

INTERNATIONAL TAXATION NOTES

- A range of price variation should be fixed and only adjustment to be made if the difference between transaction price & ALP determined is out of that range.
- CUP (comparable uncontrolled price) – price with an independent entity treated as ALP & is substituted with the transaction price. Adjustments are made for differences most , reliable & highly objective.
- RPM (Resale price method) – As certain the price that would be obtained if the same goods / services is resold to an independent enterprises . This is the resale price & to this the resale price margin of the seller & selling & distribution expenses is deducted. It assumes that the goods are sent without naming any further value additions.
- CPM – cost place method .Cost of the supplier are determined , markup of supplier is added. Method applied to transfer of semi finished goods to related parties.
- PSM (Profit split method) – it determines the division of profits which the enterprises would have expected to realize from the transaction . Firstly identify the profits to be split between related parties. Then split the profit on independent transaction basis. Here both the related parties are evaluated, so less reliance on external data useful where there are no comparables. But difficult to get info from its foreign co's.
- TNMM (Transactional Net Margin Method)
 1. Compute the N/P margin of the transaction enter by AE in relation to the costs incurred or sales or assets employed or any other relevant base.
 2. Find the N/P margin of similar uncontrolled transaction.
 3. Then adjust the N/P in 2 for differences ALP is the transaction value adjusted N/P margin.
- **Applying ALP to intangible assets/ property (IP)**- Intangibles are trade intangibles , marketing intangible assets intangible property is transferred by sale or by a royalty under a licensing agreement intangible property transfer may be included in a package price for goods . Generally CUP or resale price method is used to determine ALP of intangibles. RSM is used if the AE sublease the IP to third party.
- **Applying ALP to intra-group services** – issue are whether services have been provided by one member of an MNC group to other members of that group & how to find out ALP for those services . The services /activity provided should provide economic or commercial value to the other group members to enhance their commercial position. An independent enterprise would be willing to pay for such services then only it can be considered as intra group services under ALP.

INTERNATION / NON RESIDENT TAXATION :

- Taxability of an amt depends on its nature, place of receipts/ accrual, point of time of accrual or receipts & taxpayers by or on behalf of assessee residential status (R, RNOR, NR)
- Leaving India for employment does not mean that he should be unemployed in India before leaving employment outside India also includes self employment official tours outside India are not employment.
- Control & management means central (where hand & brain is located) control management & not to carry on day to day activities by employees agents etc. place of control may be different from where the biz is run or where the regd office is located. Control means where vital decisions, policies of biz are made.
- Status of karta determine the status of HUF .Every Indian co. is resident irrespective of where its control or management lies. Every foreign co. is non resident unless its control & management (POEM) lie wholly in India . Mere facts that parent co. exercises shareholders influence on its subsidiaries does not make the subsidiaries deemed residents of the state where the parent co. resides.
- Resident always taxable on world income whether income is brought or recd in India or not.
- NOR (is only for individual and HUF)is only not taxed if income accruing or arising to him outside India unless it is from a business controlled or professional set up in India.
- NR is not taxed for any income outside India in all cases
- None of above if individual & HUF (R, NOR & NR) are taxed if income is earned & received outside India but later on remitted to India. But if person is not , individuals & HUF then above is taxed in case of residents .
- Only individuals & HUF can be NOR , no other 'person' can.
- Receipt of income refers to the first occasion when recipient gets the money under his control .Further remittance or transmission of that amount from one place or person to another does not , constitute receipts.
- 'Accrue' refers to the right to receive , whereas 'due' , refers to the right to enforce payment of the income e.g interest accrues on day to day basis during the period ,but becomes due only after that on specified dates.
- Income once taxed accrual basis , cannot again be taxed on receipt basis
- S-9-Income deemed to accrue or arise in India are taxed for all (R, NOR, NR) even though these incomes actually accrue or arise outside India. This section codifies the 'source' rule of taxation and supports the source country's right to tax the gains derived from offshore transactions where the value is attributable to the underlying assets lying in the source country & is recognized internationally)

The following 7 categories of incomes deemed to accrue or arise (AOA) India are

- any income AOA to an assessee in any place outside India directly or indirectly.
- Through or from any biz connection in India, any property in India , any asset or source in India.

- Through the transfer of a capital asset situated in India. It covers incomes from a source in India. 'Through' means & includes 'by means of' 'in consequence of' or 'by reason of'.
- expl. 5 to S-9 inserted to clarify that on asset or a capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be / have been situated in India if the share or interest derives, directly or indirectly its value substantially from the assets located in India.
- Salary is deemed to accrue / arise in India if it, is earned in India, irrespective of where it is payable / paid.
- Salaries paid by govt. of India to a citizen for services outside India, excepts the allowances / perks paid outside India are not deemed to AOA.
- Dividends paid by Indian co. outside india.
- Interest
- Royalty
- FTS(fees for technical services)
- Business connection includes biz activity carried through person acting on behalf of NR, having authority to conclude contracts & not merely to purchasing of goods. Includes person who maintains stock of goods & delivers then includes person who secures orders for NR.
- No biz connect if NR conducts business through a broker, general commission agent who conducts business independently & is not, employed by NR.
- Only so much of income that is attributable to the operations carried out in India shall be deemed to accrue or arise in India.
- Business activity should be continuous & not a stray transaction should be real & intimate & should contribute to the profits of the NR. Man, material or machinery should be used in India to constitute business activity.
- Property in India include movable, immovable, tangible or intangible in India
- Capital asset include movable, immovable, tangible or intangible situated in India irrespective of whenever the documents is registered or where payment is made.

