

Deloitte Haskins & Sells LLP

Dividends, Interest & Royalty and FTS (Article 10, 11 and 12)

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*WIRC – Beginners Study Course on
International Taxation*

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Article 10 – Dividend

Article 10 – Dividend

- Article 10(1) – Taxability of Dividend in Country R
- Article 10(2) – Taxability of Dividend in Country S
- Article 10(3) – Meaning of ‘Dividend’
- Article 10(4) – PE Situation
- Article 10(5) – Prohibition of extraterritorial taxation of dividends / undistributed profits

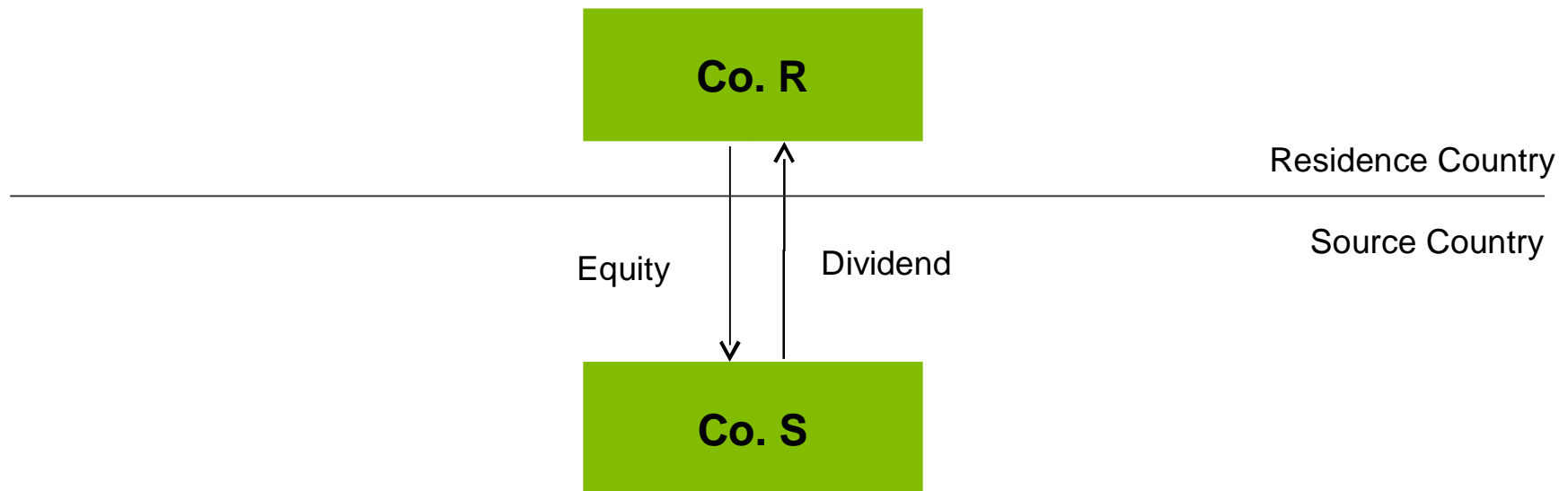
Article 10 – OECD Commentary

1. Dividends **paid** by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the **beneficial owner** of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
 - 15 per cent of the gross amount of the dividends in all other cases.
 - The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.
 - This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

Article 10 – OECD Commentary

3. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Case Study



Whether dividend income taxable in Country R or Country S?

Whether dividend income taxable in the year of its 'declaration' or in the year of its 'payment'?

Article 10 (1) – Taxability by Resident Country

Article 10(1) - Meaning of 'paid'...

- OECD commentary (para 7 of Article 10)
- The term 'paid' has a very wide meaning, since the concept of payment means the fulfillment of the obligation to put funds at the disposal of the shareholder in the manner required by contract or custom
- Article 3(2) - terms not defined in Tax Treaty - meaning as per domestic tax laws
- Section 43(2) - 'Paid' means actually paid or incurred according to the method of accounting
- Section 8 – Dividend Income
 - For the purposes of inclusion in the total income of an assessee,—
 - (a) any dividend declared by a company or distributed or paid by it within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of section 2 shall be deemed to be the income of the previous year in which it is so declared, distributed or paid, as the case may be
 - (b) any interim dividend shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the company to the member who is entitled to it.

Article 10(1) - Meaning of 'paid'...

- Section 9(1)(iv):

The following incomes shall be deemed to accrue or arise in India :-

(iv) a dividend paid by an Indian company outside India

- Section 2(22)(a), (b), (c), (d) dealing with deemed dividend provisions uses the word 'distribution', while section 2(22)(e) uses the word 'payment'
- Credit entry in books of payer to account of payee amounts to its receipt by payee
- CIT v. Standard Triumph Motor Company Ltd. (201 ITR 391)(SC)
- Bombay HC decision in case of Pfizer Corpn. v. CIT (259 ITR 391)
- Dividend paid by Indian company outside India constitutes income deemed to accrue in India u/s 9(1)(iv)
- 'Declared or distributed' occurring in section 8 do not find place in section 9(1)(iv)
- Dividend paid to non-resident outside India deemed to accrue in India only on payment and not on declaration

Timing of taxability of dividend income needs careful consideration

Article 10 (2) – Taxability by Source Country

- Paragraph 2 of Article lays down that dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident (i.e. in country S) and according to the laws of that State (i.e. Country S), but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:
 - a) XX% of the gross amount of the dividends if the beneficial owner is a company which holds directly at least YY% of the capital of the company paying the dividends;
 - b) XXX% of the gross amount of the dividends in all other cases

No major Indian tax impact in the hands of recipient as Indian company is subject to DDT and recipient of the dividend is exempted from Indian taxes

Article 10(2) - Meaning of 'beneficial owner'

- 'Beneficial owner' not defined in Model Convention and in most Tax Treaties
- To be understood in light of object and purpose of Tax Treaties
- Anti-tax avoidance provision
- Beneficial owner of asset v. Beneficial owner of income
- Whether benefit of Article 10(2) available to agent/nominee/conduit entity ?
- Natwest Ruling (220 ITR 377)(AAR) - No (held to be conduit entity)
- AIG (224 ITR 473)(AAR) - Yes (held not to be conduit entity)
- CBDT Circular no. 789 dated April 13, 2000
- Certificate of residence issued by Mauritian authorities - sufficient evidence for accepting status of residence as well as beneficial ownership for applying India-Mauritius Tax Treaty
- Validity of Circular no. 789 upheld by SC in case of Azadi Bachao Andolan (263 ITR 706)

Article 10(2) - Meaning of 'beneficial owner'

- **Canadian case – Prevost car**
- “the beneficial owner of dividends is the person who receives the dividends for his or her own use and enjoyment and assumes the risk and control of the dividend he or she receives. The person who is the beneficial owner of dividend is the person who enjoys and assumes all the attributes of ownership. In short, the dividend is for the owner’s own benefit and this person is not accountable to anyone for how he or she deals with the income.”
- **The Commentary provides a clarification to the concept of 'beneficial ownership'**
 - It states that the Source State is not obliged to give up the taxing rights merely because the income is paid to the residents of the State with which there exists a Convention
 - It grants relief in the source state only if the beneficial owner of the income is the resident of the other state
 - However, concept of “beneficial ownership” was not defined or discussed
 - Thus, if the income is received by the resident of the State acting in the capacity of an agent or nominee or simply acting as a conduit Company cannot be regarded as a beneficial owner and thus cannot claim relief in the source

