

Cross-border film shoots - direct tax implications

April 21, 2020

Setting the context

“...the fact that the location of production can be extremely difficult to figure out because in a globalized economy production processes stretch across numerous jurisdictions and include not only physical processes, but also intangible ones that are difficult to price. He gives the example of the production of the movie Star Wars: The Force Awakens to make his point. The movie used intellectual property (IP) located in the United States; actors from the United Kingdom and the United States; special effects developed in San Francisco, Singapore, London, and Vancouver; was shot in the UAE, the U.K., Iceland, and Ireland; and tickets for the movie were sold throughout the world...”

Case study 1 - Hollywood film

Producer

Overseas

F Co

- F Co, a foreign company, produces a Hollywood film
- Film shooting undertaken in India
- Foreign actors, crew and producer visit India for film shooting and equipment rented from overseas

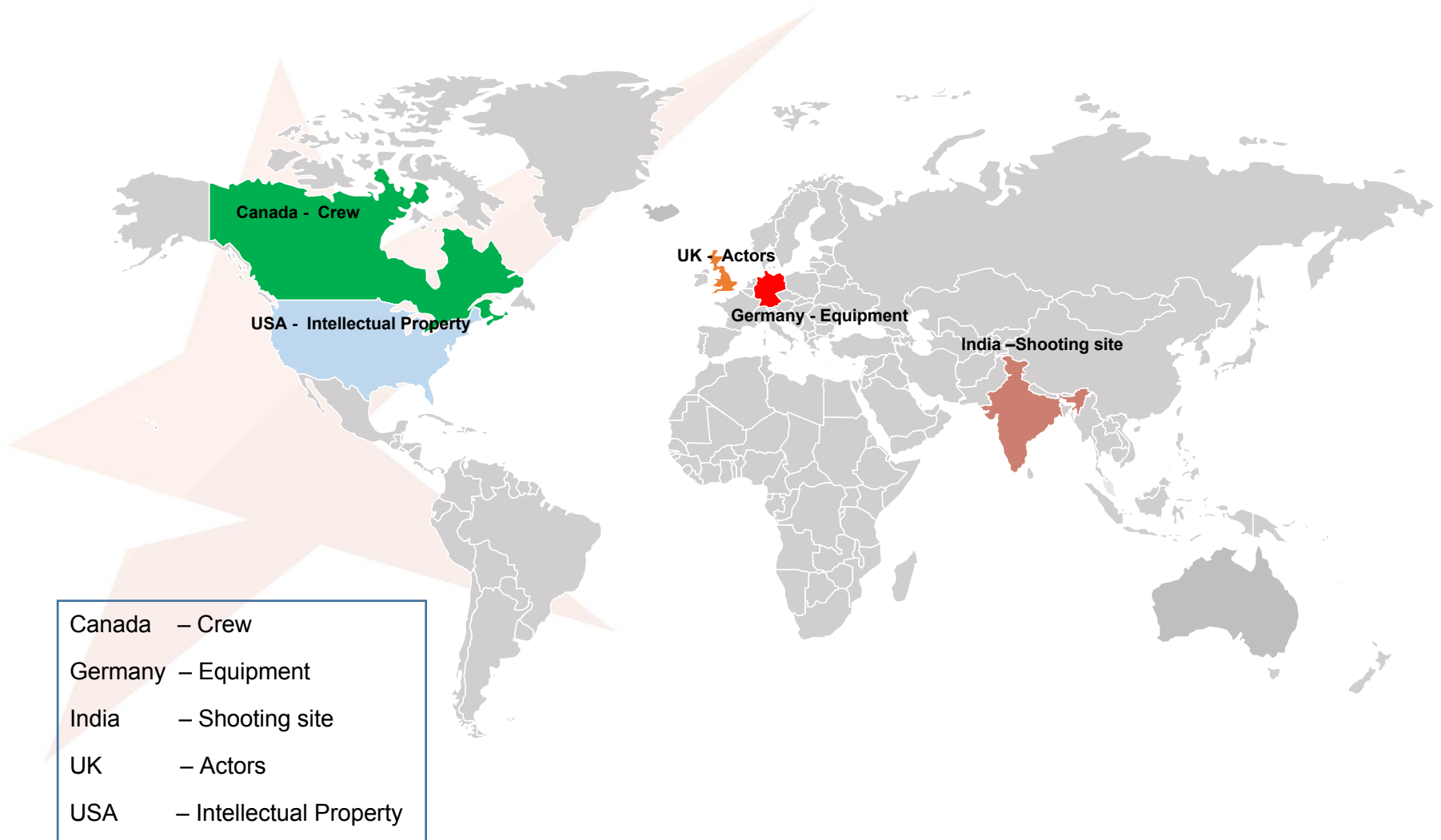
India

Film shooting in India

Issues for consideration:

- Taxability of foreign film producer
- Taxability of foreign actors
- Taxability of foreign crew
- Taxability of equipment rentals

Case study 1 - Hollywood film



Film producer

Income deemed to accrue or arise in India

9. (1) The following incomes shall be deemed to accrue or arise in India :—

...

