

New Software Business Models And Their Tax Issues

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Cloud Computing

e.g.

Infrastructure as a Service (IaaS)

- Software as a Service (SaaS)
 - Hosted applications
 - Online Office
 - Video Conferencing
 - Customer Relationship Management
 - Human Resources
- Hardware as a Service (HaaS)
 - Hosted resources
 - Servers
 - Network Equipment
 - Memory
 - CPU
 - Data Center Facilities

Common Elements

- Outsourced business technology platforms
- User-based fees
 - Typically monthly or annual arrangements
- Browser accessed
- Facilitated by massive data centers

User Benefits

- Lower front end cost
 - no capital expenditures
- Less complexity to initiate/operate
- Scalable, pay as you grow environment
- No software or hardware upgrade hassles
- Portable access
- Laptop theft or crash impact is minimized

User Drawbacks

- Data security
 - Sarbanes-Oxley & HIPPA
 - Private clouds are emerging
- Reliability
 - Disruption from outages
- Network connection required
 - High speed connection essential
 - Difficult to work offline
- Dependent on third parties

Providers/Adopters/Market Size

- Google; IBM; Microsoft; Hewlett-Packard; Dell; AT&T; Amazon; Salesforce.com; Oracle
- Sanmina-SCI
 - 1,000 users of Google Apps; est. 10,000 in three years
- U.S. Olympic Committee
 - AT&T managed videos and results
- Merrill Lynch Estimates 95B Market in 5 years

U.S. International Tax Classification

- Treas. Reg. 1.861-18 classifications of transactions involving computer programs
 - (a)(2) *Generally* requires that such transactions be treated as being *solely* within one of four categories:
 - (b)(i) *Transfer* of a copyright right
 - » Right to make copies for sale, lease, or lending
 - » Right to prepare derivative computer programs
 - » Right to public performance
 - » Right to publicly display
 - (b)(ii) *Transfer* of a copyrighted article
 - » Copy of a computer program from which the work can be perceived, reproduced or communicated
 - » Floppy disk, hard drive, or in any other medium
 - (b)(iii) Provision of software development services
 - » To develop or modify a computer program
 - » Standard upgrades and technical support may be considered de minimis
 - (b)(iv) Provision of computer programming know how

U.S. International Tax Classification

Facts and circumstances based determinations

- Transfer of copyright rights
 - Transfer of all substantial copyright rights = sale or exchange
 - Otherwise = license generating royalty income
- Transfer of copyrighted article
 - Transfer benefits and burdens of ownership = sale or exchange
 - Otherwise = lease generating rental income
- Provision of software development services
 - Which party owns copyright rights?
 - How was risk of loss allocated between the parties?
 - Not classified as a service if rights and risk of loss are allocated to provider of programming

U.S. International Tax Classification

- Example 1
 - Company A provides software that is downloaded to a laptop upon receipt of a payment to use the software for a period of one week. Software has an electronic lock that will not allow access after the time period expires. To activate the program for another week, the customer must remit additional funds to Company A's website. Upon receipt of additional funds, access key is downloaded enabling the program for an additional week.
 - Transfer of a copyright right?
 - Transfer of a copyright article?
 - Lease, sale or service?
 - If accessed over the internet and not downloaded
 - Does that change the answer?

U.S. International Tax Classification

- Example 1 analysis
 - Treas. Reg. 1.861-18(h) *Example 4*.
 - Download with electronic key enabling application for limited duration
 - Lease of a copyrighted article, not a sale
 - Result - transaction is classified as rental income for
 - Sourcing rules; FTC; FDAPI/Withholding; 367; 482 and other provisions delineated in 1.861-18(a)
 - Hosted application by analogy may receive the same result
 - Preamble states functionally equivalent transactions should be treated similarly
 - Arguably absence of a transfer might not create a discernable distinction
 - Although software was downloaded in the example, nothing appears to have been transferred at the end of the activation period.
 - Is there any functional difference to Company A or the customer?
 - However, customer never received a copyright article leaving question as to classification.

U.S. International Tax Classification

- Example 2
 - Company A offers hosted data storage by providing internet access to its servers and software for a fee. Software is standard, off the shelf, and offered to multiple customers with minimal or no customization.
 - Lease, sale, or service?

U.S. International Tax Classification

- Example 2 analysis
 - Can we look to section 199 for guidance?
 - Treas. Reg. 1.199-3(i)(6)
 - (ii) Services
 - » Internet access; online banking; access to publications
 - (iii) Lease, rental, license, sale, exchange
 - » Online access to computer software if substantially similar software is made available by taxpayer or others
 - Is this fact pattern analogous to online banking?

U.S. International Tax Classification

- Example 3
 - Customer contracts with Company A for Company A to provide hosted business applications including data storage and financial reporting software. Applications are programmed to Customer specifications. Customer has exclusive rights to use.
 - Lease, Sale, or Service?

