

IFA 2026 MELBOURNE CONGRESS

Subject 1: Taxation of Royalties for the Use of, and Gains From the Sale of, Intellectual Property/Intangibles

Directive for branch reports

General Reporters: Paul W. Oosterhuis / Prof. Dr. Wolfgang Schön

INTRODUCTION

This topic was chosen because royalties, including payments for the use of and for the sale or other transfer of, intellectual property rights (“**IP**”), as well as other protected intangible rights including name, image and likeness rights (“**NIL**”) (collectively and for purposes of this directive, “**IP and Proprietary Rights**” or “**IP/PR**”) is a rapidly growing sector of most economies.

According to the World Intellectual Property Organization (“**WIPO**”), the value of intangible assets held by firms worldwide was up 8% in 2023 when compared with 2022 (after a severe hit due to Covid-19), reaching an overall amount of USD \$62 trillion.¹ In most high-income countries, intangibles account for the better part of firm value, reaching 90% of intangible asset-intensity in the United States.²

Intangibles can be used by a firm in two ways. First, the firm can use the intangibles in their business for production or distribution purposes, i.e., the value of the intangibles flows into the goods and services provided by that business in the market. Second, the business can grant other firms the right to benefit from these intangibles. This is regularly achieved through license contracts and similar arrangements. The World Bank estimates that charges for the use of intellectual property—i.e., royalties—were at a record high of USD \$487 billion in 2023.³ According to WIPO, this value is even higher—exceeding USD \$1 trillion.⁴

In this context, identifying when a payment is properly characterized as involving some form of

¹ WIPO, “Corporate Intangible Assets Grew to USD 61.9 trillion in 2023” (Feb. 28, 2024), accessible at <https://www.wipo.int/en/web/global-innovation-index/w/blogs/2024/corporate-intangible-assets>.

² *Id.*

³ World Bank, “Charges for the use of intellectual property, receipts (BoP, current US\$)”, accessible at <https://data.worldbank.org/indicator/BX.GSR.ROYL.CD?locations=P>.

⁴ David Bonaglia and Sacha Wunsch-Vincent, “Cross-border Payments for the Use of Intellectual Property (IP) surpass 1 trillion US Dollars in 2022, a record high” (Jun. 28, 2024), accessible at <https://www.wipo.int/en/web/global-innovation-index/w/blogs/2024/cross-border-payments-ip/>

transfer of IP/PR and, once so characterized, how it is treated for tax purposes, has become a prominent issue on which governments and tax practitioners often disagree. In particular, the distinction between licenses/royalties on the one hand and services/service fees and other types of transactions can be hard to draw. A similarly prominent divide runs between royalty income being part of ordinary income and capital gains which are often subject to different treatment.

The characterization depends on numerous factors, including whether a particular transaction involves any substantive transfer of IP/PR, whether any substantive transfer of IP/PR rights is appropriately characterized as a transfer of the use of IP/PR or the transfer of the IP/PR itself, and whether the rights transferred are sufficiently interwoven with services or other activities to be ignored as separate income items. These characterizations and treatments are creatures of tax law, but often build on intellectual property law concepts. As a result, the General and Branch Reports will include some background on the intellectual property law concepts to the extent they inform the tax treatment of particular transactions.

In recent years, the topic of royalties has gained more and more prominence particularly in the international arena where the taxation of cross-border payments is at stake. According to WIPO, the total amount of receipts from international trade in IP has risen from USD \$18 billion in 1980 to over USD \$700 billion in 2015, and has risen substantially since then.⁵ The United States alone has seen its receipts from cross-border IP transactions increase by a multiple of 50 between 1982 and 2022, standing today at USD \$120 billion.⁶ It is not surprising that these numbers attract the interest of tax legislators and tax authorities to claim jurisdiction over these items of income. On the other hand, this also explains why multinational entities are said to have an interest in the strategic allocation of IP rights and the ensuing income to specific tax jurisdictions.

GENERAL INFORMATION

General reporters' contact information

The general reporters are Mr. Paul Oosterhuis and Prof. Dr. Wolfgang Schön. Branch reporters who wish to contact the general reporters are invited to do so using the following email address:

Paul W. Oosterhuis, Skadden, Arps, Slate, Meagher & Flom LLP
Paul.Oosterhuis@skadden.com

Professor Wolfgang Schön, Director and Scientific Member at the Max Planck Institute for Tax Law and Public Finance
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⁵ Davide Bonaglia and Sacha Wunsch-Vincent, “Cross-border payments for the use of Intellectual Property” (May 31, 2023), accessible at <https://www.wipo.int/en/web/global-innovation-index/w/blogs/2023/cross-border-payments>.

