ACCRUAL, RECEIPT AND DEEMED ACCRUAL OF INCOME IN INDIA

DATE: 04 JULY 2026

SPEAKER: GAURAV SINGHAL

AGENDA

- Accrual of Income
- Receipt vs Accrual
- Deemed Accrual
- Business Connection
- Significant economic presence
- Specific Activity Exemptions
- Salary
- Interest, Royalty, FTS, FIS, Software Royalty

FIRST PRINCIPLES

TAX RESIDENCE /FISCAL DOMICILE

- Total income (‘TI’) means income referred to in Sec. 5 of the ITA2025.
- TI of NR shall include:
  - Income **received** in India by or on behalf of NR
  - Income **deemed to be received** in India
  - Income **accrues** or arises to NR in India
  - Income **deemed to be accrue or arise** in India

TAX RESIDENCE /FISCAL DOMICILE

- In case of a Tax **RESIDENT** of India (say, ROR), his / her **Global Income** is taxable in India

- TI of R includes all income from whatever source derived which:

  - Income **received** in India, or deemed to be received in India

  - Income **accrues** or arises in India, or is **deemed to be accrue / arise** in India

  - Income accrues / arises to him **outside India**

- **ABSENT:** Income received / deemed to be received **OUTSIDE India**
  - Question: Can an income be ‘**received**’ (without first ‘accruing’)

ACCRUAL OF INCOME

- ‘Accrue’ or ‘Arise’ – Not defined under the Act

V.G. Every (Cal HC)

*"I think that the question whether any particular income, profits or gains **accrue or arise** in British India is a question of fact, and it is **not practicable to formulate any precise test.**"*

ACCRUAL OF INCOME

C.G. Krishnaswami Naidu v. CIT (Mad HC)

*"Where profits or income accrue or arise will therefore have to be determined according to the general principles of law and in the light of the particular facts. It has been held that "accrue or arise" in section 4 have **more or less a synonymous sense** and income or profits are said to accrue or arise **where the right to receive them comes into existence** with a corresponding liability to pay the same. Where and when such a right or liability comes into existence is a **question of fact-perhaps a mixed question of fact and law**.*

*Decided cases, some of which we will presently examine, **do not lay down any general principles of guidance capable of uniform application."***

ACCRUAL OF INCOME

CIT v. Anamallais Timber Trust Ltd. (Mad)

*"We have been taken through a number of decisions by the learned counsel on both sides, but it is **difficult to extract from them a comprehensive principle which would serve as a guide**.*

*If we are to follow the lead given by the committee, the wisest course is to **deal with the particular facts before us and decide as best as we can** whether they are sufficient to bring the assessee within the charging section. It is **difficult to formulate affirmatively a general principle with full confidence in its accuracy or legitimacy**.*

*Not only have any precise tests for determining the place where income, profits and gains can be said to **accrue or arise**, not been formulated, but the **observations in some of the decided cases have contributed to blur rather than clarify the relevant considerations**."*

ACCRUAL OF INCOME

- Illustrations: Location of ‘Source’ of Income vs. Place where income ‘Accrues’:
  - **Services**: Where services rendered
  - **Goods**: Where transfer of title takes place
  - **Interest** on Loan: Where loan is given
  - The case of **‘Deemed Incomes’**

ACCRUAL OF INCOME

- **Judicial Precedents**
  - **E. D. Sassoon and Co. Ltd. (SC)**
    - Income accrues when payee acquires a **vested right to receive**, coupled with corresponding **debt owed by payer**.
  - **Carborandum Co. (SC)**
    - **To tax NR under deeming provision it must be shown that some of operations were carried out in India**, in respect of which income is sought to be assessed.