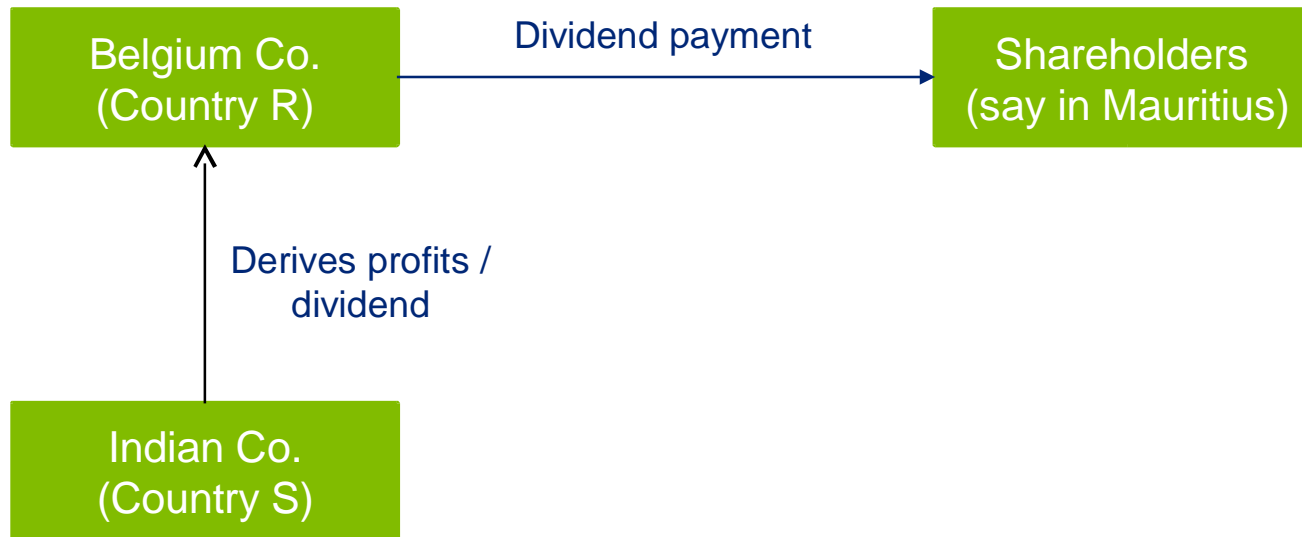
Article 10(2) - Meaning of 'beneficial owner'

- **Clarification on meaning of beneficial ownership in the OECD MC**
 - the recipient of the dividend is not the “beneficial owner” because that recipient does not have the full right to use and enjoy the dividend that it receives and this dividend is not its own; the powers of that recipient over that dividend are indeed constrained in that the recipient is obliged (because of a contractual, fiduciary or other duty) to pass the payment received to another person. The recipient of a dividend is the “beneficial owner” of that dividend where he has the full right to use and enjoy the dividend unconstrained by a contractual or legal obligation to pass the payment received to another person.

Article 10(5) – Extra Territorial Taxation situation

- Prohibits country S to tax dividend distributed by resident of country R to its shareholders merely because profit/income is derived from country S , except where:
 - Dividends paid to shareholder resident in country S (i.e. resident of India)
 - Holdings with respect to which dividend is paid is effectively connected with PE situated in country S (India)
- Article 10(5) prohibits 'extraterritoriality' with respect to taxation of dividend
- Prohibition of extraterritoriality extended to undistributed profits

Article 10(5) – Case Study



Whether Country S can impose tax on dividends paid by Belgium Co. to its shareholders ?

NO

Article 11 – Interest

Article 11 - Interest

- Article 11(1) – Taxability of Interest in country R
- Article 11(2) – Taxability of Interest in country S
- Article 11(3) – Meaning of ‘Interest’
- Article 11(4) – PE Situation
- Article 11(5) – Source of Interest
- Article 11(6) – Related Party transactions – Arm’s Length Principle

**Article 11 of UN Model Convention similar to Article 11 of OECD
Model Convention**

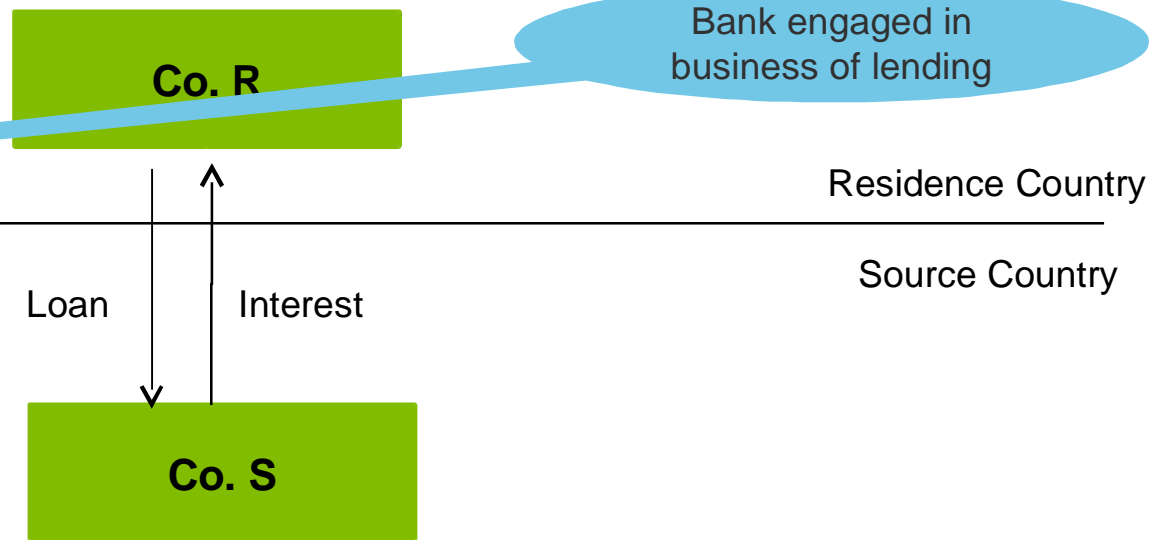
Article 11 – OECD Commentary ...

- 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- 2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the **beneficial owner** of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
- 3. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
- 4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

... Article 11 – OECD Commentary

5. Interest shall be deemed to arise in a Contracting State where the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Case Study



Whether interest income taxable under Article 7 (Business Profits) or Article 11 (Interest) ??

**Article 11 (Interest) since Article 7 of Treaty generally provides as under:
“Where profits include items of income which are dealt with separately in other
Articles of this Convention, then the provisions of those Articles shall not be affected
by the provisions of this Article.”**

Article 11(1) - Principle

- Interest arising in Country S and paid to a resident of country R may be taxed in Country R
- OECD commentary - no exclusive right of taxation of interest either to country R or country S
- Meaning of 'arising' – Refer deeming fiction under Article 11 (5)
 - Country of residence of “payer”
- Meaning of 'paid' - similar to meaning of 'paid' used in Article 10(1)
 - Section 9(1)(v) uses the 'payable' unlike section 9(1)(iv) which uses the 'paid'
- The following incomes shall be deemed to accrue or arise in India :-

(v) income by way of interest payable by—

(a) the Government ; or

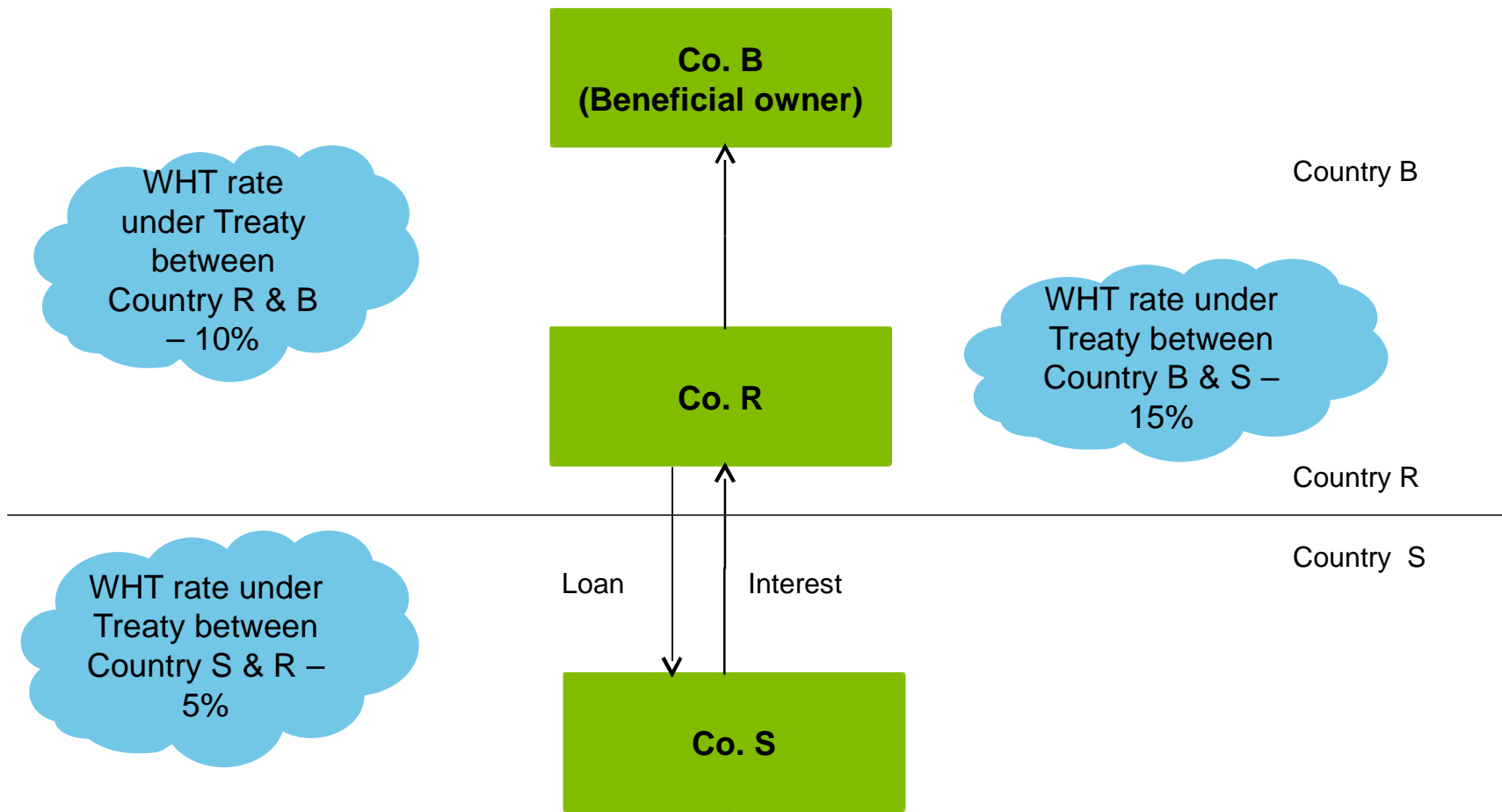
- *(b) a person who is a resident, except where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or*

