

Media & entertainment Industry - Direct tax

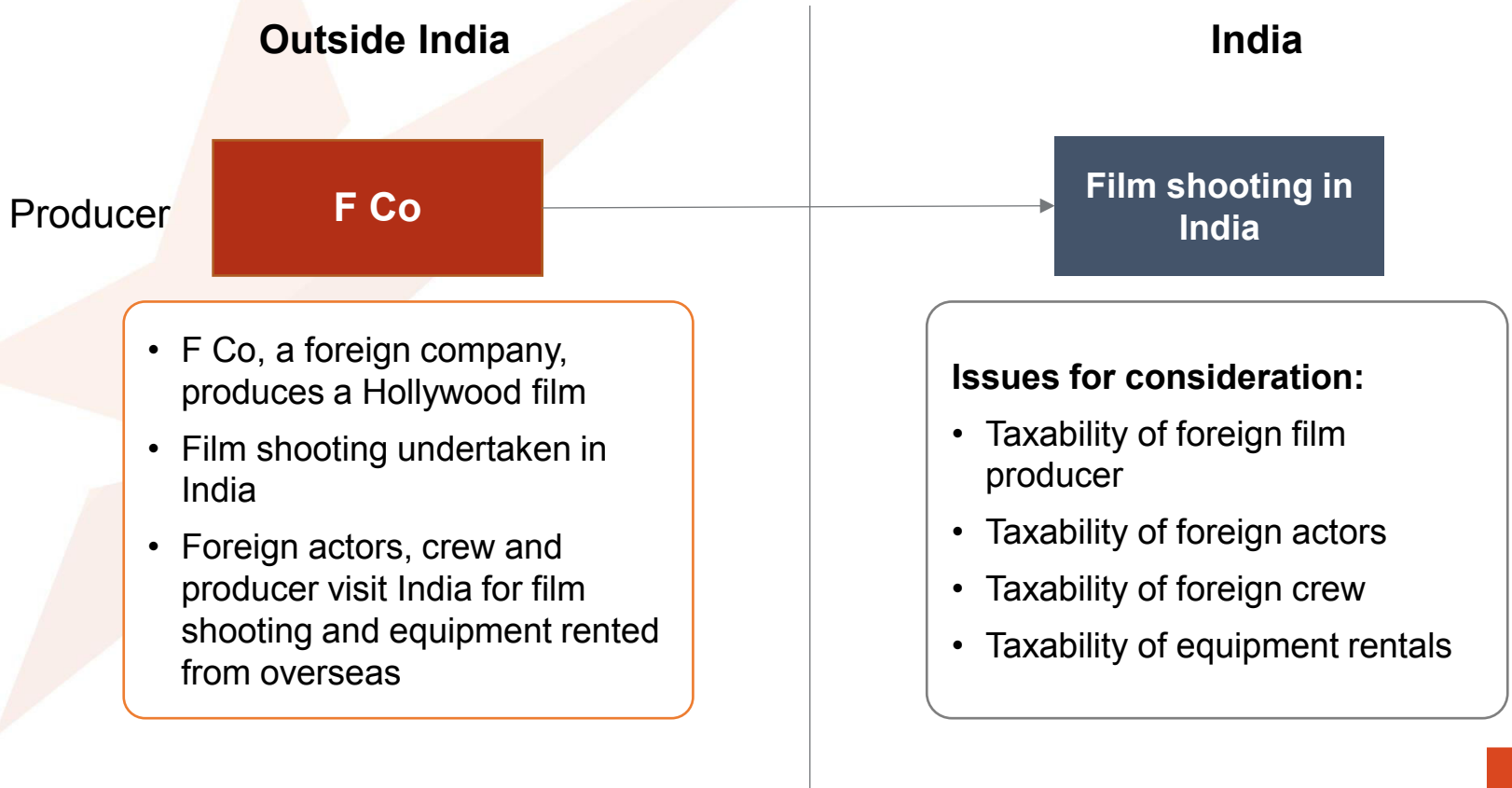
Prashant Bhojwani

6 October 2018

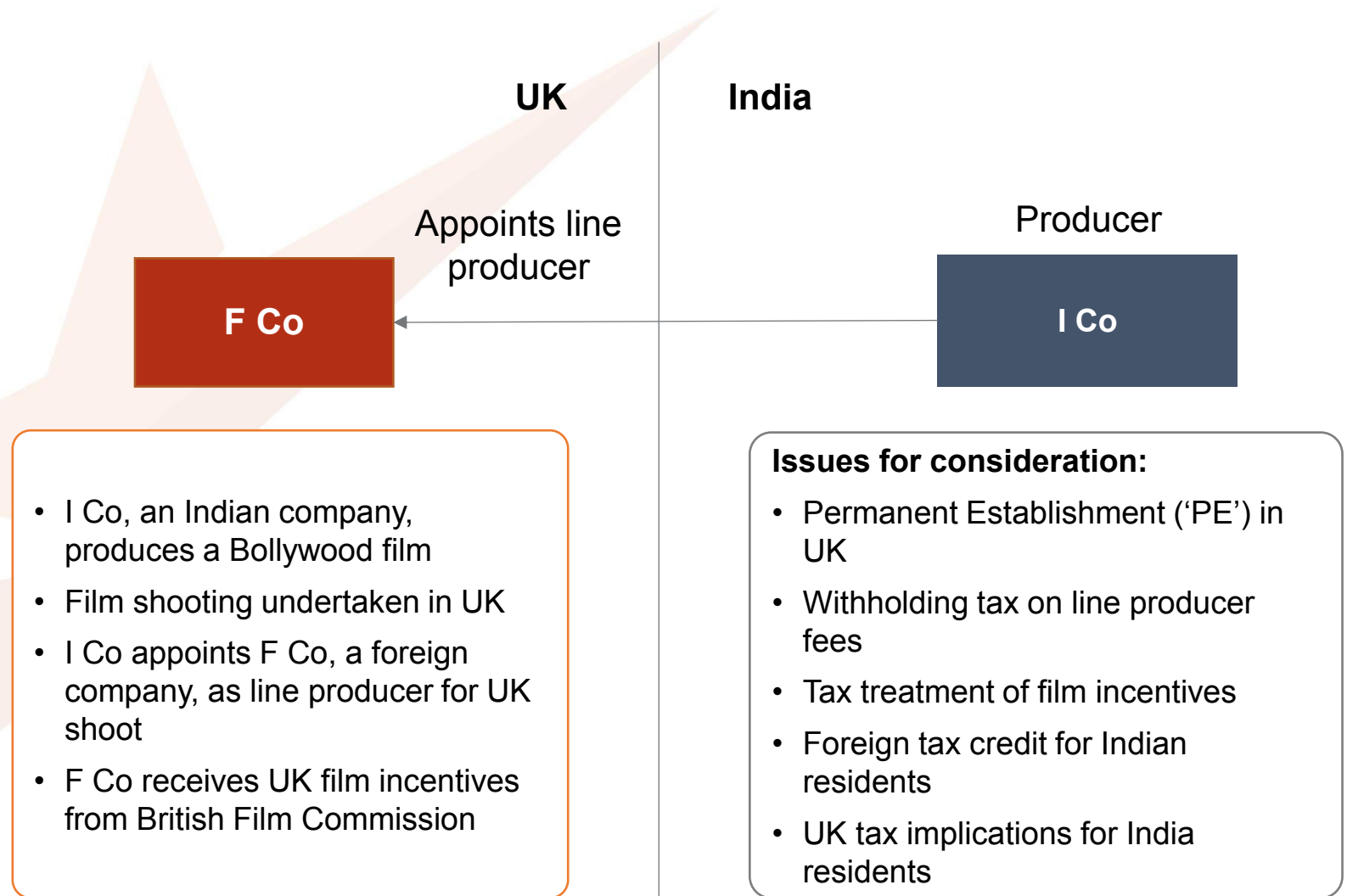
Key sectors



Case study 1 – Hollywood film



Case study 2 – Bollywood film



Case study 2 – Bollywood film



Film incentives

Government of various countries offer film incentives to attract overseas film producers to shoot in their countries

- Prevalent in some countries for a long time (example: Canada since 1974)