ACCRUAL OF INCOME

- **Judicial Precedents**
  - **Performing Right Society Ltd (SC)**
    - Although society was NR and received income out of an agreement that was executed in England, income undoubtedly accrued / arose in India as it was for use of music rights in India.
    - Whether an income accrued / arose in India, is a question of **fact** which should be examined and decided upon in light of **common sense and plain thinking**

ACCRUAL OF INCOME

- **Judicial Precedents**
  - **Ashokbhai Chimanbhai (SC)**
    - Income is said to be received when it reaches assessee and is said to accrue / arise when **right to receive** it vests in assessee.
  - **P.G. & W. Sawoo (P.) Ltd v. ACIT (SC)**
    - Enhancement of rent: **Right vested only in year in which such increase was done.**

ACCRUAL OF INCOME

- **Judicial Precedents**
  - **Cushman & Wakefield (AAR)**
    - An income is said to accrue / arise at the location where the services / activities for earning the income or the contract which gives rise to such income has been entered into.

DEEMED ACCRUAL

Sec.	Description
9(2)	Income arising or arising directly / indirectly through or from: • any **asset or source** of income in India • any **property** in India • any **Business Connection** (BC) in India • transfer of a **capital asset** situated in India
9(3)	**Salary** • For services rendered in India / Leave period • Paid by Govt. to Indian citizen for services outside India
9(4)	**Dividend** paid by Indian Co. outside India

DEEMED ACCRUAL

<table>
<tr><th>Sec.</th><th colspan="2">Description</th></tr>
<tr><td>9(5)</td><td>Interest</td><td rowspan="3">• Paid by Govt
• Paid by Resident
(Exception: Business / source outside India)
• Paid by NR for Indian business</td></tr>
<tr><td>9(6)</td><td>Royalties</td></tr>
<tr><td>9(7)</td><td>FTS</td></tr>
<tr><td>9(8)</td><td colspan="2">Receipts of money / property - taxable u/s 92(2)(m) for NR (other than companies) / RNOR</td></tr>
</table>

BASIS OF TAX COMPUTATION

- Income of NR is chargeable to tax in India, to the extent:
  - It accrues / arises **through Business Connection (BC)** in India
  - From any **property, asset or source of income** located in India
  - Such income is **REASONABLY attributable to operations** carried out in India

BUSINESS CONNECTION

BUSINESS CONNECTION

- Income earned by a NR from BC in India, is taxable in India
- Not **exhaustively** defined
  - Meaning **depends on facts** of each case
  - **Derived from case laws**

DEFINITION UNDER THE ACT - DAPE AS BC

› BC includes any **business activity** carried out through a person (a dependent agent) who, acting on behalf of NR:

  – Option 1: Contract conclusion
    - Has and habitually exercises authority to conclude contracts on behalf of NR
    - **Habitually** concludes contracts; or
    - Habitually **plays principal role leading to conclusion** of contracts by that NR

*Upon signing of **Multilateral Instrument** by India, definition of PE in DTAAs stands expanded (as suggested in BEPS AP 7). **FA2018 amendment** aligned the definition of **Agency BC** accordingly.*

DEFINITION UNDER THE ACT - DAPE AS BC

- Contract conclusion (Cont'd)
  - Applicable in cases where:
  - Contracts are in name of NR, or
  - Contracts are for transfer of ownership of, or for granting of right to use **property owned by NR** or w.r.t. which NR has right to use; or
  - Contracts are for provision of services by NR

- ***Option 2:*** *Delivery*
  - Has no authority, but habitually **maintains in India, a stock of goods** from which he **regularly delivers** goods on behalf of NR