U.S. International Tax Classification

- Example 3 analysis
 - Customer in this example appears to have the benefits and burdens of ownership for the software development suggesting classification as services
 - Would the contract be bifurcated into software development and other?
 - See Treas. Reg. 1.861-(b)(2)
 - As in Example 2, can we look to section 199 for guidance?

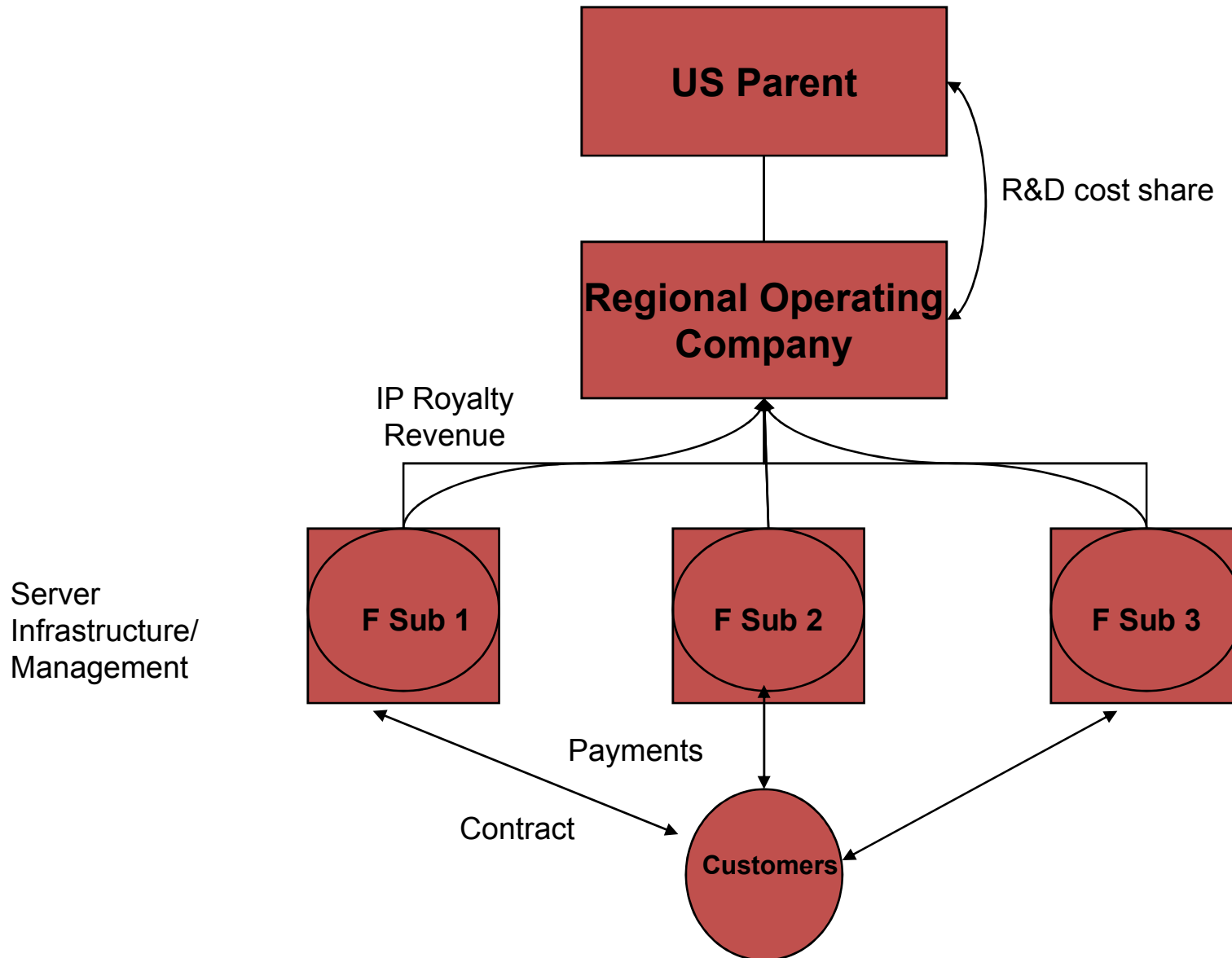
Federal Tax Classification

- Remember, 1.861-18 classification applicable to delineated Code sections (i.e., U.S. international tax sections)
- What about classification of SaaS for other tax sections (i.e., baseline “federal” tax sections such as section 451); Does it even matter?
 - Rev. Proc 2004-34 deferral or full inclusion methods can apply to advance payments for both services and “sale, lease or license of computer software”
 - However, consider items of income under Rev Proc 2004-34 application, and also state tax conformity to federal tax characterization
 - So, yes, it can matter
- Possibly apply Treas. Reg. 1.861-18 principles?
- Consider Norwest v. Commissioner, 108 T.C. 358 (1997)?
- Consider Treas. Reg. 1.199-3(i)(6) relative to online internet access vs. online access to computer software?
- Apply general economic principles? Legal characterization?
- Unclear