Film incentives serve as a mechanism to support production of films



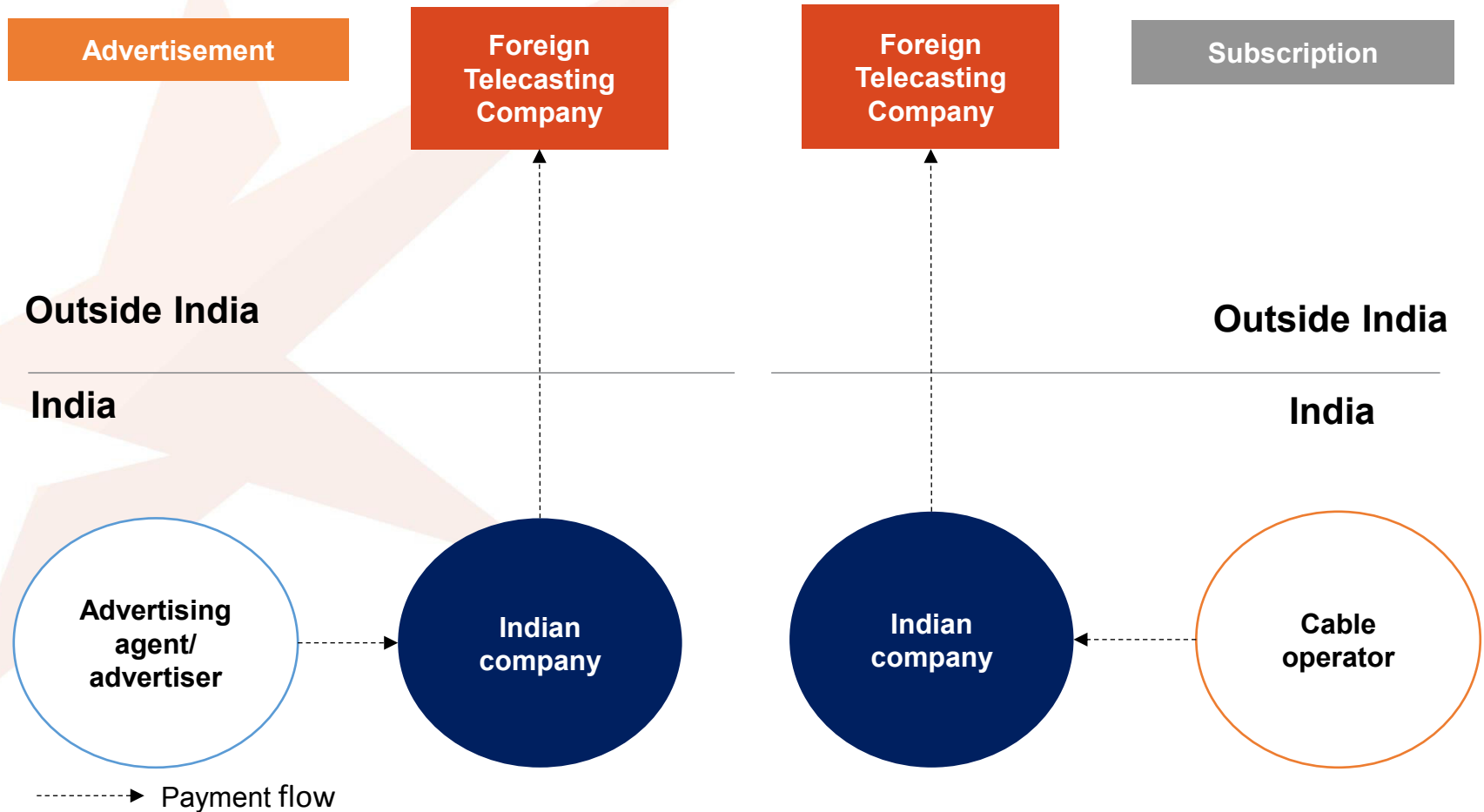
Advantages for producer

- Reduction in cost of production of film
- Opportunity to showcase new locations to audiences
- Access to overseas expertise / latest technology

Examples:

- Mauritius: 30-40% of qualifying expenditure
- United Kingdom: 25% of qualifying expenditure

