

Synergy 2012

Indian Higher Education Sector- Opportunities for Foreign Universities

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Agenda

- Overview of the Regulatory regime
- Key Legislations/ Regulations in the pipeline
- The India Story – What can you do today?
- What you may have missed (Oops!)
- Case Studies

Glimpse of recent news items

UK's Warwick Business School eyes Delhi campus

- The Times of India
(March 18, 2012)

Rotman School of Management to open Mumbai Office

- Business Standard
(October 10, 2012)

Schulich B-school's Hyderabad campus to start in Sept 2013

- The Times of India
(July 13, 2011)

Maharaja Sahayajirao University to tie-up with Virginia university

- The Times of India
(October 5, 2012)

Shiv Nadar University to offer dual degree courses in partnership with Carnegie Mellon University

- Hindustan Times
(September 25, 2012)

Presidency University to tie up with Trinity College

- The Times of India
(October 18, 2012)

Overview of the Regulatory regime

Broad Segment Classification

Regulated Segment:

- Central & State Universities
- Private Universities
- Technical Institutions
- Private/Professional colleges
- Research Institutions

Institutions need to be registered as Trust/ Society/ S.25 company

Non- Regulated Segment:

- Vocational training
- Finishing schools
- Professional Development
- Training & Coaching classes
- Education services

Institutions can be registered as private / public companies

√ Can earn profits

√ No dividend distribution possible

√ Growth stifled by restrictions

√ Foreign Direct Investment ('FDI') not possible

√ Can earn profits

√ Can distribute dividends

√ Provide horizontal and vertical services to regulated sector

√ Rapidly growing

√ 100% FDI allowed

Bill 57 - The Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010

- To allow stand alone campus
- Award of degrees and diplomas requires mandatory Government approval
- Conditions for approval :
 - 20 year's track record in the home country
 - **Minimum corpus - USD 9 mn**
- **To operate as a “Not for Profit”**
- 75% income from Corpus fund - to be used for development purposes
- 25% - to be deposited into the Corpus fund

Bill pending since 2 years – To Wait and Watch!

New Regulations on Twinning – A boon ?

- Applicable for foreign universities proposing to offer twinning programs/ joint degree programs in collaboration with Indian educational institutions*

Eligibility criteria for Foreign Universities

- To be ranked among the top 500 by:
 - Times Higher Education World University or
 - by Shanghai Jiao Tong University

Eligibility criteria for Indian partners

- Highest accreditation grade in India**
- Tie-ups must be pre-approved by UGC
- 6 month window available to regularize existing tie-ups
- No franchise agreement permitted

*Based on information available in public domain. Copy of Regulations not available as yet.

** By National Assessment and Accreditation Council or National Board of Accreditation

Key Legislations - Pending for approval

The Universities for Research and Innovation Bill 2012

- Seeks to attract foreign and local private investment to boost India's research capability

The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and University Bill, 2010

- Seeks to empower government to initiate criminal proceedings against charging of capitation fee

The National Commission for Higher Education & Research Bill, 2010 (NCHER Bill)

