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LEGAL AND TAX COUNSELING WORLDWIDE

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Business Model Case Study – Fintech: Part I

Payment Aggregators and Pre-Paid Instruments

August 2020

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  2020, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012

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1. Introduction

FinTech is an abbreviation for 'financial technology'. The term is used to describe innovations in technology related to financial services, with increasing reliance on the information technology.[1] At the time of its inception, FinTech referred to the back-end technology used by financial institutions. However, over time, its scope has expanded to consumer-oriented (front-end) services within the financial sector.[2]

The FinTech movement has the potential to revolutionize the financial landscape, both in terms of increasing business efficiency and transforming consumer experience in respect of financial activities.[3] Further, as a result of the FinTech developments in the recent past, financial services is no longer a monopoly of the banks. Non-banking entities are supplementing, complementing and competing with banks, either in the form of being technology service providers to banks or directly providing financial services to customers.[4]

There is no concrete definition of FinTech yet. However, as per the Financial Stability Board, an international body that monitors and makes recommendations about the global financial system, *"FinTech is technologically enabled financial innovation that could result in new business models, applications, processes, or products with an associated material effect on financial markets and institutions and the provision of financial services."* As is indicative from the definition, the scope of FinTech is very wide and includes an array of technological enhancements such as mobile and web-based payment services, digital currencies (cyprocurrencies), blockchain technology, peer to peer lending, crowd funding, smart contracts, cloud computing, big data, Artificial Intelligence etc.[5]

In the global landscape, India has been a frontrunner in the FinTech space. As per the EY FinTech Adoption Index 2019, India ranks second (after China) in terms of adoption of FinTech with an adoption rate of 87 percent (increased from 52 percent in the 2017 index).[6] The efforts of the incumbent government and the RBI in terms of bringing about legal and policy changes to foster a conducive climate for FinTech has been crucial in India achieving this feat.

Some of the most noteworthy achievements of India in FinTech has been in the payments sector. Development of payments services such as Immediate Payments Service (IMPS), Unified Payments Interface (UPI), Bharat Interface for Money (BHIM), Bharat Bill Pay System (BBPS) etc. by the Government has formed the bedrock for developing a state-of-the-art national payments infrastructure in India.

In this edition of our Technology and Tax Series, we will be dealing with one of the subsets of FinTech, i.e. payment aggregators and prepaid instrument issuers. Specifically, the focus will be on tax issues pertaining to foreign service providers entering the Indian market.

1. https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/WG-FR68AA1890D7334D8F8F72CC2399A27F4A.PDF - page 1
2. https://www.investopedia.com/terms/f/fintech.asp
3. Supra note 1, page 6
4. https://rbidocs.rbi.org.in/rdocs/Speeches/PDFs/GSF-NA250319AD0EE1F30EB746028A177251138EC297.PDF – page 2
5. http://www3.weforum.org/docs/WEF_The_future__of_financial_services.pdf; Ibid, page 7 onwards
6. file:///C:/Users/afaan.arshad/Downloads/ey-global-fintech-adoption-index-2019.pdf

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2. Legal Provisions

I. Indian laws applicable to Payment Services

Payment systems in India are regulated by the Payment and Settlement Systems Act, 2007 (**"PSS Act"**) and the Payment and Settlement Systems Regulations, 2008 (**"Regulations"**) issued thereunder. Under the PSS Act, any 'payment system' which *"enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them, but does not include a stock exchange"* requires authorization from the Reserve Bank of India. There are however certain exceptions to this requirement such as in the case of an agency model, or accepting payments from group companies. Under the PSS Act, the Reserve Bank of India has wide discretion to issue directions and guidelines for regulating payments.

Some of the important RBI regulations dealing with payment services are:

i. Opening and Operation of Accounts and Settlement of Payments for Electronic Payment Transactions involving Intermediaries, 2009, as amended from time to time (**"Payment Intermediary Directions"**). These Regulations provide the legal framework within which the payment intermediaries in India must operate. As an update to the Payment Intermediary Directions, the RBI came out with Guidelines on Regulation of Payment Aggregators and Payment Gateways dated March 17, 2020;

ii. Master Circular on Credit Card, Debit Card and Rupee Denominated Pre-paid Card Operations of Banks and Credit Card Issuing NBFCs, 2015, as amended from time to time, (**"Master Circular on Cards"**). These regulations provide the legal framework and issuance and operation of credit, debit and prepaid cards in India;

iii. Master Direction on Issuance and Operation of Prepaid Instruments 2017, as amended from time to time (**"PPI Master Directions"**). These regulations deal with issuance and operation of prepaid instruments;

The PPI Master Directions defines PPIs as:

> *"PPIs are payment instruments that facilitate purchase of goods and services, including financial services, remittance facilities, etc., against the value stored on such instruments. PPIs that can be issued in the country are classified under three types viz. (i) Closed System PPIs, (ii) Semi-closed System PPIs, and (iii) Open System PPIs."*

Prior RBI approval is required for operating open and semi-closed system PPIs, however no such approval is required for closed systems PPIs.

Open system PPIs are those which may be used at any merchant for purchase of goods and services and can also be used for cash withdrawals. Importantly only banks can issue open system PPIs. *Semi-closed system PPIs* are those which can be used for purchase of goods and services from designated third parties which have a specific contract with the issuer to accept the PPIs as payment instruments. *Closed system PPIs* are issued by an entity for facilitating the purchase of goods and services from that entity only (and not from third parties). Semi -closed and closed system PPIs can be issued by non-bank entities as well

Further, over the last few years, the legal landscape pertaining to the payments sector has been constantly evolving. India has been proactive in dynamically developing regulations to deal with innovations in the payments space. For example, India has been working on developing a framework for regulatory sandbox – 'an environment for developing FinTech innovations and testing applications / APIs developed by banks and FinTech companies - since 2017.'[7] Vide circular dated May 20, 2019, the Securities and Exchange Board of India (**"SEBI"**) stipulated the

7. https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/WGFR68AA1890D7334D8F8F72CC2399A27F4A.PDF

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framework for Innovation Sandbox for offline testing of proposed FinTech solutions for non-SEBI regulated entities. Further, vide circular dated June 05, 2020, the SEBI introduced a framework for a Regulatory Sandbox to SEBI regulated entities, with facilities and flexibilities to experiment FinTech solutions in a live and controlled environment on a limited set of real customers for a limited time frame.