Case study 3 - Foreign telecasting company



Case study 3 - Foreign telecasting company

Issues for consideration



Taxability of advertisement revenue



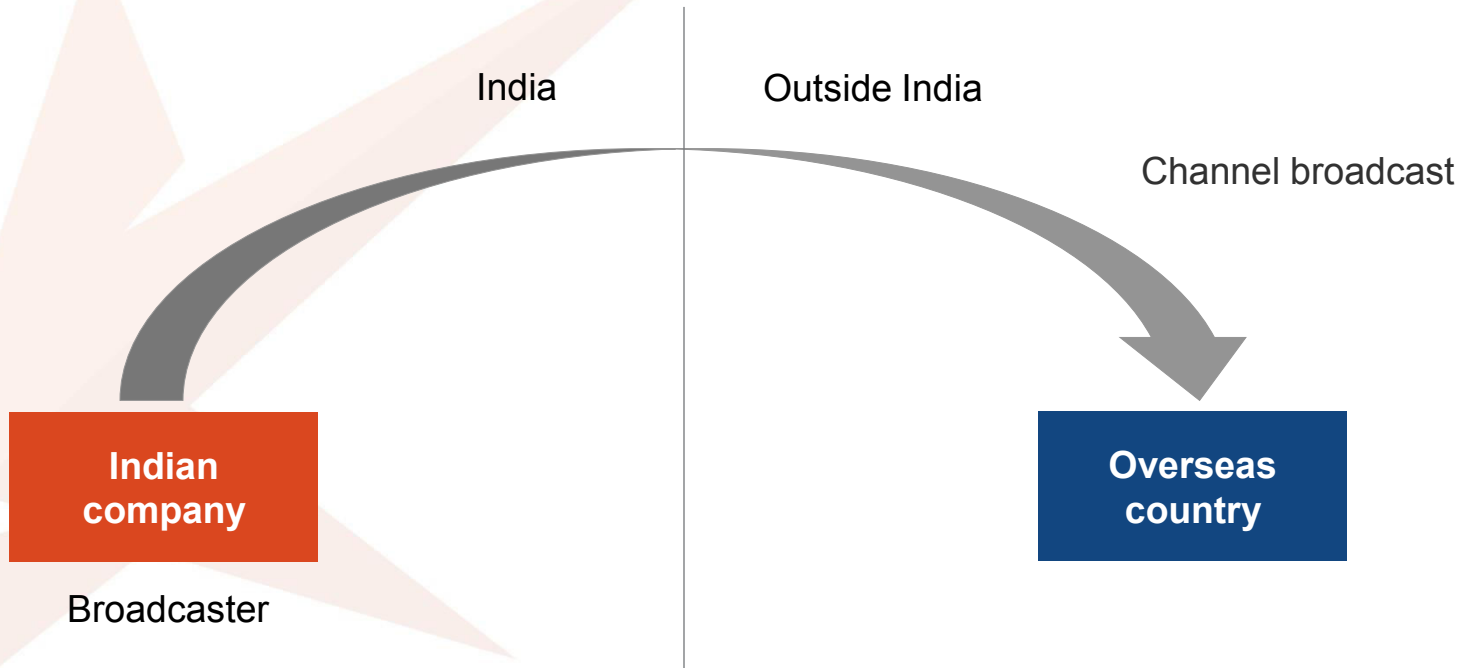
Taxability of subscription revenue

Decisions:

- Taj TV Limited (Mumbai Tribunal)
- NGC Network Asia LLC (Mumbai Tribunal)



Case study 4 - Indian channel company



Issue for consideration: Withholding tax on payments to non-residents for broadcast of channels in overseas country

- Content
- Transponder



Case study 5 – India event



Case study 5 – India event

Issues for consideration

- Taxability of foreign sportsperson
- Taxability of foreign trainers, coach
- Taxability of foreign match officials
- Taxability of foreign Boards/ Associations
- Taxability of foreign third party service providers

- Taxability of commercial rights holder
 - Live broadcast rights
 - Sponsorship rights



Case study 5 – India event

- Tax exemption under Section 10(39) of the Income-tax Act, 1961 ('Act')
 - Approval to be obtained for income to be exempted
 - Income should arise from sporting event held in India
 - Person earning income to be notified by Central Government
 - Event to be approved by International Body
 - Participation of more than 2 countries
 - Event to be notified by Central Government

Approval granted for following events:

- ICC Champions Trophy 2006
- Commonwealth Games 2010
- ICC Cricket World Cup 2011
- FIFA under-17 Football World Cup 2017

