THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA

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Course on International Trade

International Taxation & Cross Border Payments

Part -1: Overview of International Taxation

Income Tax Act, 1961
Applicability & Procedure

International Taxation

International taxation is the study or determination of tax on a person or business subject to the tax laws of different countries or the international aspects of an individual country's tax laws as the case may be.

Refers to tax levied on Cross Border Transactions. Transaction may take place between two or more entity of two or more tax jurisdictions.

Such a transaction may involve a person in one country with property and income flow in another.

Types of International Taxation

The global taxability is dependent on two basic principles:

Residence based Tax: A country can tax persons on their worldwide income, regardless of the source of income.

Source based Tax: only local income from the source inside the country is taxed, usually non-residents are taxed only on their local income.

When the transaction is carried on between persons of two different countries, the taxability in any country is determined as per provisions of the domestic law read with the Double Taxation Avoidance Agreement entered into between the Countries. In India, residence-based taxation rule is followed!

Categories of International Tax

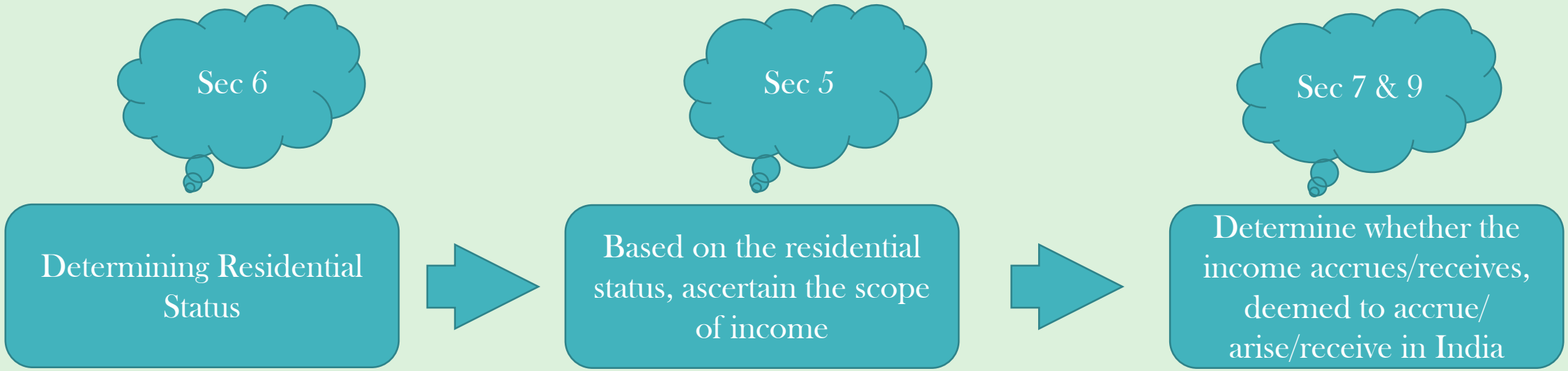
- Cross Border Trade in Goods and Services
- Cross Border Manufacturing by MNCs
- Cross Border Investments
- Taxation of Individuals working outside country

How relevant International Taxation for you

- Overseas presence of Indian company;
- Imports goods and services from various countries.
- Making cross border payments.

International Taxation Structure in India

As per the charging provision of Income Tax Act, the flow for determining taxability in hands of non-resident is as follows:



International Taxation Structure in India

Once the residential status is determined, the scope of taxability of income is as under:

Nature of Income	Taxability in hands of Non-Resident
Income which accrues or arises in India	Taxed
Income which is deemed to accrue or arise in India	Taxed
Income which is received in India	Taxed
Income which is deemed to be received in India	Taxed
Income accruing outside India from a business controlled from India or from a profession set up in India	Not Taxed
Income other than above (i.e. income which has no relation with India)	Not Taxed

International Taxation Structure in India

Sec 90 & 90A of the Act authorizes Central Government to enter into DTAA with other Countries/ ratify DTAA between other specified associations for granting relief in respect of income on which tax is payable

The relevant provisions under the Act and corresponding Articles under UN Model Convention are summarized in the following table –

