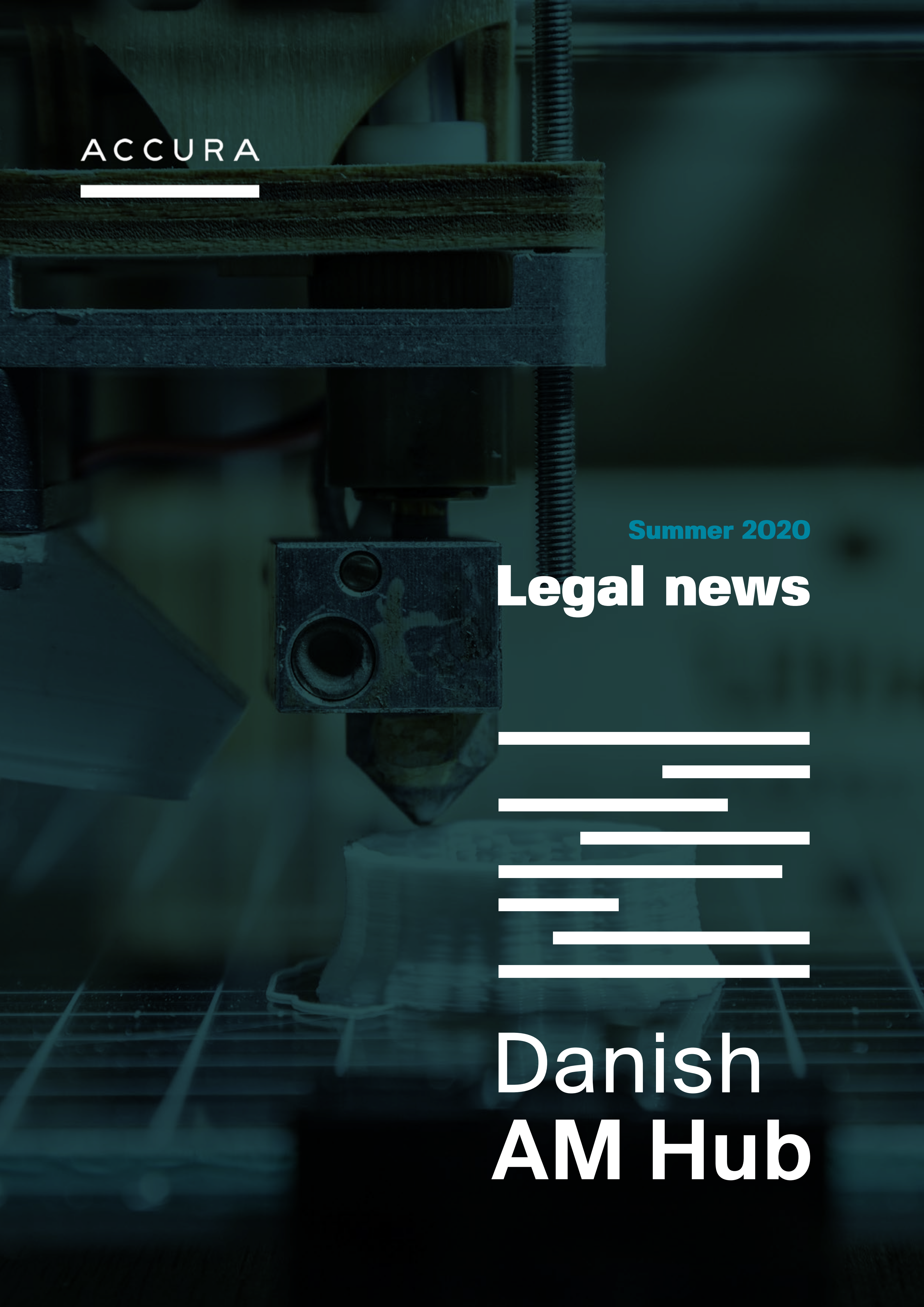

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Summer 2020

Legal news

Danish AM Hub

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Increase in tax allowance for R&D further secures Denmark's status as R&D hotspot

The Danish Government and other parties of the Parliament have reached an agreement regarding the restoration of the Danish economy after COVID-19, which includes an interim increase in tax allowance for expenses to R&D activities.

An important element of the restoration plan is the so-called stimuli initiatives aimed at stimulating innovation and growth. More specifically, one of the initiatives is aimed at incentivizing both Danish and international companies to initiate new Research and Development (R&D) projects and investments in Denmark to stimulate innovation.

R&D allowance

Currently, the tax allowance for R&D activities is 103 % in 2020, gradually increasing to 110 % in 2026. The new R&D initiative consists of an additional temporary increase in tax allowance for R&D activities from the current level of 103 % to 130 % in 2020 and 2021.