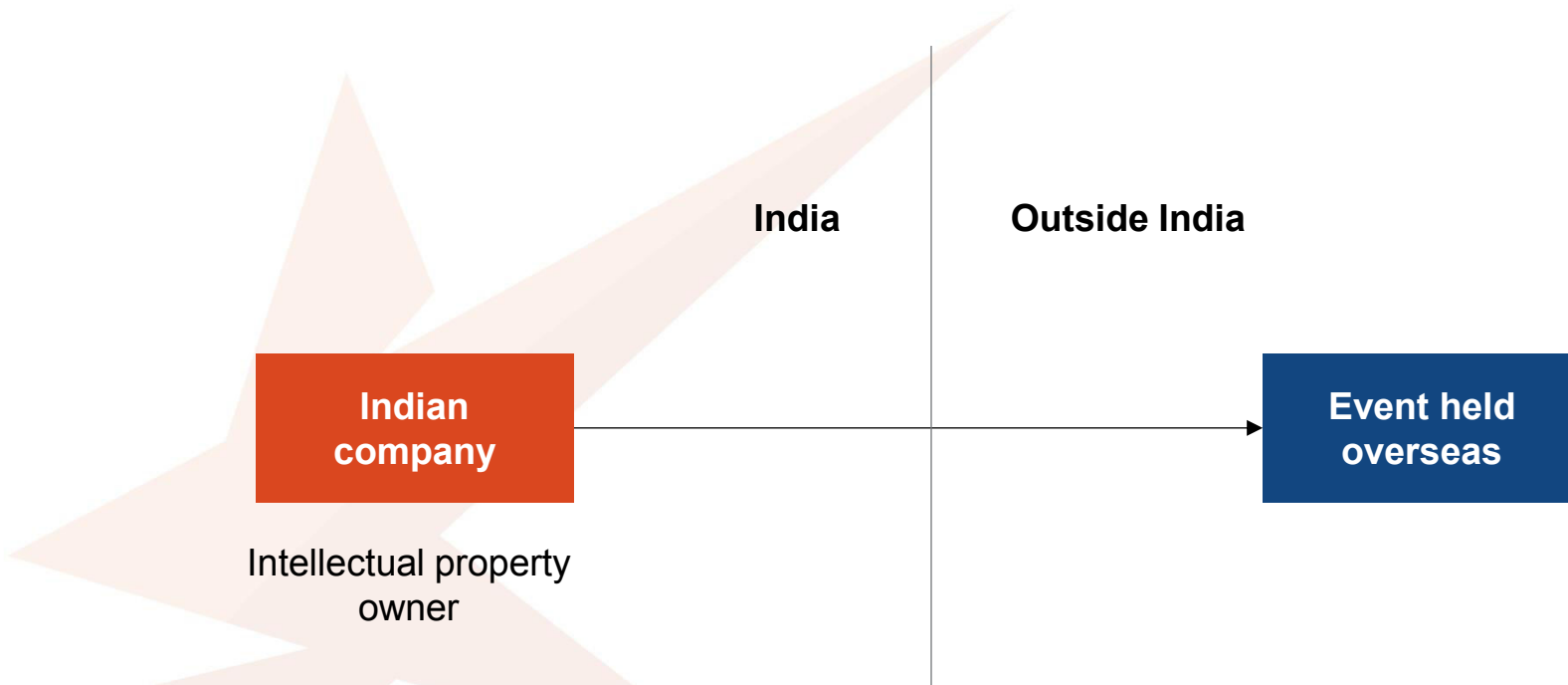


Case study 5 – India event

- Supreme Court's decision in Formula One World Championship Limited's ('FOWC') case
 - Budh International Circuit is a PE of FOWC in India
- **Key observations of the Supreme Court:**
 - Event has taken place by conduct of race physically in India
 - Entire income is generated from conduct of event in India
 - Budh International Circuit is a fixed place from where Grand Prix was conducted which is an economic / business activity
 - Commercial rights are with FOWC, which are exploited with actual conduct of race in India
 - During duration of event (though for limited days), FOWC had full access to / complete control of circuit (at the disposal of FOWC)