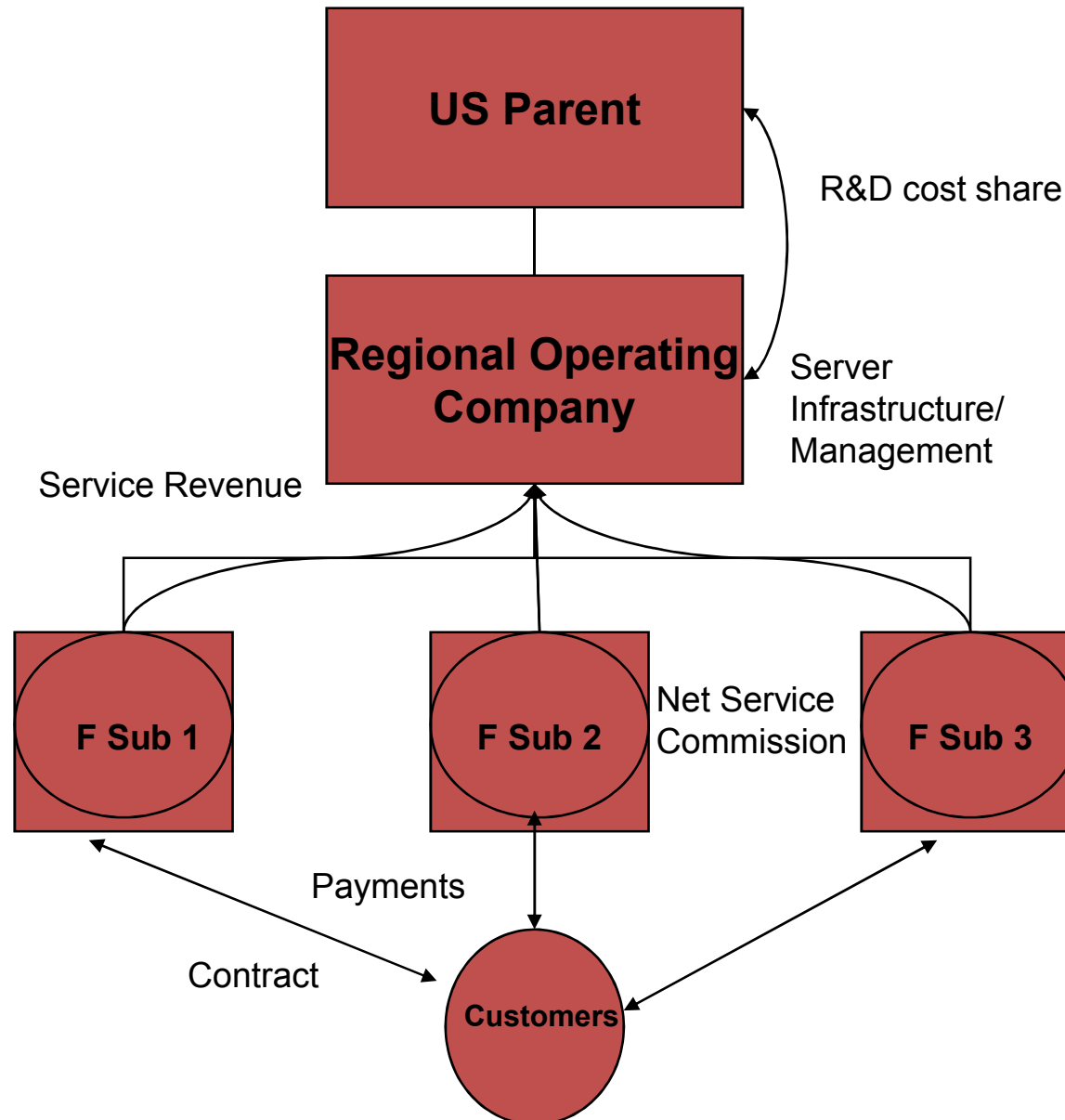
Online Software Tax Structuring Considerations

- Permanent establishment issues (e.g., server infrastructure location and oversight)
- Characterization of Revenue
 - US Tax Purposes (e.g., Subpart F, sourcing, withholding tax)
 - Local Country Tax Purposes (e.g., withholding tax, VAT)
- Subpart F and Foreign Base Company Income
 - If Services Income Characterization – FBC Services Income
 - Particular attention to substantial assistance rules
 - If Rental Income Characterization - FPHCI and active leasing exception
- Withholding Taxes and Services Taxes
- Transfer Pricing
- VAT
- FTC Planning