Changes are in line with **BEPS AP 1**

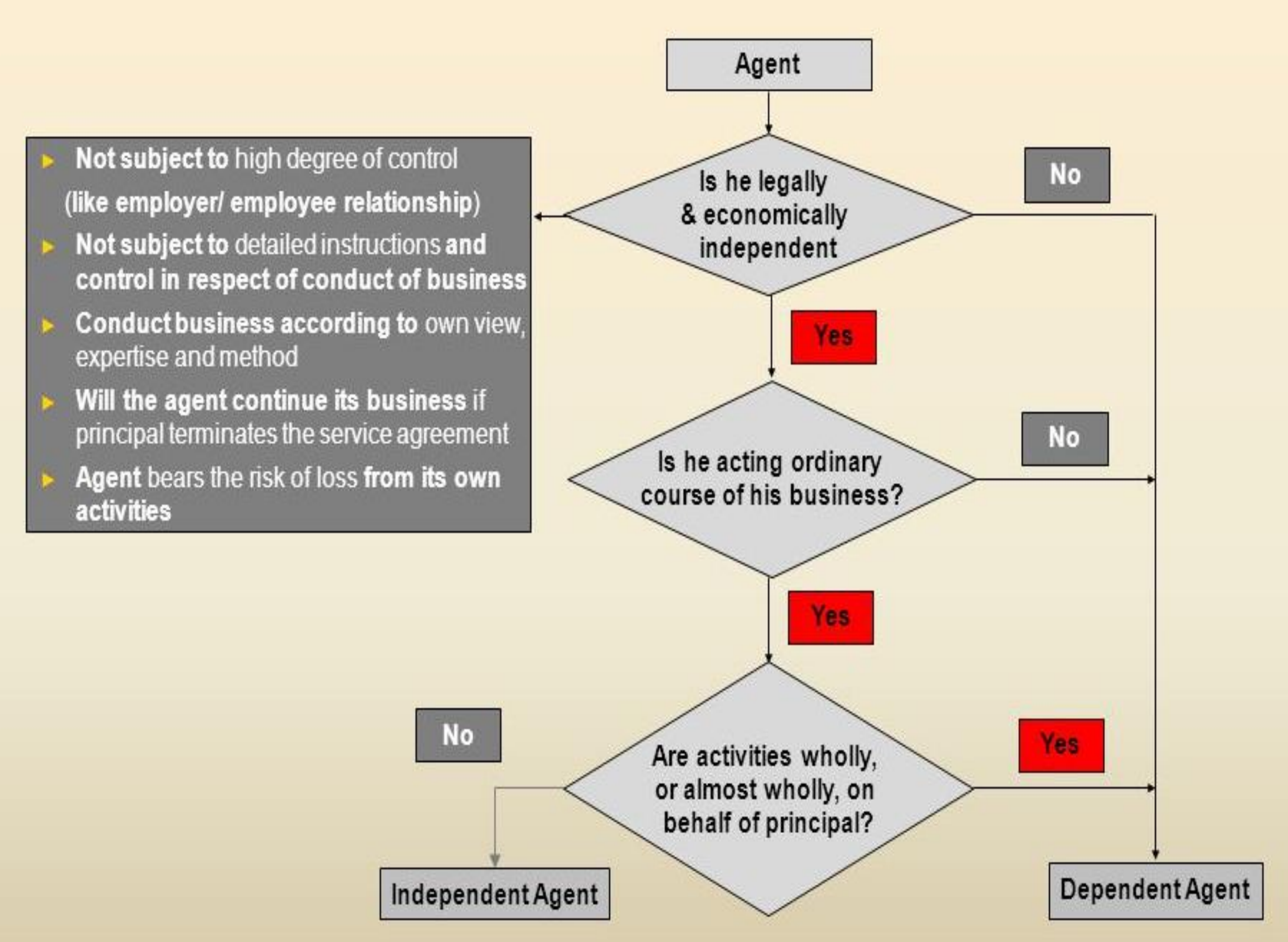
DEFINITION UNDER THE ACT - DAPE AS BC

- ***Option 3: Securing orders***
  - Habitually **secures orders** in India, mainly or wholly for NR or for that NR and
  - Other NR who control above mentioned NR
  - Other NR controlled by that NR
  - All other NR subject to same common control as that NR

DEFINITION UNDER THE ACT - DAPE AS BC

Exception

- NR carrying out business activities **through agent of independent status**, if such person is **acting in ordinary course of business.**