⁶ *Id.*

What is expected from the Branch Reporters

Two specific tasks should be completed by each branch reporter:

- First, and most importantly, branch reporters need to draft a branch report for the jurisdiction that they represent. The report should be prepared on the basis of the present directives and, as explained below, should focus on the relevant legislation, tax treaty provisions, and guidance produced, in that jurisdiction, by courts and tax administrations as regards the application of provisions related to IP/PR-related royalties in the context of domestic tax law and tax treaties. To the extent that the topics indicated in Annex 1 are not covered by such sources, branch reporters should discuss with the general reporters the degree to which they will be able to make reliable, accurate statements on such topics. The report should be preceded by a **1,000** words “Summary and conclusions” section that will constitute a short “executive summary” of the report.
- Second, as indicated in Annex 2, branch reporters are invited to provide to the general reporter a copy of the relevant legislation, court decisions and administrative pronouncements that are referred to in their branch report. Preferably, such guidance should be available in English and in electronic form. Where, however, the information is not available in English, it should be provided in its original language.

Language and format of the branch reports

While IFA rules allow the branch reports to be submitted in English, French or German, it is clear that branch reports that are in English will reach a much larger audience as branch reports in French and German will not be translated. Also, if a report is submitted in either French or German, summaries/conclusions in English will need to be provided by the branch reporters. It is not permitted to use automated text, artificial intelligence and data mining to produce the branch report.

Each branch report should be readable independently without reference to these directives, which will not be reproduced in the Cahiers. Therefore, even when the directives formulate questions, please do not just directly reply to them, but include an articulated and self-standing answer. The branch reports should not attempt to address all the issues included in these directives since these issues are merely illustrative of issues that may be covered under each subsection. In order to facilitate comparison and to make sure that the same topics are covered, branch reports should, however, follow the general structure of these directives as per the format of the Table of Contents attached hereto as Annex 1.

The maximum length for a branch report is **10,000** words (including footnotes, appendices and bibliography). This, however, does not include the Summary and conclusions section and the text of court decisions and administrative pronouncements that branch reporters are also invited to provide (as indicated above). Branch reporters should allocate that overall limit based on the guidance that is available, in their jurisdictions, on the various topics covered in these directives since it is unlikely that, in any jurisdiction, there will be guidance on all the issues raised in these directives.

In order to facilitate the comparison between the different jurisdictions, branch reporters should follow the various headings and the section numbering found in the Table of Contents attached to these directives as Annex 1. Headings under which a branch reporter has little to contribute should still appear in the branch report, if only to report that there is no guidance on the topic in that jurisdiction.

The branch report should not contain references to page numbers of the report itself.

Relationship between the Description of the Subject and Annex 1: The Description of the Subject that follows the general information part of these directives provides branch reporters with an overview of the subject. Annex 1 contains the Table of Contents and the text in italics that follows each heading in Annex 1 purports to give specific guidelines with respect to the information that the branch reporters are requested to give under that heading, all within the context of the subject as described in the Description of the Subject.

Timetable

Ultimately by the **30th of September 2025**, branch reporters are strongly encouraged to send to the general reporters a close-to-final or final draft of the branch report. The final deadline for submission of the branch reports to the general reporter and the IFA General Secretariat is the **15th of November 2025**. This deadline date must be strictly adhered to, in view of editing and publication schedules. The Cahiers must be made available electronically well in time before the start of the congress. Furthermore, the deadline is important to the general reporter to allow him/her sufficient time to write his/her general report for submission by the **15th of April 2026**. In the case of delays, a branch report may not be considered for drafting the General Report and may not be published.

Addendum

If a branch reporter expects radical changes in his domestic legislation relating to the subject between the date of submission of the report and the publication date thereof, he may, following prior consultation with the General Secretariat, supply an additional one-page Addendum to the report, for publication in the Cahiers, explaining such changes in legislation, but not after the **1st of February 2026**.

Reporter's biographies

The branch reporters are requested to include an abstract with a maximum of 400 words together with a half page biography with a maximum of 300 words and a color photo in portrait style and high resolution which shall be included in the digital publication of the Cahiers. Full personal biographies will not be printed, but shortened at IFA's discretion.