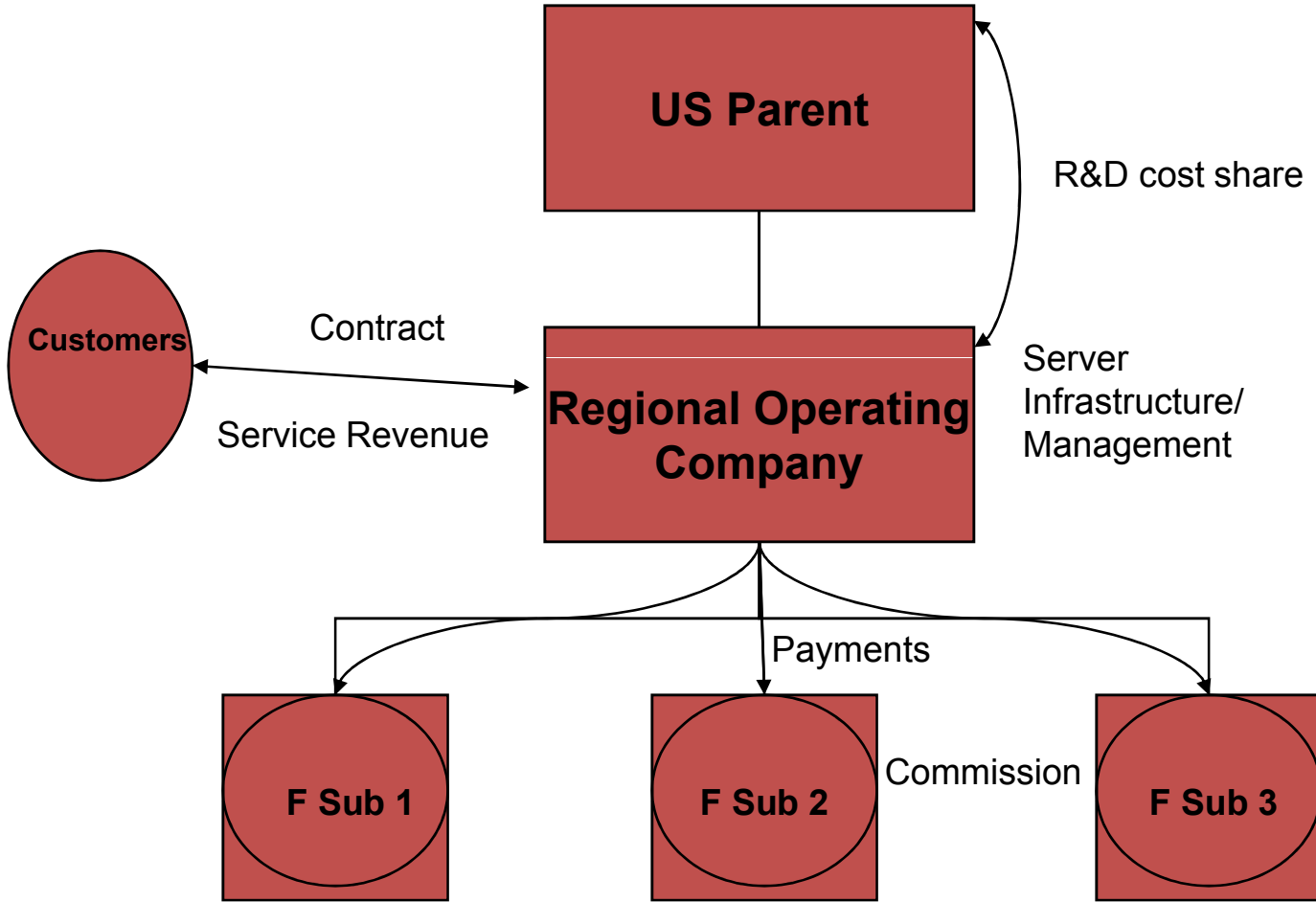
Local Infrastructure Contracting Structure