II. General taxation framework under Income-tax Act, 1961

A. Charging Provisions

- Section 5 of the Income-tax Act, 1961 (**"ITA"**) which deals with the scope of total income, has been divided into two sub-sections. Section 5(1) lays down that income of a resident, derived from whatever source, would be chargeable to tax in India. Section 5(2) of the ITA defines the scope of total income chargeable to tax in India in the hands of a non-resident. As per provisions of section 5(2) a non-resident is liable to tax in India in respect of the following incomes:
  - Income received / deemed to be received in India;
  - Income accruing or arising in India; and
  - Income deemed to accrue or arise in India
- Section 9(1) of the ITA explains the scope of the phrase 'income deemed to accrue or arise in India'. In this regard, 'all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India', shall be deemed to accrue or arise in India. By virtue of section 5(2), as aforesaid, such income of non-resident will be taxable in India.
- Explanation 2A to section 9 provides that significant economic presence (**"SEP"**) of a non-resident in India shall constitute business connection in India. Explanation 2A[8] to section 9(1)(i) of the ITA defines SEP to mean:
  - Transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, is taxable in India if the aggregate of payments exceeds thresholds, which are yet to be notified.
  - Any systematic and continuous soliciting of business activities or engaging in interaction with such number of users in India, which are yet to be notified, would also make income from such transactions taxable in India.

  In case a non-resident has a SEP in India, so much of the income of the non-resident attributable to such SEP will be taxable in India.
- The SEP provisions come into effect from April 1, 2021. While currently the thresholds on number of users or transaction value to trigger SEP as stated above, has not been notified, should such thresholds be satisfied there could be SEP after March 31, 2021 resulting in a business connection in India.
- Explanation 3 to section 9(1)(i) of the ITA provide that in case a non-resident has a business connection in India, so much of the income as is attributable to such business connection is taxable in India.

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8. *"Explanation 2A.*—For the removal of doubts, it is hereby declared that the significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—
(a) transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
(b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users in India, as may be prescribed:
Provided that the transactions or activities shall constitute significant economic presence in India, whether or not—
(i) the agreement for such transactions or activities is entered in India; or
(ii) the non-resident has a residence or place of business in India; or
(iii) the non-resident renders services in India:
Provided further that only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India."

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- The Finance Act, 2020 (**"FA, 2020"**) expanded the attribution rules by inserting Explanation 3A[9] to section 9(1)(i) of the ITA (**"Expanded attribution rules"**). Explanation 3A provides that the income attributable to the operations carried out in India shall include income inter-alia from:
  - advertisement that targets Indian customers or
  - sale of goods or services using data collected from India.

The Expanded attribution rules apply to all business connection situations.

B. Royalty and FTS

- Section 9(1)(vi) of the ITA provides that 'royalty' earned by a non-resident shall be deemed to be sourced in India (and hence taxable in India) if it is paid by a resident (except if the royalty is payable in respect of any right, property or information used outside India or any services utilised for business purposes outside India or for the purposes of earning any income outside India) or non-residents where the royalty is payable in respect of any right, property or information used in India or any services utilised for business purposes in India or for the purposes of earning any income in India.
- As per Explanation 2 to Section 9(1)(vi) of the ITA, 'royalty' is defined as the consideration (including lump sum payment) for, amongst other things, the transfer of all or any rights (including the granting of a license) in respect of a patent, invention, model, design, secret formula, process, trademark, copyright, literary, artistic or scientific work. The WHT tax rate for payment of 'royalty' under the ITA is 10%.[10]

9. *"Explanation 3A.*—For the removal of doubts, it is hereby declared that the income attributable to the operations carried out in India, as referred to in Explanation 1, shall include income from–
(i) such advertisement which targets a customer who resides in India or a customer who accesses the advertisement through internet protocol address located in India;
(ii) sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India; and
(iii) sale of goods or services using data collected from a person who resides in India or from a person who uses internet protocol address located in India."

10. All the tax rates mentioned in this memorandum are exclusive of applicable surcharge and cess.

- Similarly, section 9(1)(vii) provides that 'fees for technical services' (**"FTS"**) earned by a non-resident shall be deemed to be sourced in India if it is paid by a resident (except if the FTS is payable in respect of any right, property or information used outside India or any services utilised for business purposes outside India or for the purposes of earning any income outside India) or non-residents where the FTS is payable in respect of any right, property or information used in India or any services utilised for business purposes in India or for the purposes of earning any income in India.
- Under the ITA, FTS is defined as 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) but does not include consideration for any construction, assembly, mining or like projects.
- The term 'technical services' in the definition of FTS was interpreted by the Supreme Court in *CIT v. Kotak Securities Ltd.*[11] It was held that the term has to be interpreted applying the principle of 'noscitur a sociis' as per which the meaning of doubtful words may be ascertained by reference to words associated with it. The term 'technical services' comes in between the terms 'managerial' and consultancy services' – both of which require human intervention. Applying the principle of '*noscitur a sociis*' the term 'technical services', placed between the terms 'managerial and consultancy services,' shall be interpreted to mean services which involve human intervention.

C. Tax Treaty Relief

- Section 90(2) of the ITA provides that a non-resident in a country with which India has a tax treaty, shall be taxed as per the provisions of the tax treaty or the ITA, whichever is more beneficial.
- In order to obtain treaty relief, the non-resident entity must be a resident liable to tax in its country of residence.

11. [2016] 383 ITR 1 (SC)

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- With the ultimate objective of preventing double taxation by allocating taxing rights between the resident and source countries, tax treaties provide relief in various ways such as a narrower definition of terms such as FTS, royalty, Permanent Establishment (**"PE"**) (which is the tax treaty equivalent of the test of 'business connection) etc., lower rates of withholding in case of dividends, interest, royalty etc.

- Under some of India's tax treaties', for the FTS clause to be triggered, the provision of services must qualify the 'make available' provision, i.e. the services must be provided in such a manner that it enables the service recipient to re-apply the technology provided as part of the service.

- The concept of PE is the tax treaty equivalent of the concept of business connection under the ITA. There are several types of PE. Essentially, PE is a fixed place of business through which business is carried out. The components for satisfaction of fixed place PE are as follows: (i) the physical test i.e. the foreign enterprise has at its disposal a physical premise in India, (ii) the temporal test i.e. there is a degree of permanence or the physical presence in India is of an enduring nature and not temporary, (iii) the functionality test i.e. the foreign enterprise must conduct its own business through such fixed base or premise.

- Since the inception of digitalization, the judiciary has had the occasion to consider the applicability of PE in respect of digital presence. In *Amadeus Global Travel Distribution S.A.*,[12] the Delhi tribunal held computers (including software and hardware) installed in premises of the India travel agents for facilitating the business of a non-resident entity engaged in the business of customer reservation system (CRS) constituted a PE in India. Further, in *MasterCard Asia Pacific Pte. Ltd., In re.*[13], the Authority for Advance Rulings held that the MasterCard Interface Processor (MIP) an electronic device (similar to a computer) placed in the premises of the Indian financial institutions which connected such institutions to the Master Card global network for payment processing constituted a PE in India.

- In the case of *ITO v. Rights Florists*,[14] the Kolkata tribunal while relying on the OECD commentary in this regard observed that while a website by itself cannot constitute a fixed place PE, the server from where the website functions could constitute a PE. Recently in the case of *Union of India v. UAE Exchange Centre*,[15] the Supreme Court held that the Indian liaison office of a UAE entity involved in downloading of relevant data for the business while connected to a server in the UAE did not constitute a PE.