DEFINITION UNDER THE ACT - SEP AS BC

- To tackle emerging business models on digital platforms, definition of BC was amended by **FA 2018** to include **'Significant Economic Presence'** (SEP). It has been substituted by FA 2020 **w.e.f. 1 April 2022**:
  - Any transaction in respect of any goods / services / property carried out by NR ~~in India~~ with any person in India *including provision of download of data or software in India*, **if aggregate** of payments arising from such transaction(s) during year **exceeds a prescribed amount**; ***or***
  - Systematic, continuous soliciting of business activities or engaging in interaction with prescribed number of users ~~in India through digital means~~

DEFINITION UNDER THE ACT - SEP AS BC

- The transactions / activities shall constitute SEP in India, whether or not:
  - Agreement for such transactions / activities is entered in India
  - The NR has a residence / place of business in India
  - The NR renders services in India
- Only so much of income as is REASONABLY attributable to transactions / activities referred to above shall be deemed to accrue or arise in India

DEFINITION UNDER THE ACT - SEP AS BC

- Unless treaty provisions are amended in line with above amendments, **existing treaty exemption should prevail**
  - Similar statement was made in the context of applicability of GAAR (but Tiger Global)

EXCEPTIONS UNDER THE ACT

TIME

- Income derived by a NR **solely from purchase** of goods in India for export. – *Nike Inc., Tesco International*

- **Collection of news and views** in India for transmission out of India.

NYT's editorial:

"There's no denying the Indians' ingenuity. If this thing sticks, there's a whole new tax world to be conquered: New exit fees for all pale-skinned travellers, depending on the amount of Indian sun they have absorbed; a tax on every globe and map that profits from showing the subcontinent's location; perpetual royalties from an array of diaries and novels, starting, of course, with EM Forster's most profitable A Passage to India.

…if tax revenues slackened, Indira Gandhi could declare war on Pakistan and let tax revenues on war reportage pay for the cost of the war."

EXCEPTIONS UNDER THE ACT

- Income of Foreign Company (‘F.Co.’) engaged in diamond mining, accruing / arising in India through or from activities confined to display of uncut, unassorted diamond in notified special zone.

- **Shooting of cinematograph films** in India.

JUDICIAL PRECEDENTS

- **R.D. Agarwal and Co. (SC)** – BC involves:
  - **Real and close relation** between a business carried on by NR which yields profits or gains and some activity in taxable territories which contributes directly or indirectly to earning of those profits or gains.
  - Element of **continuity** between business of NR and activity in taxable territories.
  - **Stray / isolated** transaction not normally regarded as BC.

JUDICIAL PRECEDENTS

› **Anglo French Textile Co. Ltd. (SC)**

  – Activity was **not in nature of** an isolated transaction of purchase of raw material.

  – **Continuity** of business relationship between person who helps to make profits and person outside India who receives or realizes profits, constitute a BC.

JUDICIAL PRECEDENTS

- **G V K Industries (SC)**
  - **Existence of close, real, intimate relationship and common interest** between NR and Indian person.
  - **Control by NR**, of management / finances / substantial holding of equity shares / sharing of profits of Indian Co.
  - **Continuity** of activity or operation.
  - Isolated transaction **is not enough** to establish a BC.

DISTINCTION VIZ-A-VIZ PE

- PE **defined under the Act** in Sec. 173(c), to include:
  - Fixed place of business
  - through which business of enterprise
  - is wholly or partly carried on.
- Definition of PE under DTAAs, differs from a case to case basis. Includes 'PE fictions' too, such as Installation PE.
- Ambit of BC is (generally) considered to be **wider**.

DISTINCTION VIZ-A-VIZ PE

- **Al Nisr Publishing (AAR)**
  - NR entitled to claim exemption from taxability of such profits arising through BC, if NR does not have PE in India.

SPECIFIC KINDS OF INCOMES

SALARY INCOME

- Salary for **services rendered** by NR in **India** is deemed to accrue in India – Irrespective of place of payment.
- Includes income payable for **leave period**
  - Preceded and succeeded by services rendered in India and
  - Which forms part of employment contract
- Salary paid by **Indian Government** to an **Indian citizen** for services rendered **outside India.**

INTEREST INCOME

- Interest income earned is taxable in India, if it is **payable by**:
  - The Government;
  - Resident… Except, if payable in respect of debt incurred / money borrowed for purposes of:
    - Foreign Business
    - Foreign Income; and
  - NR, in respect of debt incurred / money borrowed for carrying on business or profession in India.
- Existence of BC / rendering of service in India, for taxation of Interest (and similarly for Royalty / FTS) – **Not relevant**.

