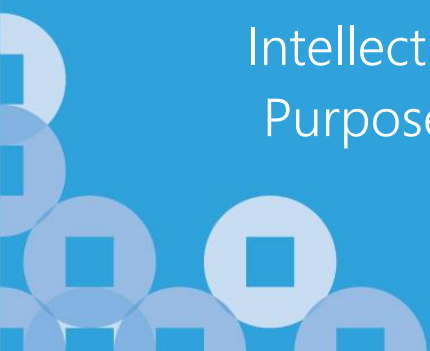




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IRAS e-Tax Guide

Intellectual Property Rights Valuation Report for
Purposes of Section 19B of the Income Tax Act



Intellectual Property Rights Valuation Report for Purposes of Section 19B of the Income Tax Act

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Table of Contents

	Page
1 Aim	1
2 At a glance	1
3 Glossary	2
4 Introduction	3
5 Submission of Valuation Report	3
6 Information to be provided in a Valuation Report	5
7 Record-keeping	9
8 Contact information	9
9 Annex - Frequently Asked Questions.....	10

1 Aim

1.1 This e-Tax Guide provides guidance on:

- a) when an independent valuation report on qualifying intellectual property rights (“IPRs”) is to be submitted for the purposes of Section 19B of the Income Tax Act (“ITA”); and
- b) the relevant information to be provided in the valuation report.

1.2 The e-Tax Guide is relevant to a company¹ that has incurred capital expenditure in acquiring any qualifying IPR for use in its trade or business, and qualifies for writing-down allowances (“WDA”) on that capital expenditure.

1.3 In relation to the above, this e-Tax Guide provides information for a company and valuer and explains IRAS’ expectations. It is not intended to provide guidance on how IPRs are to be valued or guidance on valuation approaches and methods.

2 At a glance

2.1 A company may claim WDA on capital expenditure incurred in acquiring a qualifying IPR, subject to the conditions under Section 19B of the ITA.

2.2 Where the value of the capital expenditure exceeds certain thresholds as determined by the Comptroller, a company is required to submit an independent valuation report to the Comptroller. The valuation report should include, minimally, the following information:

- a) Purpose of valuation
- b) Definition of value
- c) Date of valuation
- d) Type(s) of IPR being valued
- e) Background of the company’s business and value drivers
- f) Valuation approaches and methods
- g) Valuation assumptions and inputs
- h) Valuation conclusion
- i) Information relied on in determining the valuation
- j) Material risks
- k) Disclaimers and limitations
- l) Terms of engagement
- m) Credentials of Valuer

¹ WDA is also available to partners of a partnership on capital expenditure incurred by the partnership in acquiring qualifying IPRs, subject to the conditions under Section 19B of ITA.

3 Glossary

3.1 Appropriate Valuer

This refers to a valuer who is an independent party and has the relevant qualifications and experience as follows:

Independence – The valuer and the firm that the valuer belongs to are not related to the transferor (i.e. person from whom the IPRs are being acquired) or transferee of the IPRs, and have no interest in the acquisition/ disposal of the IPRs. If the valuer is also undertaking other assignment(s) or had undertaken other assignment(s) for the company within the past two years of the date of the valuation report, the valuer must disclose the relationship, and demonstrate that there is no conflict of interest between the valuation assignment and the other assignment(s) undertaken.

Qualifications – The valuer must possess the relevant qualifications. Full particulars of the qualifications and the professional institute that awarded the qualifications have to be provided in the valuation report. Examples of a valuer who possesses the relevant qualifications are Chartered Valuer and Appraiser, Chartered Financial Analyst and Chartered Accountant.

Experience - The valuer has experience in valuing similar types of IPRs or IPRs in similar industries.

3.2 Capital expenditure qualifying for WDA

It does not include legal fees, registration fees, stamp duty and other costs related to the acquisition of the IPRs.