- Further, recently in the case of *Volkswagen Finance Pvt. Ltd.*,[16] the Mumbai Tribunal introduced the concept of intangible business connection. It held that payment made by an Indian entity to an American actor for making an appearance in a product launch in Dubai constituted a business connection in India on the basis that the product launch, though conducted in Dubai, was intended for the Indian market.

- Regardless of the judicial developments discussed above which indicate a transformation of the concept of PE to bring within its ambit digital presence, the PE test is not sufficient to capture digital presence. It is for this reason that newer and more innovative regime such as 'Unified Approach' etc. (discussed later) are being curated at the global level to effectively tax digital businesses.

- Apart from a fixed place of business, several other modes of PE are also contemplated in tax treaties'. Agency PE is concept under which a foreign entity might form a PE in India if its dependent Indian agent habitually concludes or exercises an authority to conclude contracts, maintains a stock of goods or secures orders on behalf of the non-resident enterprise in India. Service PE is concept under which a foreign entity shall constitute PE in India if it furnishes services in India through its

12. *[2011] 11 taxmann.com 153 (Delhi)*
13. AAR 1573 of 2014
14. I.T.A. No.: 1336/ Kol. / 2011
15. Civil Appeal No. 9775 of 2011
16. ITA No. 2195/ Mum/ 2017

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employees / personnel through their presence in India for a specified duration. Other forms of PE include construction PE, installation PE etc.

- Further, in the aftermath of the ruling by the Supreme Court confirming the fundamental right to privacy, the Government is in the process of developing laws to safeguard privacy. It is anticipated that such laws would require storage of different types of customer data on servers located in India. In the payment space, the RBI introduced the Storage of Payment Systems Data Directive on April 06, 2018 (**"Payments Data Storage Directive"**). The directive directs all digital payment system providers to ensure that the entire data relating to payment systems operated by them is stored in a system only in India.

D.Profit Attribution

- Collection of tax revenue depends on quantum of income attributable to India. India has made reservations against the revised Article 7[17] of the OECD Model Tax Convention and has taken a stand that the process of attribution of profits by using functions performed, assets used and risks assumed (**"FAR"**) analysis, negates role of 'demand side factors' in the profitability of an enterprise.

- Instead, the Central Board of Direct Taxes (**"CBDT"**) in its report on profit attribution to PE (**"Report"**) has considered options based on mixed approach which allocates profits between jurisdictions based on both demand and supply factors. Consequently, a 'fractional apportionment approach' based on apportionment of profits derived from India has been considered as the best option under the Report. A three-factor method based on one-third weight each accorded to sales (representing demand), manpower and assets (representing supply) has been proposed.

  Importantly, the Report also dealt with profit attribution in case where business connection is established due to SEP in India. The Report provides for addition of a fourth factor of apportionment i.e. 'users' for businesses in which users contribute significantly to the profits of an enterprise. The degree of apportionment on basis of 'users' differs according to 'user intensity' in a business. For businesses with low and medium user intensity, users have been assigned a weight of 10% while other three factors have been assigned 30% weight each. For businesses with high user intensity, users have been assigned a weight of 20% while the share of assets and employees is reduced to 25% each and sales have been assigned 30% weight.

III. International Developments – Pillar One

- The digitization of the economy has strained the existing international tax rules, which has led to a number of countries imposing unilateral measures or departing from previously agreed standards. In an attempt to resolve this issue, the Organization for Economic Co-operation and Development (**"OECD"**) in association with the G20 developed a two-pillar approach for taxation of the digital economy. Pillar One provides for allocation of taxing rights through new nexus and new profit attribution rules. Pillar Two seeks to introduce measures to ensure a minimum level of tax. The OECD member countries came up with three diverging proposals under Pillar One, i.e. the User Participation Proposal, the Marketing Intangibles Proposal and the Significant Economic Presence Proposal. The OECD proposed a Unified Approach bringing together the common elements of all three proposals.

- In January 2020, the OECD released a statement (**"OECD Statement"**) outlining the architecture of the Unified Approach under Pillar One and welcoming the progress made on Pillar Two.[18] The

17. Under the Article 7 as modified by OECD in 2010, the OECD mandated the Authorized OECD Approach (**"AOA"**) as the preferred approach for attribution of profits to a PE. The AOA requires attribution of profits to the PE on the basis of functions performed, assets used and risks assumed (**"FAR"**) analysis per prescribed OECD's Transfer Pricing guidelines.

18. OECD (2020), Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy – January 2020, OECD/G20 Inclusive Framework on BEPS, OECD, Paris, available at www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps-january-2020.pdf

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OECD Statement endorses the Unified approach encompassing three types of taxable profits that may be allocated to a market jurisdiction i.e. Amount A, Amount B and Amount C. The OECD Statement provides that the Unified Approach is designed to adapt taxing rights by taking into account new business models and thereby expanding the taxing rights of market jurisdictions (which, for some business models, is the jurisdiction where the user is located).

A.Amount A – New taxing right

- *Determination of residual profit:* The primary response of the OECD Statement to tax challenges of the digitalisation of the economy is a new taxing right called 'Amount A' by which a country will be able to tax profit earned by a multinational without regard to whether the multinational has a physical presence in the country. Under Amount A, a share of the deemed residual profit will be allocated based on a formulaic approach to market jurisdictions using the new nexus standard that is not dependent on physical presence. The OECD Statement provides that the calculation of Amount A will be based on a measure of profit derived from the consolidated group financial accounts and suggests 'profit before tax' as the preferred profit measure to compute Amount A.

- *In scope businesses:* The OECD Statement provides two categories of businesses that will fall within the scope of Amount A namely:

  i. Automated Digital services (**"ADS"**) – These services will cover businesses that generate revenue from the provision of ADS that are provided on a standardised basis to a large population of customers or users across multiple jurisdictions and includes online search engines, social media platforms, online gaming, cloud computing services etc.

  ii. Consumer facing business - This would cover businesses that generate revenue from the sale of goods and services of a type commonly sold to consumers, i.e. individuals that are purchasing items for personal use and not for commercial or professional purposes. In other words, this only covers B2C transactions and not B2B transactions. This also includes goods and services sold to customers indirectly through third party resellers and intermediaries. Importantly, there is a carve out for activities within the financial services sector on the basis that they take place with commercial customers, i.e. they are B2B. Even consumer facing businesses in the financial services sector such as retail banks and insurance should be excluded from the scope on the basis that the heavy regulation of such activities typically ensures that residual profits are realised in local customer markets.

- *Establishing nexus with market jurisdiction:* The OECD Statement provides for a new nexus rule based on 'significant and sustained' engagement with market jurisdictions for in-scope businesses. The new nexus rule will be contained in a standalone rule to limit any unintended spill-over effects on other existing tax or non-tax rules. For ADS, the revenue threshold will be the only relevant test required to create nexus. For other in-scope activities, sustained interaction with market is also necessary for creation of nexus.

