

CASE STUDY 1: PPT, SLOB, dividend, FTS, Royalty, capital gains and thin capitalization

Fact sheet:

Name of Indian company	I Co. Pvt. Ltd. [IPL]
Name of first foreign company	F Company Private Ltd. [FPL]
Name of second foreign company	M Company Private Ltd. [MPL]
Other relevant facts	<p>1. MPL is based in Mauritius. MPL is owned by two technocrats who are residents of USA. MPL is an investment company. MPL also owns some intangibles previously transferred by promoters at prices accepted to be at arm's length in respective years of transfers.</p> <p>2. FPL is based in France and is held wholly by MPL. FPL is engaged in R&D and manufacture in pharma industry. FPL is owning a host of patents.</p> <p>3. IPL is wholly owned by FPL. IPL is engaged in manufacture of pharma products using patents of FPL. IPL is selling its products both in domestic and overseas markets including exports to FPL.</p> <p>4. IPL is carrying out contract R&D for FPL on a huge facility built on land owned by it. IPL has carried out handholding of operations of FPL India Pvt. Ltd., a newly formed subsidiary of FPL in India. IPL paid security deposit of premises taken on lease by FPL India Pvt. Ltd., and the same was subsequently reimbursed by FPL along with costs on handholding with a mark up of 5%.</p> <p>5. Income streams of IPL are as follows;</p> <ol style="list-style-type: none"> a) Revenue from FPL for contract research on a cost plus 7.5% basis b) Revenue from sale of manufactured goods

	<p>c) Reimbursement of handholding costs with mark up</p> <p>6. Income streams of FPL</p> <p>a) Dividend from IPL</p> <p>b) Royalty from IPL for licensing of patents</p> <p>c) Interest on ECBs made to IPL</p> <p>d) Revenue from sale of goods imported from IPL</p> <p>e) Capital gains from partial divesting of shares in IPL</p> <p>f) Capital gains from alienation of some patents owned by it.</p> <p>7. Income streams of MPL</p> <p>a) Dividend from FPL</p> <p>b) Capital gains on partial divesting of shares in FPL</p> <p>c) Capital gains from transfer of some patents to FPL</p>
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Issues :

1. What are the tax implications on FPL under domestic law and under the applicable DTAA?
2. What are the tax implications on MPL under domestic law and under the applicable DTAA?

Reference materials:

1. Indo France DTAA – articles 2, 5, 7, 11, 12, 13 and 14
2. Indo Mauritius DTAA – articles 2, 5, 7, 10, 11, 12, 12A and 13
3. France Mauritius DTAA – articles 2, 5, 7, 10, 11, 12 and 13
4. Section 9
5. Section 94B

6. Sections 92 to 92F [excluding sections 92CB to 92CD but including section 92CE along with relevant Finance No.2 Bill, 2019]

7. Chapter X-A

CASE STUDY 2: Hybrid entity, commissionaire arrangement, transfer pricing, corresponding adjustment and foreign tax credit

Fact sheet:

Name of Indian company	PPL
Name of foreign LLP	RHP
Name of foreign company	Zoom
Other relevant facts	<ol style="list-style-type: none">1. Zoom is based in USA. Zoom manufactures and sells ICs which are universally used by automobile manufacturers across the globe.2. RHP is based in Greece and belongs to Zoom group. RHP manufactures and sells components which are also used by automobile manufacturers across the globe.3. PPL is not part of Zoom group. While PPL is a distributor for products of Zoom, it acts as an agent for RHP.4. In its distribution business, PPL acts as a stocking distributor and is allowed to buy ICs from Zoom at its final selling price discounted by 10%.5. While acting for RHP, PPL's team reaches out to various companies. PPL is remunerated on cost plus 5% margin.

Issues :

1. Do Zoom and RHP have business connection/PE in India?

2. What is the scope of attribution of business income under the IT Act and the DTAA for Zoom and RHP?
3. Will your answers to questions 1 and 2 vary, if PPL is a subsidiary of Zoom or RHP?
4. Whether Zoom/RHP would get any corresponding adjustment in the event of any enhancement to the income of PPL by Indian tax authorities?
5. What is the entitlement of Zoom/RHP for FTC in respect of tax paid by them in India?
6. Whether the above answers would vary if RHP is regarded as a transparent entity in Greece? What if PPL is also one of the partners in RHP?

Reference materials:

1. Indo USA DTAA – Articles 2, 5, 7, 9 and 25
2. Indo Greece DTAA – Articles 2, 5, 7, 9 and 17
3. Sections 9(1)(i) read with Explanations 2 and 3, 92 to 92F [including section 92CE along with relevant Finance No.2 Bill, 2019]
4. MLI Articles 3, 5, 11, 12, 15 and 7

CASE STUDY 3: Digital commerce, Data localization, equalization levy and significant economic presence

Fact sheet:

Name of Indian company	India Tours Pvt. Ltd. [ITPL]
Name of first foreign company	Jupiter Holiday PLC [JHP]
Name of second foreign company	Tourgoods Inc [TG Inc]

Other relevant facts	<ol style="list-style-type: none"> 1. TG Inc is based in USA. TG Inc does auto and property rentals in tourism industry. TG Inc has a highly popular website. TG Inc not only owns but also has secured right to use in respect of vehicles and hotel rooms across the globe. Additionally, TG Inc has tie ups in respect of vehicles and room space in several countries. 2. TG Inc owns a software which provides travel planner, travel budget and facilitates identification of best prices. This software is available for download by the people in travel industry for a fee. 3. JHP is based in Switzerland and is held wholly by TG Inc. JHP is engaged in the same business as TG Inc. While the worldwide business is largely split between TG Inc and JHP, in some countries in Asia including India, both have parallel [not competing but complimenting] operations 4. The website of TG Inc also hosts advertisement of persons providing various allied services in the tourism industry. 5. ITPL is wholly owned by TG Inc. ITPL has a captive centre in India providing global business services and software development services to TG Inc. ITPL has also signed up product/service promotion agreement [PPA] with TG Inc and JHP. 6. As part of PPA, ITPL's team reaches out to travel industry, both domestic and overseas. The successful customers eventually enter into contract with TG Inc and JHP directly. ITPL is remunerated on cost plus ALP margin.
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Issues :

1. Do TG Inc and JHP have business connection/PE in India?

2. Does the fact that ITPL solicit orders for other service providers like Zomato, Foodcart, Homemovie, PVR etc., make any difference?
3. Are the activities of TG Inc, JHP and ITPL to be aggregated [by adopting a combined approach] for the purpose of testing whether benefit of exempt activities [in the context of PE] is to be extended?
4. If TG Inc is required to adhere data localization norm, would this have any tax implications?
5. What is the scope of attribution of business income under the IT Act and the DTAA?
6. Does the fact that ITPL is remunerated at ALP by TG Inc and JHP make any difference in attribution of profits to business connection/PE in India?
7. Is equalization levy applicable and if yes, what are the related tax implications?

Reference materials:

1. Indo USA DTAA – Articles 2, 5 and 7
2. Indo Switzerland DTAA - Articles 2, 5 and 7
3. Sections 9(1)(i) read with Explanations 2 and 3, 92 to 92F [including section 92CE along with relevant Finance No.2 Bill, 2019]
4. Sections 44DA and 115A
5. MLI Articles 12 and 13
6. RBI Payment Systems Act with amendment by Finance (No.2) Bill 2019
7. Data Privacy Bill
8. Chapter VIII of Finance Act 2016