Nature of Income	Under the Act	Under the DTAA
Business/Profession	Sec 9(1)(i)	Article 5, 7 & 14
Salary Income	Sec 9(1)(ii)	Article 15
Dividend Income	Sec 9(1)(iv), Sec 115A	Article 10
Interest Income	Sec 9(1)(v), Sec 115A	Article 11
Royalties/ Fees for Technical Services (FTS)	Sec 9(1)(vi)/(vii), Sec 115°	Article 12
Capital Gains	Sec 9(1)(i), Sec 45	Article 13

Double Taxation Avoidance Agreement (DTAA)

Double taxation occurs when the same income is taxed in more than one jurisdiction. To mitigate double taxation, countries often have tax treaties or agreements with each other, allowing for credits or exemptions to be applied to taxes paid in one jurisdiction against taxes owed in another.

Why DTAA?

Every country has its own taxation structure according to which they determines the taxability of people residing there and also taxability of the people who does not belongs to their country but with some means they are related to their nation in their form of assessee or deemed assessee. So, for recoverability of tax from the income generated in other nations by NRI's DTAA was formed and secondly, to ensure that this taxability of income does not lead to double taxation of Same income in both the countries.

Objectives of DTAA

- Tax Credit / Relief
- Avoid Double Taxation
- Prevent Tax Discrimination Certainty of Tax Treatment to Investors
- Exchange of Information
- Ease in Recovery of Tax Dues
- Promote Investment & Mutual Relation
- Prevent Fiscal Evasion

Presently, India has the DTAA with more than 93 countries.

This states that if a NRI is a resident in any of those 93 countries and he/she is paying taxes on income earned then he will be eligible for a tax benefit in either of the following two ways: Exemption method: under this method, any one country will tax the income of NRI. Means if the income is taxed in India then the same income will not be taxed in his own country. Credit method: under this method, both the countries will tax the income of that person but the country where he is a resident will allow him deduction or give credit to the foreign tax.

Relief to the Taxpayer

Bilateral Relief through Double Taxation Avoidance Agreement (DTAA)

As per Section 90(2) of the IT Act, the taxability in case of non-resident shall be more beneficial of

Double Taxation Avoidance Agreement (DTAA) entered into with Government of the other Country, or

Provisions of IT Act

Considering provisions of both the domestic laws and the DTAA, if the taxability falls under the scope of Indian Laws, the payment to non-resident shall be done after withholding tax as per applicable provisions.