- *Elimination of double taxation:* The OECD Statement recognises that it will be essential to have appropriate mechanisms to eliminate double taxation as Amount A is an overlay to the existing method of allocation of profits on basis of arms-length principle. In this regard, the OECD Statement states that mechanisms to eliminate double taxation in relevant tax treaties like Article 9(2) may not be useful given that Amount A is not premised on identifiable transactions between group entities. Further, in case where jurisdictions want to eliminate double taxation by way of providing credits, it will be necessary to determine which jurisdiction will have an obligation to eliminate tax and whether there can be any adjustments made to Amount A to avoid situations of double taxation.

- *Interactions and potential of double counting:* The OECD Statement states that there should be no significant interaction between Amount A and Amount B. In relation to interaction between Amount A and

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Amount C, the OECD Statement provides that there may be a case where both Amount A and Amount C are allocated to market jurisdiction like India as multinational enterprise (**"MNE"**) has a taxable presence in such jurisdiction. There exists a risk of double taxation due to double counting of profits in Amount A and Amount C. While the OECD Statement currently does not provide any mechanism to resolve double taxation in such cases, it may be useful for MNEs to re-visit their structures and agreements to obtain more clarity with respect to arms-length principle and distribution of profits within separate entities.

B. Amount B – Fixed Remuneration based on arm's length price

- Amount B is a fixed remuneration based on the arms' length price for defined baseline distribution and marketing functions that take place between related parties in the market jurisdiction. Amount B does not create a new taxing right.

- Amount B aims to simplify administration in transfer pricing rules for tax administrations, lower compliance costs for taxpayers and enhance certainty about pricing of transactions.

- The OECD Statement acknowledges that the design of Amount B will need to ensure that the baseline distribution and marketing activities are only remunerated in Amount B and not (again) in Amount C.

- While the OECD Statement does not provide a clear definition of baseline distribution and marketing activities, the OECD Statement provides that definition of baseline distribution activities will include distribution arrangements with routine levels of functionality, no ownership of intangibles and no or limited risks.

- Further, as per the OECD Statement it is expected that treaty changes will not be required to implement the Amount B regime. Allocation of taxable profits to market jurisdictions under Amount B is based on the existing profit allocation rules (including reliance on physical presence).

C. Amount C – Allocation of additional profit

- The return under Amount C covers any additional profit where in-country functions exceed the baseline activity compensated under Amount B. A further aspect of Amount C is the emphasis it gives to the need for improved dispute resolution processes. Amount C does not create a new taxing right.

- Allocation of taxable profits to market jurisdictions under Amount C is based on the existing profit allocation rules (including reliance on physical presence).

D. Transfer Pricing

- Transfer pricing rules are anti-avoidance rules under the ITA which seek to ensure that international transactions[19] between associated enterprises[20] are conducted at arm's length.

- Based on the definition, inter alia, a parent and its wholly owned subsidiary as well as its sister concerns (which are controlled by the same shareholder, directly or indirectly) should be considered as 'associated enterprises' and be subject to transfer pricing provisions.

19. A transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

20. An "associated enterprise" has been defined under s. 92A of the ITA to include, *inter alia*, an enterprise *"which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise."*

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IV. Equalisation levy framework under Finance Act, 2016

- Equalisation levy (**"EL"**) was introduced in India with effect from June 1, 2016 under Chapter VIII of the Finance Act, 2016 (**"FA, 2016"**), as a separate, self-contained code, not forming part of the ITA. The EL as introduced by the FA, 2016 (**"2016 EL"**) was levied at rate of 6% on the amount of gross consideration received by non-residents for online advertisement and related services provided to i) a person resident in India and carrying on business or profession; or ii) an NR having a PE in India.[21] Income arising from provision of online advertisement services which is subject to 2016 EL is exempt from income-tax under the ITA.[22]

- The Finance Act, 2020 (**"FA, 2020"**) expanded the scope of EL to apply EL at rate of 2 percent (**"2020 EL")** on the amount of consideration received or receivable by 'e-commerce operators' from 'e-commerce supply or services' made or provided or facilitated by it to:

  i. person resident in India; or

  ii. an non-resident under specified circumstances; or

  iii. a person who buys such goods or services or both using an internet protocol (**"IP"**) address located in India.[23]

'Specified circumstances'[24] in case of a non-resident have been defined as:

  a. Sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through IP address located in India; *and*

  b. Sale of data, collected from a person who is resident in India or uses IP address located in India.

Further, the term 'e-commerce operators' has been defined to mean an NR who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.[25] The term 'e-commerce supply or services' is defined to mean i) online sale of goods owned by the e-commerce operator; ii) online provision of services provided by the e-commerce operator; iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator; or iv) any combination of the above.[26]

- While the Expanded EL has been applicable from April 1, 2020; a corresponding exemption from income tax has been provided in the ITA for income arising from any e-commerce supply or services made or provided or facilitated on or after April 1, 2021.[27]

V. GST framework

- GST is an indirect tax levied on supply of goods or services. Section 7 the Central GST Act, 2017 (**"CGST Act"**) provides the scope of supply to include inter-alia all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business. Under the GST regime, Central GST and State GST is levied on all intra-state supplies of goods and/or services, and Integrated GST is levied on imports and all supplies of goods and / or services undertaken in the course of inter-State trade or commerce. The slab rates for the levy of GST on the supply of goods/ services are fixed at 5%, 12%, 18% or 28%.

- Specifically, issues can arise due to classification disputes where license of technology or software or trademarks are involved since the rates can either be 12% or 18% depending on the classification.

21. Section 165(1) of Finance Act, 2016.
22. Section 10(50) of ITA.
23. Section 165A(1) of Finance Act, 2016.
24. Section 165A(3) of Finance Act, 2016.
25. Section 164(ca) of Finance Act, 2016.
26. Section 164(cb) of Finance Act, 2016.
27. Section 10(50) of ITA.

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- Section 7(3) of the Integrated Goods and Services Act (**"IGST"**) provides that supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce. Further, if it qualifies as an Online Information Database Access or Retrieval (**"OIDAR"**)[28] service the foreign service provider is required to obtain a registration in India and discharge any applicable taxes directly.
- Export of services is treated as a zero-rated supply and should be exempt from GST subject to satisfaction of prescribed conditions.

28. If a service if delivered primarily over the internet without significant human intervention then such a service is considered to be an OIDAR service.