Way forward for events in India

Case study 6 – Overseas event

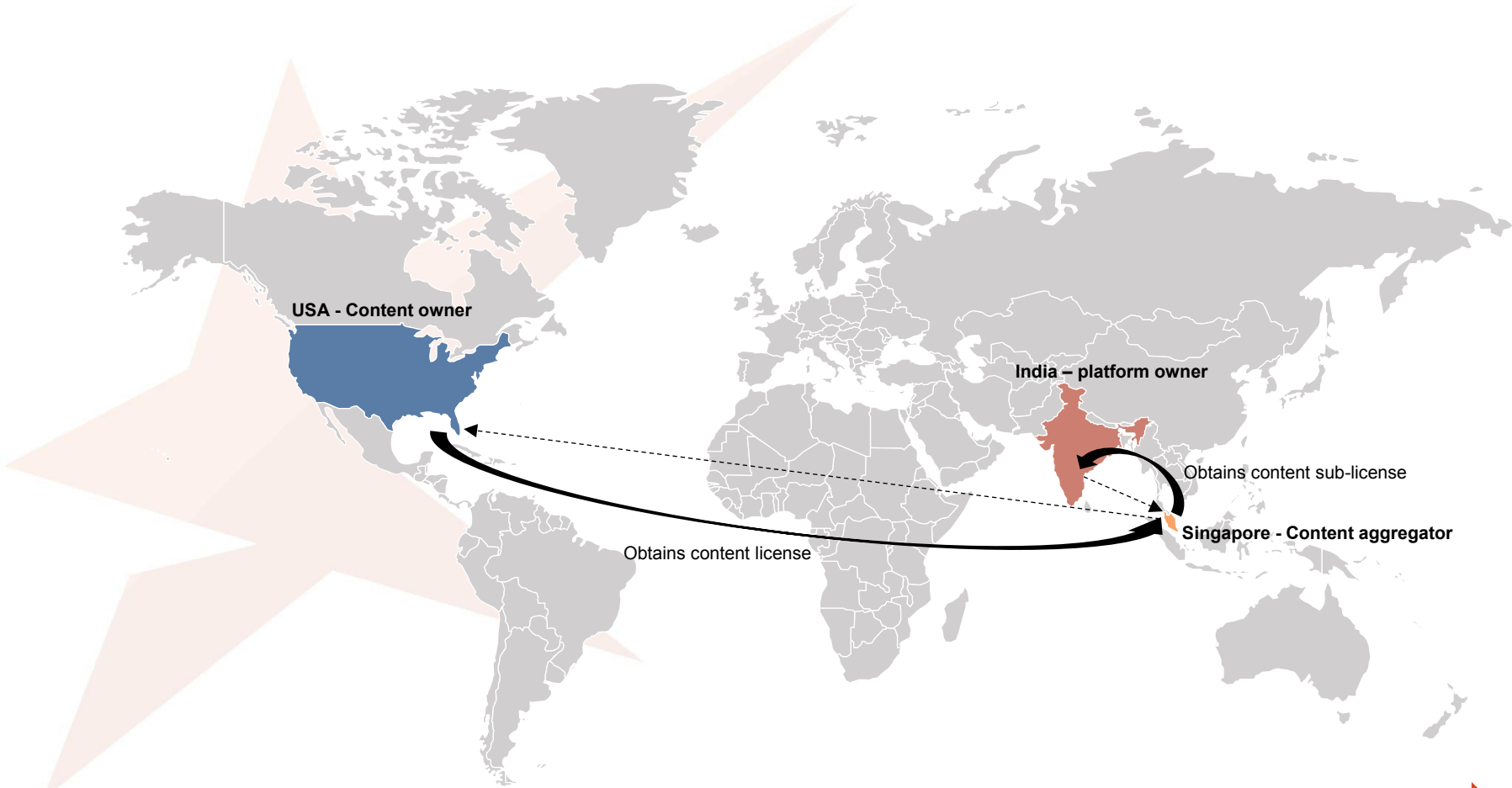


Issue for consideration: Withholding tax on payment to non-residents for event outside India

