

Taxing the Digital Economy

An Overview



Pallav
Pradyumn
Narang

- Qualified Chartered Accountant
- Partner with CNK
- Oversees direct tax advisory and business advisory Practices
- Advises clients on international tax, FEMA, business valuation and other associated matters.
- Books authored: Taxation of foreign entities in India, Structuring of Foreign Direct Investment in ecommerce companies, Guide to Domestic Transfer pricing, general Anti Avoidance Rules (GAAR) –past present and future
- Pallav@cnk-rk.co

About CNK

About CNK

- Mission : To provide “Knowledge Based Solutions” with personalized services
- 25 Partners, 500+ Strength
- Offices across India and Dubai
- Stellar leadership and experienced team
- Established quality assurance process
- Focus on building long term customer relationships
- Members of INAA an international association of firms with presence in over 50 countries.



What is the digital economy?

- Borderless
- Intangible commodities
 - Software
 - Content
 - Crypto
 - "Data"
- Instant
- Ephemeral

The Digital Conundrum

- Businesses and their customers are no longer bound by Geography
- Transactions without obvious gatekeepers (customs, immigration etc.)
- Companies can move bases easily
- IP can be transmitted across geographies
- Data is now a commodity
- How should such transactions be taxed?

Examples



A



B



C

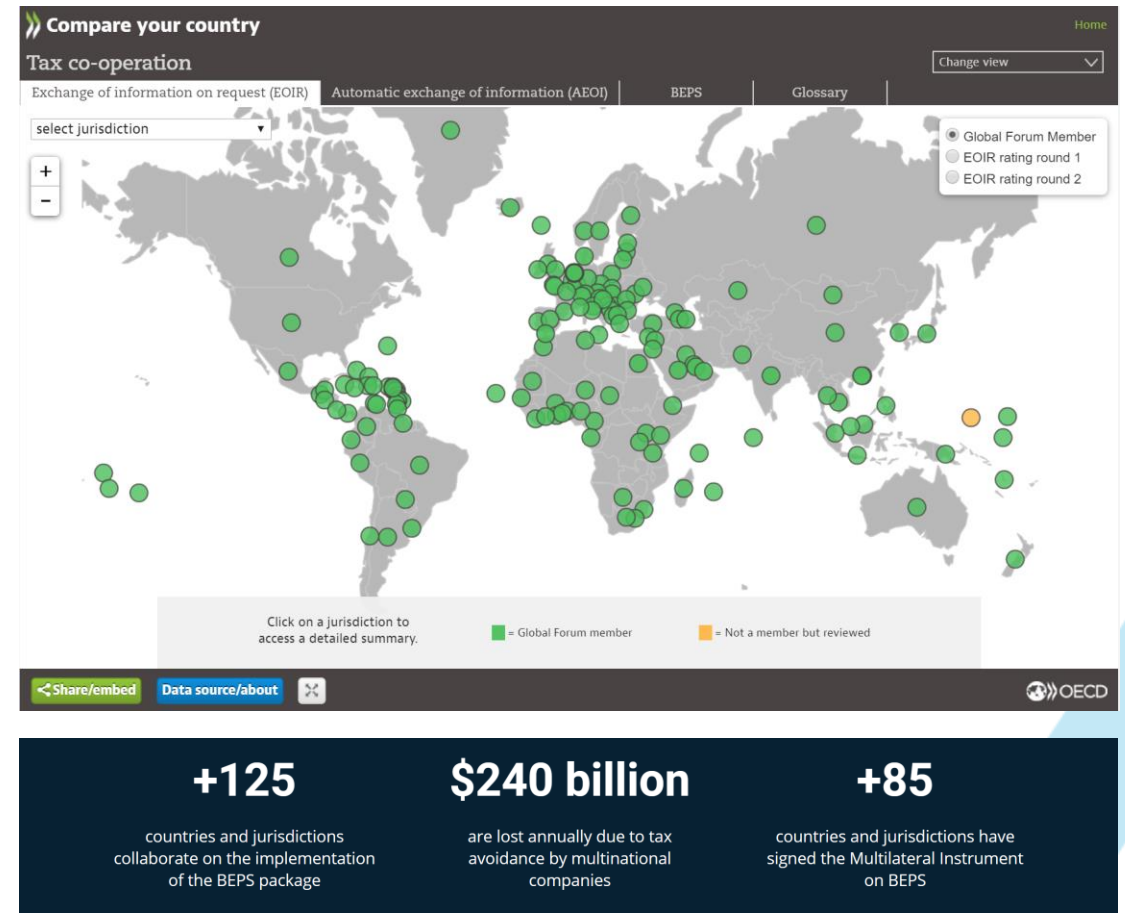
Global trends

GTTS :