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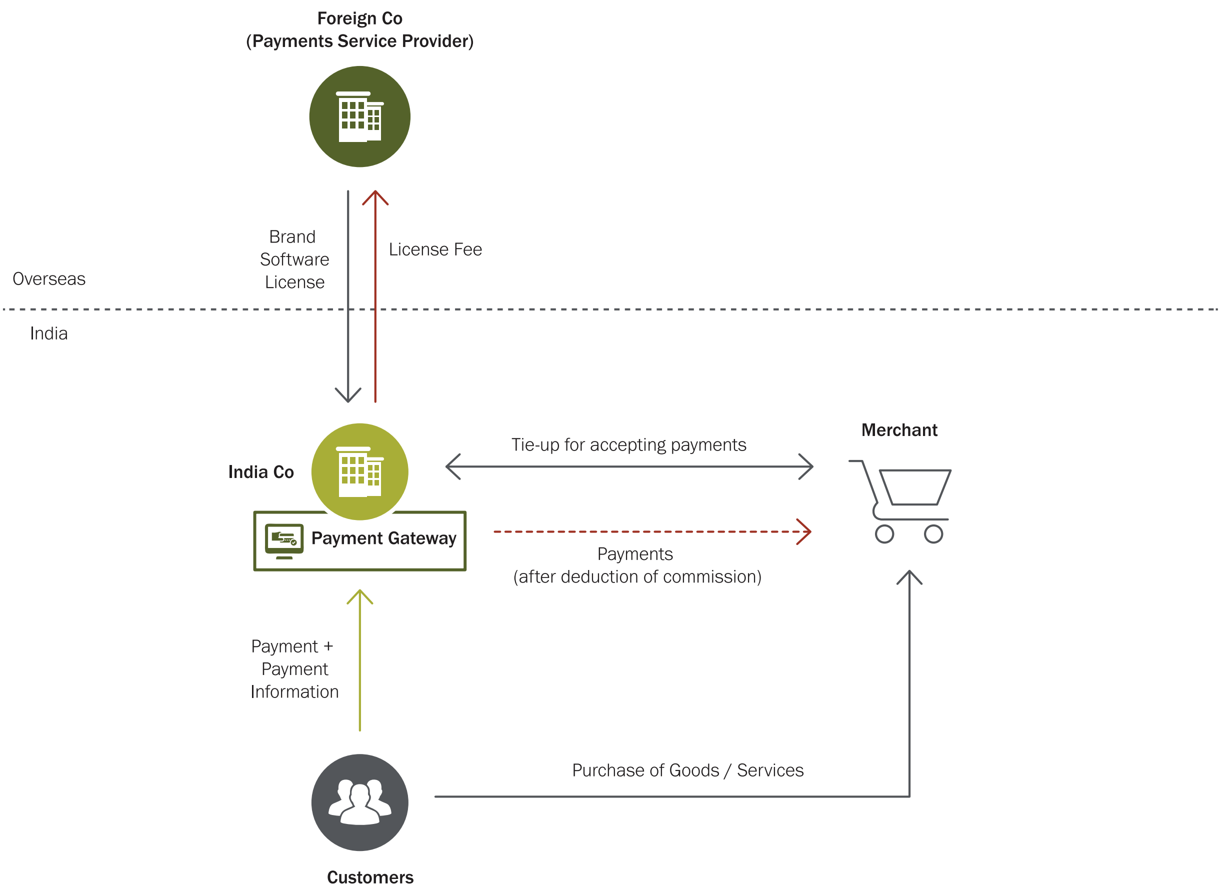
3. Case Study

In the following case studies, we have analysed the business models by which foreign payment providers can do business in India. The business models discussed have been arrived at based on the limitations under Indian exchange control laws. Model 1 deals with services of a Payment Gateway, whereas models 2 and 3 deal with payment services in the form of Prepaid Instruments (**"PPI"**).

- Payments for goods and services purchased from the Merchant is made through the payment gateway.
- India Co deducts its commission (service fee) for providing the payment gateway services to the Merchants.



Model 1 - Payment Gateway

- Foreign Co provides the brand and software license to the India Co.
- India Co operates the payment gateway. At the back -end, India Co has tie ups with banks to provide the payment gateway services.
- Payment Gateways do not process the transaction but instead tie-up with banks that actually process the transactions. In that sense, it is merely a technology service provider providing the technology link between the Merchant and the Customers. No RBI license / authorization is required to operate Payment Gateways.

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Tax Analysis

<table>
<tr><th>S. No.</th><th>Considerations</th><th colspan="2">Analysis</th></tr>
<tr><td rowspan="4">1.</td><td rowspan="4">Brand & Software License</td><td colspan="2">Income Tax implications</td></tr>
<tr><td>Income Tax Act (ITA)

▪ The license fee paid by the India Co to the Foreign Co for brand licensing should constitute ‘royalty’ under the ITA and be subject to tax at the rate of 10% (exclusive of applicable surcharge and cess).

▪ India Co should withhold tax at the applicable rate under section 195 of the ITA on payment of license fee to the Foreign Co.

▪ If the India Co is a subsidiary of the Foreign Co, then the payment of license fee to the Foreign Co should be considered to be an international transaction between related parties, requiring it to be paid on an arm’s length basis in accordance with transfer pricing laws.</td><td>Tax Treaty

▪ Provided the Foreign Co is eligible to avail the treaty, a beneficial rate of witholding tax on ‘royalty’ may be availed. However, in most of India’s tax treaties’ , the witholding rate for ‘royalty’ is 10%, which is same as under the ITA.

▪ Provided the tax treaty provides for it, the Foreign Co may avail foreign tax credit in its country of residence against the taxes withheld in India.</td></tr>
<tr><td colspan="2">Pillar One Implications

▪ While the OECD Statement currently does not provide a definition of baseline distribution and marketing activities, arms-length pricing for license fees between Foreign Co and India Co should constitute Amount B under Pillar One calculations.</td></tr>
<tr><td colspan="2">Equalisation Levy Implications

▪ While the 2016 EL should not apply in this case, as there are no advertising services involved, the question as to whether the 2020 EL may apply arises considering the wide language referring to ‘online services’.

▪ A license fee should not normally be construed to be an an online service. However, tax department may argue that it is a service considering it is taxed as a service under GST. Nevertheless, despite the wide definition of the term ‘online’ which includes any right or benefit obtained through a telecommunication network, such a license should not qualify as an ‘online’ service.

▪ It is pertinent to note that some companies have been reported to have paid the 10% royalty tax and the 2% 2020 EL on the same transaction taking a conservative view on this issue.

▪ Further, while 2020 EL is not applicable if Foreign Co has a PE in India, no similar exclusion has been made for payments where royalty tax has been withheld. Therefore, while the 2020 EL may be payable, in such a situation an exemption from payment of royalty taxes under the ITA should be available. This has raised questions of arbitrage, where companies could possibly claim that service or license is subject to 2020 EL at 2% and thereby claim exemption from royalty taxes at 10% under the ITA.

