

Tax Benefits for IPR related Activity

1. 400% Tax Deduction/Allowance

In 2011, the tax allowance on qualifying activities was increased from a maximum of 150% to 400% on up to $400,000 of annual expenditure. In a further enhancement the government announced that the annual expenditure cap was to be combined. The cap for Year of Assessment (YA) 2011 and 2012 are considered together and 2013 – 2015 are similarly combined as follows.

<table>
<thead>
<tr>
<th>Year of Assessment (YA)</th>
<th>Expenditure Cap per Qualifying Activity</th>
<th>Tax Deduction per Qualifying Activity</th>
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<tbody>
<tr>
<td>2011 and 2012 (Combined)</td>
<td>S$800,000</td>
<td>S$3,200,000 (400% x S$800,000)</td>
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<tr>
<td>2013 to 2015 (Combined)</td>
<td>S$1,200,000</td>
<td>S$4,800,000 (400% x S$1,200,000)</td>
</tr>
</tbody>
</table>

The effect of this is that claimants do not have to wait until they have reached the cap before they can claim the benefit. By planning their strategies ahead of time, they can work on the basis that they could attract up to S$4,800,000 worth of tax reduction per qualifying activity. This cap is per activity, so if a business is seeking to acquire IPRs and investing in substantial R&D the savings could be doubled. The result is the more a company invests across innovative industries, the more they are able to save from tax deductions.

2 For more details on qualifying design activities, refer to http://www.designsingapore.org/for_enterprises/grants/pic_for_design.aspx
3 Extracted from IRAS website: http://iras.gov.sg/irashome/PIcredit.aspx#Unutilised_Trade_Losses_and/or_Allowances_Arising_from_PIC
For a newly incorporated business whose first YA is 2012, the expenditure cap per qualifying activity is S$400,000.

2. **Cash Payout Option**

As an alternative to the tax deduction, a business can convert their qualifying expenditure into a non-taxable cash payout. As a result of positive feedback on this initiative, the 2012 budget increased the rate for cash payout from 30% to 60% from next year. In this scenario up to 30% of S$200,000 can be converted in respect of qualifying activities for both YA2011 and YA2012, each year being a cap of S$100,000. The rate of conversion at 30% gives a maximum cash payout of S$60,000 for both years. A company newly registered whose first YA is YA2012 will enjoy a maximum cash payout of S$30,000 for YA2012. As a result of the changes in the 2012 budget for YA 2013 to YA 2015, businesses can enjoy a maximum cash payout of S$60,000 at the higher rate of 60%. Given the increasing sums of pay out which are available over the next 4 years, companies would do well to start innovating and maximise cash returns, particularly between 2013 and 2015.

To qualify under this scheme, a company must have active business operations in Singapore and employ at least 3 Singapore citizens / permanent residents with CPF contributions made in the last month of the qualifying YA. Excluded from consideration are sole-proprietors, partners under service contracts and shareholders who are directors of the company.

3. **Tax Deferral Option**

For YAs 2011 to 2014, there is an option to defer a dollar of current YA tax for every dollar of PIC qualifying expenditure incurred for the current financial year up to a cap of S$100,000. In this instance, businesses can defer their tax payable in 2012 until 2014. Submission can be made any time after a qualifying expenditure but before the end of a financial YA. This deferment effectively allows businesses to enjoy their tax savings in advance. The resulting cash flow would allow for further investment in IP related activities.

The tax deferral option can be combined with either the tax deduction or the cash payout option.

**Limitations**

Businesses must have owned the IPR for at least 1 year from date of filing of IPR⁴, and at least 5 years from the date of acquisition⁵, to qualify for tax deduction / allowances or the option to convert qualifying expenditure to cash under PIC. Otherwise, the relevant deduction and / or cash payout will be clawed back if the minimum ownership requirement is not met.

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⁴ For registration of IPR
⁵ For acquisition of IPR
Illustrations

Registration of Intellectual Property Rights

Company A, the regional HQ of a global conglomerate, spends S$320,000 in 2014 registering for a portfolio of trademarks and patents. These fees are inclusive of all legal fees, and fees paid to IPOS to register the IPRs. The IPRs were approved and Company A is entitled to a S$1,280,000 tax deduction for YA2014 (400% x S$320,000).

Even if the patent was not approved, Company A is still entitled to its S$1,280,000 tax deduction for YA2014.

Acquisition of IPRs

Company B is an SME in Singapore which had recently acquired 2 international patents in 2011-2012, spending a total of S$140,000. As it is a small company with few clients, it has cash constraints. Seeing that its taxes are low (relatively), tax deductions under PIC will not help to relieve its financial constraints. However, Company B can opt for the Cash Payout Option, where it can then obtain S$42,000 (30% x S$140,000) in rebate.

If Company B had been more aggressive in expanding its IPR portfolio and more patents were acquired in the same period for e.g., S$300,000, it could apply for cash payout of S$60,000 (30% x S$200,000 (maximum cap)) and enjoy a further tax deduction of S$400,000 (400% x S$100,000 (S$300,000 – S$200,000)).

Unutilised Trade Losses / Allowances Arising from PIC

Following from the last example of Company B, any unutilised or under-utilised deduction / allowances given under PIC can be:

- Used to offset against the income of a related Singapore company, or the spouse of a sole-proprietor or partner;
- Carried back to offset against the previous year’s income under the loss carry-back relief system⁶; and
- Carried forward to offset against business income of future YAs⁷.

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⁷ This is subject to shareholding test and business continuity test as per current tax rules
Conclusion

The PIC provides a flexible means for companies to extract real value from the acquisition or development and registration of IPRs. With proper planning, they can also provide a means to free up financing or relieve cash flow restraints in order to give companies the best opportunity to exploit these valuable assets and giving them an advantage over competitors based in other territories.

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