- Event management fees



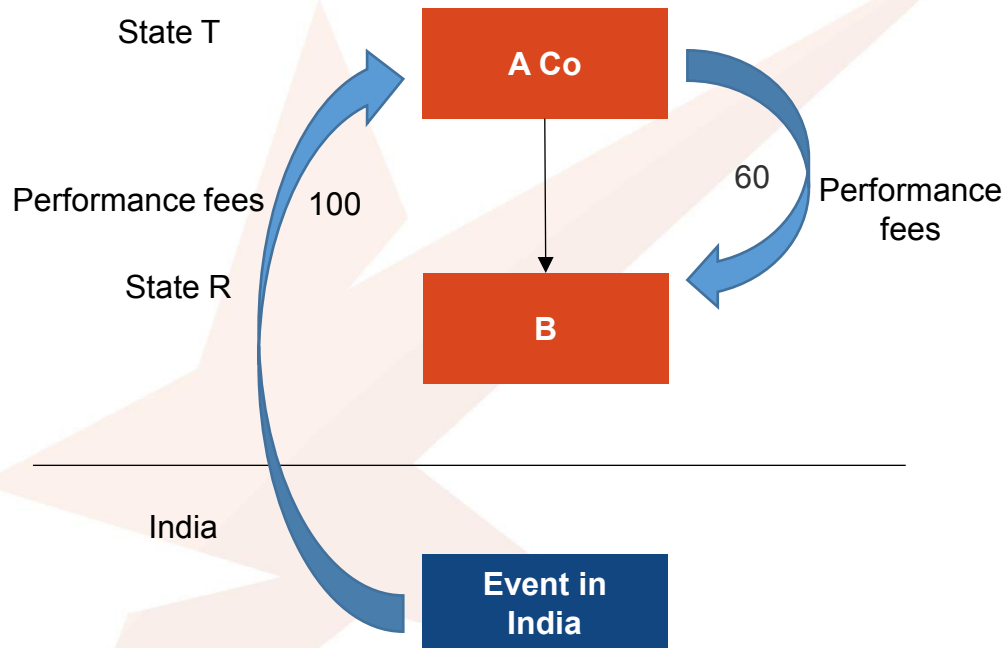
Case study 7 – New media



Issue for consideration: Withholding tax applicability on payment of license fee

-----> Payment flow

Case study 8 – Star company

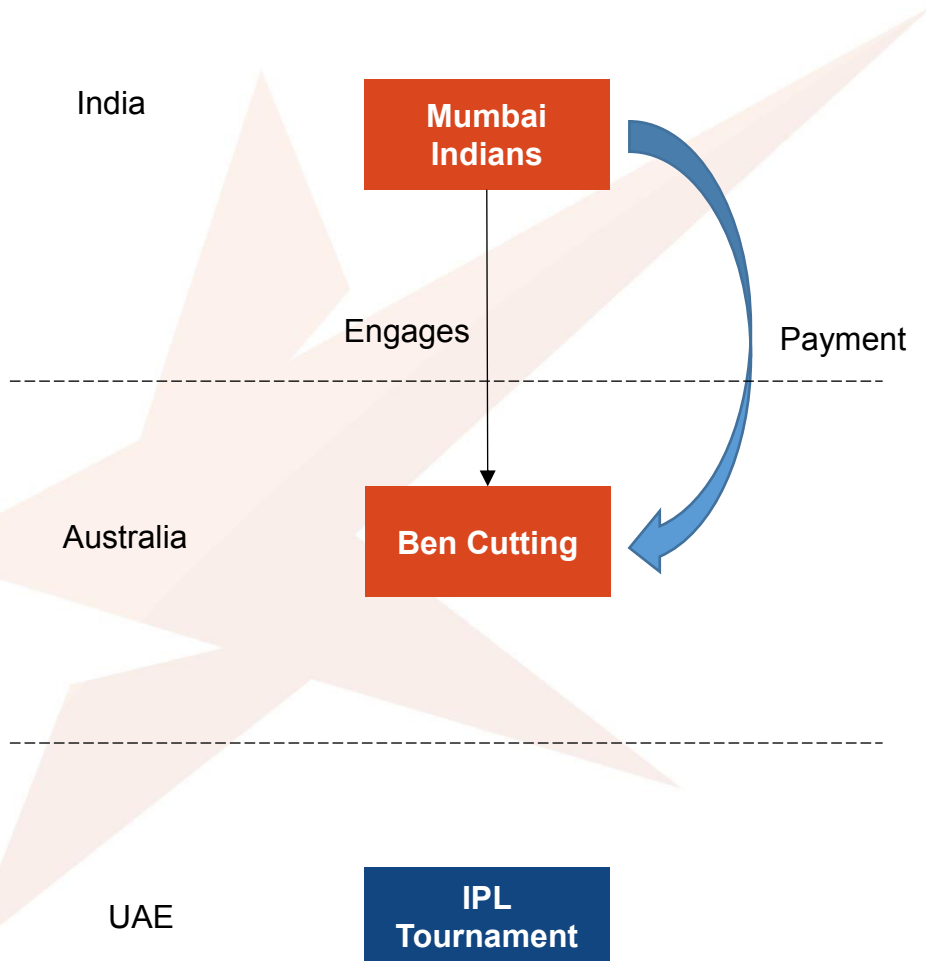


- Entertainer is a resident of State R
- B is engaged by a company (A Co) situated in State T
- Entire shareholding of A Co is held by B
- A Co provides B's services for a event in India

Issues for consideration:

- Taxability of B
- Taxability of A Co

Case study 9 – IPL