- *(c) a person who is a non-resident, where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession, carried on by such person in India ;*

Article 11(2) – Right to Tax

- Right of taxation of interest in Country S - taxability in accordance with domestic laws
- Right to taxation by the Country S usually subject to a limit – usually 10% or 15%.
Concessional rate of taxation subject to certain conditions:
 - Recipient of interest - resident of country R and beneficial owner of interest

Case Study



What is the withholding tax rate applicable in Country S on the interest payment to Co. R ?

- (i) If Treaty exists
- (ii) If no Treaty exists



Article 11(2) – Right to Tax

- Article 11 under India-Mauritius Treaty:
- 3. Interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :
 - (a) the Government or a local authority of the other Contracting State ;
 - (b) any agency or entity created or organised by the Government of the other Contracting State ; or
 - (c) any bank carrying on a bona fide banking business which is a resident of the other Contracting State.
- 4. Interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person [other than a person referred to in paragraph (3)] who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

Article 11(2) – Right to Tax

- Exemption of interest income in country S under India-Mauritius Tax Treaty provided:
- Interest is derived and beneficially owned by government, banks, state agencies etc. of country R
- Debt claim transaction and interest arising in country S approved by government of that country
- Funding of loan through Mauritian banks - structuring possible
- Similar clauses under India-US Tax Treaty, India-Cyprus Tax Treaty, etc.

Article 11(3) – Meaning of “Interest”

- Sec 2 of the Act
- (28A) “interest” means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised
- (28B) “interest on securities” means-
- interest on any security of the Central Government or a State Government ;
- interest on debentures or other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act

Article 11(4) - PE situation

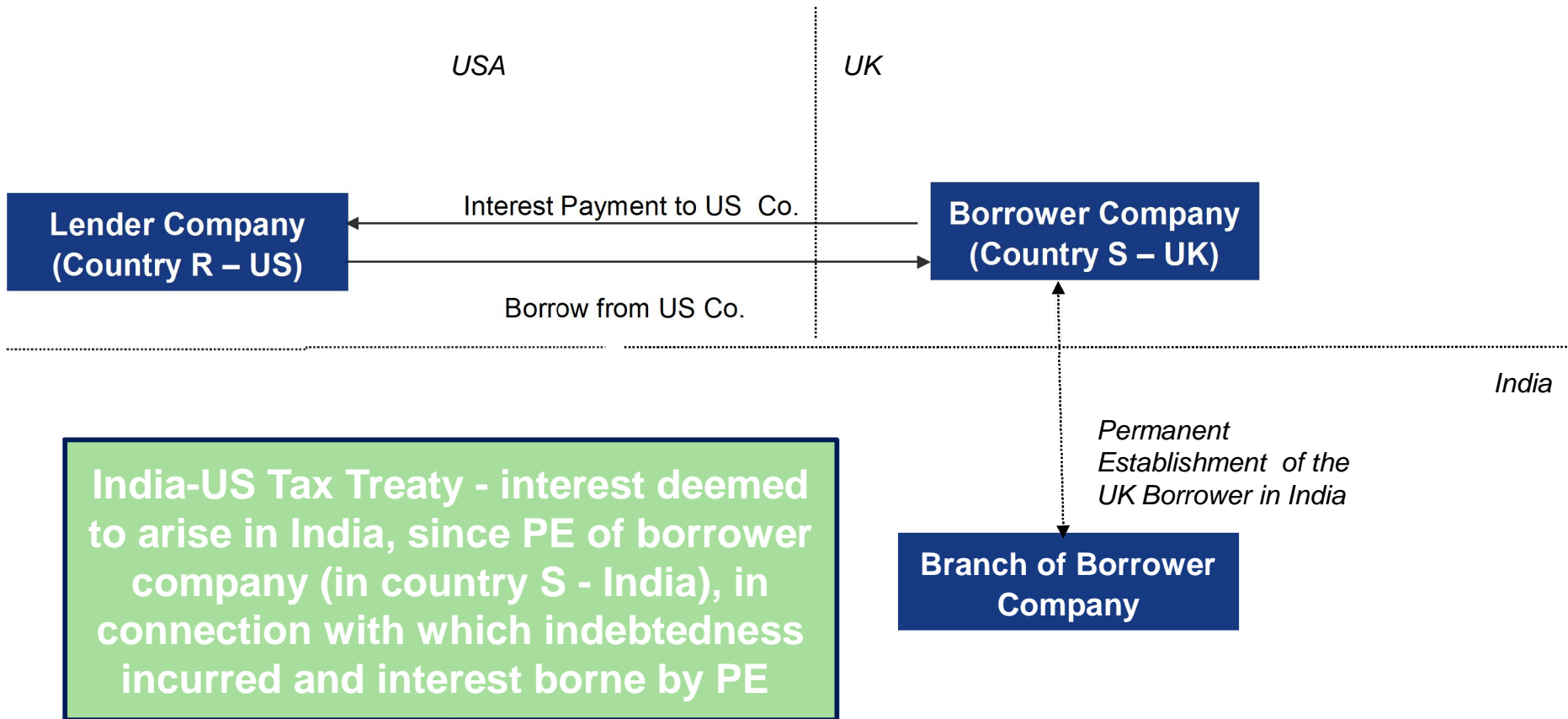
- Interest taxable under Article 7 (i.e. Business Profits) and not Article 11 if
 - Resident of State R carries on business in State S through a PE in State S and
 - Debt claim in respect of which interest is paid is effectively connected with such PE i.e. interest paid in respect of debt claims forming part of the assets of PE

Interest will be taxable on net basis in Country S

Article 11(5) – Source Rules

- Article 11(5) provides that interest is deemed to arise in the Contracting State if “payer” is resident of that Contracting state
- Exception to the above rule:
 - If the payer of interest has PE in a contracting state; and
 - the interest is actually borne by a PE of the payer in that Contracting State; then
 - Such contracting state has right to tax the interest borne by such PE

Article 11(5)



Interest received by Lender Company would be taxable in India if loan is borne by PE of Borrower Company in India

Article 11(6) - Arm's Length Principle

- Restrict operation of Article 11 to the amount of interest determined as per arm's length principle when special relationships exist
- 'Special Relationship' may exist
 - Where the interest is paid to a person who holds direct / indirect control over the payer;
 - Where there is a relationship by blood or marriage and, in general, any community of interests as distinct from the legal relationship giving rise to the payment of interest
- Excess amount may be subjected to tax as per the domestic tax laws of each of the Contracting States

Article 12 – Royalty / Fees for Technical Services

Royalty/ FTS under the Treaty

- Article 12(1) –Distribution of rights of the Contracting States
- Article 12(2) –Ceiling of Gross taxation by the State of Source
- Article 12(3) –Meaning of the term „Royalty“ / „FTS“
- Article 12(4) –Taxation of Royalty / FTS if effectively connected with PE / Fixed Base of Non-Residents in the State of Source
- Article 12(5) –Where does Royalty / FTS arise?
- Article 12(6) –Adjustments for related party transactions