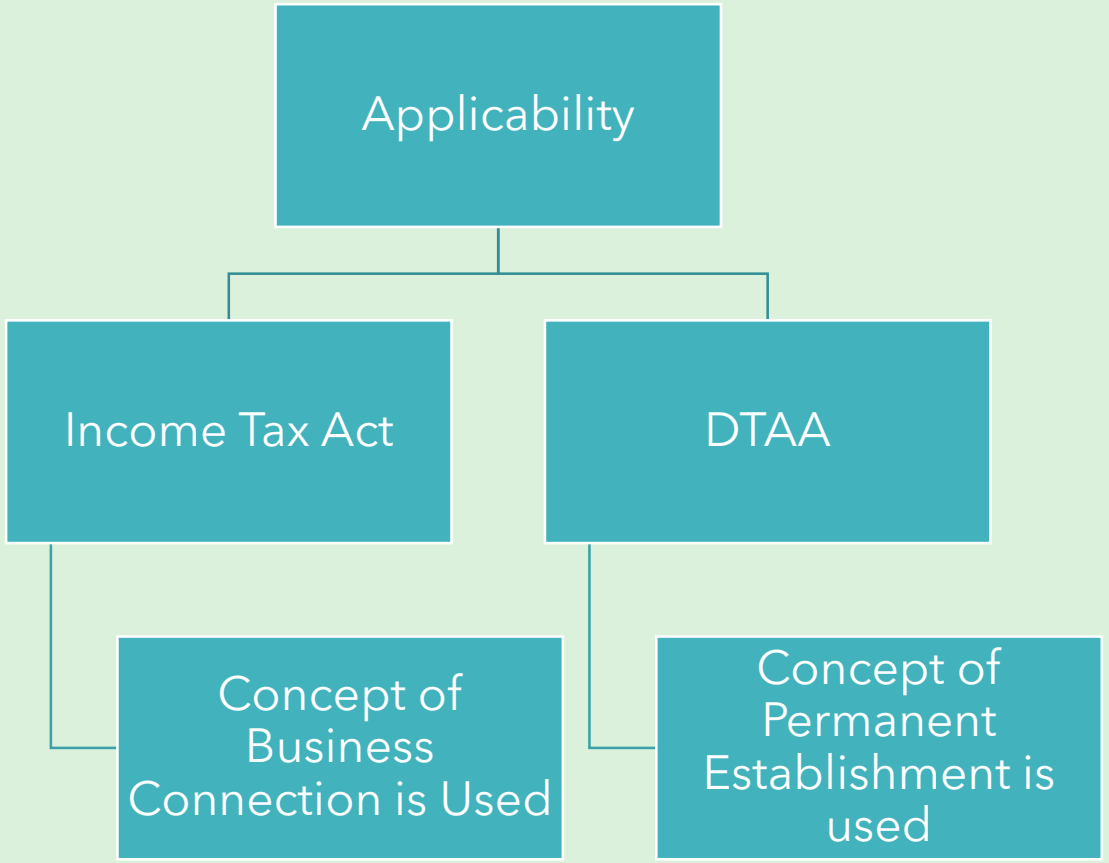
Unilateral Relief

Relief to taxpayer who has paid tax in a country with which India has not signed DTAA by way of deduction or otherwise.

Tax Treaties and Their Role in Preventing Double Taxation

Tax treaties, also known as double taxation agreements (DTAs), play a vital role in preventing the same income from being taxed twice. DTAs are bilateral agreements between two countries that define which taxes are covered, who is a resident, and how taxing rights on different types of income get divided between the countries. They provide clarity, predictability, and often contain provisions to resolve disputes, making cross-border trade and investments more feasible and less risky.

Permanent Establishment Vs. Business Connection



Permanent Establishment Vs. Business Connection

- When a resident of one country earns income from a source in another country, the possibility of double taxation arises because one country may tax that income on the source principle whereas the other country may tax it on the residence principle.
- **This is where the international tax concepts of PE and profit attribution come into play.**
- These determine the right of a country to tax the profits of a company that is the resident of another country.
- Permanent Establishment (PE) means having a taxable presence outside your company's state of residence.
- Tax authorities are now going beyond the "bricks and mortar" definition, identifying PEs caused by overseas contractors, presence of personnel, warehouse space, digital activity and more.
- Taxable presence of a company in a country may attract the tax liability in the source country.

Concept of Business Connection

A business connection is **a continuous and intimate relationship** between two businesses resulting in a profit to a non-resident entity. Unless such a business connection is established, it cannot be held that the profit earned by a non-resident business entity is taxable in India

The following incomes shall be deemed to accrue or arise in India (Section 9)

- through or from any business connection in India, or
- through or from any property-in India, or
- through or from any asset or source of income in India, or
- through the transfer of a capital asset situated in India

Part -2: Cross Border Payments

Analysis of Section 195(1)

Section 195(1) of the Income Tax Act, 1961 in India pertains to the requirement of withholding tax (also known as tax deduction at source or TDS) on payments made to non-residents. Here's an analysis of this section

Who is responsible to deduct?

-a) Any person - including individuals, HUF, Companies, Partnership Firm

-b) Whether resident or non-resident

-Payment to whom?

-a) Non-resident and Foreign Companies

-b) It doesn't include Resident but Not Ordinary Resident

-Nature of payment

-a) Interest(excluding interest under Section 194LB, 194LC and 194LD) or any other sum chargeable to tax

-b) Salaries are excluded

-What rate to apply

-a) Deduct tax at the rates in force (as provided in the Finance Act)

-b) If DTAA available, rates of income tax specified in the Finance Act or the rates specified in the DTAA, whichever is more beneficial shall apply.

-When to deduct

-a) The Act: At the time of payment or credit of income to the account of the payee, whichever is earlier (Explanation to the Section provides an exception to the Government, Public Sector Bank & Public Financial Institution –Deduction only on payment)

-b) Tax Treaty: Any specific requirement in the treaty to deduct tax needs to be adhered with if treaty provisions are followed.

Who should deduct tax under Section 195?

Any person who makes any payment (other than salary or interest referred to in sections 194LB, 194LC, and 194LD) that is taxable in India to a non-resident must deduct tax under this section.