Publication of the Cahiers

The printed publication of the Cahiers consists of the General Reports of both Subject 1 and

Subject 2, the topical and special reports (if existing), and the summary and conclusions of all branch reports. The digital publication consists of the General Reports, the topical and special reports (if existing), and all branch reports, including biographies, abstracts, and directives. The digital publication will be made available through the secured section of the website of IFA, and the website of its sister organisation, the IBFD. The digital publication will contain easy access to all reports, making it more available for its audience. It will be featured with a user-friendly search function, and all reports can be downloaded for offline consultation.

Meetings with the general reporters

The following preparatory meetings will be hosted online and onsite:

- Three Online Meetings in May, July, and September 2025.
- Sunday 5 October 2025, 11-13hrs (Portugal time) – onsite meeting at the venue of the IFA 2025 Lisbon Congress. Please note that this meeting will not be streamed online.

A summary of the discussion during each preparatory meeting will be distributed to all branch reporters via email.

DESCRIPTION OF THE SUBJECT

Generally, the subject will cover the tax treatment of transactions involving the potential transfer of the types of IP/PR that are capable of being transferred for value separately from the transfer of a broader trade or business. That includes patents, copyrights, trademarks, franchise rights, trade secrets and know-how (IP) as well as name, image and likeness rights (NIL) and indigenous knowledge, but does not include other intangibles like goodwill, going concern value, assembled workforce, customer relations or other potential forms of IP/PR that are only transferred with a broader trade or business transfer transaction.

An introductory section of the General Report will focus on the general non-tax law treatment of transactions that potentially involve the transfer of IP/PR in some fashion. Given the high degree of international coordination (e.g. for patents under the roof of the WIPO) or regional harmonization (e.g. for patents, trademarks etc. in the context of the EU) it might make sense to invite a dedicated report on international standards for the protection and the transfer of IP/PR.

Branch reporters will be requested to identify the main avenues of the general non-tax law treatment of IP/PR in ways that are relevant to various aspects of local branch country tax treatment of IP/PR transactions. Against this background, national reporters will also emphasize to what extent their local non-tax law deviates substantially from international agreements.

The central element of the analysis is the characterization of a transaction under the relevant domestic and international tax law with a special emphasis on the interpretation and application of tax treaties. The tax consequences can be quite dramatic and they will not only differ between countries but also between domestic rules and treaty provisions. The discussion will take into account from the start the fact that there is no uniform treatment of IP/PR rights even at the “basic” domestic level. Therefore it is of high importance to take an analytical approach and discuss separately the tax treatment of IP/PR-related domestic transactions for domestic tax purposes, the tax treatment of cross-border transactions under domestic legislation, and the tax treaty implications for cross-border transactions. The intricate issues involved include:

- License v. sale. License fees are regularly taxed as ordinary income, but depending on domestic tax law, the gain from a sale may be tax-free, subject to specific capital gains treatment of part of ordinary income.
- Business assets v. privately-held (investment) assets. Royalties may be qualified and treated differently depending on the context in which the relevant IP/PR has been acquired or held.
- Service fee v. royalty. Depending on domestic tax law and tax treaty law, this distinction may be relevant for withholding taxation. This is also an issue that is heavily discussed from a policy point of view in the international arena.
- Mixed situations, such as embedded royalties, “bundles” of rights to IP/PR being subject to an umbrella license agreement, etc.

Last but not least, one might think about normative consequences from the findings coming from the country reports. These findings might feed into the current debate on the international allocation of taxing rights where one of the focal points in the eternal conflict between residence countries source countries is—among other topics—the justification of withholding taxes on royalties, capital gains and service fees against the background of Articles 7 and 12 of the OECD Model Tax Convention⁷ and the broadening of these provisions under the United Nations Model Tax Convention.⁸ Thus, a wider policy outlook could and would round off the panorama of the national reports and the analytical part of this General Report.

⁷ OECD, *Model Tax Convention on Income and Capital 2017* (Nov. 21, 2017) (the “**OECD Model Treaty**”).

⁸ United Nations, *Model Double Taxation Convention Between Developed and Developing Countries 2021* (Sep. 2021), Articles 12, 12A, 12B, and 13.

Annex 1

TABLE OF CONTENTS OF THE BRANCH REPORTS

Summary and conclusions

The report should be preceded by a “Summary and conclusions” section that will constitute a short “executive summary” of the report. This summary should not exceed **1,000** words and should logically be prepared after the branch report has been completed. The Summary and conclusions section shall be printed in the Cahiers.