- Seeks to create a single body for regulating higher education in India

The Educational Tribunals Bill, 2010

- Aimed at creating a speedy grievance redressal mechanism

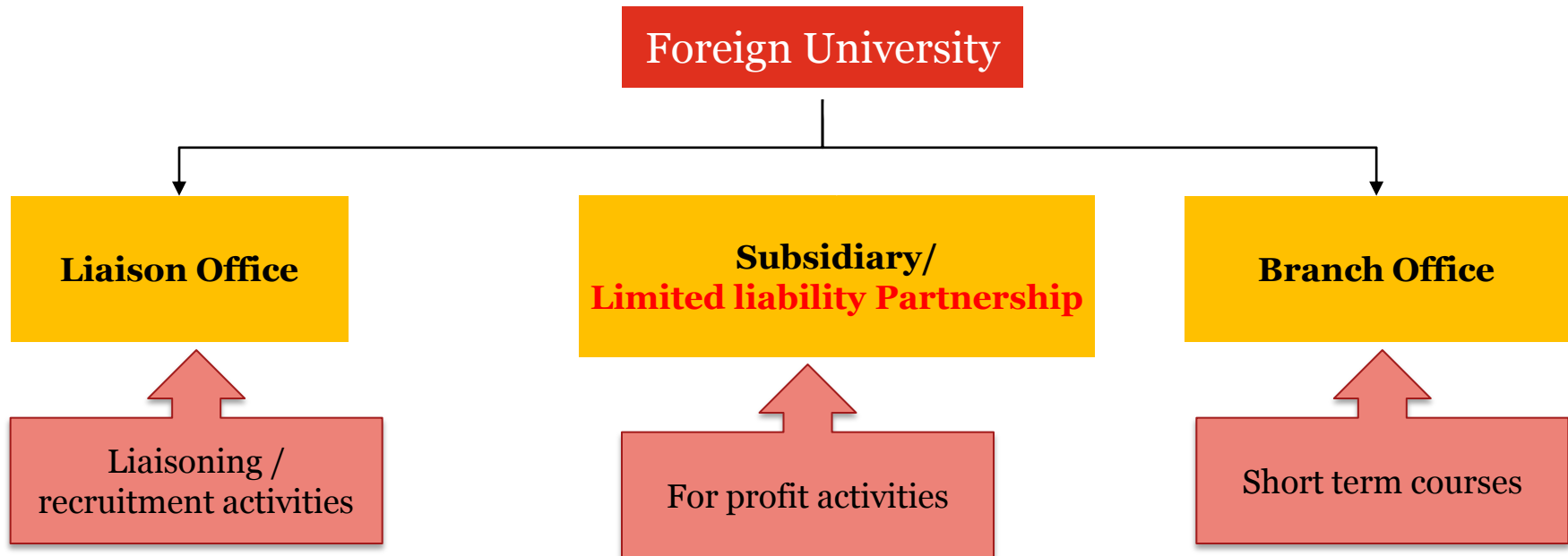
National Accreditation Regulatory Authority Bill

- Seeks to establish a body to assess and accredit every institution /set norms for accreditation.

The India Story – What you can do today in India?

The India Story - What can you do today in India...