▪ Some companies on the other hand have not paid the 2020 EL on the ground that it is vague.</td></tr>
</table>

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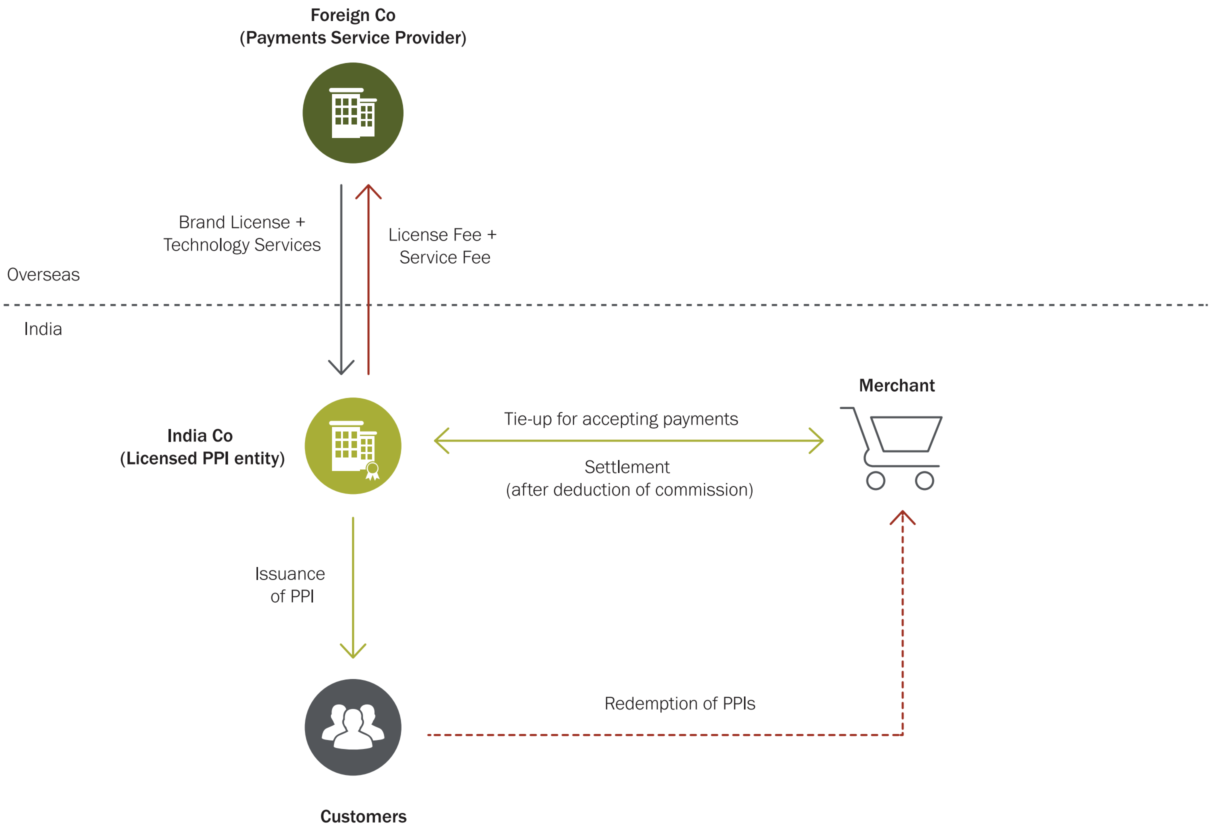
		GST Implications ▪ licensing of brand and software should constitute import of service by the India Co under GST laws. ▪ As a result, the India Co should be required to discharge GST obligations on a reverse charge basis at the rate of 18% on the software license and 12% on the trademark or brand license. ▪ India Co should be required to obtain a GST registration. ▪ India Co should be able to avail input tax credit on the GST paid against its outward supplies.



Model 2 - Indian Co is the PPI issuer

- Foreign Co is a company engaged in the issuance of PPIs. India Co is a licensed PPI issuer.
- India Co is the issuer of the PPIs in India through retail outlets or though the India Co's mobile application.
- The Foreign Co licenses its brand to the India Co.
- The Foreign Co also provides technology services to the India Co in the form of creating the codes, PIN etc. for the PPIs.
- The Foreign Co charges the India Co for the brand licensing and providing the technology services.
- The Customers redeem the PPIs with the Merchant.
- The Merchant has a tie-up with the India Co for accepting payments.
- India Co deducts its commission (service fee) for providing PPI payment services to the Merchants.

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Tax Analysis

S. No.	Considerations	Analysis	
1.	Brand Licensing	**Income Tax implications**	
		Income Tax Act (ITA) ▪ The license fee paid by the India Co to the Foreign Co for brand and software license should constitute 'royalty' under the ITA and be subject to tax at the rate of 10% (exclusive of applicable surcharge and cess). ▪ India Co should withhold tax at the applicable rate under section 195 of the ITA on payment of license fee to the Foreign Co. ▪ If the India Co is a subsidiary of the Foreign Co, then the payment of license fee to the Foreign Co should be considered to be an international transaction between related parties, requiring it to be paid on an arm's length basis in accordance with transfer pricing laws.	***Tax Treaty*** ▪ Provided the Foreign Co is eligible to avail the treaty, a beneficial rate of witholding tax on 'royalty' may be availed. However, in most of India's tax treaties' , the witholding rate for 'royalty' is 10%, which is same as under the ITA. ▪ Provided the tax treaty provides for it, the Foreign Co may avail foreign tax credit in its country of residence against the taxes withheld in India.
		Pillar One Implications ▪ While the OECD Statement currently does not provide a definition of baseline distribution and marketing activities, arms-length pricing for license fees between India Co and Foreign Co should constitute Amount B under Pillar One calculations.	
		Equalisation Levy Implications ▪ Same implications as for technology license as pointed out in Model 1.	
		GST Implications ▪ licensing of brand and software should constitute import of service by the India Co under GST laws. ▪ As a result, the India Co should be required to discharge GST obligations on a reverse charge basis at the rate of 12%. ▪ India Co should be required to obtain a GST registration. ▪ India Co should be able to avail input tax credit on the GST paid against its outward supplies.	
2.	Technology Services	**Income Tax Implications**	
		Income Tax Act (ITA) ▪ The service fee paid by the India Co to the Foreign Co for availing the technology services in the form of creation of codes, PINs etc. for the PPI should not be subject to any tax in India unless is constitutes FTS or has a business connection / PE in India.	***Tax Treaty*** ▪ In case the service fee constitutes FTS under the ITA, relief may be taken under tax treaties. Some of the reliefs which may be availed under tax treaties' in respect of FTS are as follows:

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- If the technology services are fully automated and do not require human intervention for their provision, the payments made for them should not constitute FTS.

- However, if the provision of technology services involves human intervention, service fee paid for the same should constitute FTS and be subject to tax in India at the rate of 10% (exclusive of applicable surcharge and cess). In this scenario, the India Co should withhold tax at the rate of 10% under the ITA.

- In the event that the service fee does not constitute FTS, the tax authorities might argue that the Foreign Co has a business connection in India on the basis of the SEP test – and should therefore be taxed on profits attributable to India at the rate of 40% (exclusive of applicable surcharge and cess). Their argument in this regard could be that the Foreign Co is engaged in 'a transaction in respect of services with the India Co' and hence satisfies the SEP test. The constitution of the SEP would depend upon the transaction value, the thresholds for which are yet to be notified.

- Alternatively, the tax authorities may argue that the payment is a royalty payment for license of using the underlying software. However, so long as the copyright is not licensed it should not amount to a royalty.

- If the India Co is a subsidiary of the Foreign Co, then the payment of service fee for the Tech services to the Foreign Co should be an international transaction between related parties, requiring it to be paid on an arm's length basis in accordance with transfer pricing laws.

- a narrower definition of FTS owing to the 'make available' clause meaning that fees for technical services cannot be taxed unless the knowledge or technology is made available to India Co. This is only there in some tax treaties.