The maximum tax allowance eligible for the additional temporary increase is, however, capped at total expenses of DKK 227,272,727, representing a tax value of DKK 50 million (tax rate of 22 %) calculated on a consolidated basis within a Danish joint taxation group as a whole. Further, a specific model on the cap of DKK 50 million will be prepared to ensure that the calculation of the limit is manageable for the taxpayers and the Danish tax authorities.

R&D tax credit

As an alternative to the R&D tax allowance, loss-making companies should consider utilizing the existing Danish R&D tax credit scheme. According to the tax credit scheme, loss-making companies are entitled to a cash payment corresponding to the tax value (22 %) of their qualifying R&D costs (maximum obtainable tax credit is DKK 5.5 million in 2020, corresponding to R&D costs of DKK 25 million calculated for a joint taxation group as a whole).

The tax credit may be combined with the increased tax allowance, so that the excess amount (i.e. the additional percentage for the tax allowance for the relevant year) is included as a tax loss which may be carried forward to be set off against profit in future years.

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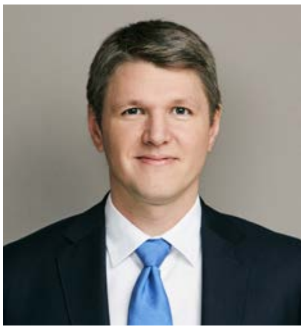

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Qualifying R&D costs

Examples of activities qualifying for R&D tax allowance and tax credit are:

- Development work, i.e. the application of scientific or technical knowledge to develop new or significantly improved materials, products, processes, systems or services.
- Applied research, i.e. research carried out in order to acquire new knowledge for the purpose of applying it in practice.
- Work in connection with obtaining information about experiments or research.
- Fundamental research, i.e. research to acquire new knowledge which is not carried out with a view to a specific practical application of the knowledge.

R&D costs qualifying for tax allowance and tax credit are product development costs and costs incurred in connection with the creation of specific knowhow. This includes, i.a., expenditures on wages and salaries, materials and primary products (raw materials) as well as rental cost on laboratories.

Perspectives

The temporary increase in tax allowance for R&D expenses is welcomed by the Danish Life Science industry, as it will make Denmark more attractive in terms of where to invest in research and development of new products etc. within the life science industry. Stakeholders in the life science industry are, nonetheless, encouraging the Government to consider increasing the tax allowance even further and/or extending the preliminary period beyond 2021.

Feel free to contact Accura's dedicated team of Life Science specialists if you have any questions or wish to know more about R&D tax allowances.

Legal issues of joint ventures in 3D printing

Businesses in the 3D printing space are engaging in joint ventures to optimize existing additive manufacturing products or invent new ones.

In 2018, Shapeways and Stratasys announced a joint venture to provide easier access to full color multi material 3D printing. In the oil & gas industry, Aurora Labs and Advision Digital, owned by WorleyParsons Services, formed a joint venture on metal 3D printing. However, small and medium sized businesses operating within the 3D printing space may also benefit from joint ventures, e.g. to finance the costly purchase of 3D printers to be used on an industrial scale.

By engaging in joint ventures, companies can save costs and focus on expanding their business.

What is a joint venture?

A joint venture can generally be described as a collaboration between two or more companies about a common activity separated from their individual businesses. The parties operate with joint control. Joint ventures can be created to focus on a single, specific activity, such as investments in developing a new product, or it can be a more permanent project or venture.

From a legal point of view, the parties generally operate under freedom of contract, and joint ventures are not subject to strict requirements as to form. For instance, the contracting parties are free to choose the company structure.

In a joint venture each contracting party generally has veto power regarding essential decisions to ensure that none of the parties alone has the final say. A key issue to consider, when entering into a joint venture is the regulation of intellectual property rights (IP).

Pros and cons

Pros: A joint venture can be a valuable tool to provide a company with access to new markets, distribution channels and bigger capacity by sharing costs, risks, knowledge and technology. Joint ventures are often useful in resource-intensive projects when a single company cannot afford an investment on its own, e.g. the purchasing of 3D printers for use on an industrial scale. A joint venture may also be used to combine technology or knowledge to the mutual benefit of participants, e.g. a joint venture for the joint development of new 3D printing materials between a manufacturer of 3D printers and a manufacturer of materials used for printing. A joint venture can thus facilitate the sharing of knowledge and resources, and may also be used to create new, valuable IP, such as know-how, new methods, trade secrets or products, that would otherwise not have been created.

Cons: It can be time consuming and difficult to create a successful collaboration. Notably if the parties have not clarified the purpose of the joint venture or if their capabilities and management practices are not compatible. Further, as a joint venture is often created between competitors for cost sharing purposes, the parties must be aware of the risks of collaborating with competitors. >

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5 things to consider

If your company is thinking about engaging in a joint venture, you should consider:

1. **The corporate form of the joint venture**
The decision should be based on profit expectations, tax considerations and what form of liability is desired.