Royalty – Definition under the Act

- Consideration (incl. lumpsum consideration) for:

Transfer of all or any rights (including license) in

- Patent, invention, model, design, secret formula or process or trademark, etc. (IP)
- copyright, literary, artistic or scientific work

Imparting of any information concerning

- the working of or use of IP
- technical, industrial, commercial or scientific knowledge, experience or skill

Use of

- any IP
- or right to use any industrial, commercial or scientific equipment

- Rendering of any services in connection with above

Capital Gains and consideration for sale, distribution and exhibition of cinematographic films excluded

Royalty – Definition under the Treaties

- OECD Model – Payments of any kind received as a consideration for:

Use of or right to use:

- Copyright of literary, artistic or scientific work **including cinematograph films**
- Patent, trademark design or model, plan, secret formula or process,

Information concerning

- industrial, commercial or scientific experience

- UN Model – Payments of any kind received as a consideration for:

Use of or right to use:

- Copyright of literary, artistic or scientific work **including cinematograph films** or films or tapes used for radio or television broadcasting
- Patent, trademark design or model, plan, secret formula or process
- industrial, commercial or scientific equipment

Information concerning

- industrial, commercial or scientific experience

Definition of Royalty under certain Indian Treaties

Country	Definition
Singapore	Includes gains from alienation of IPRs
US	Includes gains derived from the alienation of IPR which are contingent on the productivity, use, etc.
Malaysia, Morocco, Namibia, Russia, Trinidad & Tobago, Turkmenistan, Kazakhstan and Kyrgyz Republic	Specific inclusion of software
Libya	Rental and other income from cinematograph films considered as business profits and not Royalties
Greece, Israel, Sweden, Netherlands	Does not include 'Equipment Royalty'

What do you mean by FTS?

- FTS - Explanation 2 to Section 9(1)(vii) of the Act
- “means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel)”
- Exclusion
 - consideration for any construction, assembly, mining or like project undertaken by recipient; or
 - consideration which would be income chargeable under the head "Salaries"

Exhaustive Definition under the Act

Can FTS, that does not fall within its ambit of Section 9(1)(vii) be taxed under Section 9(1)(i) i.e. business connection?

What do you mean by FTS?

- Thrust is on 'Services'
- Distinguish between: Product v. services
 - Created Vs. person agrees to create, develop
 - Anticipated Demand Vs. Work begins after setting specifications
 - Equipment Hire Vs. Service
- Managerial, technical or consultancy services not defined
 - Dictionary meaning / OECD TAG Report
 - Meaning as understood in common parlance
- Supply of technical or other personnel

What do you mean by Managerial Services?

- Dictionary definition
- Black's Law dictionary defines 'manager' as:
 - “A person who administers or supervises the affairs of a business, office, or other organization”
- OECD TAG Report
 - 43. The Group considers that services of a managerial nature are services rendered in performing management functions. The Group did not attempt to give a definition of management for that purpose but noted that this term should receive its normal business meaning. Thus, it would involve functions related to how a business is run as opposed to functions involved in carrying on that business.
 - As an illustration, whilst the functions of hiring and training commercial agents would relate to management, the functions performed by these agents (i.e. selling) would not.

What do you mean by Technical Services?

- Dictionary definition
- Oxford's dictionary defines 'technical' as:
 - “Involving or concerned with the mechanical arts and applied sciences”
- OECD TAG Report
 - 39. For the Group, services are of technical nature when special skills or knowledge related to a technical field are required for the provision of such services. Whilst techniques related to applied science or craftsmanship would generally correspond to such special skills or knowledge, the provision of knowledge acquired in fields such as arts or human sciences would not.
 - As an illustration, whilst the provisions of engineering services would be of a technical nature, the services of a psychologist would not.

What do you mean by Consultancy Services?

- Dictionary definition
 - Black's Law dictionary defines 'consultation' as:
 - “ The act of asking the advice or opinion of someone (such as lawyer)
 - Webster's Encyclopedia states that to 'consult' is to:
 - “....to consult is to seek from a presumably qualified personal or an impersonal source advice, opinion, etc”
- OECD TAG Report
 - 45. For the Group, “consultancy services” refer to services constituting in the provision of advice by someone, such as a professional, who has special qualifications allowing him to do so. It was recognised that this type of services overlapped the categories of technical and managerial services to the extent that the latter types of services could well be provided by a consultant.

Where does Royalty/ FTS arise?

- Under the Act
 - Royalty/FTS deemed to accrue or arise in India if paid by
 - Government
 - Resident -except for business/profession/source outside India
 - Non-Resident -where relates to business/profession/source in India
- Under the Treaty
 - Royalty/FTS deemed to arise in India if:
 - the payer is a resident of India; or
 - (i) the payer has PE / Fixed Base in India;
 - (ii) the liability to pay Royalties / FTS has been incurred in connection with such PE / Fixed Base; and
 - (iii) such royalties are borne by such PE or Fixed Base

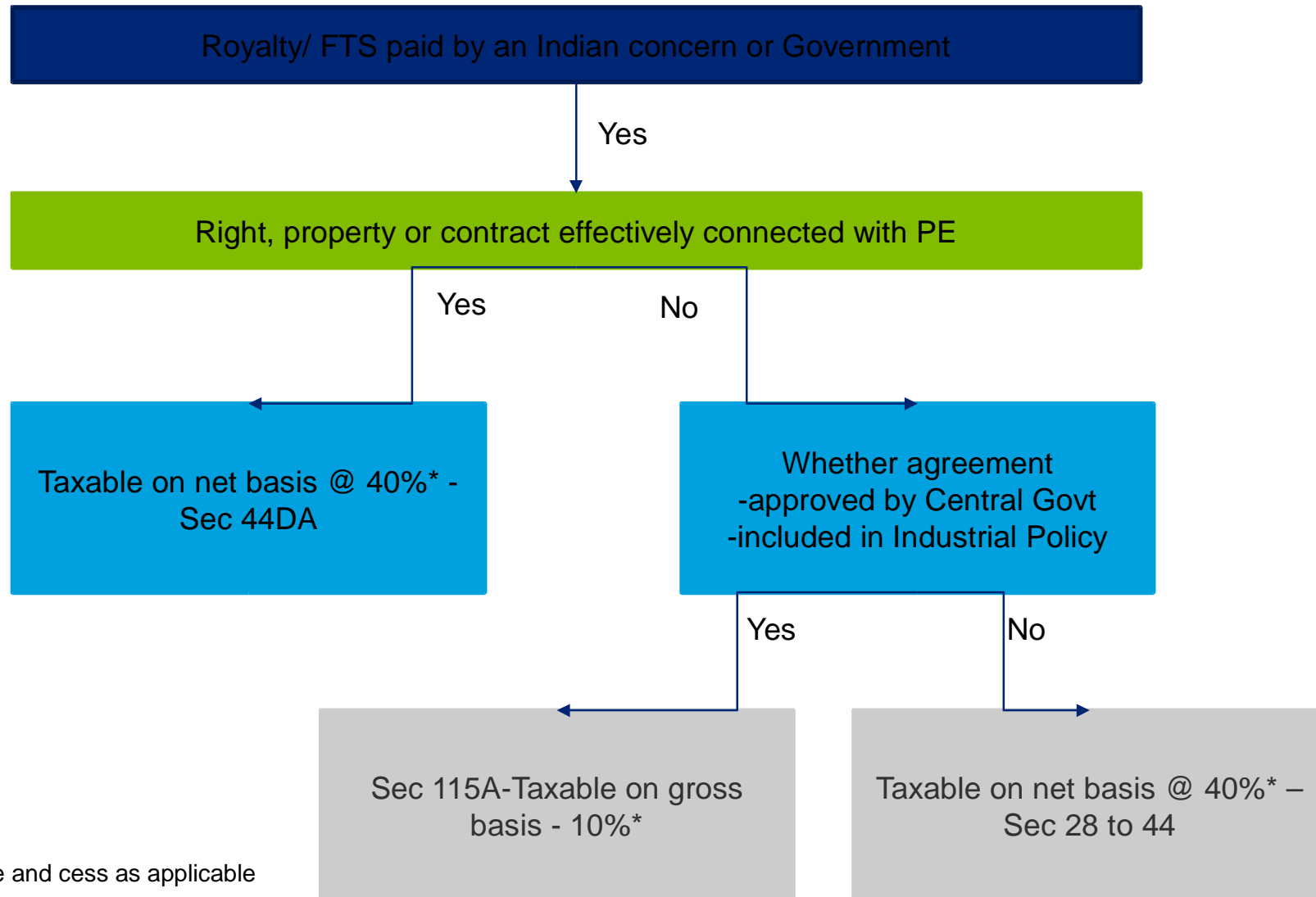
Fundamental Principles

- Fundamental principles emerging out of various judicial precedents:
- Following factors irrelevant
 - Situs of the assessee
 - Place where agreement is entered into
 - Place where services are rendered
 - Place where payment is made