INTEREST INCOME

- Only situs of utilization of the money, is to be considered.
- **Sumitomo Mitsui Banking Corporation (Now over-ruled)**
  - Where interest is payable by Indian Branch of a foreign bank to overseas HO, interest so paid **is deductible** while computing income of India Branch.
  - Such interest is **not taxable** in India in hands of recipient as payer and recipient are same. Branch is an extension of parent Co. for all legal purposes.

INTEREST INCOME

- **FA 2015** nullified the aforesaid ruling, and provided that if
  - NR is engaged in business of banking and has an Indian PE
  - Interest is payable by PE to HO or another PE outside India
  - Such PE in India shall be **deemed to be a person separate and independent** of NR
  - Interest will be deemed to accrue or arise in India and will be **chargeable** to tax

ROYALTIES

› Royalties are taxable in India, if payable by

  – Government

  – Resident… **Except** if payable in respect of right, property, information (‘RPI’), services utilized for:
    - Foreign Business
    - Foreign Income

  – **NR** for Indian business / profession

ROYALTIES – DEFINITION UNDER THE ACT

- Consideration for
  - Transfer of all / any rights (including granting of license) in respect of:
    - A patent, invention, model, design, secret formula or process or trademark or similar property
    - Any copyright, literary, artistic or scientific work including films / video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for sale, distribution or exhibition of cinematographic films

ROYALTIES – DEFINITION

› Imparting of any information concerning:

  – Working of, or use of, a **patent, invention, model, design, secret formula or process** or TM or similar property

  – **Technical, industrial, commercial or scientific knowledge, experience or skill**

ROYALTIES – DEFINITION

- **Use of**:
  - any patent, invention, model, design, secret formula or process or TM or similar property
  - or right to use any ICS **equipment**
- Rendering of services in connection with above activities

ROYALTIES – FA 2012 AMENDMENT

› Transfer of **all or any rights** in respect of any RPI includes and has always included:

  – Transfer of all or any right for use or right to use **computer software** (including granting of **license**)

  – Irrespective of medium through which such right is **transferred**

*"Computer software" means **any computer programme** recorded on any disc, tape, perforated media or other information storage device and includes any such programme **or any customized electronic data.***

ROYALTIES – FA 2012 AMENDMENT

› Royalties includes and has always included consideration in respect of any Right, Property or Information (RPI), **whether or not:**

  – Payer **possess or control** such RPI

  – Payer **used directly** such RPI

  – **Location** of such RPI is in India

ROYALTIES – FA 2012 AMENDMENT

› ‘**Process’ includes** and shall be deemed to have always included

  – Transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), **cable**, optic fiber

  – **By any other similar technology**, whether or not such process is secret

FEES FOR TECHNICAL SERVICES

- FTS will be deemed to accrue or arise in India if payable by
  - Government
  - Resident… **Except**, if payable for services <u>utilized</u> for:
    - Foreign Business
    - Foreign Income
  - **NR** for Indian business / profession

FEES FOR TECHNICAL SERVICES

- **Lufthansa Cargo India Ltd (Del. HC)**
  - Payment made for repairs and maintenance of aircraft (given on wet lease to F.Co's) carried on outside India is not taxable as FTS since such payments have been made **for earning income from sources outside India.**
- Term defined under Act exhaustively

FEES FOR TECHNICAL SERVICES

- Consideration (including lump sum consideration) for:
  - Managerial Services
  - Technical Services
    - *Includes **provision of services** of technical / other personnel*
- Excludes:
  - Income chargeable as Salary
  - Mining, Assembly, Construction, any like project

FEES FOR TECHNICAL SERVICES

- Technical / Managerial / Consultancy services – Not defined in the Act. **To be interpreted as per judicial precedents.**
- **Managerial** means services in nature of managing by direction, regulation, administration or supervision of activities performed by another.
- SC in **R. Dalmia** - 'manage' means – to control, guide, administer… to conduct or direct affairs; carry on business.
- ‘Managerial services’ may also be construed to be involving functions related to how a business is run as opposed to functions involved in carrying on that business.