The payer, one who pays the NRI or remits the payment, can be a resident or a non-resident, an individual, Hindu Undivided Families (HUFs), partnership firms, other NRIs, foreign companies, or an artificial juridical person (for example, a corporation, government agency or non-profit organization).

Is there a threshold limit to deduct TDS u/s 195?

No, there is no threshold limit to deduct TDS under Section 195. However, the payer must deduct tax only when the payment made to a non-resident is taxable in India. Therefore, no tax is to be deducted in case of exempt income or any other income that is not taxable as per the Income Tax Act unless the government notifies explicitly.

At what rate is the tax deducted under section 195?

TDS is deducted at either of the following rates, whichever is beneficial to the payee:

Rates as per the Finance Act of the given year

Rates contained in the Double Taxation Avoidance Agreement (DTAA) between India and the country of residence of such non-resident

Note: The rates given under the Finance Act are to be increased by the applicable surcharge and education cess of 4%. However, surcharge and cess are not required to be added to the rates given under DTAA.

Payment of TDS under Section 195

Below are the ways to deduct TDS under Section 195:

Person making payment to non resident (Deductor / Buyers) should obtain a TAN (Tax Deduction Account Number) under section 203A of the Income Tax Act before deducting the TDS. Deductor should also have their PAN number and PAN number of the NRI.

The deductor must deduct TDS at the time of making payment to NRIs.

TDS deducted by the buyer should be deposited through challan for TDS payment on or before the 7th of next month in which the TDS is deducted.

TDS can be deposited online or through banks that are authorised by the government or the Income Tax Department to collect direct taxes using challan 281.

After depositing the TDS, the buyer should electronically file a TDS return by filing Form 27Q. TDS returns are filed quarterly within the below due date.

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Application for nil or lower TDS deduction certificate by the Non-Resident (NRI)

When the recipient non-resident believes that no amount or only a partial amount (other than salary) is taxable in India or that TDS is to be done at a lower rate, then he may make an application under Form 13 to the Assessing Officer (AO) for obtaining a lower or nil deduction certificate. The assessing office will issue a lower withholding tax certificate u/s 197, which will enable the deductor or payer to deduct the TDS at a much lower rate.

Consequences of Not Paying TDS Under Section 195

Following are the consequences when individuals do not fulfill the provisions of Section 195:

In case the tax deducted is not withheld or submitted for a given time, the expenditure will be disallowed in case of business and will be allowed only in the year of such payment.

When the payer deducts the TDS but fails to submit it within the due date, he/she will be charged with a 1.5% interest from the date of deduction to the date of deposit.

If TDS is deducted but not paid, a penalty equal to the TDS amount will be levied.

In case of short tax deduction, a penalty equal to the difference between the actual amount deductible and actually deducted would be levied.

Part-3 :Procedure of Foreign Remittance

Compliance with tax deduction

A. TAX

To Check :

Lower Deduction Certificate

Amount on which tax has to be deducted

Section 195A – Grossing up

Section 206AA - Requirement to withhold tax at the higher of the following rates if deductee fails to provide its PAN to the deductor:

Rate specified in the relevant provision of the Act (i.e. specified rates in Chapter XVII-B);or

Withholding tax rate specified in Finance Act; or

Rate of 20%

Rule 37BC provides relaxation from deduction of tax at higher rate under section 206AA. Section 206AA shall not apply on the following payments to non-resident Deductees who don't have PAN in India, subject to deductee furnishing the specified details and documents to the deductor:

Interest

Royalty;

Fees for Technical Services; and

Payment on transfer of any capital asset

In respect of the above, the deductee shall be required to furnish some of the details like mail, contact no, address and TIN.