Relevant Factor – place where services are utilized

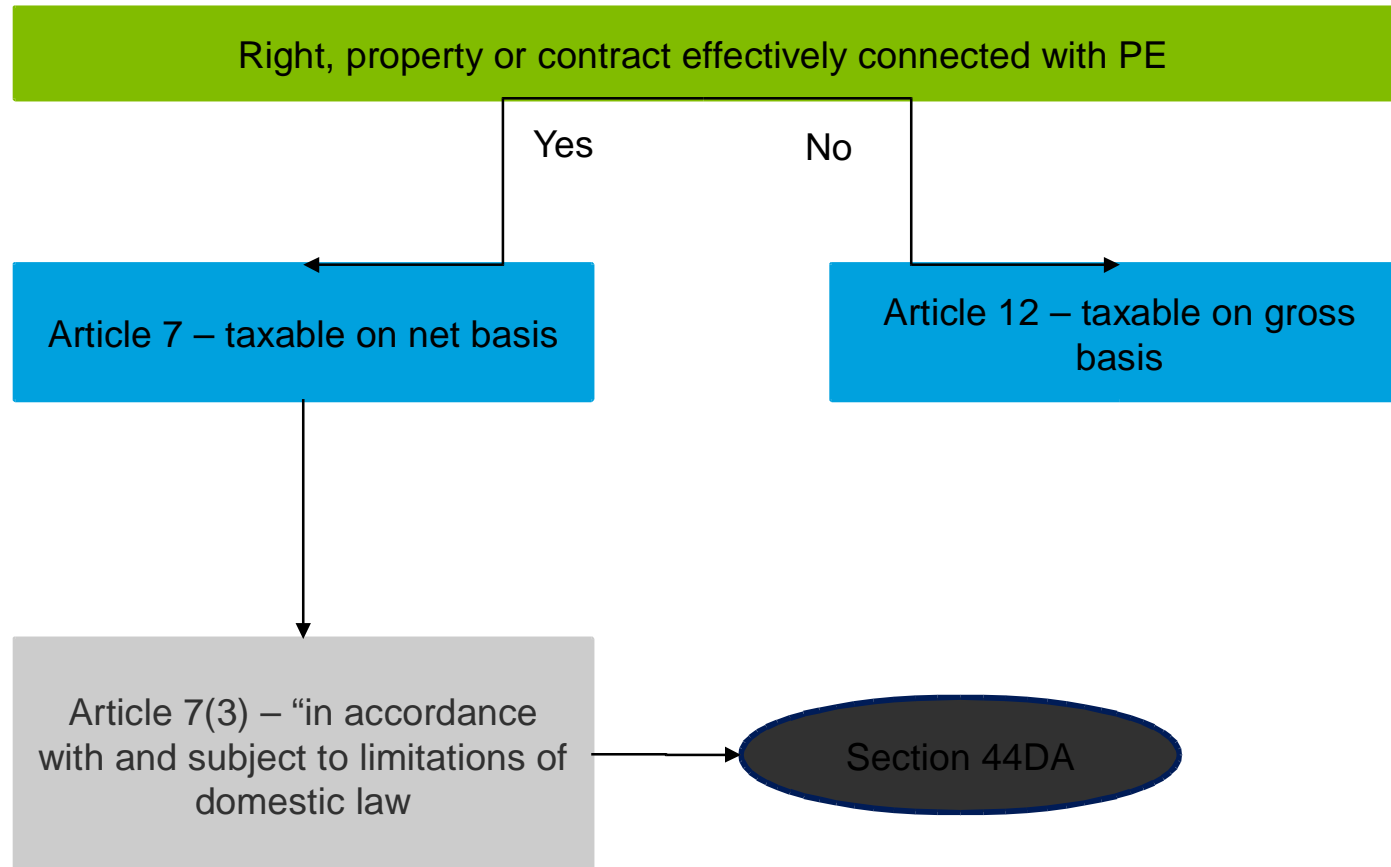
Other important concepts

Taxation of Royalty/ FTS under the ITA

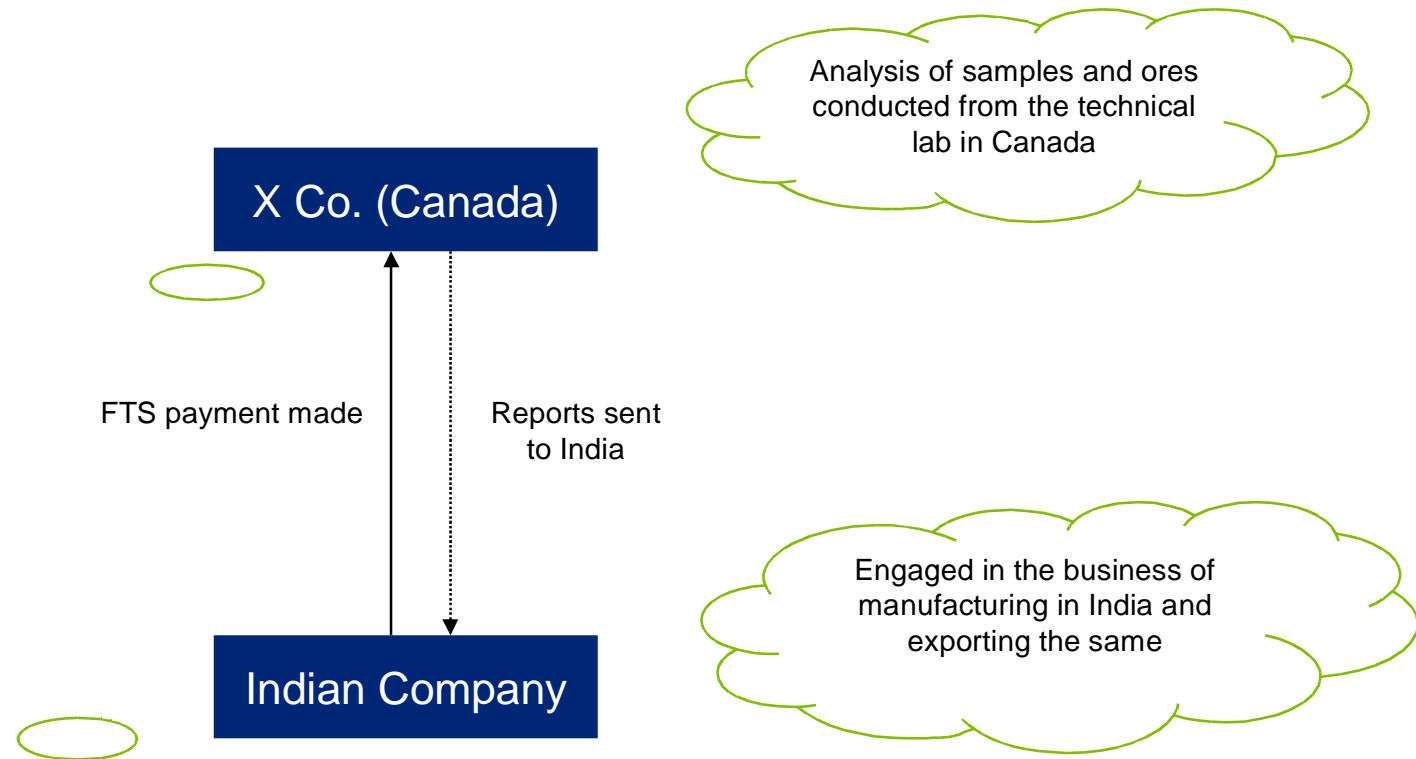


*Surcharge and cess as applicable

Taxation of Royalty/ FTS under the Treaty

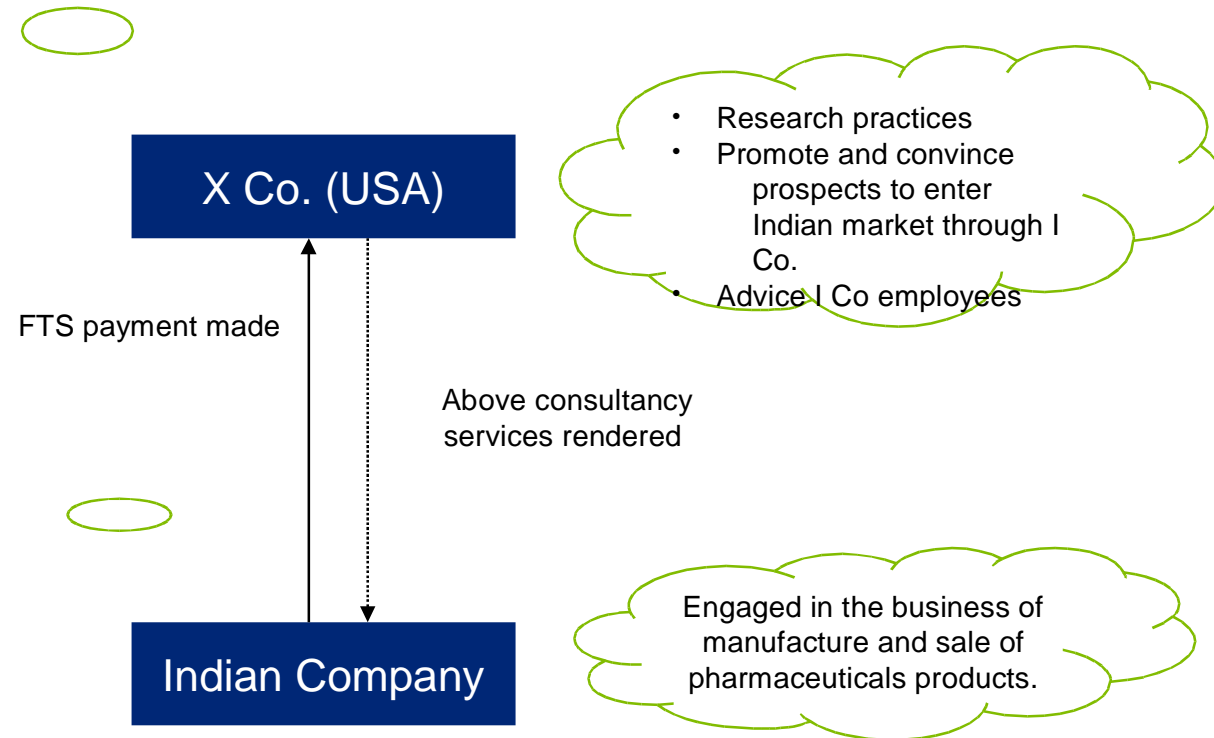


Case Study 1



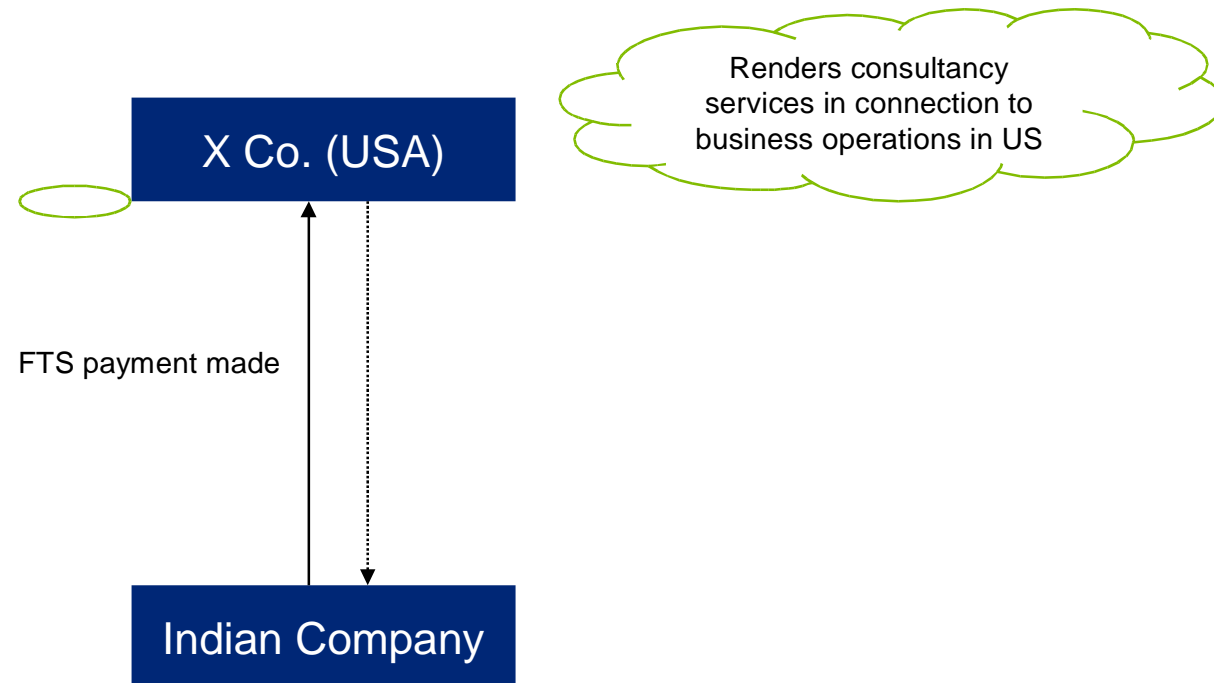
Whether payment taxable in India?

Case Study 2



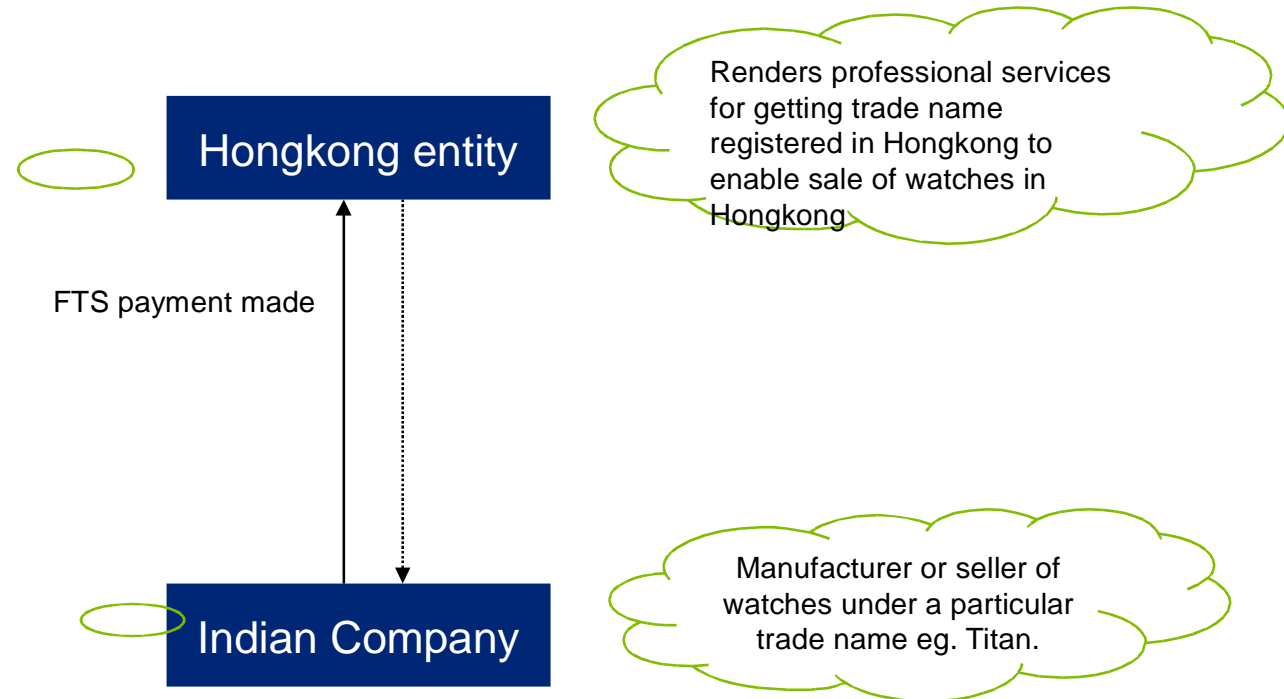
Whether payment taxable in India?

Case Study 3



Whether payment taxable in India?

Case Study 4



Whether payment taxable in India?

Concept of FTS under the tax treaty

- OECD MC, US MC or the UN MC - FTS not defined
- Accordingly FTS forms part of business profits
- Most of Indian tax treaties have specific article for FTS
- General definition of FTS under the Treaty
- *Payments of any kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personal services, in consideration for services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel*
- Treaty definition largely at par with domestic law

Fees for Included Services (FIS)

- Deals with Technical Services - but, coverage is of FIS.
- Definition of FIS (Refer for example Indo - US Treaty)
- “For purposes of this article, “fees for included services” means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services :
 - (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received ; or
 - (b) make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a plan or technical design.”