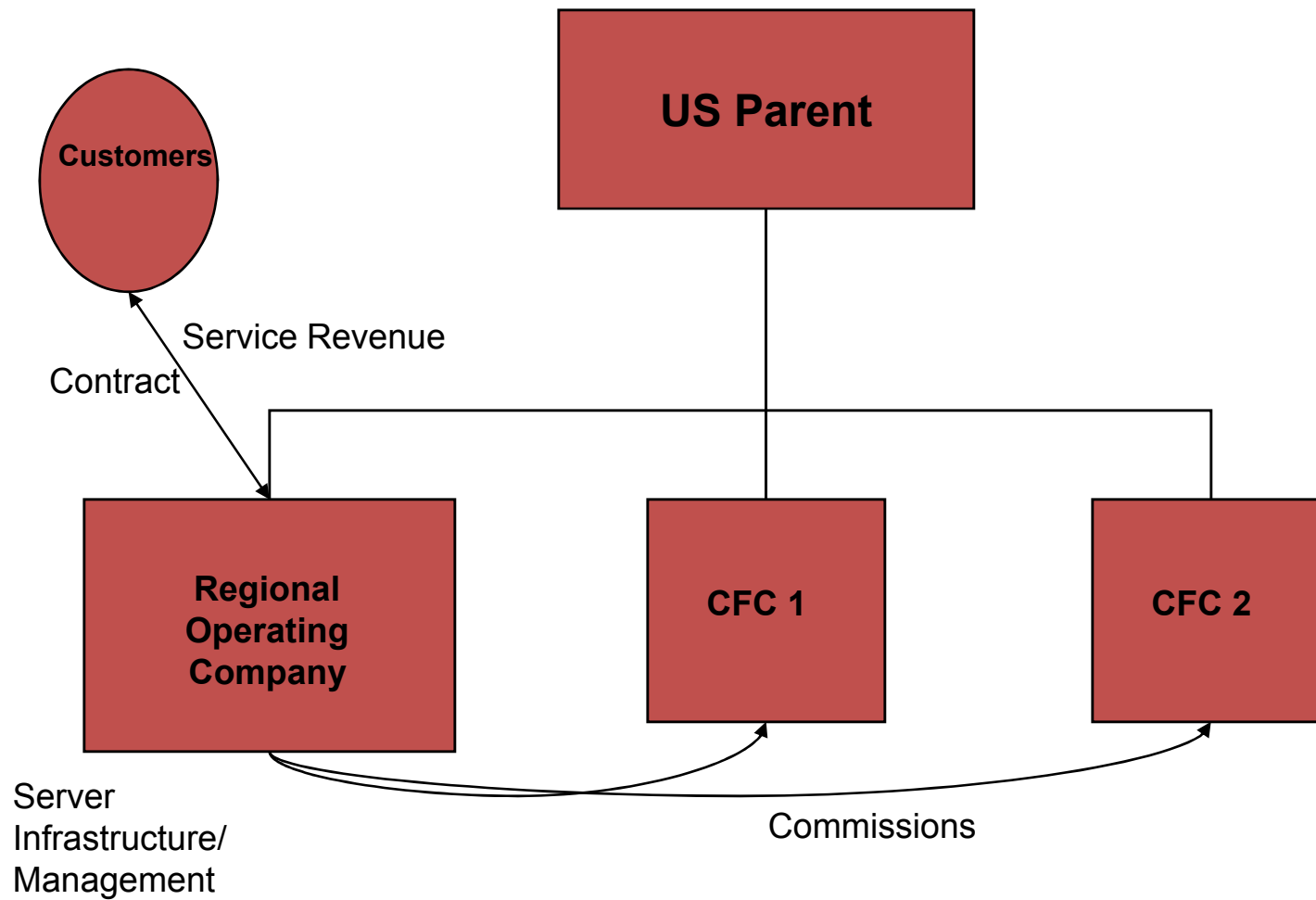
Regional Infrastructure Local Contracting Structure



Regional Contracting Structure With Branches



Regional Contracting Structure With CFCs



State & Local Tax Issues

- Income Tax
- Sales Tax
- Planning Issues

State Income Tax Issues

- Nexus
 - Physical Presence
 - P.L. 86-272 Protection
 - Economic Nexus
- Apportionment – Sales Factor
 - Tangible Property - Destination
 - Other
 - Cost of Performance
 - Destination (market)
 - MTC – where benefit derived

State Tax Example

- Seller/Hoster provides access to software applications via the internet to Purchaser without download.
 - Seller/Hoster is located solely in Nevada
 - Purchaser is California-based
 - Purchaser has end-users throughout the U.S.

State Sales Tax Issues

- Nexus
- Character of Transaction
 - Tangible property
 - Service
- Use Tax

State Planning Issues

- Audits
- Location of Hosting Services
- Purchasing Location
- Selling Destination
- Contract Language
- Global Contracts

Online Software And Revenue Foreign Country Characterization

- A survey of sixteen foreign countries was conducted on the local tax treatment of online portal revenue versus hosted application.
- Online portal/website revenue is generally categorized as payment for provision of a service except for France, India, Luxembourg, Netherlands, Spain, Switzerland and the U.K.
- The countries listed above classify online portal/website revenue as business income, except for the Netherlands.
- Alternatively, hosted application is generally categorized as licensing or services income except for India, Luxembourg, Switzerland and the U.K. which classify these revenues as business income.

Online Software And Revenue

Foreign Country Characterization - AsiaPac

COUNTRY	HOSTED APPLICATION	PORTAL/WEBSITE REVENUE
AUSTRALIA	Company A is a U.S. corporation and owns an online video conferencing tool. Company B is a corporation residing in your local country and pays Company A a monthly fee for the non-exclusive right to use the online conferencing tool. The software is accessed from Company B's web browser rather than installed computer software. Company B's web browser is linked to Company A's server. (Please ignore the location of the server for the purpose of this example.)	Company X is a U.S. corporation who owns a search engine and makes revenue on advertisements. Company Y is a corporation residing in your local country and pays Company X a set fee to display advertisements for Company Y's business.
CHINA	Generated revenue will be characterized as licensing fees , and subject to a withholding tax of 10% (and 5% business tax).	Generated revenue will be characterized as services income , and subject to a 5% business tax depending on whether the services are performed in or outside of China.
INDIA	Generated revenue will be characterized as business income , and exempt from withholding tax. Seeking advance ruling is recommended due to evolving guidance in this area.	Generated revenue will be characterized as business income , and exempt from withholding tax. Seeking advance ruling is recommended due to evolving guidance in this area.

The above characterization is based on generalized facts and cannot be relied upon. Further analysis will be needed.