Global Tax transparency Standards

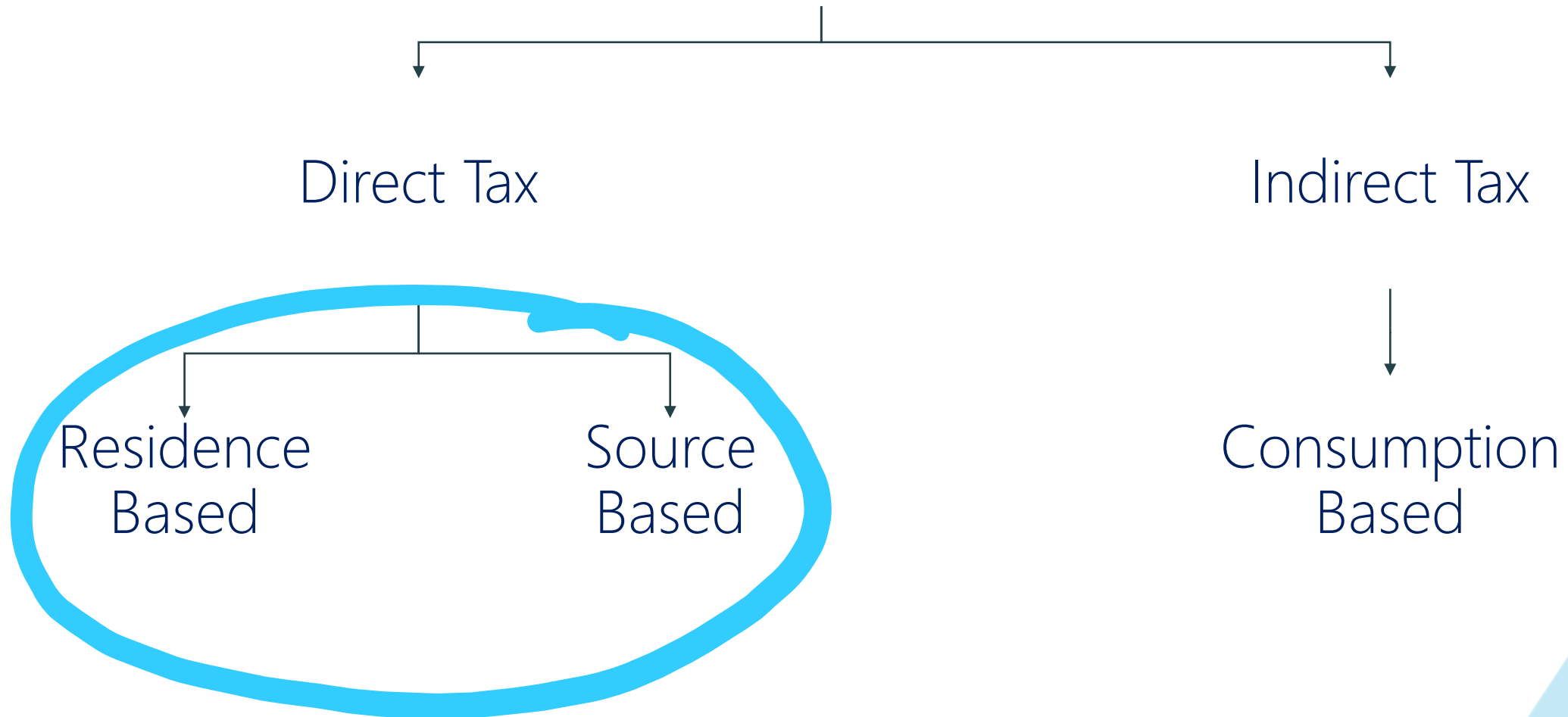
BEPS :

Base erosion and profit sharing



Direct Taxes

Indian Tax Framework



Residential Status

Section 6(3) of the income tax act, 1961

Pre April 2017

A company shall be said to be a resident of India if

- The company is incorporated in India; or
- during that year, **the control and management of its affairs** is situated wholly in India

Post 1st April 2017

A company shall be said to be a resident of India if

- It is an Indian company, or
- Its **place of effective management (PoEM)**, at any time in that year, is in India

Place of effective Management

a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made.