Managerial services excluded under the FIS definition

Fees for Included Services

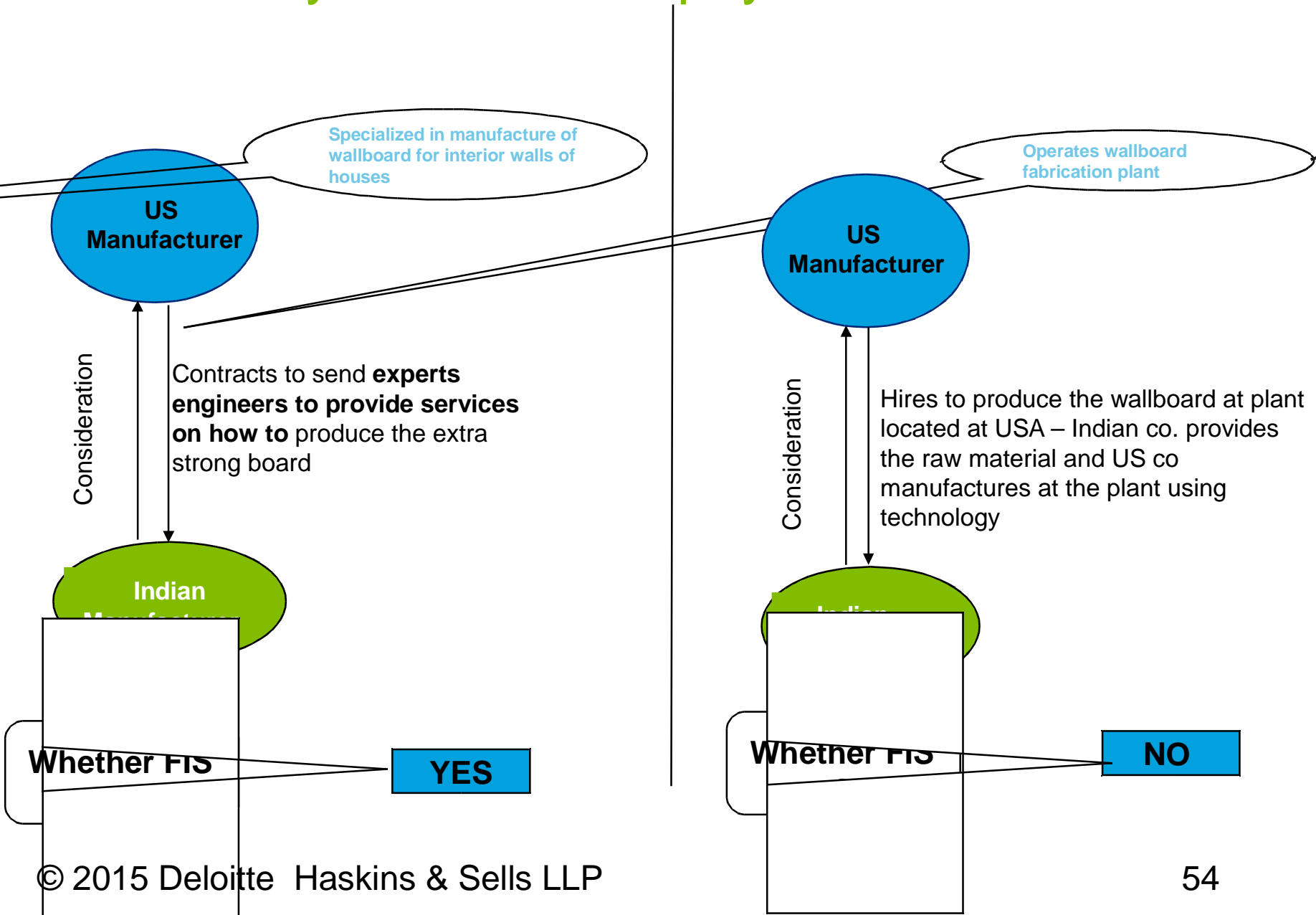
- Extract from Memorandum of Understanding on India-USA treaty.
 - “This FIS category is narrower because it excludes any service that does not make technology available to the person acquiring the service. Generally speaking, technology will be considered “made available” when the person acquiring the services is enabled to apply the technology. The fact that the provision of the service may require technical input by the person providing the service does not per se mean that technical knowledge, skills, etc. are made available to the person purchasing the service, within the meaning of 4(b). Similarly, the use of a product which embodies technology shall not per se be considered to make technology available.”

Concept of ‘Make Available’

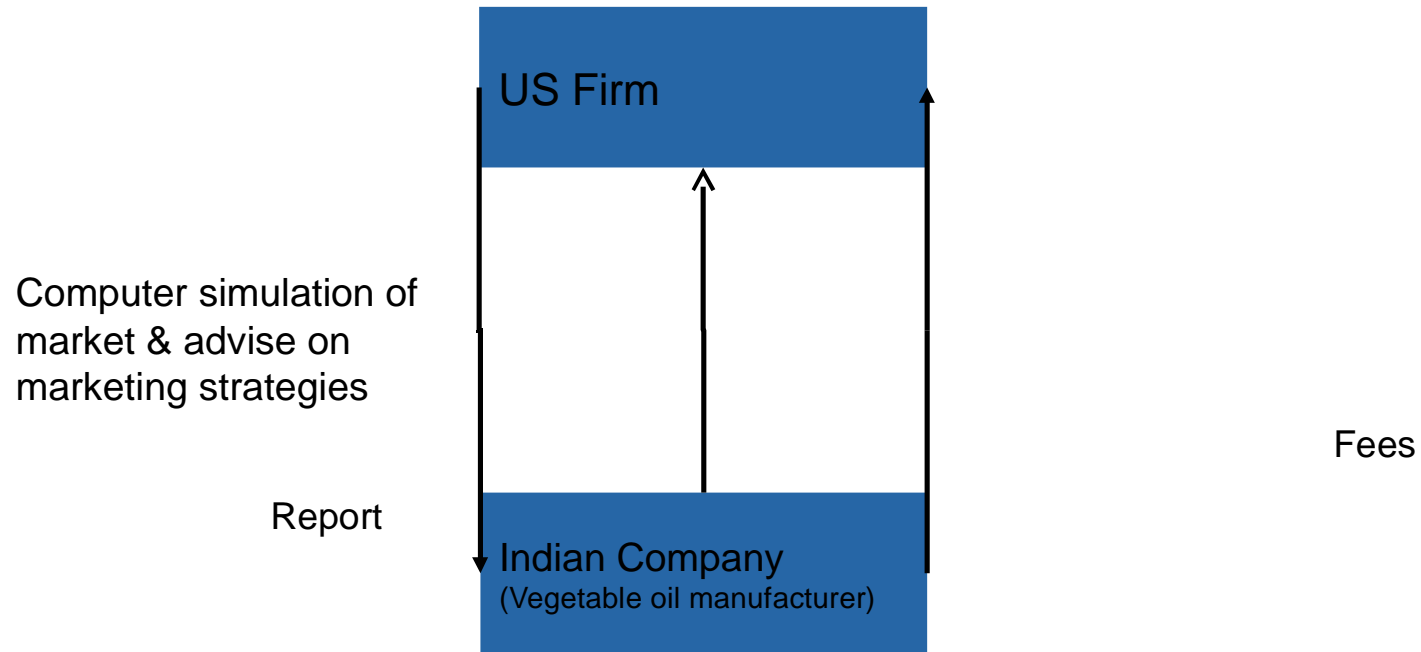
- Person acquiring the service is enabled to apply the technology
- Mere requirement of technical input by a person providing services does not necessarily mean that technical knowledge is “made available”
- Use of a product which embodies technology cannot be considered to make technology available
- Cases of development and transfer of technical plans or designs / making technology available may include engineering services, architectural services, computer software development, technical training, etc.

**“Make available” significantly narrows
down the scope of FTS**

Case Study 5 – Whether payments are FIS?

