

Tech industry: Emerging  
business models and  
tax landscape in India

# Recent developments

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## 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



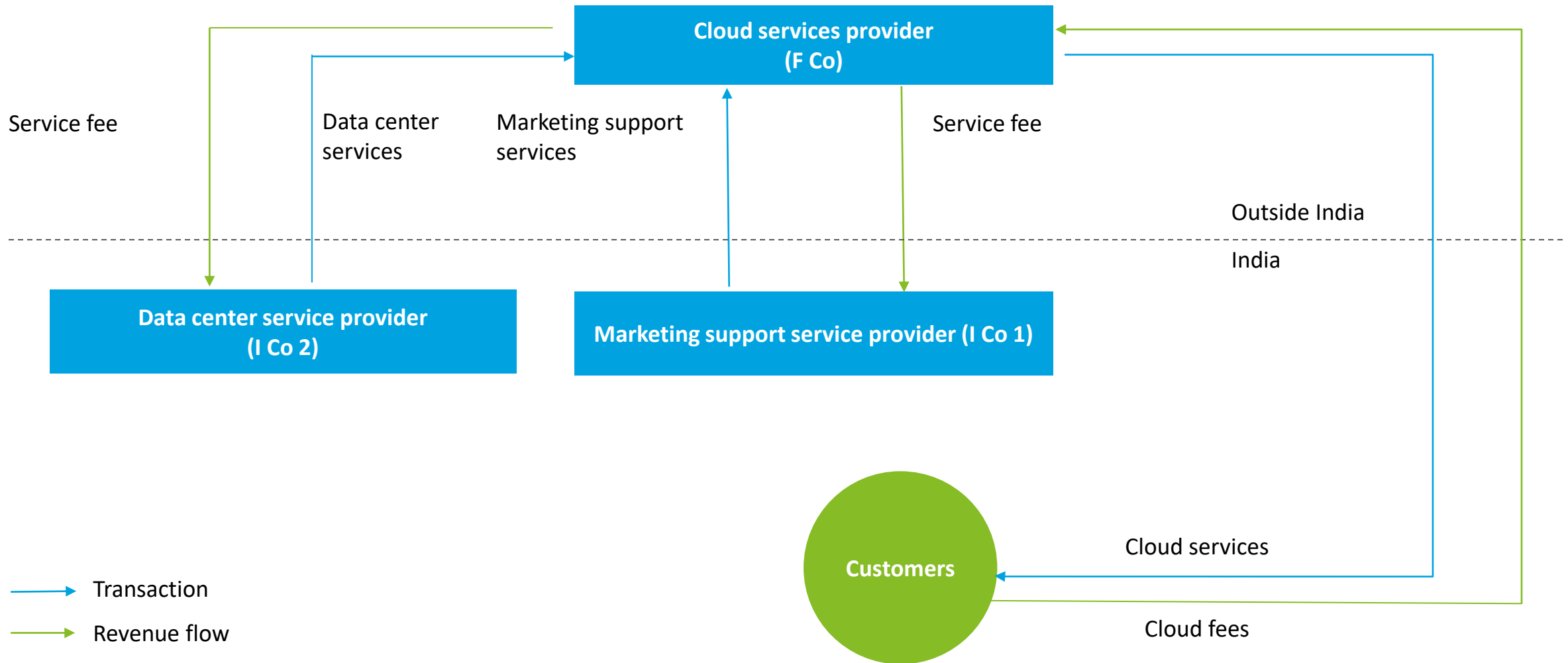
