

Saturday
International
Tax
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SITG

SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No.

190

New series – International Business Transactions!!

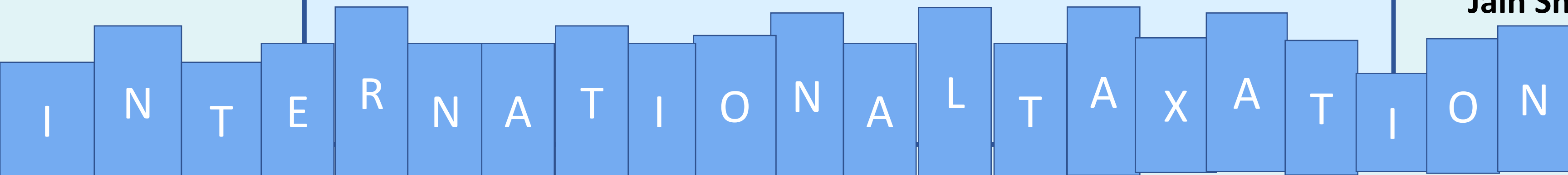
PART-IV

#Nature of transaction

Managerial Services

27.01.2024

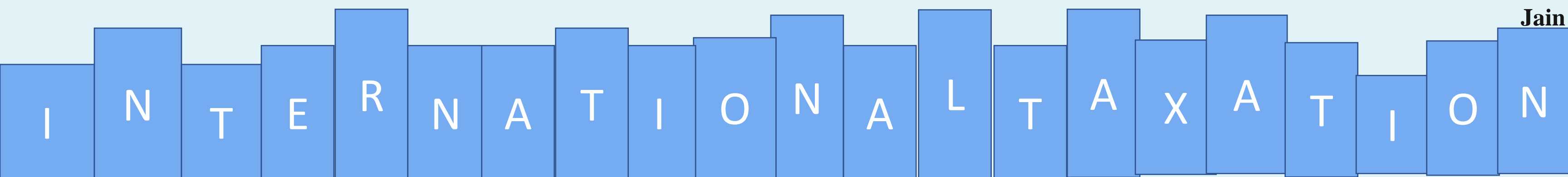
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Concept and examples

What shall constitute Managerial Services?

- The Hon'ble Supreme Court in case of *GVK Industries Ltd. v. ITO [2015] 54 taxmann.com 347 (SC)*, the expressions **'managerial, technical or consultancy services'** are not defined in the act, and therefore it is obligatory on our part to examine how the said expression are used and understood by the person engaged in business. The **general and common usage of the said words has to be understood in the normal parlance.**
- The word **'managerial'** relates to two words, i.e., **manager or management.** The Hon'ble Supreme Court in the case of *R. Dalmia v. CIT [1977] 106 ITR 895* observes that the word **'management'** includes the act of managing by direction, regulation, or superintendence. The word **'manager'** is a person who manages an industry or business deals with administration or a person who organizes other people's activity. **Thus, 'managerial services' essentially involve controlling, directing, or administering the business.**
- A "managerial service" shall have a **definite human element** attached to it or an **application of human mind** or can only be rendered with human interface or human intervention.



Types of managerial services

- **Types of managerial services** are mentioned below along with the relevant case laws:
 - a) Global Management Services [**Relevant Case Law- *Invensys Systems Inc., [2009] 317 ITR 438***]
 - b) Management Services- Involving Technical Skills. [**Relevant Case Law- *US Technology Resources Pvt. Ltd. [2013] 39 taxmann.com 23 (Cochin-Trib.)***]
 - c) Managerial Services [**Relevant Case Law- *Filtrex Technologies Pvt. Ltd. v. ACIT – (2011) 47 SOT 69 (Bang)***]

- The services which come under the head “**administrative management**” **cannot automatically be brought within the purview of managerial services**. Cases like maintenance of trademark register and arranging renewals, preparation and distribution of brochures and other promotional material, maintenance of central claims or providing professional tax advice, are not pre-dominantly managerial services, however they still come under the head ‘administrative management’.

