

assets in an accounting setting,²³ to be utilised in many areas they apply to. Accounting and taxation rules are self-contained bodies leaving comparatively little room for methodical preferences of the appraiser and should therefore be treated as a group distinct from valuation scenarios which are not governed by binding legal bodies.²⁴

What is more, the appraiser generally works with historic data and mostly serves the purpose of covering past events.²⁵ Due to this fact, valuations for the purpose of assessment of damages or the amount in dispute in legal proceedings should be - as they are also based on mainly historic data - added to accounting and taxation valuations in order to form one group. Based on its focus on past events, this category shall be called 'reporting' valuations in order to differentiate it from future-related valuations.

The latter include all those scenarios in which the appraiser is tasked with estimating future value. These are all future-oriented occasions in the broadest sense, i.e. strategic ones such as licensing and other prospective transactions, strategic and operative management and controlling, as well as finance and protection strategies.²⁶ Valuations carried out in this category are not regulated by binding laws. They shall, in contrast to reporting valuations, be named 'forecasting' valuations.

All forecasting valuation occasions have in common that future value has to be determined on the basis of presently available data. Hence, they by necessity constitute an estimate. This means that – contrary to mainly past-related valuation fields such as accounting and tax – the outcome cannot be expressed in one fixed sum. Rather, future-related valuation must result in a

23 Cf. IAS 38.24 in combination with IAS 38.65.

24 Furthermore, the purchase price of a brand is in most cases not identical to the value of the respective brand as laid down on the balance sheet. Cases may arise in which the balance sheet value is zero whereas the brand is sold for a considerable sum. Examples which show that brands have been sold for a multiple of the book value is the takeover of Rowntree by Nestlé for US\$ 4.5 bn. – the fivefold of the book value – and the acquisition of Kraft by Philip Morris for US\$ 12 bn. – four times the book value, cf. *Berger*, MarkenR 1999, 271, 271. Quod vide *Franzen*, DStR 1994, 1625, 1625. The examples just mentioned show that there must be a difference between the accounting value and the one arrived at in the course of a sale. The balance sheet cannot and does not make a valid statement about the strategic future-related value of the respective brand.

25 This shall not ignore that accounting is in part future-related. However, this is not the main focus. As *Barsky* and *Marchant* put it, "Accountants are paid to track the past, but managers are paid to build the future.", cf. *Barsky/Marchant*, The Most Valuable Resource – Measuring and Managing Intellectual Capital.

26 Cf. 2.3.1, 2.3.2, 2.3.3 and 2.3.4.1.

value spread. An exact value figure will not be detectable until the moment of transaction (if there is one), in which the asset must be given a specific price tag.

This, in turn, means that the quality of a forecasting valuation technique can be detected by how well it is able to deal with and minimise future-related uncertainties and risks.

The reporting-forecasting dichotomy is so profound that it justifies and even necessitates a differentiation between these two fields. It applies to all valuation objects, tangible and intangible.

The work at hand is committed to dealing with forecasting intellectual property valuations.

1.3 General Framework Underlying the Value of any Asset

Next to universal value determinants of intellectual property and other intangible assets,²⁷ there are general principles underlying the formation of value of any asset, tangible and intangible. These factors are scarcity, utility and title.

1.3.1 Scarcity

As a general rule, tradable assets are more valuable the more demanded or scarce they are respectively. If supply rises above demand, scarcity and prices decline.²⁸ Assets which are not scarce have no potential to attain noticeable value. Therefore, scarcity is a fundamental source of and *conditio sine qua non* for value.

Physical assets are either scarce *eo ipso* if there are merely a few or only one item in existence or can be made scarce by physically moving them from a place of abundance to a place of scarcity or by limiting production. Therefore, the scarcity of physical assets is a factual one. Exercise and control of this scarcity can be facilitated by allocating property rights.

²⁷ Cf. 2.1.1.3.

²⁸ *Paschke*, Grundlagen der Volkswirtschaftslehre, p. 36 et seq.