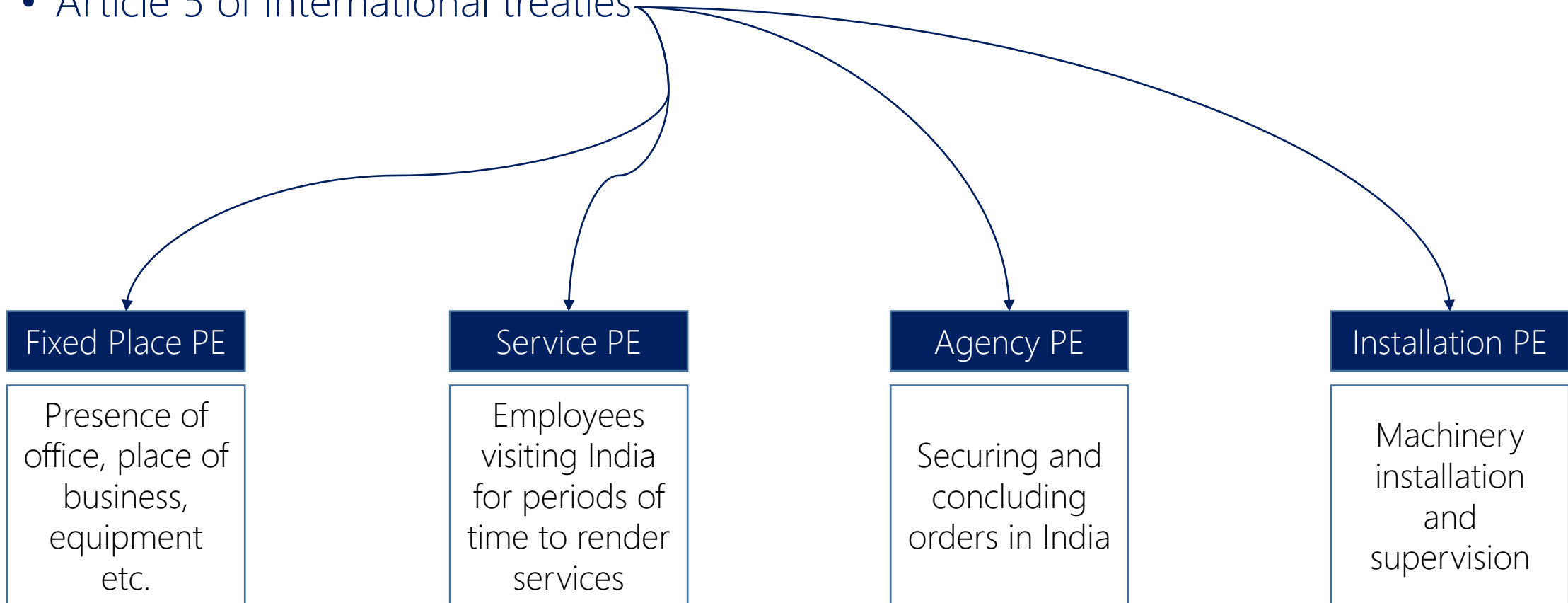
Companies with turnover less than 50 cr exempt

Companies with **Active Businesses outside India (ABOI)** also exempt

Consequences or PoEM in India?

Permanent Establishment

- Section 9 of act : "Business Connection"
- Article 5 of International treaties



Virtual PE

Business connection expanded to include : Any significant Economic Presence (SEP)

- A transaction in respect of any goods, services or property, including provision of downloaded data or software, carried out by a non-resident in India if the aggregate of the payments arising from such transactions during the previous year exceeds the prescribed threshold
- Systematic and continuous soliciting of business activities or engagements involving interaction with the prescribed number of users in India using digital processes

Virtual PE

Business connection expanded to include : Any significant Economic Presence (SEP)

- A transaction in respect of any goods, services or property, including provision of downloaded data or software, carried out by a non-resident in India if the aggregate of the payments arising from such transactions during the previous year exceeds the prescribed threshold
- Systematic and continuous soliciting of business activities or engagements involving interaction with the prescribed number of users in India using digital processes
- Impact of proposed Data localization norms?