2. **The joint venture contract**
The contract should inter alia include the purpose of the collaboration, rights and obligations of the parties, allocation of responsibilities and liability, and provisions on financing as well as the duration of the cooperation, and how to split up again.

3. **Handling of IP**
One or more of the parties may already own IP which can be necessary or helpful to the joint venture (or even the whole reason for the parties' collaboration in the first place). Such pre-existing IP is often referred to as "background IP", and the ability to share background IP assets is crucial in many joint ventures. One or more of the parties may therefore need to contribute ownership, or at least the ability for the other parties to use its background IP. This is often dealt with by including an IP license directly in the joint venture contract, which inter alia describes the IP in question, how it can be used and by whom, but also what happens if the joint venture is terminated. In addition, new IP may be invented, created or developed in the joint venture, often referred to as "foreground IP". The ownership of any such foreground IP developed must also be dealt with in the contract. Generally, the alternatives are (1) joint ownership, or (2) sole ownership by one of the parties, with or without a license to the other party to use the IP. The extent to which foreground IP can be used by the parties (e.g. only jointly or also separately) is important, including in situations where the parties do not agree or fall out. IP including shared IP can last for many years and will often outlive the purpose of a joint venture. If important IP aspects are not dealt with in writing, shared IP rights may often lead to conflict, and the parties risk becoming dependent on each other against their will even after the collaboration has ended and/or losing the possibility of using or commercializing valuable IP.

4. **How to deal with a deadlock situation**
The parties' veto power entails an inherent risk of deadlock, where the company cannot operate because the parties are enforcing such veto powers. This situation may be regulated in the contract, for example by making one vote decisive. Others leave the question unanswered on the assumption that the prospect of an unsolvable deadlock will make the parties agree in the first place. Either way, the parties should decide on a strategy.

5. **Competition law risks**
It is important to be wary of competition law implications of joint ventures. A joint venture between competitors may be viewed as anti-competitive depending on the circumstances, e.g. it may be deemed a restrictive agreement or an abuse of a dominant position in the market if the parties are dominant in the market.

Trademark protection in China – in Chinese or Latin?

Chinese is the most widely used language in the world when measured in numbers of native speakers covering China, Hong Kong, Macau, Taiwan and Singapore where Chinese (Mandarin) is the official language.

This amounts to about 1.3 billion native Chinese speakers in a strongly growing consumer base.

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Despite this fact, quite a number of Western brand owners have chosen to enter Chinese-speaking markets on the premise that their trademarks are sufficiently global and that localisation into Chinese versions is not required.

Although consumers in the Chinese region recognise certain brand names in their original Latin language, most consumers nevertheless refer to products by their localised Chinese names or refer to the brands by use of local nicknames, which in some cases may have unintentionally negative or odd connotations or meanings.

As an example, LANCÔME has been registered in Hong Kong as 蘭金 (meaning "epidendrum, gold"), but is commonly referred to as 蘭蔻 (lán kòu) in China, which is phonetically almost indistinguishable from "difficult to buckle" in Mandarin and "basketball" in Cantonese.

Besides such problems of undesirable connotations or associations, and even dilution of the goodwill or reputation built up in the brand, disputes may also arise in terms of ownership to a similar Chinese name or coined version registered by local distributors or agents in their own name. Such disputes can be costly and lengthy to rectify and, unfortunately, often difficult to resolve.

We therefore strongly advise brand owners to consider registration of a Chinese version of any trademarks used in the Chinese-speaking regions. Despite the many dialects across the region, we recommend that the Chinese version adopted is the same throughout all countries/territories, the reason being not only consistency and easy recognition, but also to avoid any confusion like the example mentioned above to an increasing consumer base, as well as in instances of parallel import.

If several Chinese versions of your trademarks already exist, perhaps filed by different regional distributors or agents, efforts should be focused on choosing one version and using that version on all marketing and packaging materials and, where possible, on the products themselves.

After ensuring that the chosen version has been properly registered in the relevant countries/territories for a relevant scope of goods and services, we recommend that such version be consistently used in the market, and all other versions allowed to lapse.

If your company has not yet decided on a Chinese version of the primary trademarks, we are able to assist you with such transliteration taking into account both local connotations, relevance to the intended goods or services, inherent registrability, potential pronunciation difficulties as well as potential enforcement difficulties.

If you are interested in learning more about registering Chinese transliterated trademarks, please contact our IP prosecution experts at trademark@accura.dk.

”Very good legal and industry knowledge. Focuses on the relevant items”

”Great team of engaging and hard-working lawyers.”

“Always pragmatic, commercial yet diligent and fun to work with.”

“Highly recommendable.”

Legal 500