FEES FOR TECHNICAL SERVICES

- **Consultancy service** means act of offering expert or professional advice in a field.

- **Bharti Cellular Ltd (Del. HC)**
  - **Consultancy** is defined as work / position of a consultant.

  - ‘**Consultant’** has been defined as a person who gives professional advice or services in **a specialized field**. It is a derivative of ‘consult’ that entails deliberations, consideration, conferring with someone, conferring about or upon a matter.

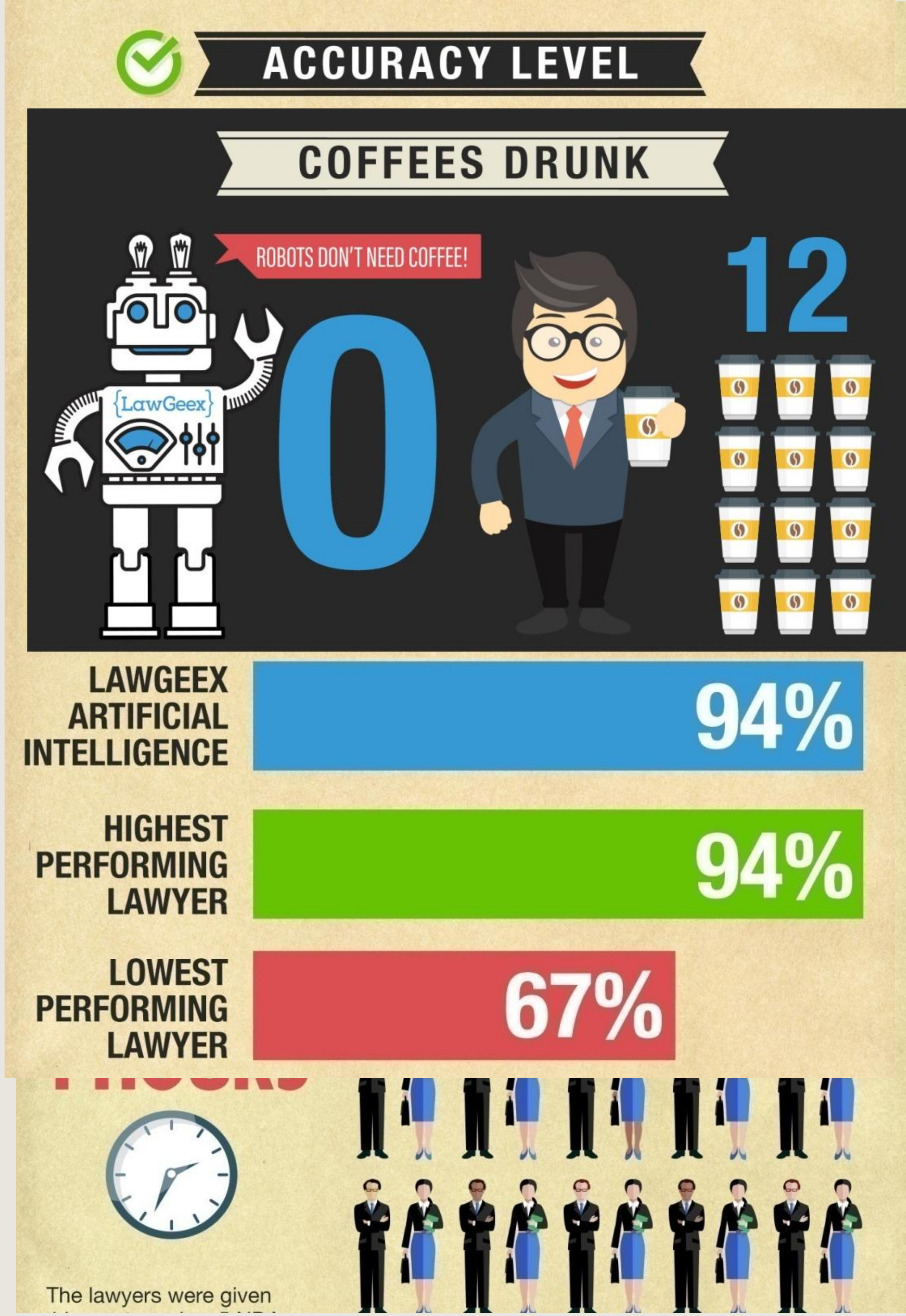
FEES FOR TECHNICAL SERVICES

- As per Oxford Dictionary, word ‘**Technical**’ means:
  - Having knowledge of or expertise in a particular art, science, or other subject.
  - Pertaining to, involving, or characteristic of a particular art, science, profession, or occupation, or applied arts and sciences generally.
- **Skycell Communications (Mad. HC)**

The term **technical** was generally understood as *‘involving or concerning applied and industrial science’*

FTS

- **‘Human Intervention’**
- Kotak Securities (SC)
- Bharti Airtel (SC)



LATEST DEVELOPMENTS

Amazon Web Services (Delhi HC):

› Receipts from cloud-computing are not taxable as Royalty

- Customers do not acquire title / IPR entitling them to **commercially monetise** Service Offering on their own
- Relied on own decision in **MOL Corp.**, wherein held that issue of taxability of cloud services' subscription fees is covered in case of **Engineering Analysis (SC)**
- Relied also on Salesforce.com (Delhi HC) and Urban Ladder (Kar. HC)

LATEST DEVELOPMENTS

Amazon Web Services (Delhi HC):

› Receipts from cloud-computing are not taxable as Royalty

- – Hardware not at **exclusive disposal** of customer
- – Customers do not **control** the cloud computing hardware or software
- – Access to standard **automated** facilities (computer power, storage, data, other services for computing needs)