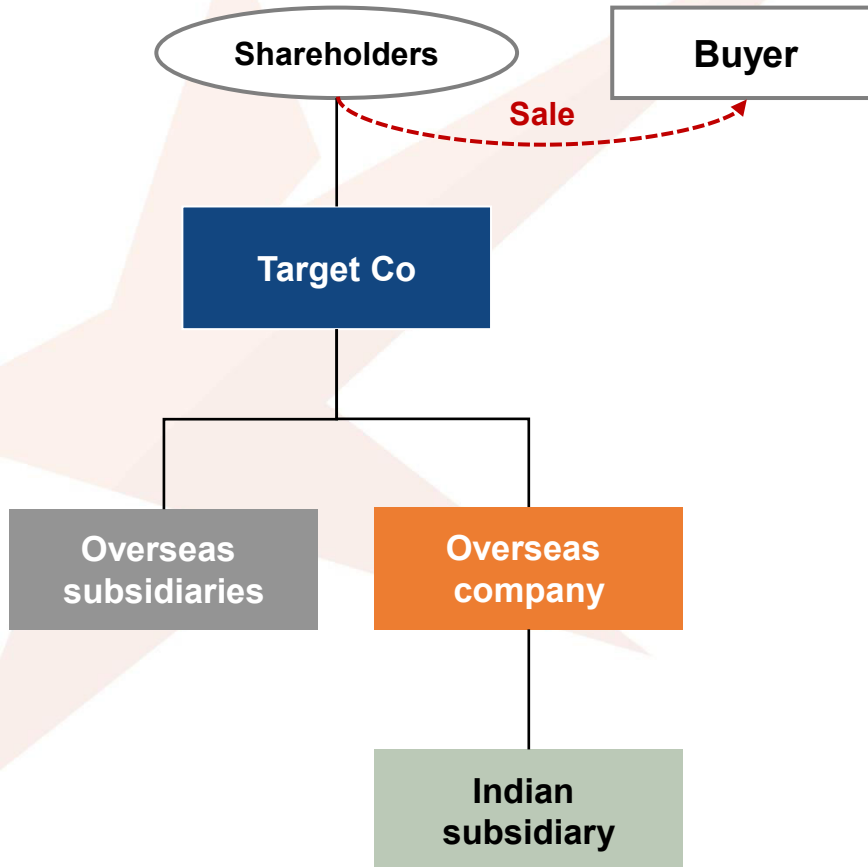
- Mumbai Indians, an Indian company, engages Ben Cutting for IPL Tournament
- Ben Cutting, a tax resident of Australia, receives performance fees
- IPL Tournament to be held in UAE

Issue for consideration:

- Withholding tax on payment to Ben Cutting

Mergers and acquisitions - landscape

Large global deals witnessed in recent times in media and entertainment industry



Areas for consideration

- Indirect transfer of Indian assets
 - Withholding tax
 - Reporting
 - Valuations
- Regulatory aspects

