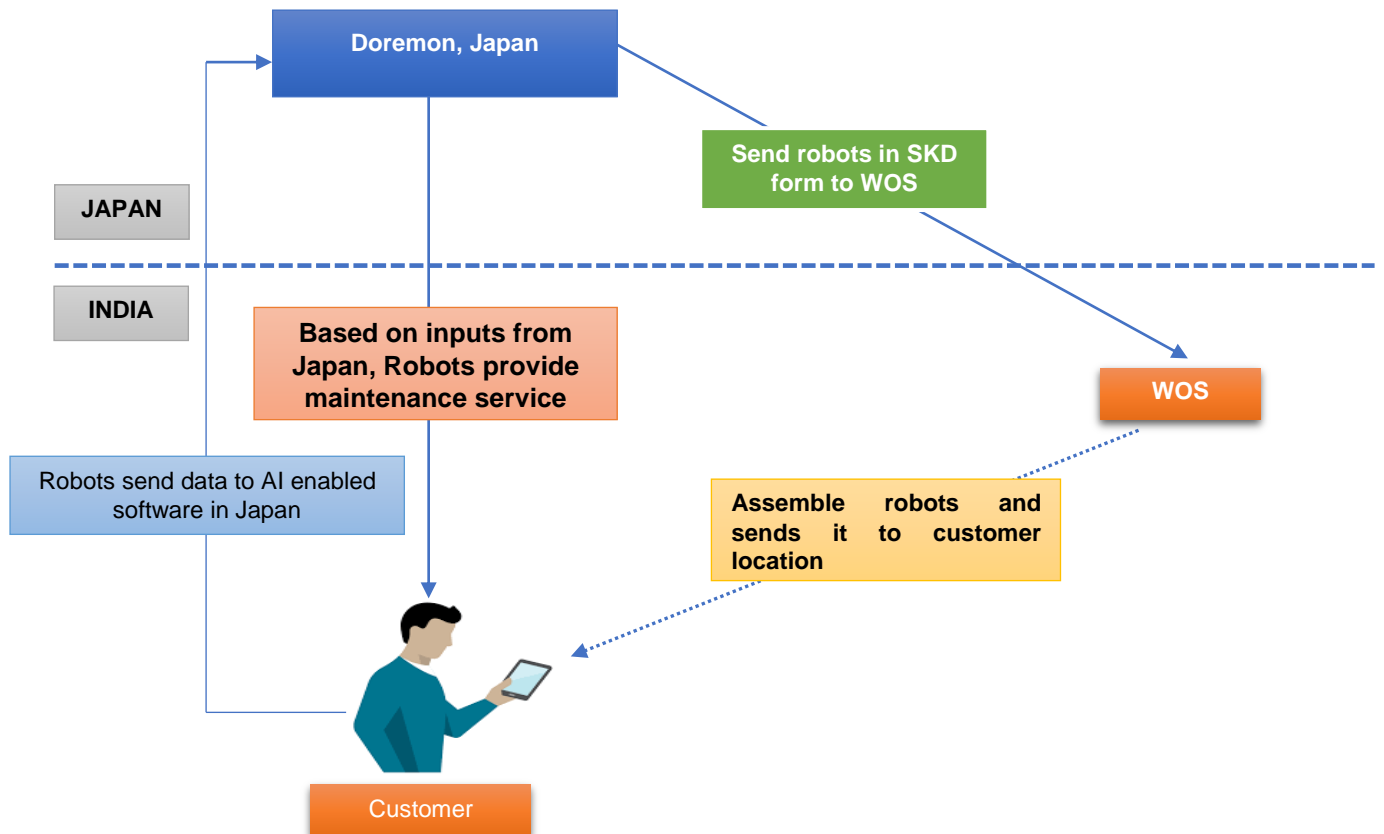




## **THE CHAMBER OF TAX CONSULTANTS**

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### **CASE STUDY 1 – ROBOTICS AND AI**

