R&D and innovation

An IP strategy for your company: Create and generate value through innovation and intellectual property

R&D and innovation are inextricably wound into the DNA of the Fast50 companies. The intellectual property (IP) of technology companies is comparable with the fixed assets of a conventional production company and often represents the most important part of the business' assets. This means that having a carefully thought-through IP strategy to protect and enhance the company's innovative capabilities is crucial. We spoke with Inge Timmerman and David Derhaeg of Deloitte Fiduciaire.

What does this mean in practical terms?

Inge Timmerman: First and foremost, a company needs to have a clear picture of all the IP it has in its portfolio. By this we don't just mean patents or brands, but also the knowhow the company has developed, as well as any copyright on software and so on.

Step two is to ensure that the existing IP is properly protected. In practical terms, there are various ways of creating that protection. Each method has its own characteristics, pros & cons and costs. Conventionally, we think about taking out a patent or registering a trademark. But protecting IP goes further than this and involves delineating confidentiality, using non-disclosure agreements (NDAs) and making arrangements in relation to the ownership of IP with employees, subcontractors and suppliers. As part of commercial collaboration, it is quite possible to make the other party in the arrangement acknowledge contractually that any invention is your property. This obliges the other party to keep the invention secret and it also waives any right to exploit what is effectively your idea. Professional assistance in drafting and negotiating contracts is essential which is why it is the specialism of our commercial law team.

Protection costs time and money?

David Derhaeg: That's true, but innovation, development and protection for your invention are also heavily supported by the government. Having these support measures available can have an effect on your IP strategy, too. Our thoughts go first to the range of subsidies in place for R&D, which are granted mainly by the IWT. Also we mustn't forget the various tax-related incentives available.

David Derhaeg

"Intellectual property rights and how to protect them can be a defining factor in the growth, valuation and acquisition of a company."

David Derhaeg, Partner, Deloitte Fiduciaire

Under specific conditions, investments in R&D are eligible for an investment deduction or tax credit under which 4 to 7% of the amount invested can be saved. The staffing costs of R&D employees can also be brought into the calculation, which increases the potential benefit substantially. Where the option is taken for a tax credit that cannot be offset with company tax, it may be reimbursed in cash after 5 years.

Inge Timmerman: Even more attractive is the partial exemption from PAYE (Pay As You Earn) tax on the salaries of R&D staff who have eligible qualifications. This can enable a company to save up to 20% on the salary costs of its R&D staff.

Finally, we mustn't forget the tax deduction available on revenue from patents, under which profits from patents are taxed at a rate of 6.8% instead of 34%.

Are these measures also available for SMEs and start-ups?

Inge Timmerman: Absolutely. Until now, tax deductions for revenue from patents were difficult to apply because the law required the company to have its own R&D centre. The recovery plan introduced by the Di Rupo government relaxes this requirement specifically for SMEs from the 2014 tax year onwards, so that SMEs and start-ups that outsource much of their R&D will also be able to benefit from this measure.

Does it make sense to put R&D and IP into a separate company?

David Derhaeg: This can be a useful exercise in certain specific cases. Some businesses will want to ready themselves for an ownership change, either externally or perhaps, in a family firm, internally. Here, once again, the company's IP has a role to play as a 'value in itself' and as a 'value creator for the future'. As part of its preparations for a transfer at a later stage (say, within the family), a mature family company will classically hive off its industrial fixed assets with an eye to the business being transferred to successors/acquirers, with the other fixed assets going to family members who will not play an active role in the company. The same strategy can be used for IP in parallel with the fixed assets. Structuring IP and R&D in advance into a separate company enables the business owner to develop the best scenario at a later stage.

Of course everything depends on the specific facts in each case. From a fiscal or subsidy point of view it may be of greater interest in some situations to keep operations, R&D and IP all within the same company.

This means it is essential to have a clear view of your company's future when outlining a strategy on IP. Intellectual property rights and how to protect them can be a defining factor in the growth, valuation and acquisition of a company. An IP strategy tailored to the business' individual characteristics and expectations for the future is a challenge for every entrepreneur.


Inge Timmerman