B. REMITTANCE OF FUNDS ABROAD

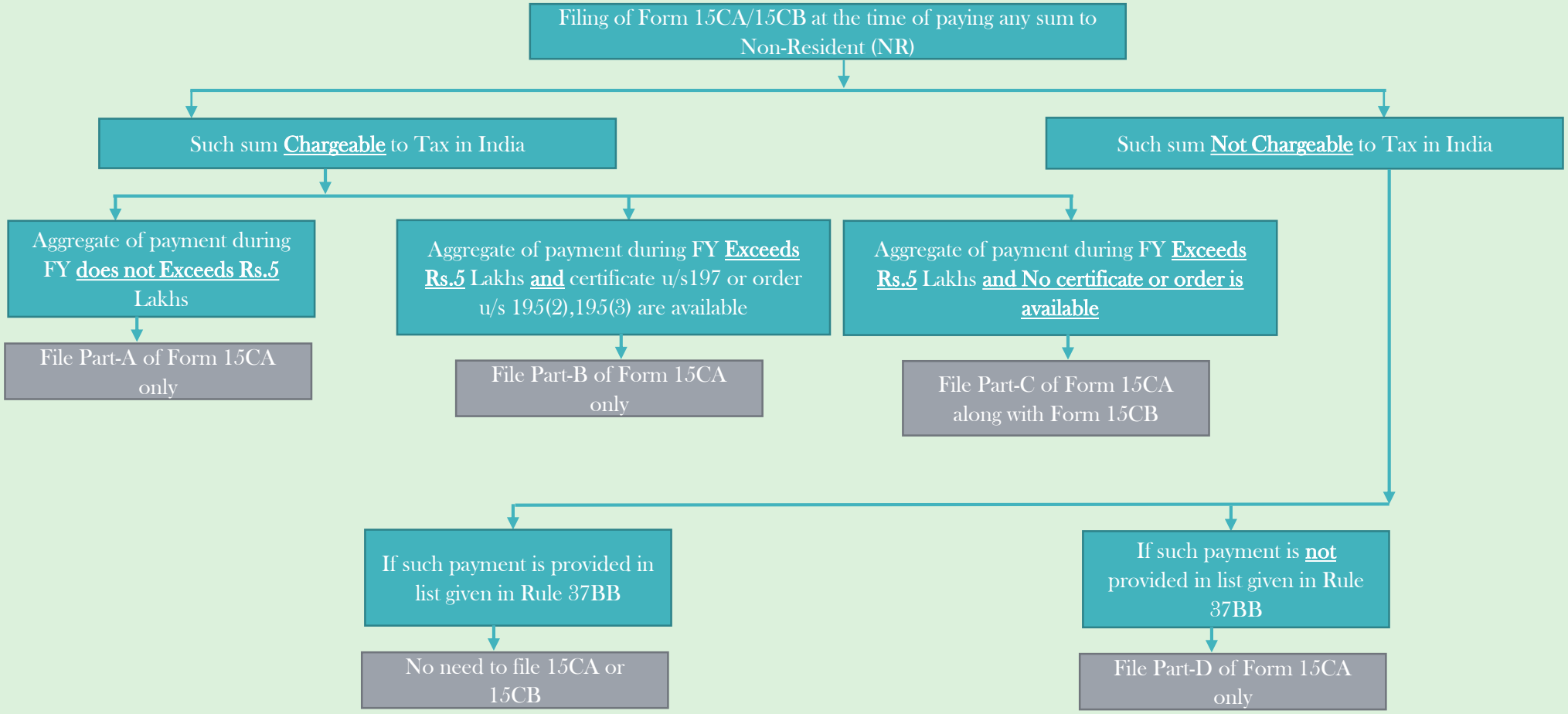
Certificate furnished by Chartered Accountant

The CBDT vide Notification No. 30/2009 dated 25th March, 2009 issued Income-tax (Seventh Amendment) Rules, 2009 and prescribed following formats through insertion of Rule 37BB –

Form 15CA – Format for furnishing prescribed information and verification by the payee

Form 15CB – Format for certificate from Chartered Accountant

Form 15CA/15CB



C. Electronic Submission of Form 10F

As per Sec 90(5) read with Rule 21AB(1), for the purpose of claiming/granting relief under DTAA, duly verified & signed Form 10F is to be obtained from Non-Resident/Foreign Company.

CBDT Vide Notification No 03/2022 dt 16.07.2022 specified that form 10F be furnished electronically by Non-Resident/Foreign Company.

Now, deductors need to obtain electronically submitted Form 10F for granting DTAA benefit in place of physically signed Form 10F.

Part -4:
Case Studies

A. Fee for Technical Services (FTS)

- Means any consideration for the rendering of any **managerial, technical or consultancy services** (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project or consideration which would chargeable under the head "Salaries".
- FTS also includes make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.

Thank you