- – Grant of such service / facility **does not entail transfer of any technical know-how**, skill, knowledge, process

LATEST DEVELOPMENTS

Ernst & Young U.S. LLP (Delhi HC):

- Secondees implemented EY Group standards, and once imbibed, employees of Indian entities could apply them **independently**. Amounted to transfer of technical skill, knowledge, experience - satisfying "make available" test

- **Lien over employment:** Indian entities had no authority to terminate their employment

- Relied on its decision in **Centrica** India. Observed that secondees continued to **remain employees of EY US** throughout the deputation period

LATEST DEVELOPMENTS

Ernst & Young U.S. LLP (Delhi HC):

- Difficult to accept the ITAT's conclusion that the "make available" test was not satisfied **when the agreements themselves envisaged such knowledge transfer**

SEC. 207: ROYALTIES / FTS

- Tax rate:
- **20%: Dividend**, Interest on forex loans (other than below)
- **5%: Interest on specified loans**, e.g. infrastructure debt fund / sec. 393(2) which includes
  - Interest to FII / QFI on RDBs
  - Interest on ECBs covered
  - Interest paid by Business Trust
  - Infrastructure Debt fund
- No deductions: PGBP / IOS / Ch. VI-A

SEC. 207: ROYALTIES / FTS

- Tax rate: 20%
- Condition:
  - CG approved agreement, OR
  - In accordance with Industrial policy
- Deductions: PGBP / IOS: Not available, Ch VI-A: Available

Date of Agreement	Rate of Tax
Before 31.05.1997	30%
01.06.97 – 31.05.05	20%
After 01.06.2005	10%

ROYALTIES / FTS - NET BASIS TAX

- Sec. 59: Royalties / FTS effectively connected to a PE
- Income by way of Royalties / FTS would be computed under **PGBP on net basis**, where:
  - NR carries on business in India **through a PE situated therein (of fixed place of profession).**
  - Right / property / contract in respect of which Royalties, FTS are paid are **effectively** connected with such PE / fixed place.