- a beneficial rate of witholding tax on FTS may be availed. However, in most of India's tax treaties', the witholding rate for 'FTS' is 10%, which is same as under the ITA.

- foreign tax credit by the Foreign Co in its country of residence against the taxes withheld in India.

- availing the definition of PE, which is a much narrower test for taxing business profits in India as compared to the business connection test under the ITA. In the present scenario, it should be possible to argue non-existence of PE as per below:

  i. **Fixed place PE:** Foreign Co has no fixed place of business in India through which it carries out business in India. Neither does the Foreign Co have any server in India for the purposes of providing the technology services to the India Co.

  ii. **Agency PE:** The Indian Co does not conclude any contracts or plays a principal role in conclusion of contracts in India on behalf of the Foreign Co.

  iii. **Service PE:** The Foreign Co does not furnish any services to any person in India through its employees / personnel.

Pillar One Implications

- If the services are mostly automated and without any human intervention it could fall under the category of Automated Digital Services and be a target for distribution of residual profits, applying the Pillar I tests.

- Assuming they have several such similar operations in different countries with varied margins of profitability, allocation of incomes could be affected by whether it is done on a regional or business line basis or based on the number of customers.

- If it is not an automated service, it may possibly fall within consumer facing businesses for which the thresholds are different. It would depend on whether India Co which is transacting in a principal to principal role would be disregarded and whether its customers would be treated as customers of Foreign Co for the purposes of Pillar I attribution.

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Equalisation Levy Implications

- While the 2016 EL should not apply in this case, as there are no advertising services involved, the 2020 EL may apply considering the wide language referring to 'online services'.
- 'Online' is defined to mean any facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network.
- Therefore, services that are automated and rendered without human intervention over the internet or through access to a platform should be the main target of the 2020 EL and therefore a 2% tax is payable on such services.
- In this case, the generation of the codes for the PPI are typically conducted by the software in an automated manner without any human intervention and therefore the 2020 EL should apply.
- Even in cases where there is significant human involvement, the current wordings are wide enough to capture these technology services transactions within its ambit. For instance, even if the generation of the PPI involved some element of human verification or moderation, the 2020 EL should still apply as the service is being accessed online.
- However, these transactions become taxable only if the de-minimis thresholds are crossed.
- Additionally, treaty benefits or credits for such taxes paid may be difficult to obtain in the foreign jurisdiction as it is unclear whether the EL is a tax on income or an indirect tax. Therefore, it may not be covered by DTAAs.

GST Implications

- Availing the technology services should constitute import of service by the India Co under GST laws.
- As a result, the India Co should be required to discharge GST obligations on a reverse charge basis at the rate of 18%.
- India Co should be required to obtain a GST registration.
- India Co should be able to avail input tax credit on the GST paid against its outward supplies.
- Further, the GST cost may be increased by the 2020 EL cost as the 2020 EL cost may form part of the tax base on which the GST is applied.

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Model 3 - Distribution of PPIs

- Foreign Co is a company engaged in the issuance of PPIs.
- Foreign Co contracts with the India Co on a principal to principal basis to distribute the PPIs in India. The India Co charges service fee for the distribution of the PPIs to customers in India.
- The Customers redeem the PPIs with the Merchant.
- The Merchant has a tie-up with the Foreign Co for accepting payments.
- Foreign Co deducts its commission (service fee) for providing PPI payment services to the Merchant.

Tax Analysis

S. No.	Considerations	Analysis	
3.	**Service Fee for distribution of PPL's in India and on payments from Indian Merchants**	**Income Tax implications**	
		Income Tax Act (ITA)	**Tax Treaty**
		▪ The service fee paid to the India Co for distribution of PPIs in India should constitute business income and form part of its corporate profits for the purposes of taxation at the rate of 25-30%.[29] ▪ If the India Co is a subsidiary of the Foreign Co, then the payment of service fee for PPI distribution to the India Co should be an international transaction between related parties, requiring it to be paid on an arm's length basis in accordance with transfer pricing laws.	▪ The tax authorities might argue that the Foreign Co has PE in India in the form of the India Co. ▪ It should be possible to argue that the Foreign Co does not have a PE in India on the basis of the following: • **Fixed place PE:** India Co is not a place of business at the disposal of the Foreign Co through which it carries out its business in India.

29. Depending on its turnover.

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		▪ The tax authorities might argue that the Foreign Co carries on its business in India through the India Co. Accordingly, the India Co should form a business connection of the Foreign Co in India resulting in the Foreign Co being taxed in India on profits attributable to India at the rate of 40% (exclusive of applicable surcharge and cess). It should be possible to negate this argument of the tax authorities on the basis that India Co has been contracted on a principal to principal basis and hence should not form a business connection of the Foreign Co in India. ▪ In the current structure, since India Co is only distributing the PPI, the contracts with customers are being directly entered into with Foreign Co. Therefore, all the PPI users are customers of the Foreign Co. Similarly, all the merchants should also be seen as clients of the Foreign Co since its revenue is derived from charges made to the merchants. Hence, the tax authorities might also argue formation of business connection on the basis of the SEP test by alleging that the Foreign Co is engaged in a 'transaction in respect of services' with the India Co or merchants or since it has the required number of customers in India. These thresholds are yet to be notified. ▪ Further, the question of whether Foreign Co is covered by Section 194 – O (in force from October 2020) may also arise. Under Section 194-O an e-commerce operator that facilitates the supply of goods or services by an Indian merchant are required to deduct 1% of the gross value of supply and pay it to the government as tax deducted at source. ▪ In the present case, since Foreign Co is enabling the supplies of Indian merchants, the applicability of this obligation may arise. However, while the technical reading of the provisions may appear wide enough to cover such situations, ideally only the platform through which sales of goods are made or provision of services are rendered should be covered. ▪ Foreign Co is merely assisting in the making of payments and not directly involved in the supply of goods or services.	• **Agency PE:** The India Co is contracted on a principal to principal basis to provide distribution services. It is not an agent of the Foreign Co. The Indian Co does not conclude any contracts or plays a principal role in conclusion of contracts in India on behalf of the Foreign Co such as negotiating terms with customers. It merely has the commercial right to distribute the codes or the PPI on behalf of the Foreign Co. Once the distribution is completed, the customer enters into a contract directly with the Foreign Co, through the terms and conditions on the platform. Therefore, the India Co is not involved in contract negotiation or conclusion. India Co is also not involved in onboarding or contracting with the merchants in India from whom Foreign Co earns commission payment. • However, tax authorities may challenge this position and claim that India Co constitutes an Agency PE since it is distributing PPI on behalf of Foreign Co. • India Co can in defence demonstrate that they are independent agents servicing other clients as well or that a majority of their income does not come from Foreign Co. If India Co is able to establish that is an independent agent then the Agency PE should not be created. • **Service PE:** The Foreign Co does not furnish any services to any person in India through its employees / personnel hence there should be no Service PE risk'. ▪ Considering that the Foreign Co directly provides the payment services to Merchants in India, it should be required under the Payment Data Storage Directive to store the entire data relating to provision of the payment services in servers located in India. This might result in creation of a PE of the Foreign Co in India.