- Services like **co-ordination of public relations related issues, audit-related services, or advice on global IT policies**, are the few instances which comes under the ambit of ‘managerial services’.

Determining the taxability as per the act

- **Income Tax Act: Explanation 2 to section 9(1)(vii)** of the act defines the scope of FTS, which includes the **consideration received for rendering of any managerial, technical, or consultancy services** but does not include consideration received for construction, assembly or mining or like projects undertaken by the recipient or income received chargeable to tax under the head “salaries”.
- Therefore, referring to the meaning and nature in the earlier slide and above, for services which are considered managerial in nature, we can safely assume that **it shall come under the ambit of ‘FTS’ since such services might be either a part of technical service or consultancy service.**
- Hence as per the provisions of the act, income earned from rendering managerial services shall be taxable as FTS under income tax act.
- Although the terms ‘managerial’, ‘technical’, and ‘consultancy’ is not defined in the income tax law. The Hon’ble courts in various case laws have defined such terms in various cases like-
 - i. **[2012] 26 taxmann.com 267 (Bom) Zuari Agro Chemicals Ltd. v. CIT**
 - ii. **[2013] 378 ITR 205 (Delhi) CIT v. Grup Ism (P) Ltd.**

Since the services involving an element of ‘managerial’ (as discussed in the earlier slide) are taxable as per the provisions of income tax act. Now, therefore we shall test the taxability as per the provisions of DTAA.

