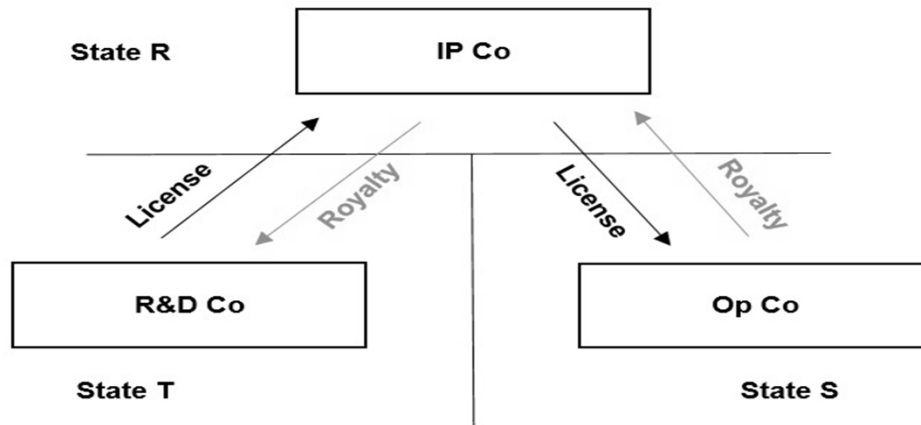


Substance in International Tax Law: DEMPE Approach, Substantial Activity Requirement and Beneficial Ownership

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IP Companies as base model



Analysis of three main issues

- Entitlement to the intangible-related returns:
 - DEMPE Approach → *Value Creation as Substance* (“important functions”)
- Preferential taxation/no or only nominal taxation of the income derived from the IP asset:
 - Substantial Activity Requirement (Modified Nexus Approach or Core Income Generating Activities) → *Value Creation as Substance* (“Nexus ratio”; “conducting research and development”)
- Elimination/reduction of withholding taxes on received royalties:
 - Beneficial Ownership Test → *Forwarding Approach* (“right to use and enjoy the royalties unconstrained by a contractual or legal obligation to pass on the payment received to another person”)

Research Question

What are (if any) the similarities and differences between these substance requirements?

Preliminary Conclusions

- Different understanding of Value Creation under the DEMPE Approach (focus on strategic R&D activities) compared to the Modified Nexus Approach (focus on operative R&D activities)
- However, understanding of Value Creation under the DEMPE Approach may be relevant for the Core Income Generating Activities → inconsistencies within the Substantial Activity Requirement
- Beneficial Ownership Test: Not an activity based concept (focus on the application of income) → at odds with tax policy orientation post-BEPS; possible contradiction to the PPT where substance may disprove the subjective element