Online Software And Revenue

Foreign Country Characterization - AsiaPac (Cont'd)

COUNTRY	HOSTED APPLICATION	PORTAL/WEBSITE REVENUE
JAPAN	Depending on the facts and legal agreement, generated revenue most likely will be characterized as services revenue , and exempt from withholding tax.	Depending on the facts and legal agreement, generated revenue most likely will be characterized as services revenue , and exempt from withholding tax.
KOREA	Generated revenue will be characterized as service income (i.e. business income) or royalties . Service income is exempt from withholding tax if certain conditions are met. Royalties are subject to 27.5% withholding tax (treaty benefits may be available).	Generated revenue will be characterized as service income , and exempt from withholding tax if certain conditions are met.

The above characterization is based on generalized facts and cannot be relied upon. Further analysis will be needed.

Online Software And Revenue

Foreign Country Characterization - Europe

COUNTRY	HOSTED APPLICATION	PORTAL/WEBSITE REVENUE
	<p>Company A is a U.S. corporation and owns an online video conferencing tool. Company B is a corporation residing in your local country and pays Company A a monthly fee for the non-exclusive right to use the online conferencing tool. The software is accessed from Company B's web browser rather than installed computer software. Company B's web browser is linked to Company A's server. (Please ignore the location of the server for the purpose of this example.)</p>	<p>Company X is a U.S. corporation who owns a search engine and makes revenue on advertisements. Company Y is a corporation residing in your local country and pays Company X a set fee to display advertisements for Company Y's business.</p>
FRANCE	<p>Depending on the facts, generated revenue will be characterized as business income or royalties depending on whether there is transfer of know-how and access to the source code, and exempt from withholding tax.</p>	<p>Generated revenue will be characterized as general business income, and exempt from withholding tax.</p>
GERMANY	<p>Generated revenue will be characterized as licensing fees, and subject to a withholding tax of 15.825%. Treaty benefits yielding a 0% withholding tax may be available.</p>	<p>Generated revenue will be characterized as services income, and exempt from withholding tax.</p>
IRELAND	<p>The nature of the revenue will depend on the legal form, but most likely, generated revenue will be characterized as services income, and exempt from withholding tax.</p>	<p>The nature of the revenue will depend on the legal form, but most likely, generated revenue will be characterized as services income, and exempt from withholding tax.</p>

The above characterization is based on generalized facts and cannot be relied upon. Further analysis will be needed.

Online Software And Revenue

Foreign Country Characterization - Europe (Cont'd)

COUNTRY	HOSTED APPLICATION	PORTAL REVENUE
ITALY	Generated revenue will be characterized as service income , and exempt from withholding tax.	Generated revenue will be characterized as service income , and exempt from withholding tax.
LUXEMBOURG	Generated revenue will be characterized as income subjected to expenses , which would be exempt from withholding tax.	Generated revenue will be characterized as income subjected to expenses , which would be exempt from withholding tax.
NETHERLANDS	Generated revenue will most likely be characterized as royalties , and exempt from withholding tax.	Generated revenue will most likely be characterized as royalties , and exempt from withholding tax.

The above characterization is based on generalized facts and cannot be relied upon. Further analysis will be needed.

Online Software And Revenue

Foreign Country Characterization - Europe (Cont'd)

COUNTRY	HOSTED APPLICATION	PORTAL/WEBSITE REVENUE
	<p>Company A is a U.S. corporation and owns an online video conferencing tool. Company B is a corporation residing in your local country and pays Company A a monthly fee for the non-exclusive right to use the online conferencing tool. The software is accessed from Company B's web browser rather than installed computer software. Company B's web browser is linked to Company A's server. (Please ignore the location of the server for the purpose of this example.)</p>	<p>Company X is a U.S. corporation who owns a search engine and makes revenue on advertisements. Company Y is a corporation residing in your local country and pays Company X a set fee to display advertisements for Company Y's business.</p>
SPAIN	<p>Generated revenue will be characterized as royalty payments, and subject to a 10% treaty-reduced withholding rate.</p>	<p>Generated revenue will be characterized as business income, and exempt from withholding tax.</p>
SWITZERLAND	<p>Depending on the facts, generated revenue will most likely be business profits, and exempt from withholding tax.</p>	<p>Generated revenue will be characterized as income subjected to expenses, and exempt from withholding tax.</p>
UNITED KINGDOM	<p>Generated revenue will be characterized as "not pure profit" (income subjected to expenses), which would be exempt from withholding tax.</p>	<p>Generated revenue will be characterized as "not pure profit" (income subjected to expenses), which would be exempt from withholding tax.</p>

The above characterization is based on generalized facts and cannot be relied upon. Further analysis will be needed.