3.3 Related party

With regard to the requirement to submit a valuation report, the company and the transferor are considered to be "related parties" where one person, whether directly or indirectly, has the ability to control the other, or where both of them, whether directly or indirectly, are under the control of a common person.

4 Introduction

4.1 Under Section 19B, a company may claim WDA on the capital expenditure incurred on the acquisition of IPRs for use in its trade or business.

4.2 For the purpose of Section 19B, the qualifying IPRs² are:

1. Patents;
2. Copyrights;
3. Trademarks;
4. Registered designs;
5. Geographical indications;
6. Lay-out designs of integrated circuit;
7. Trade secrets or information with commercial value; and
8. Plant varieties.

4.3 Section 19B specifically excludes the following categories of information from “copyrights” and “trade secrets or information with commercial value”:

- a) information of customers of a trade or business, such as a list of those customers and requirements of those customers, gathered in the course of carrying on that trade or business;
- b) information on work processes such as standard operating procedures, other than industrial information, or technique, that is likely to assist in the manufacture or processing of goods or materials;
- c) compilation of any information as described in paragraph (a) or (b); and
- d) such other matter as the Minister may by regulations prescribe.

5 Submission of Valuation Report

5.1 Amount qualifying for WDA

5.1.1 The amount qualifying for WDA is the capital expenditure incurred on acquiring qualifying IPRs, where it does not exceed the price at which the IPRs could have been acquired in the open market on the acquisition date. Otherwise, the open market price of the qualifying IPRs may be used as the amount qualifying for WDA.

² For more details on the above categories of IPRs, please refer to website of the Intellectual Property Office of Singapore (IPOS).

- 5.1.2 The Comptroller requires a valuation of the IPRs to be made by an appropriate valuer to determine the open market price of the qualifying IPRs when:
- a) the capital expenditure incurred in acquiring the IPRs is equal or greater than \$0.5 million for a related party transaction; or
 - b) the capital expenditure incurred in acquiring the IPRs is equal or greater than \$2 million for an unrelated party transaction.
- 5.1.3 Where the IPRs are acquired as part of a business acquisition or in combination with other assets, a separate valuation of IPRs may be required to arrive at the value directly attributable to the qualifying IPRs for purpose of the WDA. In this regard, the valuation report submitted will need to specifically state that the valuation is carried out for this purpose.
- 5.1.4 Given the unique nature of IPRs, there may not be readily available information on the price at which the IPRs could have been purchased or disposed of in the open market. However, if the company is able to obtain such information or evidence, the Comptroller may be prepared to consider them in lieu of an independent valuation report.
- 5.1.5 Where a company is required to submit an independent valuation report due to the thresholds stated in paragraph 5.1.2 above, the report must be submitted together with a prescribed Declaration Form³, at the time of filing of its income tax return for the first year of assessment in which the company qualifies for WDA.

5.2 Computing charge on disposal of IPRs

- 5.2.1 In computing the charge on disposal of a qualifying IPR, where the disposal value is less than the open market price of the IPR on the date of disposal, the Comptroller may treat the open market price as the price at which the IPR is disposed of.
- 5.2.2 For this purpose, the company may be required to submit a valuation report to the Comptroller. If so, the company has to engage an appropriate valuer to determine the open market price of the IPR and submit the valuation report to the Comptroller upon request.

³ Declaration for the Purpose of Claiming Writing-Down Allowances for Intellectual Property Rights (IPRs) under Section 19B of the Income Tax Act. This Declaration Form can be downloaded at <https://www.iras.gov.sg>.

6 Information to be provided in a Valuation Report

6.1 The valuation process should be adequately explained and documented in the valuation report. A valuation report should:

- a) provide adequate information to enable the reviewer to understand the valuation process, replicate the valuation process and understand how the valuation conclusion is arrived at; and
- b) objectively demonstrate that the valuation process undertaken is in accordance with internationally accepted valuation standards.