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		Pillar One Implications ▪ The business conducted by the Foreign Co should fall outside the scope of Amount A due to the following reasons: i. ADS covers businesses that generate revenue from the provision of ADS that are provided on a standardized basis to a large population of customers or users across multiple jurisdictions. In the present case, the Foreign Co provides payment service (in the form of PPIs) to Merchants in India and not a large population of customers or users. However, in the same transaction since customers are involved, it is unclear whether such involvement of users shall mean that such services are covered under ADS and whether the presence of customers would be taken into account for deeming income to be sourced from India. ii. The other leg of Pillar One is consumer facing business. Since the Foreign Co provides the services to the Merchants and not individual customers, it should fall outside this leg. Leading credence to this conclusion is the OECD Statement where a carve out has been created for activities in the financial services sector on the basis that they take place with businesses and not customers. Further, although this leg of Pillar One covers provision of services through intermediaries – even that is only to the extent the ultimate services are being provided to customers. Therefore, if customers in India, who are not charged for the PPI issuance, are considered to be customers of Foreign Co, it is possible to argue that Foreign Co is covered under the consumer facing business definition as well since ultimately Foreign Co is servicing customers in India. iii. While in ADS, the attribution is primarily based on the number of sales, other additional factors shall also be taken into account while attributing profits to consumer facing businesses.
		GST Implications ▪ The services provided by the India Co in the form of distribution of PPIs in India should constitute export of service and hence be exempt from GST provided the applicable conditions are satisfied. ▪ However, since it is in contact with ultimate customers, it is possible that the tax authorities claim that it is performing intermediary services and therefore should be subject to tax at 18%. ▪ The India Co would however need to obtain GST registration and comply with prescribed conditions for availing the exemption from GST.

Scope and Limitations of the Case Study

- The scope of this case study is limited to tax issues pertaining to the business models discussed.
- While briefly discussed, this case study does not deal with the legal and regulatory implications of the business models discussed.
- Nothing mentioned in this shall be construed as tax or legal advice.

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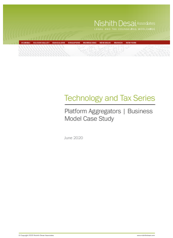

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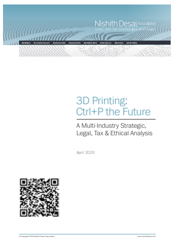

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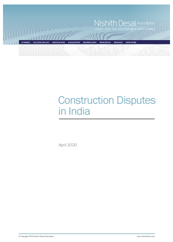

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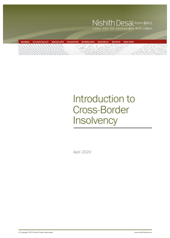

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NDA Insights

TITLE	TYPE	DATE
Delhi Tribunal: Hitachi Singapore's Liaison Office in India is a Permanent Establishment, Scope of Exclusion Under Singapore Treaty Restrictive	Tax	November 2019
CBDT issues clarification around availment of additional depreciation and MAT credit for companies availing lower rate of tax	Tax	October 2019
Bombay High Court quashes 197 order rejecting Mauritius tax treaty benefits	Tax	May 2019
Investment Arbitration & India – 2019 Year in review	Dispute	January2020
Changing landscape of confidentiality in international arbitration	Dispute	January2020
The Arbitration and Conciliation Amendment Act, 2019 – A new dawn or sinking into a morass?	Dispute	January2020
Why, how, and to what extent AI could enter the decision-making boardroom?	TMT	January2020
Privacy in India - Wheels in motion for an epic 2020	TMT	December 2019
Court orders Global Take Down of Content Uploaded from India	TMT	November 2019
Graveyard Shift in India: Employers in Bangalore / Karnataka Permitted to Engage Women Employees at Night in Factories	HR	December 2019
India's Provident Fund law: proposed amendments and new circular helps employers see light at the tunnel's end	HR	August 2019
Crèche Facility By Employers in India: Rules Notified for Bangalore	HR	August 2019
Pharma Year-End Wrap: Signs of exciting times ahead?	Pharma	December 2019
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Prohibition of E-Cigarettes: End of ENDS?	Pharma	September 2019

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Research @ NDA

Research is the DNA of NDA. In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm's culture.

Our dedication to research has been instrumental in creating thought leadership in various areas of law and public policy. Through research, we develop intellectual capital and leverage it actively for both our clients and the development of our associates. We use research to discover new thinking, approaches, skills and reflections on jurisprudence, and ultimately deliver superior value to our clients. Over time, we have embedded a culture and built processes of learning through research that give us a robust edge in providing best quality advices and services to our clients, to our fraternity and to the community at large.

Every member of the firm is required to participate in research activities. The seeds of research are typically sown in hour-long continuing education sessions conducted every day as the first thing in the morning. Free interactions in these sessions help associates identify new legal, regulatory, technological and business trends that require intellectual investigation from the legal and tax perspectives. Then, one or few associates take up an emerging trend or issue under the guidance of seniors and put it through our "Anticipate-Prepare-Deliver" research model.

As the first step, they would conduct a capsule research, which involves a quick analysis of readily available secondary data. Often such basic research provides valuable insights and creates broader understanding of the issue for the involved associates, who in turn would disseminate it to other associates through tacit and explicit knowledge exchange processes. For us, knowledge sharing is as important an attribute as knowledge acquisition.

When the issue requires further investigation, we develop an extensive research paper. Often we collect our own primary data when we feel the issue demands going deep to the root or when we find gaps in secondary data. In some cases, we have even taken up multi-year research projects to investigate every aspect of the topic and build unparallel mastery. Our TMT practice, IP practice, Pharma & Healthcare/Med-Tech and Medical Device, practice and energy sector practice have emerged from such projects. Research in essence graduates to Knowledge, and finally to *Intellectual Property*.

Over the years, we have produced some outstanding research papers, articles, webinars and talks. Almost on daily basis, we analyze and offer our perspective on latest legal developments through our regular "Hotlines", which go out to our clients and fraternity. These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our Lab Reports dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research articles and disseminate them through our website. Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with much needed comparative research for rule making. Our discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged. Although we invest heavily in terms of time and expenses in our research activities, we are happy to provide unlimited access to our research to our clients and the community for greater good.

As we continue to grow through our research-based approach, we now have established an exclusive four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug-Raigadh district. **Imaginarium AliGunjan** is a platform for creative thinking; an apolitical eco-system that connects multi-disciplinary threads of ideas, innovation and imagination. Designed to inspire 'blue sky' thinking, research, exploration and synthesis, reflections and communication, it aims to bring in wholeness – that leads to answers to the biggest challenges of our time and beyond. It seeks to be a bridge that connects the futuristic advancements of diverse disciplines. It offers a space, both virtually and literally, for integration and synthesis of knowhow and innovation from various streams and serves as a dais to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear your suggestions on our research reports. Please feel free to contact us at
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