Equalisation levy

- Equalisation levy @ 6% on consideration received by a non-resident not having a PE in India
 - No further taxation in hands of non-resident recipient
- Levy applicable on specified services – online advertisement, any provision for digital advertising space, any other facility / service for online advertisement, any other service notified by Central Government
- Obligation on resident payers/ non-resident payers having a PE in India to deduct and deposit such levy
- Compliance requirements – payers to furnish annual statement with prescribed information by 30 June
- Consequences of failure to deduct and deposit levy
 - Disallowance of expense deduction
 - Interest
 - Penalty

Transfer pricing - update

Base erosion and profit shifting – Action Plan 13 (guidance on implementation of transfer pricing documentation and Country-by-Country reporting)

Documentation	Threshold
Country-by-Country report	Total consolidated revenue of international group exceeds INR 5,500 crores
Master file (Part B)	Consolidated revenue of international group exceeds INR 500 crores and <ul style="list-style-type: none">• value of international transactions exceeds INR 50 crores or• value of intangible property related international transactions exceeds INR 10 crores

- Impact
 - Transparency: availability of information with tax authorities
 - Additional compliances

Concluding Thoughts



Media and entertainment industry growth to outperform overall GDP growth

Business models continuously evolving

Cross-border transactions increasing

Smaller sectors becoming prominent



Tax evaluation

Tax risk management

Annexures

Case study 1 – Hollywood film

Foreign crew

Article 12: Fees for technical services (FTS) means consideration for managerial, technical or consultancy services

Article 15: If consideration paid to professional (not employee): Fees for professional services not taxable in India, if following conditions satisfied*:

- if the person does not have a fixed base regularly available to him in India
- his stay in India does not exceed 90 days in a tax year

Article 16: If consideration paid to employee: Remuneration not taxable in India, if following conditions satisfied**:

- recipient is in India not exceeding 183 days in a tax year
- remuneration is paid by / on behalf of a non-resident employer
- remuneration is not borne by employer's PE in India

*Article 15 of India-USA tax treaty (Independent Personal Services)

**Article 16 of India-USA tax treaty (Dependent Personal Services)

Case study 4 - Indian channel company

““”

Domestic tax law

Royalty definition - exclusion

Payment by resident in respect of any right, property or information used or services utilised

- for the purposes of a business carried on by such person outside India
- or
- for the purposes of making or earning any income from any source outside India



Case study 6 – Overseas event

““”

Domestic tax law

Fees for technical services definition - exclusion

Payment by resident

- in respect of services utilised in a business carried on by such person outside India
- or
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Case study 7 – New media

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India-USA Tax treaty

Royalty and fees for included services

Article 12(7)(b)

Where under sub-paragraph (a) royalties or fees for included services do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property, or the fees for included services relate to services performed, in one of the Contracting States, the royalties or fees for included services shall be deemed to arise in that Contracting State.



News clippings

Lionel Messi accused of tax fraud

The Argentina and Barcelona star is accused of failing to pay 4.16 million euros in income tax



- October 2004**
First match for Spanish club Barcelona
- June 2013**
Spanish prosecutors launch an investigation into alleged tax fraud by Messi and his father Jorge IHoracio Messi
- September 2013**
When questioned by a judge, declares: "I signed things, but I never look at the contracts...my dad handled the cash"
- April 2016**
Messi and his father named in connection with revelations in the Panama Papers. The family acknowledged the existence of a company in their name but said it was "inactive"
- May 31 2016**
Trial opens in Messi's absence. Spanish prosecutors are seeking a jail sentence of 22 months, plus 4m euros in fines

Playing career

2004 -	
Champions League	Ballon d'Or
🏆 4	🏆 5
Spanish Championship	World Player of the Year 2014
🏆 8	🏆 1
Olympic Games	108 caps
🏆 1	50 goals
Annual revenue estimated at	58.2 million euros



Sources: AFP, FIFA, Forbes

Football superstar Neymar to stand trial

- 2013**
Transferred to Barcelona from Santos (Brazil)
- June 17, 2015**
Probe opened in Spain after a complaint from Brazilian investment company DIS, which owned 40% of the player's rights
- Accusations**
that the true cost of Neymar's transfer was concealed
- Official cost**
57.1 million euros
- 83.3 million**
according to the Spanish authorities
- July 6, 2016**
A Spanish court rules that irregularities were an issue for a civil court
- September 23**
Spanish authorities re-open the case



- Record**
- 1 Champions League
- 1 Club World Cup
- Olympic champion (2016)
- Suspected of alleged tax evasion in Brazil
- A part of his 43.5m euros in assets frozen
- Alleged tax evasion in Spain
- 5.5 million euros fine paid by the club in a deal with prosecutors
- May 4, 2017**
- Spanish court orders him to stand trial for fraud
- November 23**
- Spanish prosecutors recommend that Neymar be handed a two-year jail sentence and a fine of 10 million euros for alleged corrupt practices





Prashant Bhojwani

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