6.2 The valuation report should include the following information, where applicable:

6.3 Purpose of valuation

6.3.1 The valuation report should state the purpose for which the valuation is carried out. Where it is not prepared for the purpose of valuing qualifying IPRs under Section 19B, the Comptroller may request for another valuation, unless the valuation of qualifying IPRs can be reliably determined based on the information provided in the report.

6.4 Definition of value

6.4.1 For the purpose of Section 19B, the definition of value is the open market price. Open market price denotes the arm's length price at which an asset would change hands, on the date of valuation, between a willing buyer and willing seller.

6.5 Date of valuation

6.5.1 The valuation date should be close to the date of the material transaction (i.e. the acquisition of the IPR for which WDA is being claimed) so that it is representative of the market conditions as at the date of the material transaction. The valuation should take into account all relevant information which may materially affect the valuation, up to the date of the material transaction.

6.6 Types of IPRs being valued

6.6.1 The types of IPRs being valued must be within the scope of IPRs as provided for under Section 19B. Please refer to paragraph 4.2 for qualifying IPRs.

6.6.2 If a valuation report is prepared for intangibles that include non-qualifying items such as customer lists, customer data, customer relationships, and information used in marketing and selling goods or services to customers, there should be a separate analysis showing how the value for the qualifying IPRs is arrived at.

6.7 Background of the company's business and value drivers

6.7.1 Generally, a valuation report should, where applicable, include the following analysis to support revenue forecast and assumptions used in valuing the IPRs:

- a) Company's background;
- b) Company's products and services;
- c) Profiles of its customers and competitors;
- d) Historical financial performance;
- e) Economic and market outlook of the products or services to which the IPRs relate; and
- f) How the IPRs contribute to the value of the business.

6.7.2 In addition, where there are different IPRs which generate revenues for different business segments, a separate analysis of each business segment should be included in the valuation report.

6.8 Valuation approaches and methods

6.8.1 The appropriateness of the valuation approach and method generally depends on the nature of the IPRs, the strength and weakness of the possible valuation approaches and methods, and the availability and reliability of information applicable to the method.

6.8.2 As there could be limitations in a particular valuation approach or method being used, more than one approach or method may be used in the valuation of the IPRs to corroborate the valuation outcome.

6.8.3 The valuation report should explain the choice of valuation approach and method adopted and the appropriateness of the approach and method in the context of the company and the IPRs being valued.

6.9 Valuation assumptions and inputs

6.9.1 The valuation arrived at is dependent on the assumptions and inputs used. The valuation report should show supporting information to substantiate the reliability and reasonableness of the assumptions and inputs used, examples of which are:

a) Economic life of the IPRs

The valuation report should show the relevant analysis of the legal, technological, functional and economic factors in arriving at the economic life of the IPRs, as appropriate.

b) Revenue / Profit projections

The relevant analysis supporting the basis of the projections should be provided in the valuation report. Where there are risks or uncertainties in factors affecting the projections, information on such factors should be included in the valuation report.

c) Royalty rate

The valuation report should provide the relevant analysis to justify the royalty rate used in the valuation of IPRs, if applicable. Where adjustments are made or not made to the royalty rate obtained from comparable licenses, the basis should also be included in the valuation report.

d) Discount rate

The workings and the basis of arriving at the discount rate should be provided in the valuation report.

6.10 Valuation conclusion

6.10.1 The valuation report should explain how the conclusion is arrived at. While the valuation may produce a range of values under different valuation approaches and methods, the valuer must determine a point value for the purpose of Section 19B claim and state the basis for arriving at the point value.

6.11 Information relied on

6.11.1 Information on which the valuer relied on, as well as its source, should be specified clearly. This is particularly necessary if the company commissioning the valuation report is the source of the information. The valuer should make available any empirical evidence that is relied upon in the valuation report.

6.12 Material risks

6.12.1 If the valuer identifies material risks underpinning the valuation, the valuer should describe the risks in sufficient detail to show that they have been given due consideration.