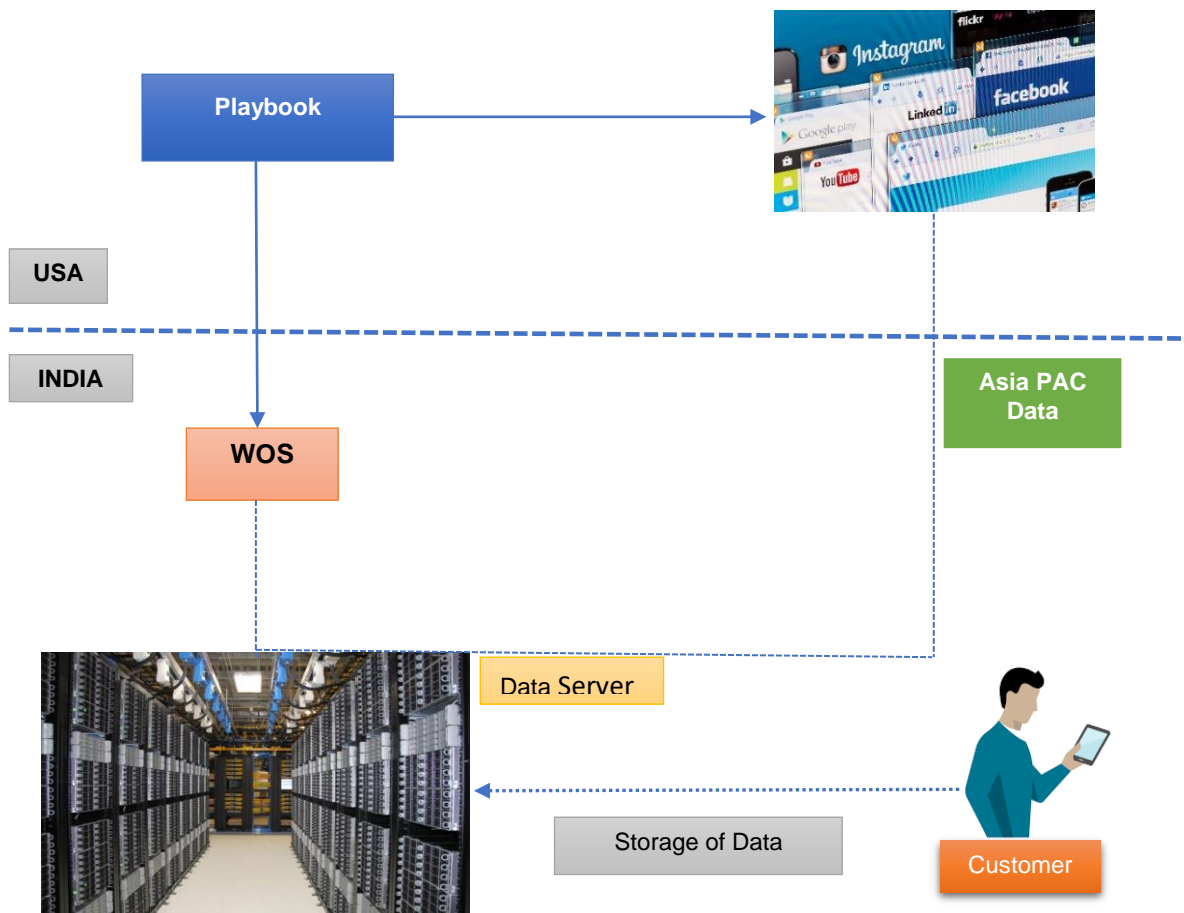
#### Facts:

- 1.1. Doremon Ltd, Japan provides remote maintenance services for servers and other IT infrastructure in India through its Robots. Doremon Ltd has a subsidiary (S Co) in India, which provides support functions on cost plus basis. Based on the request from the customers in India, Doremon Ltd sends the Robots in SKD form to India. S Co assembles the robots and transports them to the customer location. The robots with their camera application, take a photograph of the server/IT infrastructure and send it back to the AI enabled software of Doremon Ltd in Japan. Robots continuously interact with the AI enabled software. Based on the inputs received

from the AI enabled software, the Robots perform the installation, maintenance and repair services in India. After the services are completed, the Robots are exported back to Japan in SKD form. Robots stay in India for approx 100 days in FY and provide services to various customer in India.