## Reducing tax controversy

- 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



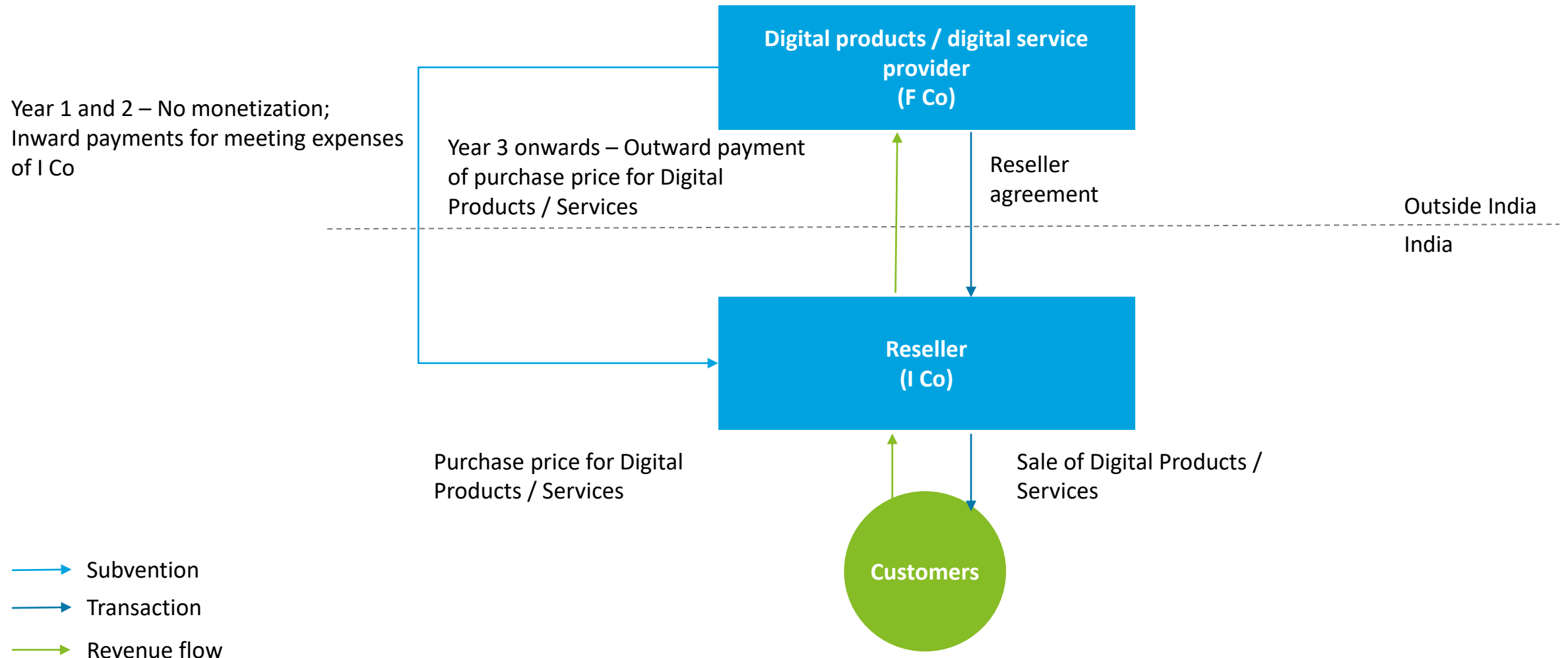
# Case study 1 – Cloud services

## 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



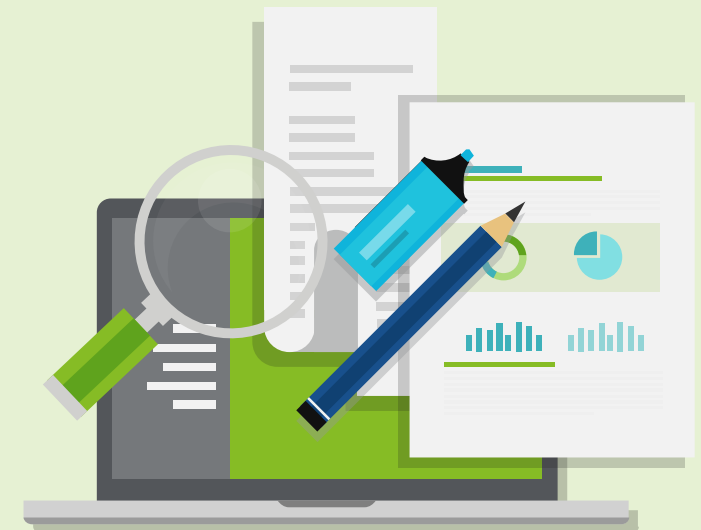
## Case study 2 – Digital products / Digital services