6.13 Disclaimers and limitations

6.13.1 If there are any disclaimers and limitations that affect the valuation process or the value, the valuer should identify them and explain the effect in the valuation report.

6.14 Terms of engagement

6.14.1 The company commissioning a valuation must be able to demonstrate that it had provided clear instructions to the valuer. Instructions to the valuer should be documented in the letter of engagement.

6.14.2 As part of the valuation report, it is expected that the valuer specifies the terms of engagement for the conduct of the valuation, and to include the terms of engagement as part of the valuation report.

6.15 Credentials of Valuer

6.15.1 The valuation report should provide information relating to the following:

- a) Name and qualifications;
- b) Valuer's experience in valuing similar types of IPRs or IPRs in similar industries; and
- c) Any relevant licences, registrations and/or professional memberships.

6.15.2 If the valuer is also undertaking other assignment(s) or had undertaken other assignment(s) for the company within the past two years of the date of the valuation report, the valuer must disclose the relationship, and demonstrate that there is no conflict of interest between the valuation assignment and the other assignment(s) undertaken.

7 Record-keeping

- 7.1 Companies should maintain sufficient records to substantiate their claim for WDA including:
- a) agreements and records relating to the acquisition and disposal of the IPRs, as applicable; and
 - b) contemporaneous documents relating to the inputs and assumptions used in the valuation of IPRs, such as supporting documents used to derive the revenue projections and discount rate.
- 7.2 These supporting documents and records are to be retained for 5 years from the relevant year of assessment as required in Section 67 of the ITA, and be provided to IRAS upon request.

8 Contact information

- 8.1 If you have any enquiries or need clarification on this e-Tax Guide, please call the Corporate Tax helpline at 1800-3568622 or email to ctmail@iras.gov.sg.

9 Annex - Frequently Asked Questions

9.1 Paragraph 2.2(e) and 6.7 of the e-Tax Guide state that the valuation report should include information on the “*background of the company’s business and value drivers*”. Does “the company” refer to the transferor or transferee of the qualifying IPRs?

The “company” in this instance may refer to the transferor, which is the original owner of the IPRs, and/or the transferee, which is the company acquiring the IPRs, depending on the relevance of the information in valuing the IPRs. As an example, if the assumptions used in the valuation, such as revenue forecasts and profit projections were based on the transferor’s historical performance, the background of the transferor’s business and value drivers should be provided.

9.2 Would IRAS accept a valuation report that is not specifically prepared for the purpose of Section 19B claim?

IRAS would consider such a valuation report if it contains sufficient relevant information as per the guidance in this e-Tax Guide such that the valuation of the qualifying IPRs can be reliably determined for the purpose of Section 19B claim.

An example of a valuer’s report that IRAS would not accept is a Purchase Price Allocation report for financial reporting purpose which merely indicates the value of the IPRs without supporting information on how the valuation is arrived at.

9.3 Paragraph 6.6 of the e-Tax Guide states that there should be a separate analysis showing how the value for the qualifying IPRs is arrived at. Does this mean that there is a requirement to prepare separate valuations for different categories of IPRs?

Paragraph 6.6 applies to cases where the scope of IPRs covered in the valuation is broader than the definition of qualifying IPRs. For example, if the valuation undertaken is on marketing intangibles comprising of a trademark (qualifying IPRs) and customer data and relationships (non-qualifying IPRs), there should be a separate analysis of the trademark value showing the inputs and approach used to arrive at the value.

As another example, in the case where, the valuation covers two different categories of qualifying IPRs, technology and trademark, the valuation report is expected to show separate valuations for each category as the value drivers and valuation methods are likely to be different for technology vis-a-vis trademark.

9.4 Must the terms of the valuation engagement be disclosed in the valuation report in entirety?

Fees charged by the valuer as reflected in the terms of the valuation engagement need not be disclosed in the report.