Tech industry: Emerging business models and tax landscape in India
Recent developments
Recent developments

Regulatory reforms and tax interplay
- Intermediary Guidelines and Digital Media Ethics Code Rules;
- Draft Personal Data Protection Bill;
- Reserve Bank of India directive on storage of payment system data; and
- Consumer Protection (E-Commerce) Rules

New evolving tax rules
- Equalisation Levy – Expanded Scope
- Thresholds for Significant Economic Presence
- G20/OECD: Pillar One & Pillar Two
- Heightened scrutiny expected under GST

Reducing tax controversy
- Indirect Transfers – removal of retrospectivity
- Software sale – not royalty under tax treaties
- Faceless Assessments
- Scope of “intermediary services” clarified – positive for IT/ITeS exports
- Clarification issued for services provided by subsidiaries to overseas affiliates to be treated as exports
Case studies
Case study 1 – Cloud services

Cloud services provider (F Co)

Data center service provider (I Co 2)

Marketing support service provider (I Co 1)

Customers

Transaction

Revenue flow

Outside India

India

Cloud services

Cloud fees

Marketing support services

Service fee

Data center services

Service fee

Cloud fees

Transaction

Revenue flow
Case study 1 – Cloud services

Potential India tax considerations

- Cloud income characterization for F Co: Business income / Royalty / FTS / EL
- Taxable presence exposure in India for F Co (income tax as well as GST)
  - Marketing support activities (I Co 1) – structuring of functions and protocols
  - Data centre usage (I Co 2) – structuring of control rights
- Remuneration model and choice of comparables for I Co 1
  - Marketing support services provider (cost plus) v/s. commission agent (commission on sales)
- Treatment of FoC items and any third party sub-contracting costs of I Co 1 or I Co 2
- Impact of OIDAR/ ESS treatment for inbound services and related compliances / risk
- Characterization of data centre revenues / marketing support services revenue as exports
Case study 2 – Digital products / Digital services

Year 1 and 2 – No monetization; Inward payments for meeting expenses of I Co

Year 3 onwards – Outward payment of purchase price for Digital Products / Services

Reseller agreement

Subvention
Transaction
Revenue flow
Case study 2 – Digital products / Digital services

Potential India tax considerations

- Income characterization for F Co: Business income / Royalty / FTS / EL
- Taxable presence exposure in India for F Co on account of activities of I Co as limited risk reseller
- What is resold? P to P arrangement? Substance in I Co and structuring of functions and risks
- Entity characterization and remuneration model for the reseller from TP perspective
- TP and tax deductibility considerations of AMP expenses
- Brand / IP provisioning – taxability for FoC transactions
Case study 3 – Manufacturing landscape in India

- IP Owner Principal Entity (F Co)
- I Co
- Third party contract manufacturer

Transactions:
- Brand & software license/ Raw material for manufacturing/ Technical know-how
- Supply of raw material
- Supply of finished goods
- $/ FoC
- Supply of goods

Revenue flows:
- Overseas related entity/ third party customers
- Outside India
- India
Case study 3 – Manufacturing landscape in India
Potential India tax considerations

Import / purchase
• Customs valuation and related party assessments
• Classification and documentation for movement
• Availment and fulfillment of import incentive conditions
• Deemed international transaction implications for purchases from third-party contract manufacturer

Manufacturing and export/ sale of goods:
• Evaluation of manufacturing promotion schemes (Central and State Government incentives/schemes)
• Export promotion schemes
• Internal v/s. External price benchmarking for exports to related parties
Glossary

- F Co – Foreign Company
- I Co – Indian Company
- AMP – Advertisement, Marketing, and Promotion spend
- FoC – Free of Cost
- FTS – Fee for Technical Services
- EL – Equalization Levy
- GST – Goods and Services Tax
- OECD – Organisation for Economic Co-operation and Development
- ESS – Electronically supplied services
- IT/ITeS – Information Technology/Information Technology enabled Services
- OIDAR – Online Information Data Base Access and Retrieval
- S/w – Software
- IP – Intellectual Property