Part one: Introduction and legal background

1.1 How different types of transferable IP/PR are protected under non-tax law

Please describe how patents, copyrights, trademarks, franchise rights, trade secrets, know how, NIL, and indigenous knowledge are protected under non-tax law.

1.2 Types of transactions involving the transfer of IP/PR

Please describe the treatment of the following transactions under non-tax law:

- *1.2.1. Transfers of the use of IP/PR where the transferor retains some meaningful right to use the IP /PR (“**Licensee Transactions**”), specifically:*
 - *Transfers of exclusive or non-exclusive geographic rights (i.e., rights which allow for the use of IP/PR only within specific countries or regions)*
 - *Transfers of exclusive or non-exclusive “field of use” rights (i.e., rights which allow for the use of IP/PR only for specific permitted activities or purposes)*
 - *Transfers of rights for a limited period of time*
- *1.2.2. Transfers of the ownership of IP/PR, where the transferor gives up all rights for future use of IP/PR (“**Sale Transactions**”):*
 - *Please describe the impact of contingent consideration (e.g., consideration the size of which depends at least in part on the revenues of the licensee (or similar metric)).*
 - *Please describe the impact of contractual rights of reversion (i.e., a contractual clause which allows rights to IP/PR to revert to the licensor upon a specified occurrence).*
 - *Please describe the impact of rights of transferor to sue for infringement*

1.3 Determining whether transactions involve transfers of rights to IP/PR or something else

Please describe, using examples, whether the following transactions would be considered to involve transfers of rights to IP/PR or another type of transaction (and what factors may influence such analysis):

- *1.3.1. Transfers of tangible property/inventory with rights to retransfer or otherwise use embedded IP rights (e.g., patent, copyright or trademark)*
- *1.3.2. Transfers of software with limited rights to copy but no re-sale rights*
- *1.3.3. Transfers of know-how provided in the form of technical services*
- *1.3.4. Use of NIL as part of performing services*

Part two: Domestic law principles for taxation of purely domestic IP/PR transfers

2.1. Characterizing transactions for tax purposes

Please describe, using examples,

- *2.1.1. Types of transactions that are treated as transfers of IP/PR (as compared to treatment as sales of goods, treatment as services, software leases, etc.)*
- *2.1.2. Types of IP/PR transfers that give rise to royalty income and expense*
- *2.1.3. Types of IP/PR transfers that give rise to gain or expense on the sale of IP/PR.*

2.1.4. Please expand in particular on the circumstances in which transactions involving IP/PR transfers will be treated as giving rise to royalties vs. giving rise to services payments.

2.2. Timing of income recognition

Please describe the timing of income recognition for IP/PR transactions involving

- *2.2.1. Lump sum payments*
- *2.2.2. Advance contingent payments*
- *2.2.3. Periodic contingent payments*
- *2.2.4. Noncontingent payments.*

2.3. Tax treatment applicable to types of income from IP/PR transfers

2.3.1. Please describe the ordinary tax treatment of royalty income.

2.3.2. *Please describe any special regimes for taxing royalties (e.g., patent boxes).*

2.4. Treatment of payments by the transferee of IP/PR

2.4.1. *Please describe any deduction or amortization for lump sum and advance and periodic contingent payments for the use of IP/PR.*

2.4.2. *Please describe any deduction or amortization for lump sum and periodic contingent payments for the transfer of IP/PR.*

2.5. Treatment of transactions with bundled IP/PR

2.5.1. *Please describe the treatment of transfers of patented, etc. inventory combined with rights to resell.*

2.5.2. *Please describe the treatment of transfers of software or similar IP when combined with the provision of related services.*

2.5.3. *Please describe the treatment of transfers of rights to use NIL rights when combined with the provision of related services.*

Part three: Domestic law principles for the taxation of cross-border transactions

3.1. Source of income from payments in IP/PR transfer transactions

3.1.1. *Please describe the source rules applicable to contingent and non-contingent royalty income under your domestic tax legislation.*

3.1.2. *Please describe the source rules applicable to contingent and non-contingent gain on sale income under your domestic tax legislation.*

3.2. Nexus for taxation of income from cross-border IP/PR transfer transactions

3.2.1. *Please describe the nexus rules applicable to payments to resident taxpayers and permanent establishments of non-resident taxpayers in the cases of (i) royalty income and (ii) gain on sale income.*

3.2.2. *Please describe the nexus rules applicable to payments to other non-resident taxpayers (i.e., not permanent establishments of non-resident taxpayers) in the cases of (i) royalty income, including applicable withholding tax rates and (ii) gain on sale income, including applicable withholding tax rates.*

3.3. Special rules that characterize or otherwise treat cross-border transactions differently than purely domestic transactions

Please describe any further special rules under domestic tax legislation relating to the use

or transfer of IP/PR that characterize or otherwise treat cross-border transactions differently than purely domestic transactions.