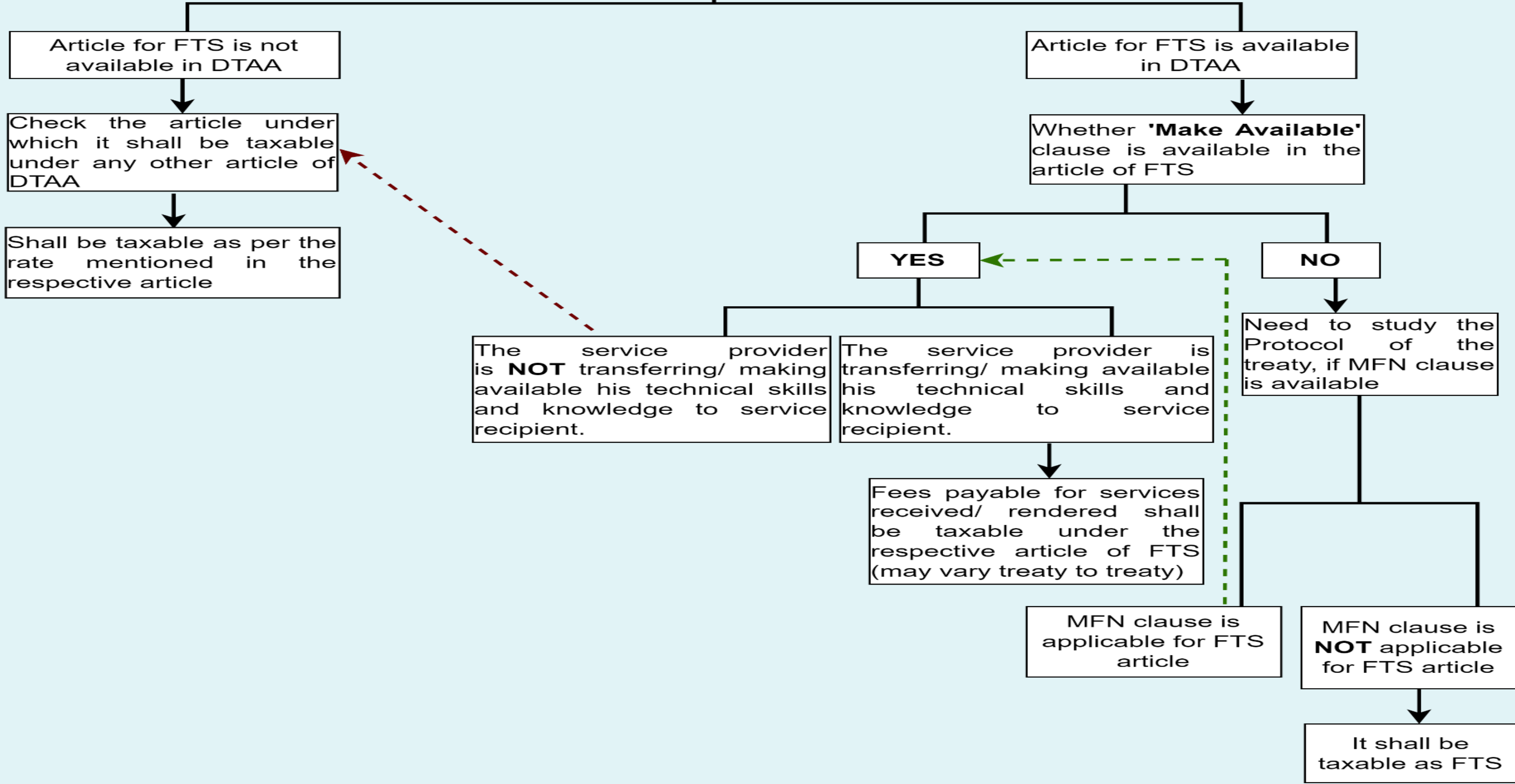
Determining the taxability as per DTAA

▪ FTS as per DTAA:

- As per DTAA, generally 'FTS' means payment of any kind to any person in consideration for the rendering of any managerial, technical or consultancy services (including through the provision of services of technical or other personnel).
- However, one should need to read the respective DTAA before applying the provisions of it because every DTAA has different nuances in FTS article, which vary agreement to agreement and therefore creates a huge impact on the transaction between countries.
- There are various DTAA's with respect to India where 'managerial services' are not covered under the said article. For example, in India-USA DTAA the clause of 'managerial service' is not covered under the FIS article.
- For example, where such services are received by an Indian resident from a resident of France, then the tax on payment of such fees shall be 10% of the gross amount of fees, whereas in case if such services are rendered by a resident of UK, the rate of tax on such fees shall be 20% of the gross amount. However, India-UAE DTAA does not have a FTS clause, which means if such services are rendered by a resident of UAE, then for the purpose of taxability we shall have to see if it falls under other articles.

Further with regards to understand the taxability as per DTAA for such transactions, we shall try to understand the flow of taxability with the help of a flowchart which is shared in the next slide.

Fees for Technical Services (FTS)



Comments

- The 3 types of services covered in the article i.e., **“Technical, Managerial, or Consultancy” in nature are not necessarily used interchangeably.** It might be a possibility that the particular transaction is bundled with 2 different types of services, however generally, one service cannot possess the color of another service.
- It is important for the assessee to ensure that if the transaction consists of more than 1 type of service as defined in the said Article, the **assessee should get each such service billed separately**, as there might be a possibility that 1 such service offered might not be taxable in the source country, in the context of the particular treaty for the said article. For example, in India-USA DTAA, the managerial services are not covered under the said article.
- In case, the particular service rendered has ‘managerial’ nomenclature does not necessarily mean that it shall be covered under the definition of FTS. Thus, the service offered should satisfy the basic condition to constitute ‘managerial service’ as explained in detail in earlier slides for taxation purposes.

Reference of previous SITGs of International Business Transactions

S. No.	Services offered	Link
Part- I	Project Review, Feasibility Study, and its Report	<u>Click Here</u>
Part- II	Survey and related services	<u>Click Here</u>
Part- III	Reimbursement of International transactions	<u>Click Here</u>



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