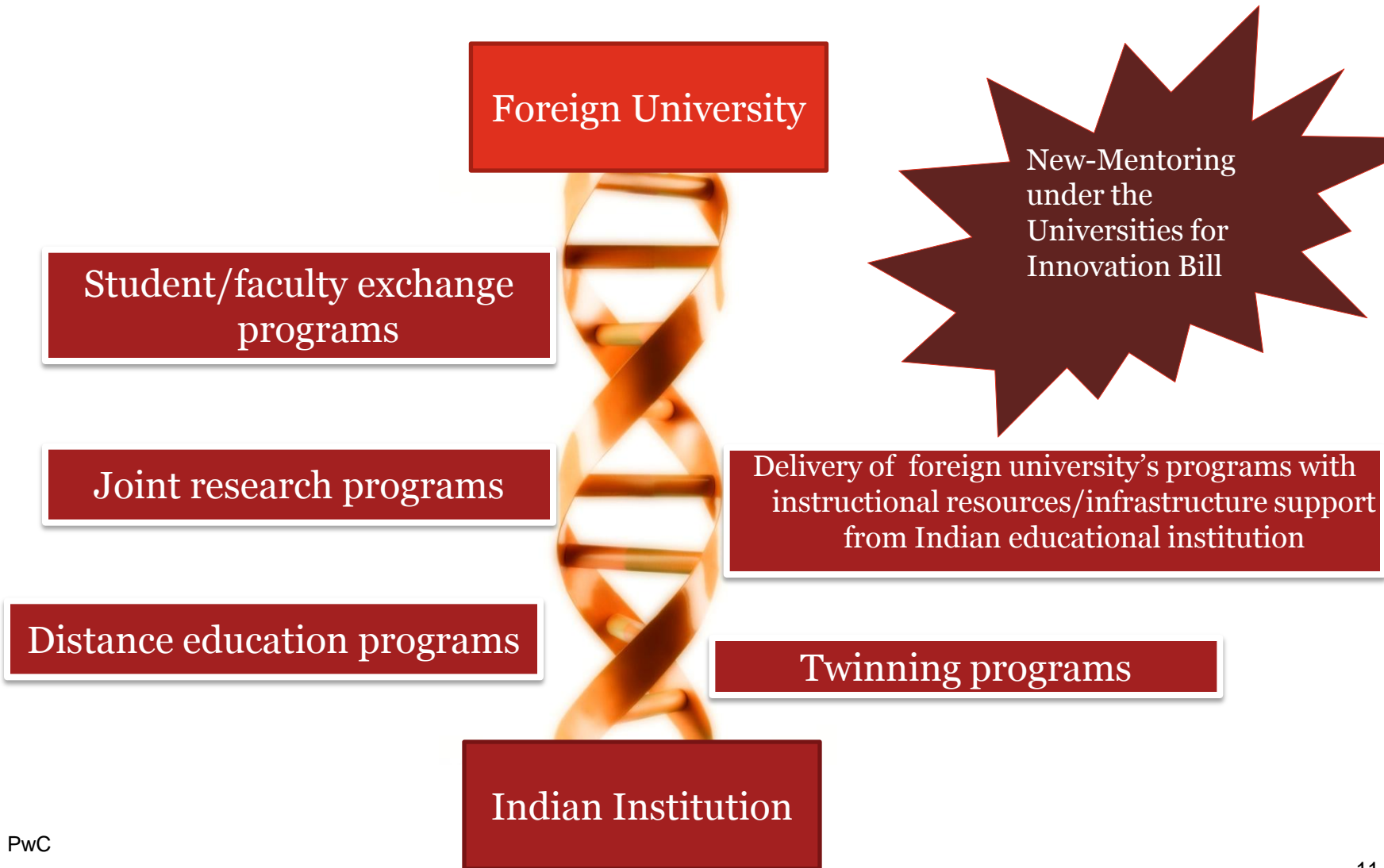
ENTITY SET UP MODE



- Education services like curriculum development, teacher training, conducting entrance test, use of brand etc
- **Executive Education Programs?**

...The India story - What can you do today in India

TIE-UP/COLLABORATION (Without entity set-up)



What you may have missed

What you may have missed (Oops!)...

Exposures at the institutional level

- Mere “non-profit” status in home country does not confer similar benefits under Indian tax law
- Potential taxation in India at rates (income-tax) ranging from 10% to 40%
- In addition -Indirect Tax applicability (12.36%)

Regulatory approvals for arrangements with Indian Institutions

- AICTE approval - Analysis of existing tie ups/ collaborations / activities to determine whether “regulated” or not

Creation of “Taxable presence” in India

- **Some instances of personnel stay in India, use of fixed space for research activities, activities of agents**
- Taxation as high as 40% (on net basis)

...What you may have missed (Oops!)

Withholding tax obligations in India

- May also apply to Foreign Universities on payments made to Indian parties and **potentially overseas (in some cases)**
- Vicarious obligation – multiple interest/ penal consequences

Personnel visiting India for short-term/ long-term

- 183 days Rule (a myth?)
- Obligation to pay personal tax
- Permanent Establishment exposure
- Indirect Tax applicability (12.36%)

Contribution to Social Security

- Mandatory in India
- Withdrawal only at age of 58
(Exceptions: Some SSA Countries)

Need of the Hour

At Institutional level :

- Tax efficient regulatory compliant operating modes/group arrangements
- Mitigation of Tax/ Regulatory exposures
- Planning for suitable commercial arrangements
- **Opportunities under Tax Treaties for favorable tax positions**

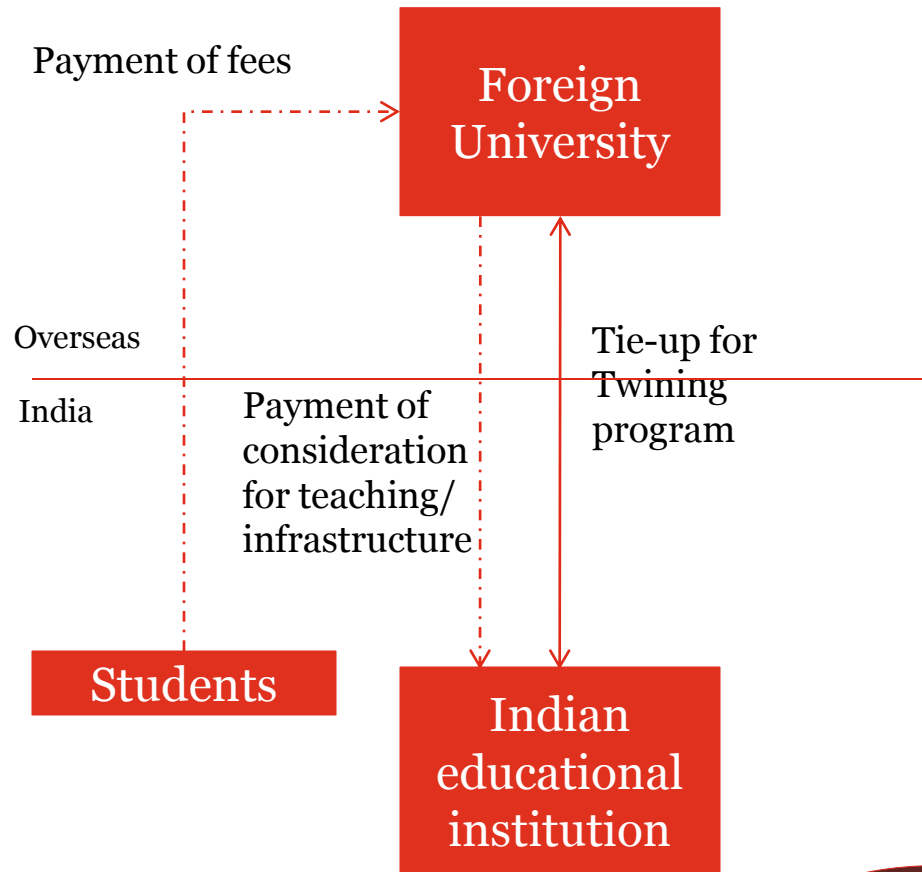
For Personnel of Universities :