ROYALTIES / FTS - NET BASIS TAX

- Royalties or FTS – Effectively connected to a PE
- **No deduction** is allowable for
  - Expenditure wholly or exclusively not incurred for business of PE or fixed place of profession in India.
  - Amount paid by PE to its HO / other office – other than reimbursement of actual expenses.
- Tax @ **35%** (plus surcharge, cess) + Accounts maintenance + Audit

SUM RECEIVED WITHOUT CONSIDERATION

- Income chargeable under the head **"Income from other sources"**
  - Money received without consideration
  - Immovable property for inadequate consideration
  - Other specified property received for inadequate consideration

SUM RECEIVED WITHOUT CONSIDERATION

- Income arising outside India, in the nature of a **sum** referred to in sec. 2(49)(u), paid by a resident, to a NR (not being a company) / Foreign Co. / RNOR shall be deemed to accrue or arise in India

- Sec. 2(49)(u): 'Income' includes any **sum of money** or **value of property** referred to in section 92(2)(m)

- Extracts from Memorandum explaining the FB(2)2019

  It has been reported that gifts are made by residents to persons outside India and are claimed to be non-taxable in India as the income does not accrue / arise in India…

SUM RECEIVED WITHOUT CONSIDERATION

- Sec. 9(1)(viii), as inserted **in the Act**:
  - Income arising outside India, being any **sum** **of money** referred to in sec. 2(24)(xviia), paid on or after 5 July 2019 by a Resident to a NR / Foreign Co., shall be deemed to accrue or arise in India
- Sec. 2(24)(xviia):
  - 'Income' includes any **sum** **of money** or **value** **of property** referred to in sec. 56(2)(x)

SUM RECEIVED WITHOUT CONSIDERATION

- Income chargeable under the head **"Income from other sources"**
  - Money received without consideration
  - Immovable property for inadequate consideration
  - Other specified property received for inadequate consideration

Covered by sec. 9(1)(viii) / Sec. 9(8)

Not covered by sec. 9(1)(viii) / Sec. 9(8)

In case of a Tax RESIDENT of India (say, ROR),

his / her **Global Income** is taxable in India

GAURAV SINGHAL

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- Gaurav has an experience of 24+ yrs, specializing in Corporate and International Taxation. He has worked for 10+ years, with organizations such as BMR Associates, KPMG and EY.
- He is a co-founder of a professional services firm, and a knowledge enterprise.
- Gaurav has represented clients in the course of various tax proceedings, including proceedings before the High Court(s), the ITAT, the AAR, and the DRP.
- He has advised a range of companies doing business in / with the UAE (including those with presence in Free Zones), on applicability of UAE Economic Substance Regulations, UAE Corporate Tax laws and other commercial regulations in the UAE, and handheld them in transition to a tax efficient yet compliant regime.

GAURAV SINGHAL

- He has advised clients on key transaction aspects throughout a deal cycle, including conceptualization and development of capital / business restructuring initiatives, as well as re-alignment of transactions to optimize tax benefits and to ensure adherence to regulatory laws.
- He has conducted tax due diligence / diagnostic reviews and health-checks to determine tax exposures and suggesting measures for optimizing their risks.
- Gaurav has undertaken several impact assessment studies of developments in tax domain, such as the Multi-Lateral Instrument (MLI), Country-by-Country reporting (CbCR), other changes introduced by virtue of OECD / G20 BEPS Project, Equalization Levy w.r.t. e-commerce transactions, Place of Effective Management (POEM) regulations, General Anti-Avoidance Rules (GAAR), rules for attribution of profits to Permanent Establishments, etc.
- He is a regular speaker in various seminars organized by various forums, both national and international, such as the ICAI, the International Fiscal Association, Chambers of Tax Consultants, PHD Chambers of Commerce, British Chamber of Commerce (Abu Dhabi), Dubai Airport Free Zone Authority (DAFZA), Dubai

Thank You

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