Incomes which are not Deemed to accrue or arise in India Expl. to S-9 (1) i)

- 1) In case of a business in respects of which all the operations are not carried out in India- income deemed on attributable basis to only that part of the income which is derived from the India operations.
- 2) Purchase of goods in India for Export – no income deemed to AOR.
- 3) Collection of news & views in India for transmission out of India no income deemed to a NR in the business of News Agency, publishing news paper, mags, journals.
- 4) Shooting of Cinematographic films in India by NR who is not a citizen of India or by a firm who does not have a partner who is a citizen or Resident in India or by a Co who does not have shareholder who is a citizen or who is Resident in India.
- 5) Salary paid for services rendered in India is deemed to A & A

- 6) All dividends from an Indian Co. deemed to A & A.
- 7) Deemed to A&A if interest paid or by any resident Government or by any resident except when the resident uses it for the purpose of using in a business or prof carried by the resident outside India or for earning any income by the resident from a source outside India or interest paid by one NR to another in respect of any debt incurred or money borrowed for a biz/ prof carried by him in India. If interest is paid for other than business or profession purpose then not deemed one NR pays another NR interest the loan which is used to buy shares of an Indian Co, the interest payable to the recipients NR is not deemed to A&A.
- 8) Royalty paid for transfer of any right or use of any property or info or for utilization of any services similarly to interest paid above is A&A i.e. If paid by government or by a resident excepts for using in a business/ proff carried outside India or for earning any income from a source outside India or if paid by a NR only if it utilized for a business/prof carried out in India or for earning an income from a source in India.
- 9) Royalty is wide enough to cover industrial royalties and copyrights royalties and also rights to use computer software irrespective of the medium used for transfer and includes consideration for imparting any information concerning technical, commercial scientific knowledge, experience or skill. Payment in lump sum covered.
- 10) Royalty excludes any consideration which would be income chargeable under capital gains.
- 11) Royalty includes consideration for transfer of rights including grant of licenses for any copyright, literary, artistic or scientific work including film or video types for use in connection with T.V or radio broadcast, but not including consideration for sale, distribution or exhibition of cinematography films.

Royalty includes rendering of any services in connection with the activities mentioned above.

- Hence if the consideration falls in def of Royalty TDS u/s 194 J & 195 is applicable.
- Royalty includes transfer of right in any 'process' & process includes transmission by satellite (including uplink, conversion, amplification, downlinkng of any signals, by cable, up to fiber or similar technology.
- Whether or not location of such right, property or information is In India or possession or control of such right, property or information is with the payer or is directly used by the payer.

FTS (Fees for Technical Services) deemed to A & A if the same 3 conditions which are the same as Royalty i.e. If paid by government or paid by residents except or paid by NR only if are met.

- FTS means any consideration (including lumpsum) for rendering any managerial, Technical or consultancy services (including providing of technical or other personnel)
- Does not include consideration for any construction assembly, mining of like projects undertaken or consideration taxable under head salaries.

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- Interest/Royalty/ FTS deemed to A & A irrespective of any territorial nexus of the NR i.e. whether not he has POR or POB in India or whether he has rendered services in India as long as the services were utilized in India by the payer it is taxed.
- In shorts Interest / Royalty/ FTS is deemed to A & A if paid by resident to a NR then the resident must use the borrowing/ or services connected to the Royalty/ FTS paid) it in connection to a business or profession carried by the resident IN INDIA or the resident should use it to earn income from any source In INDIA
- If above is paid by a NR it is deemed to A & A also in similar cases as above.
- So the utilization by the payer of the Interest/ Royalty/ FTS is only to be considered if it is IN INDIA then the NR is taxed under this deeming A & A provision.
- S-44 C ceiling on H.O to paid claimed by Branches of NR in India applicable to those NR's who carry on business in India through their branches. H.O expenses includes all general & administrative Expenses incurred outside India by the foreign company in so far as it relates to the branches business in India .Limit is least of (a) 5% of Adjusted total Income or in case of loss of the average adjusted Total Income (of previous 3 years) or (b) the amount of so much of the H.O Expenditure as is attributable to the business / profession in India. Adjusted total income is income before set off of business loss / unabs. depreciation/ Capital gain loss/ Spec loss / Investment allow.
- S-44C not applicable if provision in DTAA prohibits such restrictions.
- Reinvestment of technical expense paid by H.O to a third party allowed without 44C limit but provision of TDS applicable.
- S-44DA Spl provision & method of computing income from Royalties & FTS arising out of agreements made by NR with India company or governments after 1/4/2003 where such NR carries out business/ professions in India through a PE or fixed place of business and the contract is connected with such PE or fixed place. Actual Expense incurred wholly & exclusively for such PE or fixed place of business in India & reimbursement of actual expense to H.O or its offices are allowed provided mandatory audit is conducted.
- Presumption taxation u/s 44BB in case of NR engaged in business of mineral oil exploration operation of aircrafts, civil constructions done in connection to power project income @ 5% of amount received/ deemed to be received.