- Visa requirement - Employment Visa V/s Business Visa
- Registration with Regional Registration office- FRRO
- Planning for mitigation of double taxation in India and Canada

Tax efficient and Regulatory compliant solutions – Yes!

Case Studies

Case Study 1 – Twinning arrangement



Mechanics

- Twinning program of 2 years: 1st year in India and 2nd year overseas
- Degree by foreign university overseas
- Indian educational institution to provide cabins in campus for staff of foreign university
- Services of local entity availed for collection of fees from students and remittance overseas

Is there a tax efficient way of structuring such arrangements?

Case Study 1 – Issues

AICTE Approval?

Permanent
Establishment
Exposure?

Withholding tax
obligations?

Employee taxability?

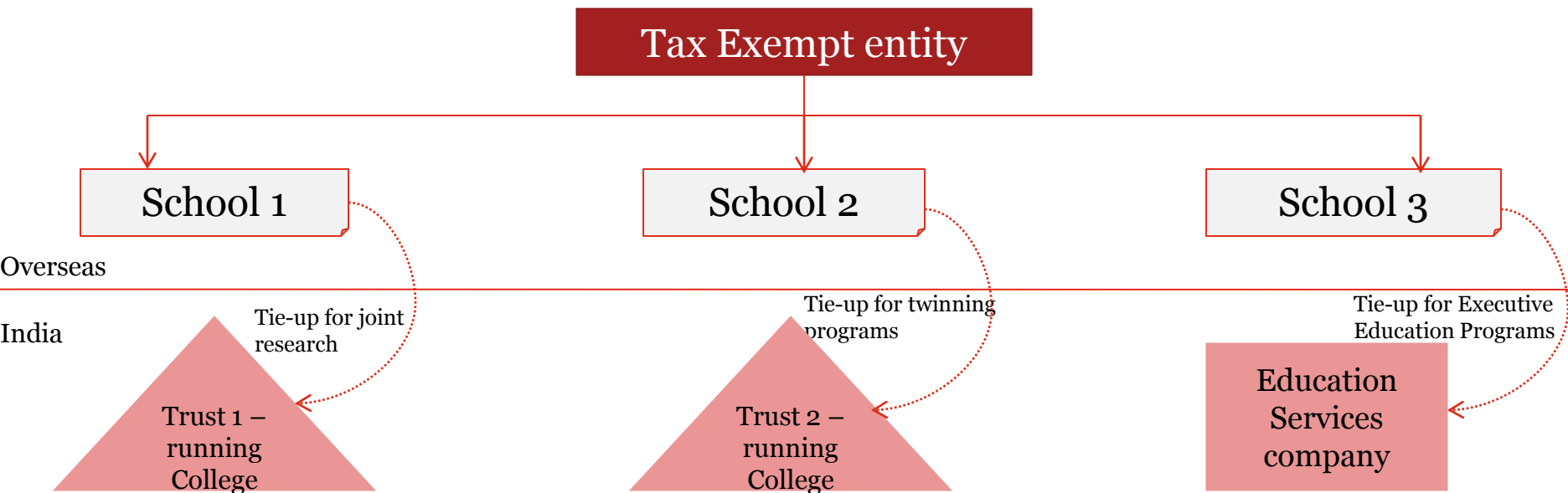
Service tax
compliance?