Issues under consideration:

- a) Whether presence of Robots constitute a Fixed Place PE/Equipment PE in India?
- b) Whether Service PE test (assuming it is incorporated in India-Japan DTAA) can be applied for Robots?
- c) Whether payment for services of Robot, constitute equipment royalty?
- d) Whether the payment for installation, maintenance and repair services constitute fees for technical services?
- e) Whether Robots presence in India and their interaction with AI enabled software lead to Significant Economic Presence in India?



**Case Study – Server in Source State**

## Facts:

- Playbook is leading social networking website and has subscribers all over the world. Highest subscribers are from India.
- Users create their own playbook page and upload images, check in places and post recent messages. Page can be seen by friends of user. Its user base include Government agencies who also run awareness campaign and supply real time information in case of contingencies. Leading politicians, celebrities have their public page, which can be viewed by all users.
- Playbook Inc management believes that regulatory indications in India are clear to store data locally. Accordingly, playbook on proactive basis incorporated its WOS (Server Co) in India.
- Playbook Inc will infuse mix of debt and equity in Server Co. Server Co will buy/lease land and construct datacentre in India.
- Server Co will enter into a hosting agreement with Playbook Inc for supplying website capacity. Playbook Inc will own, lease and operate servers and other equipment. The servers and equipment will be used by Server Co for hosting the website and related activity for Playbook Inc (sole customer).
- Server Co has sufficient capacity to store data relating to India and Asia region.
- Server Co will not be permitted to use or analyze data controlled by the parent company and stored in the datacenter. The subsidiary will not be authorized to conclude binding contracts on behalf of the parent company, or assume or create any obligations for the parent company.
- The subsidiary's employees will be responsible for installation, operation, maintenance, and repairs of the datacenter and will work under the instruction and control of the management of the subsidiary.
- Access to the datacenter will be limited to Server Co's employees and external service providers. However, a small group of employees of Playbook Inc may from time to time be granted access to the datacenter by Server Co. For this purpose, Playbook Inc needs to inform Server Co 5 days prior to visit. Employees of Server Co will accompany visitors.

- Playbook employees will handle the websites through remote access. The remote access will allow the parent company to survey the efficiency of the datacenters hardware and software, to install and uninstall applications, to maintain applications, and handle software and data in the datacenter. If a server fails to function in a satisfactory manner, the remote control may also be used to shut down the server or redirect the internet traffic to other servers.
- Server Co will deploy latest security system and software to prevent against accidental or unlawful loss, access or disclosure of data.
- Server Co will not access or use Playbook content except as necessary to maintain or provide the Service Offerings, or as necessary to comply with the law or a binding order of a governmental body. Server Co will not (a) disclose Content to any person except under legal requirements or (b) move to any other location; except in each case as necessary to comply with the law or a binding order of a governmental body or emergency.
- Data stored in datacentre always belongs to Playbook Inc and Server Co role is limited to hosting data. Server Co has no right to alter, modify, access or do anything which harms data owned by Playbook Inc. Back up if at all would be only for security reasons.
- Contract is terminable at 3 months' notice. On termination, Playbook Inc will migrate entire data to other servers. On termination, Server Co will give entire backup and all information relating to data held by them for rendering service.

Please evaluate the following:

- a. Whether operations of Server Co results in PE of Playbook Inc in India?
- b. Whether data stored on datacentre in India results in PE for Playbook Inc in India?
- c. Can activities in India said to be of Preparatory or Auxiliary character?
- d. Whether the disposal test satisfied in the instant case?
- e. Whether operations of Server Co results in SEP of Playbook Inc in India?