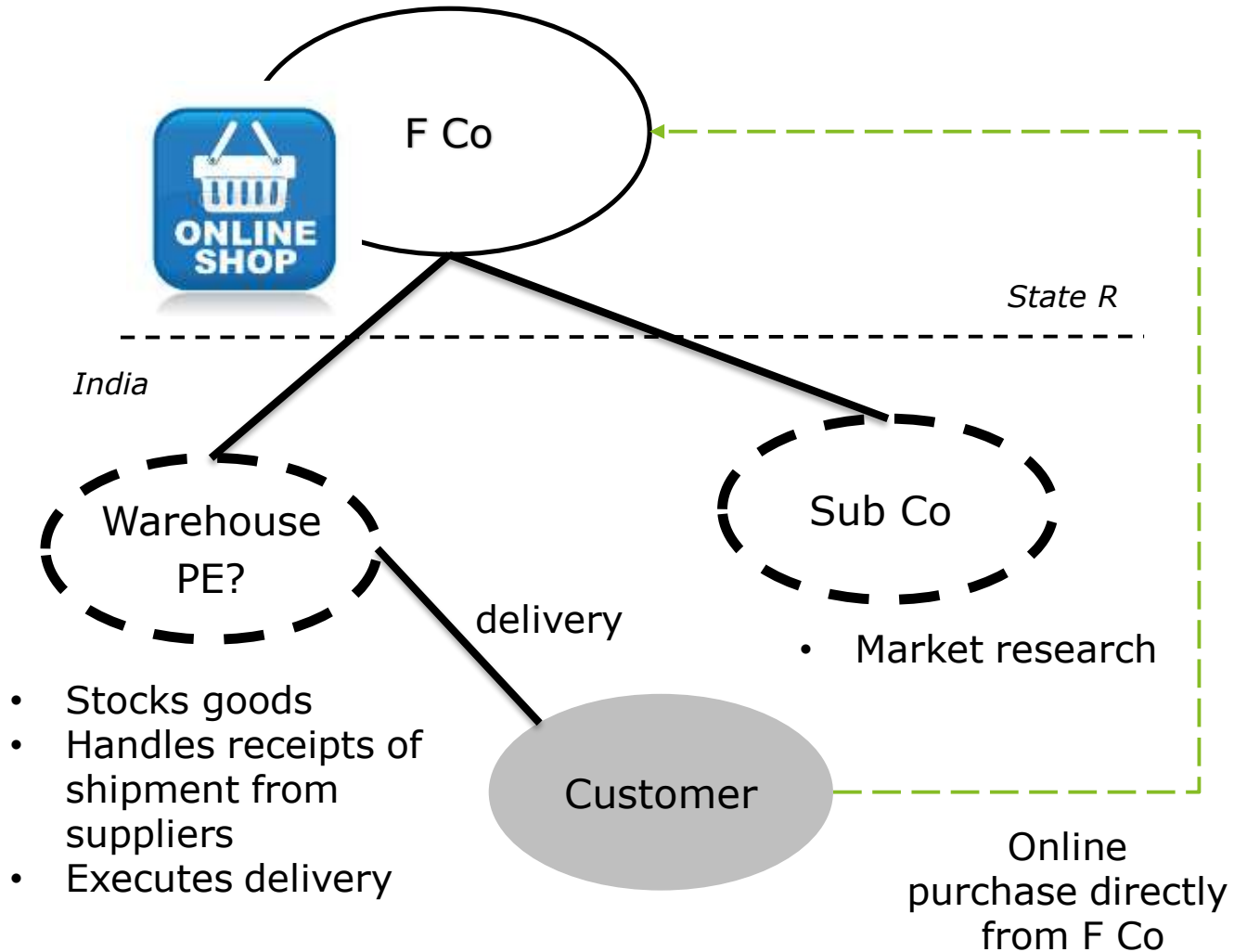


Case studies

Artificial Avoidance of Permanent Establishment

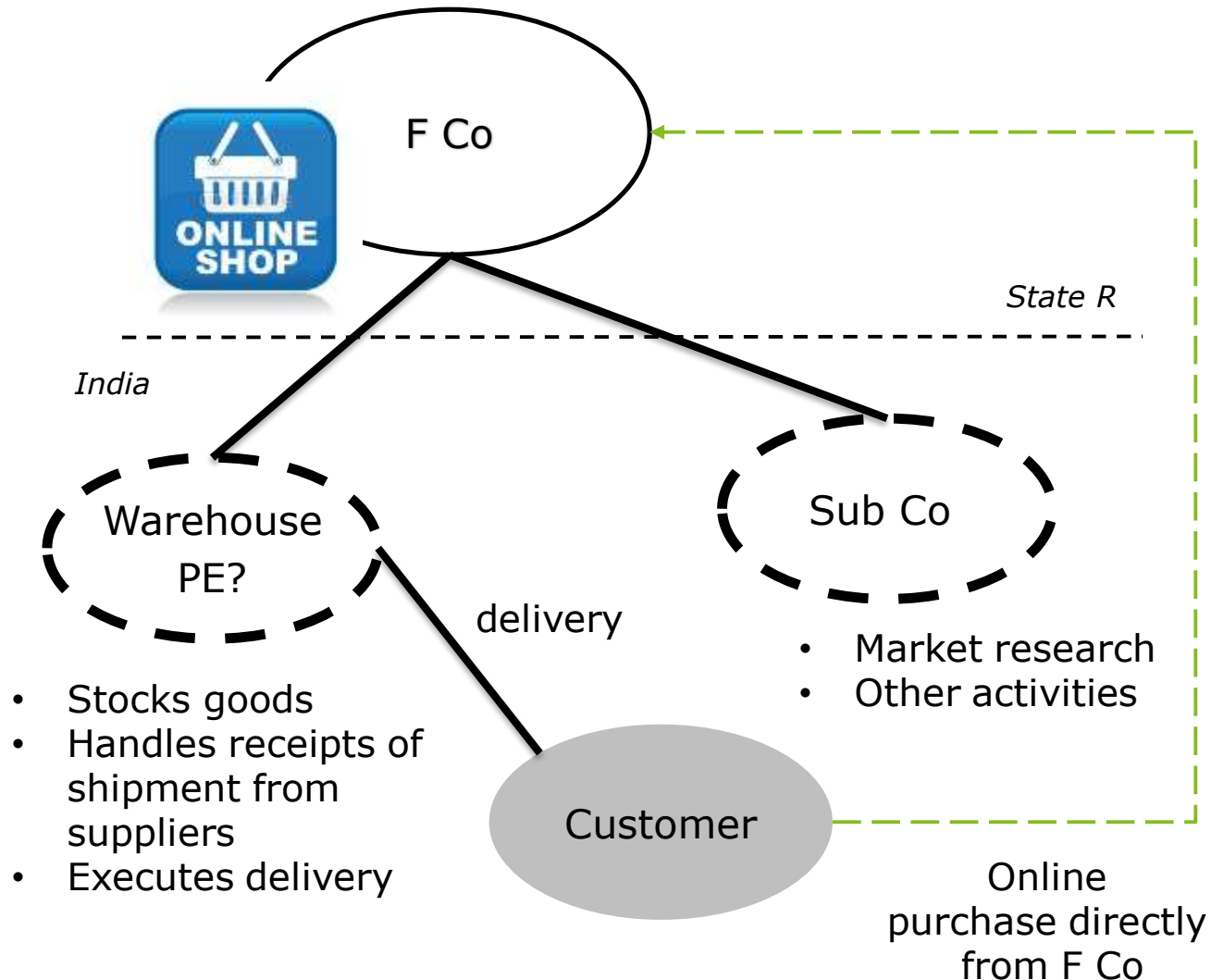
Case study 1A – Online business



- F Co owns a website & online shopping app
- It acquires goods from unrelated suppliers and stores the same in a leased warehouse in India
- F Co's employees in the warehouse facilitate delivery of goods from warehouse to customers using independent delivery service providers
- F Co also has a WOS in India viz. Sub Co. carrying out merchandising and market research activities
- State R and India, both have opted for Option A [i.e. Article 13(2) of MLI]

F Co constitutes a PE in India?

Case study 1B – Online business



- Will the answer be different in case Sub Co undertakes the following other activities:
 - Contacts the customers
 - Provides standard terms and contract to the customer
 - Acts as a communication channel between F Co and Customer?
- Will there be a PE risk even in case where the F Co only has a warehouse in India?