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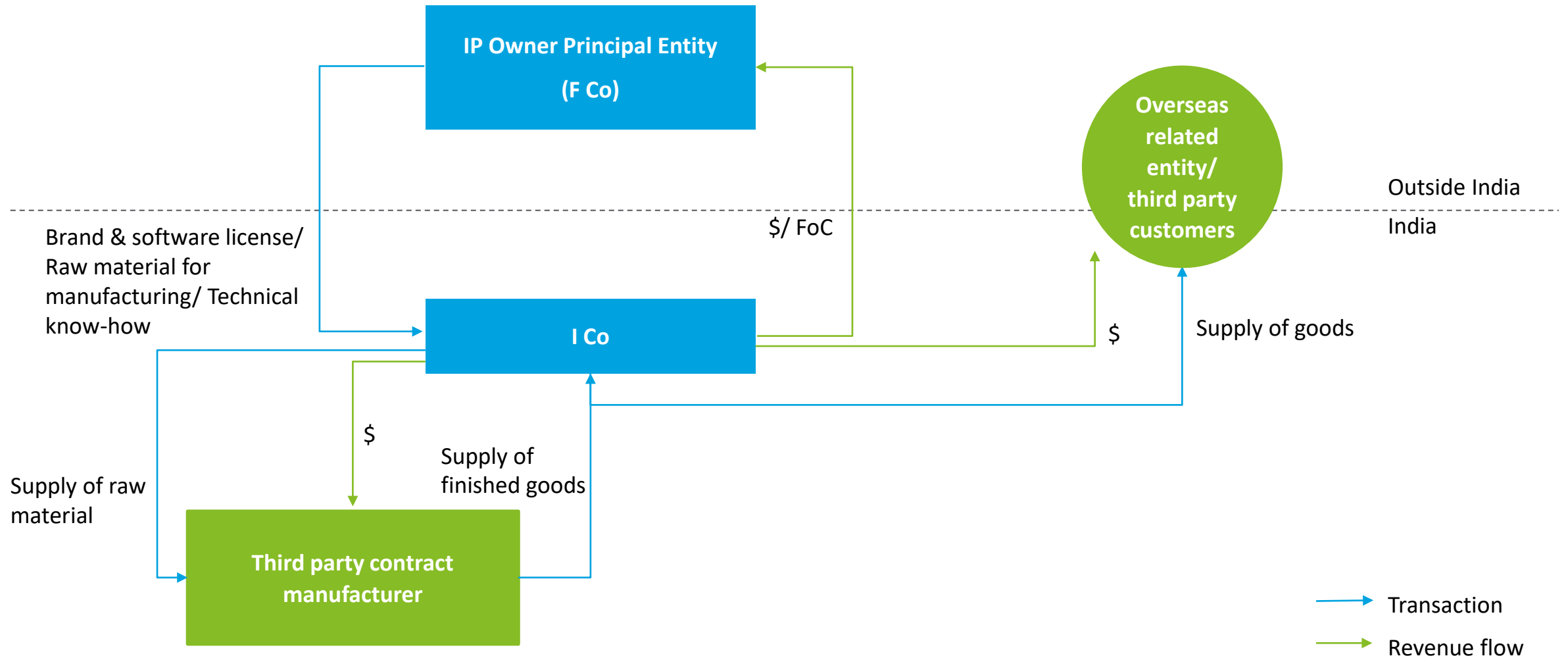
### Potential India tax considerations

- 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



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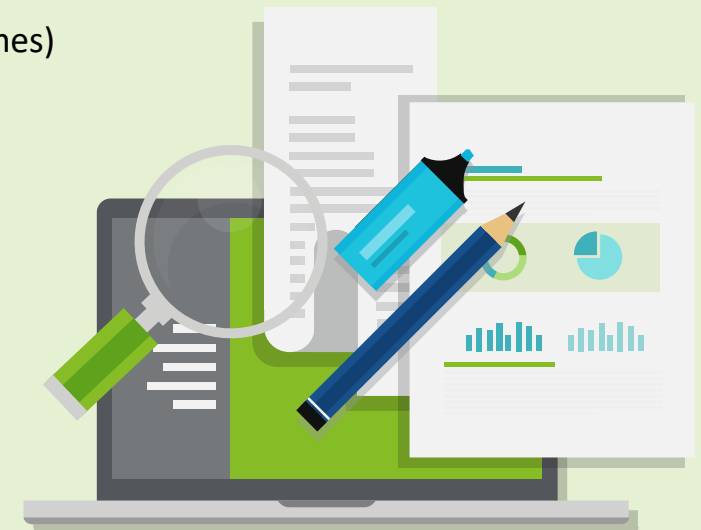
## Potential India tax considerations

### **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 supplier services
- IT/ITeS – Information Technology/Information Technology enabled Services
- OIDAR - Online Information Data Base Access and Retrieval
- S/w – Software
- IP – Intellectual Property





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