

# TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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## 287 | Intellectual Property

Intellectual property is often overlooked or treated as one big black box.

### Intellectual Property

Over the next two episodes let's look at intellectual property and how it is taxed. In this episode Melissa McGrath of Coleman Greig Lawyers will talk about intellectual property as such and then focus on its taxation ep 288.

Here is what we learned but please listen in as Melissa explains all this much better than we ever could.

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### Intellectual Property

It is difficult to grasp what exactly intellectual property is. Think of it as a right. It is only property as such to the extent you have a right to it. And this right establishes a monopoly over a specific, narrowly defined area.

There are different forms of intellectual property. IP Australia administers some of them (trademarks, patents, registered designs and plant breeder's rights). Some rights interface with Australia's competition watch-dog, the ACCC. And then some rights have no administrator as such.

Some rights are governed by specific laws. Others just by court decisions, called 'common law'. All rights sit within the general legal framework.

### Specific IP Laws

Some types of intellectual property have their own law that regulates their protection. These laws specifically identify the right, the exclusivity the right provides and how to enforce it and hence make it easier to protect these rights.

Trade Marks Act 1995

Patents Act 1990

Copyright Act 1968

Designs Act 2003

Plants Breeder's Rights Act 1994

Business Names Registration Act 2011

You can't register a copyright but you can protect it if clearly identified.

### Other IP Rights

Other IP rights are not governed by a specific law, for example:

Domain names  
Get up  
Know How  
Confidential Information  
Social Media  
Influencers

There are no proprietary interests in a domain name. A registered domain name does not give you any protection against somebody else registering an almost identical domain. You need a trademark to protect your domain.

Get up is the whole external appearance or look-and-feel of a product, including any marks or other indicia used, governed by common law.

Apart from domain names, you can't register these rights, but might be able to protect them otherwise (common law, legal framework) if clearly defined.

### **The Four Pillars of IP**

The most common forms of intellectual property people try to protect are trademarks, copyright, patents and registered designs. Melissa McGrath refers to them in this episode as the four pillars of IP.

#### **Trade marks**

You can register a trade mark for a word, device, colour, shape or sound. A trademark gives you an exclusive right for a class. A domain or business name doesn't.

Trade marks are all about exclusivity. A trademark will override a business name. So just because you have registered a business name doesn't mean that somebody else can't register a trademark for exactly the same thing and try and push you out.

You might have some common law rights since you used it first and can demonstrate reputation, but why put yourself into that position where you need to defend yourself? Trademark your brand.

Registering your own trademark is much easier than for example registering a patent. You might be able to do your trademark registration on your own with help from the IP Australia website.

For accountants and advisers class 35 and 36 are usually the most relevant classes. They cover for example:

#### **Class 35**

Management accounting – Accountancy Accounting – Auditing of accounts – Business accounts management – Chartered accountancy business services – Computerised accounting – Cost accounting – Drawing up of statements of accounts – Forensic accounting – School fee accounting services – Tax advice (accountancy) – Tax assessment (accountancy) consultancy – Tax assessment (accountancy) consultancy – Tax assessment (accounts) preparation – Tax consultations (accountancy) – Tax planning (accountancy) – Tax services (business management and accountancy services) – Taxation (accountancy) advice – Preparation of accounts – Preparation of statements of accounts – Cost management accounting – Provision of information relating to accounts (accountancy) – Tax consultancy (accountancy) – Tax return advisory (accountancy) services – Taxation (accountancy) consultancy

#### **Class 36**

Advice on finance for retirement – Advice relating to investment for retirement – Advice relating to investments – Advice relating to pensions –

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Financial advice – Financial advice relating to taxation – Income tax financial advice – Provision of tax advice (financial) – Tax advice (financial) – Provision of current accounts – Trust advice – Account debiting services – Savings account services – Bank account services – Budget account services – Cheque account services – Issuance of statements of account – Issuing of statements of accounts – Payment of bills and accounts for others – Bank account information services – Credit account insurance brokerage – Deposit accounts services – Investment account service

## Copyright

Copyright is about writing and words. And it is about the substantial part of a written text. Forget the 10% rule. You can't register a copyright. But this also means that you automatically have it the moment you created a clearly distinguishable piece of text.

You can show your claim to a copyright by showing the © symbol and the year it was created. Or by saying 'All rights reserved'

## Patents

Patents are about anything functional but exclude human beings, plants and animals and the biological processes for their generation. However, for plants you might be able to register a plant breeder's right.

You can only patent an innovation, but not something that is already common knowledge or considered standard. The priority date is key for a patent.

Registering a patent is complicated and you need a patent attorney or lawyer to obtain and enforce it.

## Registered Designs

A registered design protects the visual appearance of new and distinctive products.

IP Australia receives about 7500 design applications a year. Compare that to the over 75,000 trademark applications it receives each year.

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