Part four: Application of IP/PR-related treaty provisions to Royalties

4.1. Treaties covering royalty income

To what extent has your country concluded tax treaties covering royalties?

4.2. Wording of treaty provisions covering royalty income

Does the language of treaties concluded by your country follow Art.12 OECD Model Tax Convention/Art.12 UN Model Tax Convention/Art.12 US Model Tax Convention? To what extent and how and in which cases does the wording of all or specific tax treaties concluded by your country deviate from those model rules? Consider providing a table depicting such deviations if suitable.

4.3. Scope of royalty articles

What is the material scope of the treaty provisions related to royalties in your country? Do the royalty treaty provisions cover only a specific set of IP/PR transactions (licenses of copyrights, patents, trademarks, and other defined intellectual property rights) or transfers of rights to use intangibles more generally? Please describe court and administrative practice that might be of interest from a comparative perspective?

4.4. Nexus for source taxation of royalty income

Are there specific provisions on nexus with regard to royalty payments in your country's tax treaties?

4.5. Withholding taxation of royalties

Which policies does your country follow in its treaties with regard to withholding taxation on royalties? Please indicate to what extent treaties concluded by your country contain specific withholding tax rates for specific items of royalty income. If relevant, please include a table of such rates.

4.6. Technical assistance and technical services

Please describe any special provisions or court and administrative practice in your country regarding technical assistance and technical services relating to transfer or IP/PR?

4.7. Royalties and service fees

Please describe court and administrative practice in your country concerning the borderline between royalties and service fees under tax treaties?

4.8. Licenses and sales of goods

Please describe court and administrative practice in your country concerning the borderline between royalties and sales of goods under tax treaties?

Part five: Limitations on the deduction of payments for IP/PR transfers paid to non-residents

Please describe any limitations on the deduction of payments for IP/PR transfers paid to non-residents. Please include in your answer descriptions of such limitations

- *5.1. A discussion of the related party vs. non-related party rules, as applicable and*
- *5.2. A discussion of the rules applicable to treaty recipients vs. non-treaty country recipients, as applicable.*

Part six: Case studies

Please describe the tax considerations applicable to the following scenarios (for both parties involved in the relevant transaction), with a specific focus on characterization for tax purposes. If relevant, please describe whether any additional considerations would arise in a cross-border transaction.

- *6.1. Exclusive license to manufacture and sell patented products globally*
- *6.2. License of accounting software to be customized and used in licensee's business accounting systems*
- *6.3. License of trademark to use on manufactured products distributed around the world*
- *6.4. License of right to use pro athlete's NIL on products sold globally*
- *6.5. License of cloud computing capacity for data storage and analysis with licensee ability to download analysis on its own servers*

Annex 2

DOCUMENTS TO BE PROVIDED

Branch reporters are invited to provide to the General Reports a copy of any of the following documents which are referred to in their branch report, in an editable format, preferably in MS Word (.docx).

- Interpretive provisions found in a treaty itself, in a protocol to a treaty, in a memorandum or letter of understanding between the Contracting States or in any other instrument prepared in connection with a treaty, including an instrument prepared by one Contracting State and endorsed by another Contracting State.
- Court decisions, indicating whether the decisions are final or not
- Publicly available mutual agreements
- Publicly available decisions by any administrative review board that may be part of or independent from a tax administration (e.g. assessment board or appeal board that would not constitute a court).
- Legislative texts, such as an interpretive provision found in a statute, regulation or decree.
- Circulars, rulings or other official administrative pronouncements by the tax authorities.
- Any other similar document that can be considered to be an official statement with respect to the subject of this report originating from that jurisdiction.

Preferable, these documents should be provided in English and in electronic form as the objective is to make such information available on the IFA website. Where, however, the information is not available in English, it should be provided in its original language.

The documents provided should not exceed 200 pages (in print form). Branch reporters of jurisdictions where documents referred to in the branch report would greatly exceed that limit are invited to exercise discretion in choosing which documents to provide and to send what they consider as likely to be the most useful and influential documents for other countries (e.g. for judicial decisions, those that are most recent or rendered by the highest courts).