Online Software And Revenue

Foreign Country Characterization - Canada & Israel

COUNTRY	HOSTED APPLICATION	PORTAL/WEBSITE REVENUE
CANADA	<p>Company A is a U.S. corporation and owns an online video conferencing tool. Company B is a corporation residing in your local country and pays Company A a monthly fee for the non-exclusive right to use the online conferencing tool. The software is accessed from Company B's web browser rather than installed computer software. Company B's web browser is linked to Company A's server. (Please ignore the location of the server for the purpose of this example.)</p>	<p>Company X is a U.S. corporation who owns a search engine and makes revenue on advertisements. Company Y is a corporation residing in your local country and pays Company X a set fee to display advertisements for Company Y's business.</p>
ISRAEL	<p>Generated revenue should typically be characterized as royalty payments, and subject to a 15% treaty-reduced withholding tax.</p>	<p>Generated revenue will be characterized as advertising income, and exempt from withholding tax.</p>

The above characterization is based on generalized facts and cannot be relied upon. Further analysis will be needed.

Online Software And Revenue VAT

Hosted Software Application

- In most B to B scenarios, only specific in-country services such as training or certain other post-sales services would be generally chargeable to VAT by the service provider. Provision of such services would oblige an unregistered service provider to register in order to charge VAT on such services. In some countries, the resulting registration may require the service provider to charge VAT on all its services in that country.
 - In the EU, Company B would be expected to self assess ('reverse charge') local VAT on the buying in of the service.
 - Japan does not have a reverse charge, so JCT would normally not apply.
 - Australia would only require banks, finance houses, insurance companies and other "input taxed" ("partly exempt") businesses to apply the reverse charge (as they are restricted in their ability to recover VAT on costs).
 - Similarly, Canada does not apply a self assessment if the services bought in are used exclusively in commercial activities.
 - Singapore has a reverse charge, but has not allocated any services to it, so the buying in of the online conferencing tool is essentially GST-free.
- If online services (e.g. gaming, music/video downloads etc.) are provided to individual (as opposed to businesses) residents in the EU, then an offshore supplier of these services is required either:
 - to choose an EU country in which to register for VAT and charge VAT at the rate in force of the (private individual) customer's country of residence; or
 - 'establish' (see below re 'VAT establishment') in an EU country, register for VAT in that country and charge VAT at the rate in force in that EU country to all EU (private individual) customers, regardless of the customer's country of residence.
- Rates would vary. In the EU the range is 15% - 25%; in Asia Pacific 5% - 17%; in the Americas 7% - 21%.

Portal

- This would be treated exactly the same as the monthly fee for the online conferencing tool above.

OECD Commentary For Electronic Commerce

The 2008 OECD Model Tax Convention on Income and Capital provides guidance regarding the classification of e-commerce activities for purposes of determining if a permanent establishment (“PE”) exists:

- Computer equipment at a particular location must be “fixed” in order to constitute a PE. It must be maintained at a certain place for the required minimum period of time as specified under the relevant tax treaty.
- Actual operations of the entity need to be analyzed to determine whether its business is wholly or partly being carried on at a location where computer equipment is located.
- A business that owns or leases a server will not necessarily have a PE where the server is located.
- Servers/computer equipment that can function *without any employees* involved may give rise to a PE if the servers/computer equipment carry out essential business functions.
- Preparatory and auxiliary activities generally do not give rise to a PE and may include:
 - Providing a communication link between suppliers and customers;
 - Advertising goods and services;
 - Relaying of information through a mirror server for security and efficiency purposes;
 - Gathering market data; and
 - Supplying information.
- Hosting services provided by an internet service provider (“ISP”) generally will not give rise to a PE since the ISP is deemed to be an independent agent carrying on its own business, independent from that of the taxpayer.

Hosted Resources – Data Centers/Servers

AsiaPac

COUNTRY	CONTENT & SMART SERVERS: <i>provide information to customer</i>	BILLING & PAYMENT SERVERS: <i>allow processing of payments/ credit cards</i>	BACKUP SERVERS: <i>replicate or back-up Smart Server</i>	NON-REVENUE ASSOCIATED SERVERS: <i>provide services that do not give rise to revenue</i>	GENERAL COMMENTS
AUSTRALIA	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	To establish a PE, the activities of the server must be more than preparatory or auxiliary in nature. Australia generally follows the OECD guidelines.
CHINA	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	There is no guidance. Preliminary thoughts for a server to constitute a PE include the following requirements: server must be physically located in China, conduct direct or indirect business activities, or generate revenue.
INDIA	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	Generally, PE may arise based on location of server in India if activities constitute a major business of the foreign entity. Depending on facts, the preparatory or auxiliary exemption to negate PE exposure may be considered.

The above characterization is based on generalized facts and cannot be relied upon. Further analysis will be needed.

Hosted Resources – Data Centers/Servers AsiaPac (Cont'd)

COUNTRY	CONTENT & SMART SERVERS: <i>provide information to customer</i>	BILLING & PAYMENT SERVERS: <i>allow processing of payments/ credit cards</i>	BACKUP SERVERS: <i>replicate or back-up Smart Server</i>	NON-REVENUE ASSOCIATED SERVERS: <i>provide services that do not give rise to revenue</i>	GENERAL COMMENTS
JAPAN	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	The Japanese tax law does not provide clear guidance. Generally, if the activities performed on behalf of the US corporation in Japan are more than just auxiliary and preparatory in nature, a PE will arise. Nonetheless, the Japanese tax authorities have not been aggressively challenging PE on this area.
KOREA	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	No specific guideline or court cases are available at this time.