(d) in the case of a non-resident, being—

...

no income shall be deemed to accrue or arise in India to such individual, firm or company through or from operations which are confined to the shooting of any cinematograph film in India;

Actors

Article 18 of India-UK tax treaty

Artistes and athletes

1. Notwithstanding the provisions of Articles 15 (Independent personal services) and 16 (Dependent personal services) of this Convention, income derived by entertainers (such as stage, motion picture, radio or television artistes and musicians) or athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

Actors

Tax on non-resident sportsmen or sports associations

115BBA. (1) Where the total income of an assessee,—

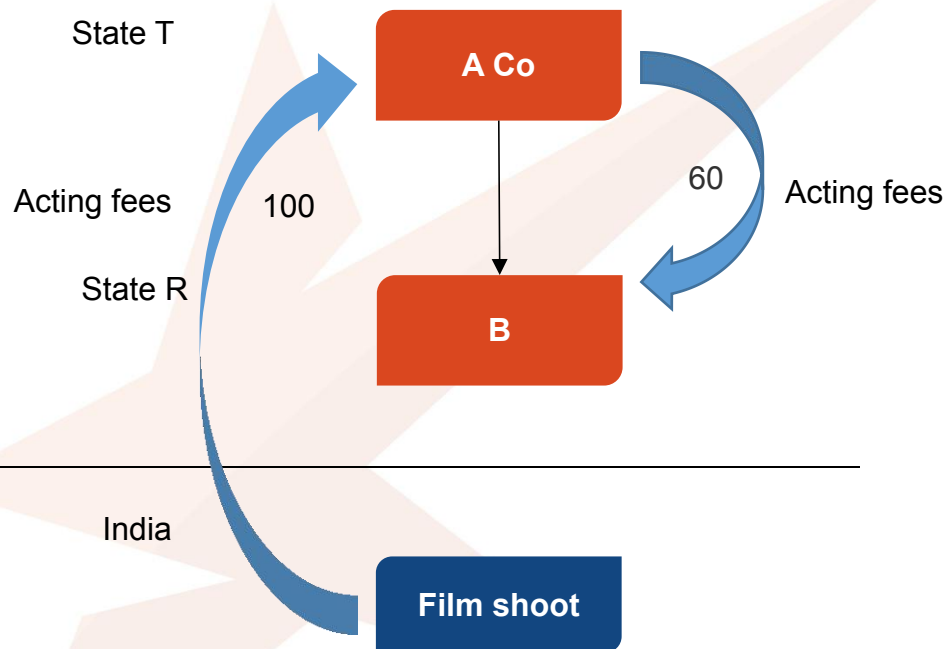
...

(c) being an entertainer, who is not a citizen of India and is a non-resident, includes any income received or receivable from his performance in India,

the income-tax payable by the assessee shall be the aggregate of—

(i) the amount of income-tax calculated on income referred to in...clause (c) at the rate of twenty per cent; and

Actors



- B, an actor, is a resident of State R
- B is engaged by a company (A Co) situated in State T
- Entire shareholding of A Co is held by B
- A Co provides B's services for a film shoot in India

Issues for consideration:

- Taxability of B
- Taxability of A Co

Actors

Article 18 of India-UK tax treaty

Artistes and athletes

2. Where income arising from personal activities as such exercised in a Contracting State by an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 (Business profits), 15 (Independent personal services) and 16 (Dependent personal services) of this Convention, be taxed in that Contracting State.

Crew

Article 14: If consideration paid to professional (not employee): Fees for professional services not taxable in India, if following conditions satisfied*:

- if the person does not have a fixed base regularly available to him in India
- his stay in India is less than 183 days in a relevant fiscal year
- If remuneration for services in India is not derived from resident of India or is not borne by PE of non-resident in India (plus monetary threshold)

Article 15: If consideration paid to employee: Remuneration not taxable in India, if following conditions satisfied:**

- recipient is in India not exceeding 183 days in a relevant fiscal year
- remuneration is paid by/ on behalf of a non-resident employer
- remuneration is not borne by employer's PE in India

*Article 14 India-Canada tax treaty (Independent Personal Services)

**Article 15 of India-Canada tax treaty (Dependent Personal Services)

Crew

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(6) in the case of an individual who is not a citizen of India,—

(vi) the remuneration received by him as an employee of a foreign enterprise for services rendered by him during his stay in India, provided the following conditions are fulfilled—

- (a) the foreign enterprise is not engaged in any trade or business in India;
- (b) his stay in India does not exceed in the aggregate a period of ninety days in such previous year; and
- (c) such remuneration is not liable to be deducted from the income of the employer chargeable under this Act;

Equipment

Various possible scenarios:

- No tax treaty with India i.e. domestic tax law applicable
- Equipment royalty clause in tax treaty
- No equipment royalty clause in tax treaty
- Permanent establishment scenario



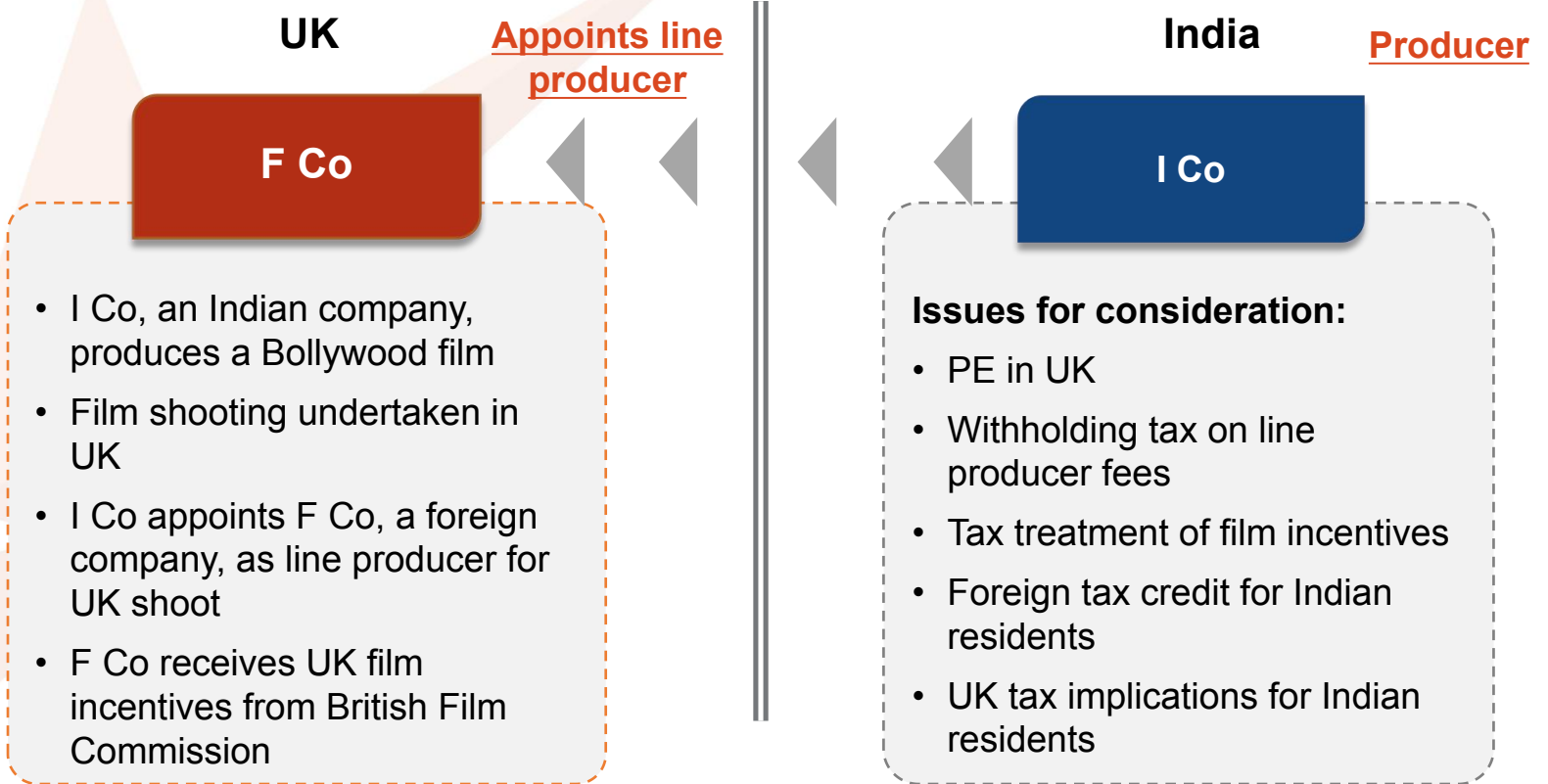
Equipment

Article 12 of India-Germany tax treaty

Royalties and fees for technical services:

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

Case study 2 - Bollywood film



Case study 2 - Bollywood film



Film incentives

Government of various countries offer film incentives to attract overseas film producers to shoot in their countries

- Prevalent in some countries for a long time (example: Canada since 1974)

Film incentives serve as a mechanism to support production of films



Advantages for producer

- Reduction in cost of production of film
- Opportunity to showcase new locations to audiences
- Access to overseas expertise/ latest technology

Example:

- UK: 25% of qualifying expenditure

Concluding thoughts



Cross-border transactions increase complexity from tax perspective

Tax can potentially increase cost of films, impact ETR - if not planned appropriately

Governments promoting countries as a filming destination

Monetization areas for film sector have widened

Innovative business models in light of Covid-19 impact

Thank You

Questions?

Prashant Bhojwani