



The Indian AAR's Ruling In MasterCard (6 June 2018)

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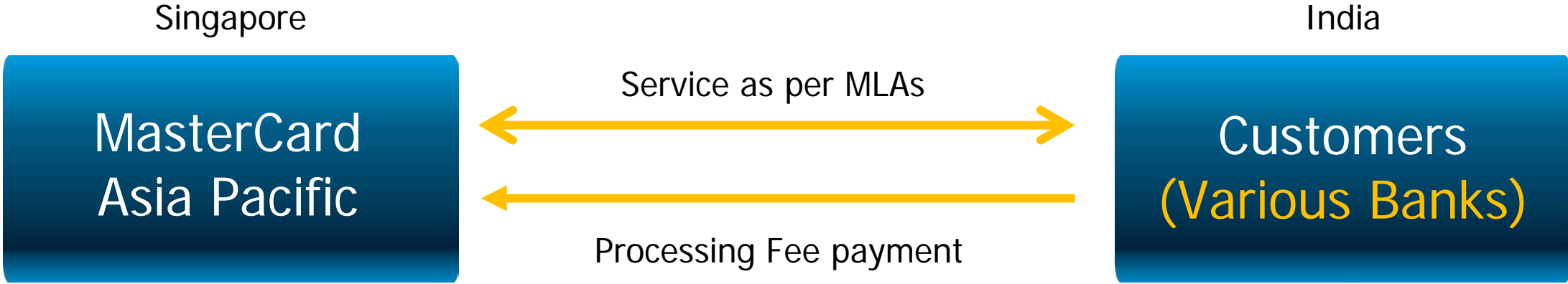
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MasterCard Asia Pacific Pte. Ltd.

(The AAR)(6 June 2018)



Background Facts:



Background Facts:

- Taxpayer Co.'s (MasterCard's) Revenue Stream:
 - Transaction processing fees (related to authorization, clearing and settlement of transactions);
 - Fees for setting up and maintaining a processing network; and
 - Miscellaneous revenue from ancillary services.



Background Facts:

Taxpayer Co.

1

Was a Regional Headquarter.

2

Provided transaction processing and payment related services.

3

Owned – Singapore processing center.



Background Facts:

Taxpayer Co.

4

Owned – Subsidiary in India.

5

That Subsidiary owned and maintained the **MIPs** placed at the premises of the customers in India.



Background Facts:

MIP (MasterCard Interface Processor)

1

The customers (banks) were provided with an MIP.

2

An MIP was connected to MasterCard's network and processing centers.



Background Facts:

MIP (MasterCard Interface Processor)

3

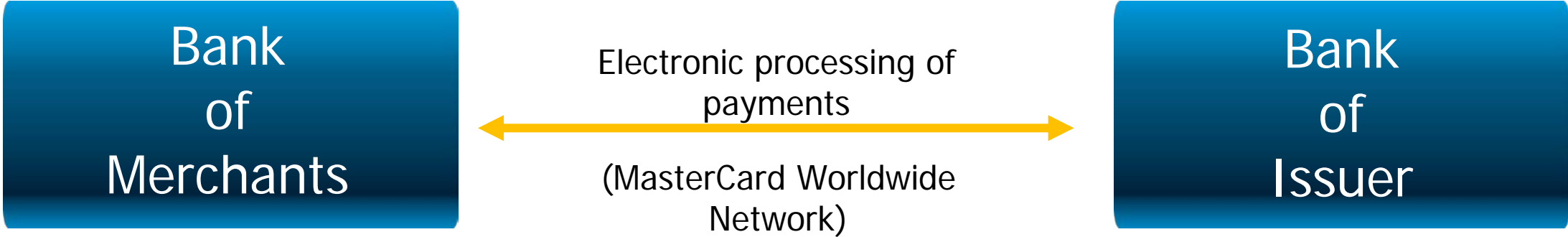
An MIP was about the size of a standard personal computer and was placed at the customers' premises in India.

4

The taxpayer company's Indian subsidiary owned and maintained the MIPs placed at the premises of the Indian customers.



Background Facts:



Background Facts:

Steps involved in processing the payment:

1

Initial level verification and validation of a transaction.

2

Authorization of the transaction.



Background Facts:

Steps involved in processing the payment:

3 Clearing and settlement of the transactions.



Issues For Discussion:

- 1 Fixed place PE – Disposal test.
- 2 MIP ownership, VAT/GST payment, relevance for disposal test.
- 3 Transmission towers, etc. owned by third party – MasterCard's PE?



Issues For Discussion:

- 4 Could use of Internet/ network in India give rise to Fixed place PE?
- 5 Could presence of the subsidiary make a difference?
- 6 Could closure of LO and setting-up of Subsidiary give rise to PE?



Issues For Discussion:

7 Could subsidiary be regarded as 'virtual projection' of erstwhile PE?

8 Could ownership of a software give rise to a PE?

9 Could activities of Bank of India cause MasterCard's PE in India?



Issues For Discussion:

10 Preparatory and auxiliary activities issue.

11 Functionality Test issue.

12 Service PE issue..



Issues For Discussion:

13 Royalties issue.

14 Tax Avoidance issue.





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