Income Characterization

	Royalty	Fee for technical Services	Other Business Income
Tax Rate (no PE)	10% or rate as per DTAA		0%
Tax Rate (PE)		40%+ Surcharge	
Examples			

Issues

- Software License Fee
- SAAS subscription
- Web Hosting
- Server Hosting charges
- Market support services
- Data Retrieval services
- Digital Downloads

- Withholding tax impact
- Tax Rate
- Tax credit availability

Other direct tax Issues

- Equalization Levy
- Angel Taxes

Indirect Taxes

Indirect Tax Framework

- Central Excise Duty
- Additional Excise Duty
- Additional Customs Duty
- Service Tax
- State VAT / Sales Tax
- Entertainment and Amusement Tax
- Luxury Tax
- Taxes on lottery, betting and gambling
- Taxes on advertisement
- Octroi and Entry Tax

Goods and Services Tax
(GST)

Supply

"Sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business"

Includes import of goods/services

Key Elements

■ Place of Supply

■ Time of Supply

■ Value of Supply

Issues Under GST

- Online Gaming
Valuation, classification still issues
- Crypto
Goods, Services, Actionable items?
- Import of Intellectual property
Taxable? Time of taxation?

OIDAR

- Online Information Database access and Retrieval
- services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services
- *advertising on the internet;*
- *providing cloud services;*
- *provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;*
- *providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;*
- *online supplies of digital content (movies, television shows, music and the like);*
- *digital data storage; and*
- *online gaming*

TCS on ecommerce

- Operators to Deduct 1% of total consideration
- Report and deposit with authorities
- To be claimed by merchants later

Questions?

Our value proposition

- **Experience** - We understand what it takes to plan, execute and effectively manage projects conducted across multiple geographies
- **Quality with Flexibility:** We pride ourselves on the high level of engagement our partners and managers have in customer projects – ensuring optimal quality assurance and knowledge transfer. We can minimize project implementation times by working within your organizational boundaries – or for economies of scale and scope
- **End-to-end support:** We can assist you across all aspects of your project – with an unmatched blend of information management skills, processing capacity, and business, regulatory and process expertise.

THANK YOU

To learn more
Contact us

Mumbai

Mistry Bhavan, 3rd
Floor, Dinshaw Vachha
Road, Churchgate,
Mumbai 400 020.
Tel: +91-22-66230600

Mumbai

501-502, Narain
Chambers, M.G. Road,
Vile Parle (E), Mumbai
400057. India.
Tel: +91-22-62507600

Dubai

17-06, Dubai World Trade
Centre, Sheikh Zayed
Road, Dubai, UAE.
Tel No: +971-043559533

Vadodara

C/201-202, Shree
Siddhivinayak
Complex, Faramji
Road, Alkapuri,
Vadodara 390007.
Tel: +91-265-2343483

Ahmedabad

2nd Floor, "Hrishikesh",
Vasantbaug Society, Opp.
Water Tank, Gulbai Tekra,
Ahmedabad 380006
Tel: +91-79-2630 6530

Pune

4, Kumar Panorama,
45/ 1B Shankarseth Road,
Pune – 411 037. India.
Tel: +91-20-26457252

Delhi

Suite 1101,
KLJ Towers North, NSP
New Delhi -110034
Tel : 91-11-2735-7350 | 91-11-2735-7030

Gurgaon

Suite 1-108,
246, Phase IV, Udyog
Vihar, Sector 18,
Gurugram, Haryana,
122016
info@cnk-rk.co

Chennai

Brindavan,
Old No 23, New No
13, McNichols Road,
Chetpet, Chennai
600031
Tel: +91-44-43849695

Bangalore

96, 7th Cross,
Domlur,
Bangalore 560071. India
Tel: +91-80-25351353

info@cnk-rk.co | www.cnk-rk.co