Transfer Pricing
regulations?

Is Indian Institution a
“Representative
assessee”?

Entitlement to tax
treaty benefits?

Case Study 2 – Operations of Multiple schools of University



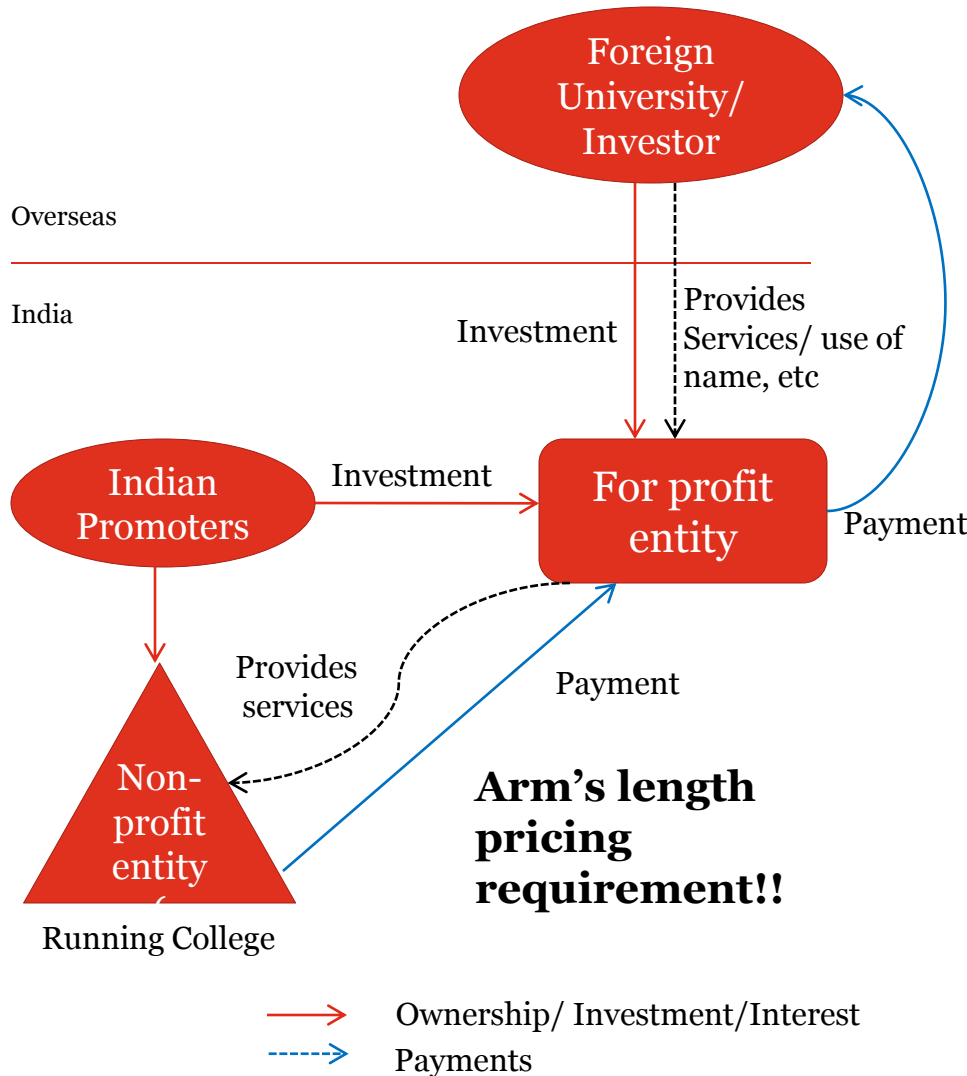
Activities/ stay of personnel for all Schools be clubbed and looked at as whole?

Income from Executive Education Programs – Taxable in India? – Possible to mitigate tax?

Joint Research – exposure in India

Infrastructure support provided by Education Services company – Tax exposure/Withholding tax obligations?

Case Study 3 – Investment Model



- Tax efficient exit mechanisms
- Benchmarking for transactions - Domestic and International
- Income repatriation options
- Planning for tax efficiency

Planning for Tax efficiency to achieve pre-determined objectives is the Key!

Questions?

Thank You