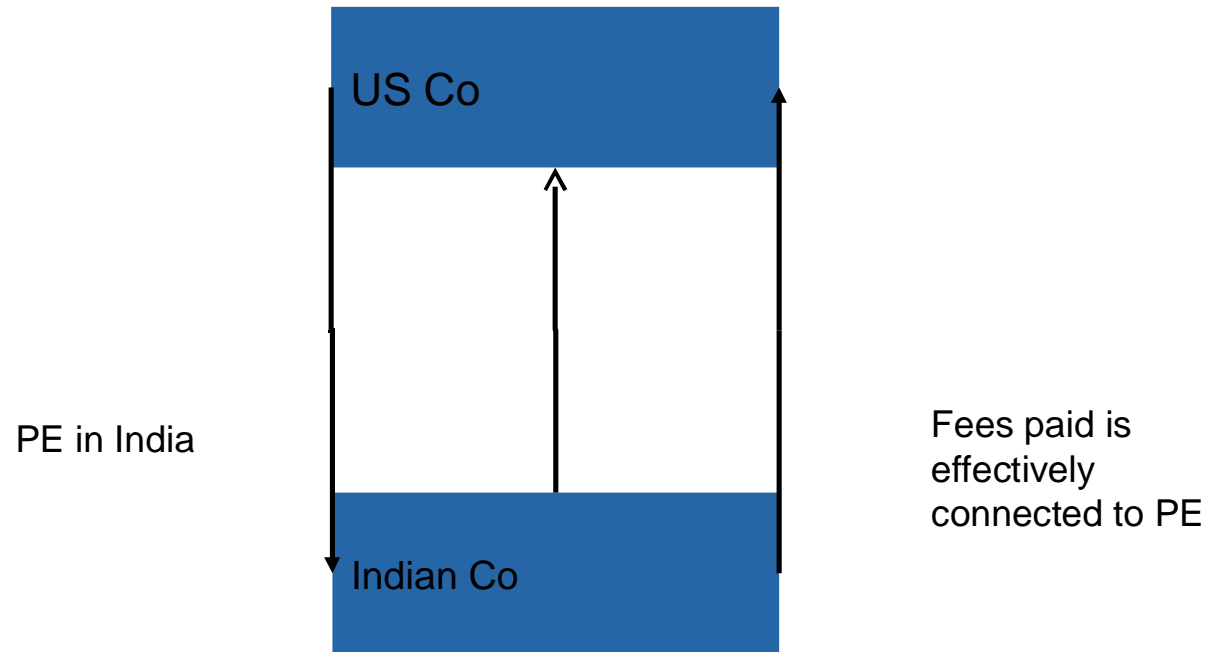


Case Study 6 - Whether payments are FIS?



McKinsey & Co. (Mumbai SMC) (99 ITD 549)
– Not a case of “Make Available”

Case Study 7 - Whether payments are FIS?



No – If business carried on through PE – Article 7 applies and not Article 12

Important points

- What happens when there is no FTS Article in tax treaty? Eg: Treaties signed by India with Mauritius, Thailand, France, Brazil, etc.
 - Conveys that there is no special treatment envisaged for Technical Fees
 - Treated at par with business income - Tekniskil (Sendirian) (222 ITR 557) (AAR)
 - Taxable as business profit only if PE
 - IPS needs to be checked in case of no FTS Article
 - FTS taxable in country of residence if no PE in source country
 - What happens when reimbursements are made alongwith FTS?
 - Concurrent Coverage under Independent Personal Services

Impact of Most Favoured Nation clause

- Most favoured nation clause - an indirect amendment
- Reduced rate of tax charged in a subsequent tax treaty; and/or
- Narrower scope of the applicability of an Article of a subsequent DTAA
- For eg. India-France treaty
- Generally stated in protocol
- FTS / Royalty Article has to be read with the MFN clause
- MFN may restrict FTS to FIS
- MFN trigger may be subject to subsequent notification
- Examples of Indian tax treaties with MFN status
 - India -Netherlands tax treaty
 - India -Belgium tax treaty
 - India -France tax treaty
 - India -Sweden tax treaty

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Thank you

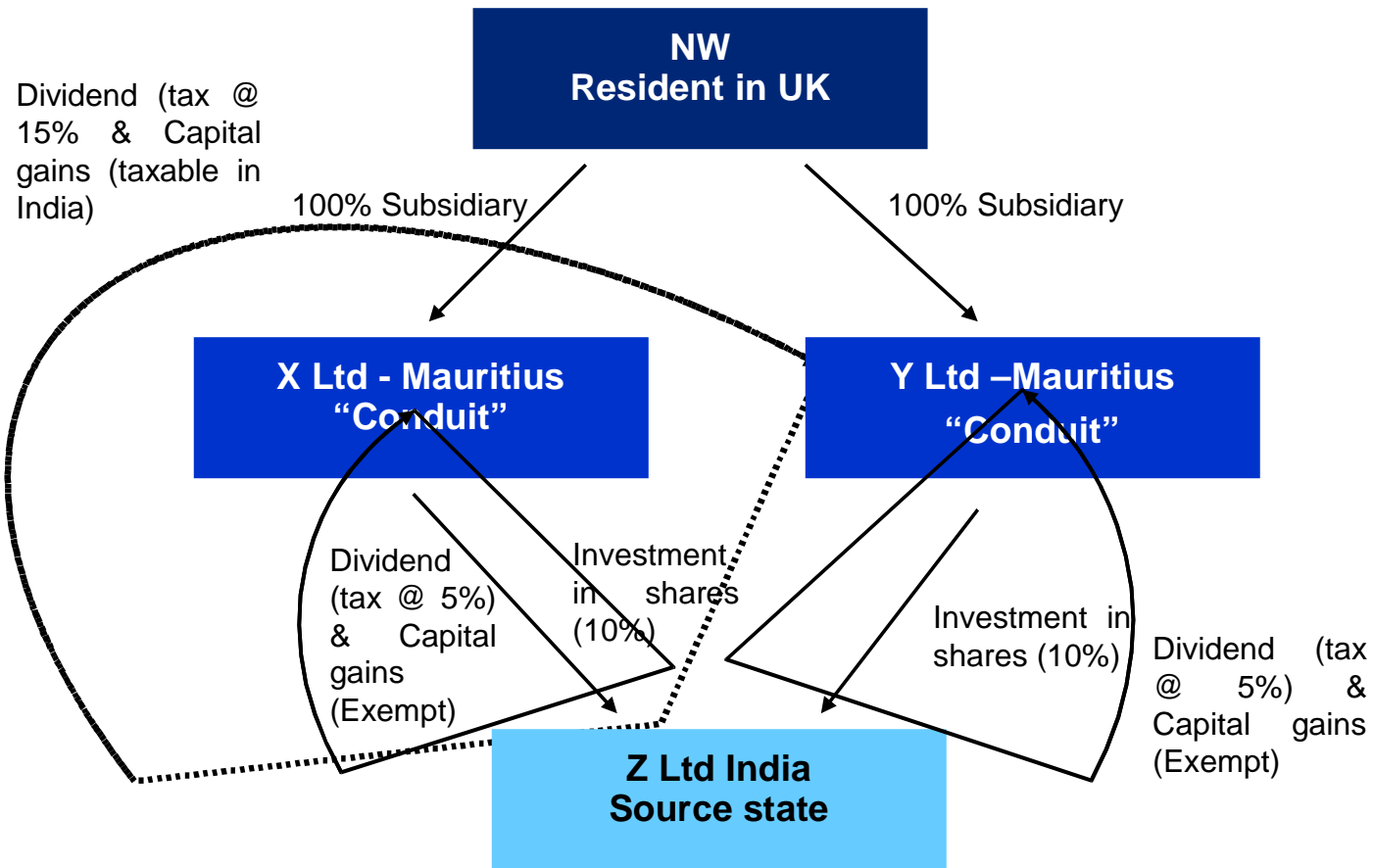
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Annexure - Natwest – AAR ruling - Against ...



...Annexure - Natwest – AAR ruling - Against

- As per Article 10 of DTAA between Indian and Mauritius - dividends derived by a resident of Mauritius from a company resident in India will be taxable @ 15%. However concessional rate of 5% is to be applied if the recipient of dividend
 - Is the beneficial owner of the shares
 - Holds at least 10% of the capital of the company paying the dividend.
- Mauritius companies X Ltd and Y Ltd held to be tax resident of Mauritius.
- However, beneficial ownership of dividend by X Ltd and Y Ltd could not be established. As X Ltd and Y Ltd were the 100% subsidiaries of the sole shareholder in UK, X Ltd and Y Ltd were merely legal owners. It was observed that NW, UK was the beneficial owner of the shares in Z Ltd.
- Consequently, the concessional tax rate @ 5% of the dividend was not permissible.

Application was rejected on the ground that question raised relates to a transaction which is designed prima facie for the avoidance of tax