Case study 2 – Fragmentation of activities

R CO 2

Country B

Country B has not accepted the MLI provisions



R CO 1

Country A has accepted the MLI provisions



Country A
India

importation



Company A: Customs/bonded warehouse: Storage; re-export or release



RCO 2's Procurement Officer (import purchasing)

importation



Company B: Packaging depot and distribution centre: Unpacking and new packaging/processing and storage for customer delivery



Company C: Display: Display room



Customer

RCO's Fiscal Rep
VAT/Customs admin, compliance, reporting



RCO's Sales Rep
Representation, no formal agency, no deals



SCO: independent sales agent: makes sales deals for RCO

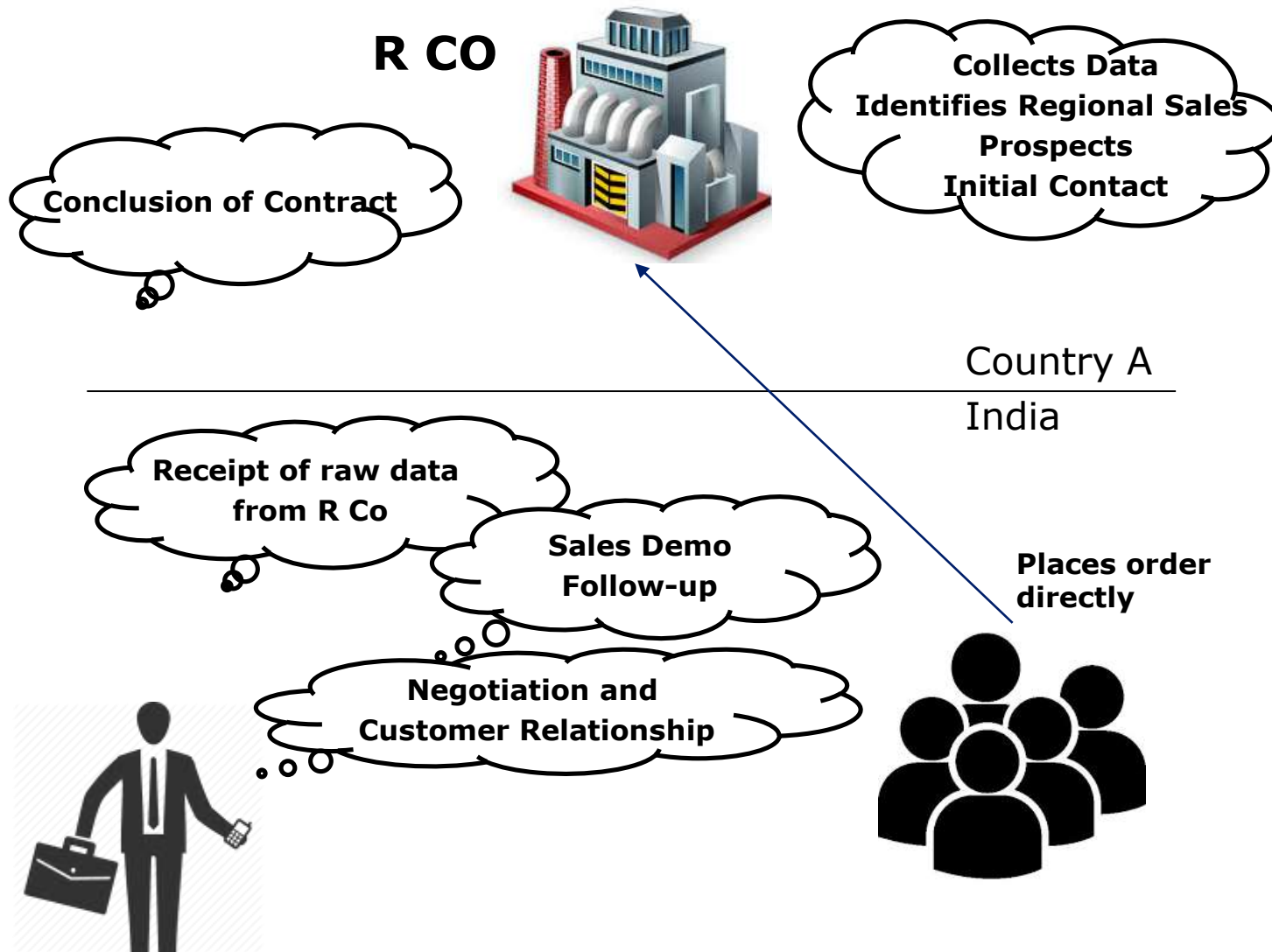


Case study 2 – Fragmentation of activities

Issues

- Will R Co constitute a PE in India if procurement officer and sales representative are on secondment from R Co to India Sub Cos?
- Will the answer change if the procurement and sales representative are consultants but are almost wholly dependent on R Co.?

Case study 3 – Agency PE



- Does R Co constitute a PE in India assuming R Co is a resident of the following jurisdictions?
 - Netherlands
 - USA
- Is there an Agency PE risk in subsequent year where the customer places the orders directly without the Indian agent involved?
- Can it be said that agency PE should not be constituted when the agent in India only acts as a communication channel?
- What is the impact under the Income-tax Act?

Thankyou