The above characterization is based on generalized facts and cannot be relied upon. Further analysis will be needed.

Hosted Resources – Data Centers/Servers Europe

COUNTRY	CONTENT & SMART SERVERS: <i>provide information to customer</i>	BILLING & PAYMENT SERVERS: <i>allow processing of payments/ credit cards</i>	BACKUP SERVERS: <i>replicate or back-up Smart Server</i>	NON-REVENUE ASSOCIATED SERVERS: <i>provide services that do not give rise to revenue</i>	GENERAL COMMENTS
FRANCE	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	Generally, a server is deemed to only perform auxiliary and preparatory activities and therefore, should not constitute a PE. A notable exception would be if the server performs automated sales functions, under which case a PE mostly likely would be found.
GERMANY	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	Germany follows the OECD guidelines. For a server to constitute a PE, it must meet the following requirements: it must be located in Germany, it must conduct core essential business activities without need for human intervention, and the server and its location must be under the control of the taxpayer.

The above characterization is based on generalized facts and cannot be relied upon. Further analysis will be needed.

Hosted Resources – Data Centers/Servers Europe (Cont'd)

COUNTRY	CONTENT & SMART SERVERS: <i>provide information to customer</i>	BILLING & PAYMENT SERVERS: <i>allow processing of payments/ credit cards</i>	BACKUP SERVERS: <i>replicate or back-up Smart Server</i>	NON-REVENUE ASSOCIATED SERVERS: <i>provide services that do not give rise to revenue</i>	GENERAL COMMENTS
IRELAND	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	Ireland generally follows OECD guidelines in this area. In practice, the Irish Revenue is generally willing to issue advance PE opinions and this may be appropriate in a given situation with material amounts involved.
ITALY	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	Beside preparatory and auxiliary activities, the availability under any arrangement of computers and relative auxiliary plants which allow gathering and transmitting data and information targeted for the sale of goods and services does not trigger a PE. Using a server for selling goods is not an auxiliary activity.
LUXEMBOURG	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	The Luxembourg Tax Authorities rely on the OECD definition and guidelines for establishing a PE. Advance tax clearance from the Luxembourg Tax authorities may be obtained.

Hosted Resources – Data Centers/Servers Europe (Cont'd)

COUNTRY	CONTENT & SMART SERVERS: <i>provide information to customer</i>	BILLING & PAYMENT SERVERS: <i>allow processing of payments/ credit cards</i>	BACKUP SERVERS: <i>replicate or back-up Smart Server</i>	NON-REVENUE ASSOCIATED SERVERS: <i>provide services that do not give rise to revenue</i>	GENERAL COMMENTS
NETHERLANDS	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	Generally, a server located in the Netherlands should not qualify as a PE unless the server is owned (or leased) by the company, and the activities performed through the server are not of a preparatory or auxiliary nature.
SPAIN	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	Spain issued a dissenting opinion in a published document in December 2000 on Article 5 of the OECD commentary and does not consider physical presence a requirement for a PE to exist. Any enterprise could have a PE in which it conducts its business through a website.

Hosted Resources – Data Centers/Servers Europe (Cont'd)

COUNTRY	CONTENT & SMART SERVERS: <i>provide information to customer</i>	BILLING & PAYMENT SERVERS: <i>allow processing of payments/ credit cards</i>	BACKUP SERVERS: <i>replicate or back-up Smart Server</i>	NON-REVENUE ASSOCIATED SERVERS: <i>provide services that do not give rise to revenue</i>	GENERAL COMMENTS
SWITZERLAND	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	A server could be treated as a fixed place of business even without personnel, regardless whether equipment is owned or rented.
UNITED KINGDOM	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	The mere location of a server in the UK does not give rise to a PE. The Tax Authorities will look to the underlying activity of the server and whether or not it is generating revenue.

Hosted Resources – Data Centers/Servers Canada & Israel

COUNTRY	CONTENT & SMART SERVERS: <i>provide information to customer</i>	BILLING & PAYMENT SERVERS: <i>allow processing of payments/ credit cards</i>	BACKUP SERVERS: <i>replicate or back-up Smart Server</i>	NON-REVENUE ASSOCIATED SERVERS: <i>provide services that do not give rise to revenue</i>	GENERAL COMMENTS
CANADA	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	MAY GIVE RISE TO PE (BUT NO ATTRIBUTABLE PROFITS)	If the server performs business essential activities, it is more likely to give rise to a PE.
ISRAEL	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	MAY GIVE RISE TO PE	NOT LIKELY TO GIVE RISE TO PE	No specific guidance at this time. Advance tax clearance from the ITA may be obtained.

The above characterization is based on generalized facts and cannot be relied upon. Further analysis will be needed.

Q&A