



SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy

SITG No.
192

Series – International Business Transactions!!

PART-VI

#Nature of transaction Professional Services

I N T E R N A T I O N A L T A X A T I O N

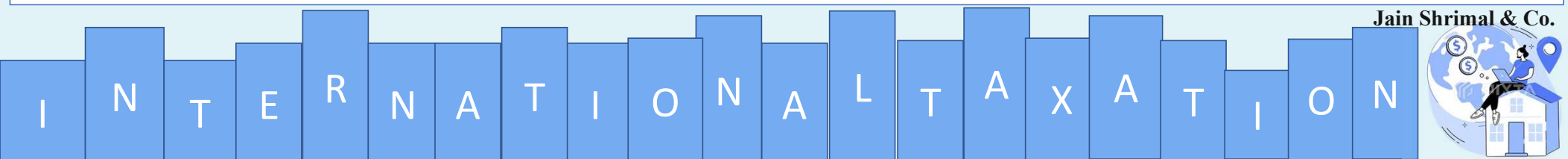
10.02.2024
Jain Shrimal & Co.



Concept and examples

What are the Professional Services?

- Professional services includes Advocacy services, Financing services, Accounting services, Legal and Consulting services, Planning and Construction services etc.
- An individual offering professional services may have expertise in a niche area, like Corporate lawyers provide services to corporate companies, which may include helping with operations or the formation of corporations outside India or representing them outside India. They may also address potential compliance concerns.
- Accountants may advise clients on wealth management, help them with estate or trust planning outside India and help them with taxes. They can specialize their advising methods depending on the needs of the client.
- Software Engineers design and test programs, engineer technical solutions and maintain applications outside India. Companies can use software developers to create innovative technology solutions that provide positive user experiences.



Determining the taxability as per the act

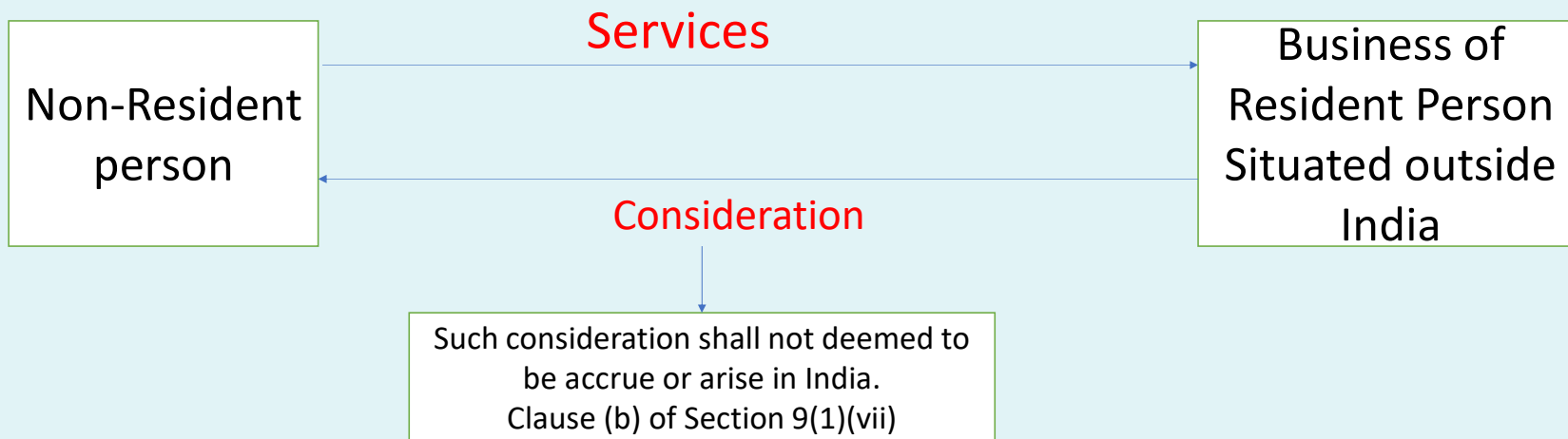
▪ **Income Tax Act:**

- **Professional Services** means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or of this section.
- These services are mostly in the nature of **Consultancy** and provided by the professional persons who possess professional and **technical knowledge** to provide these professional services to their respective clients.
- Therefore mostly such service would fall under the category of fees for technical service under Section 9 of the 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”.
- However, there is exception to such FTS income from deeming to accrue or arise in India such as providing service outside India in relation to business of resident situated outside India.

Determining the taxability as per the act

NOTE:

Hence, if a non-resident provides services outside India in relation to business carried out by assessee outside India it should not be covered under FTS as per Income tax act. It is important to note that service in relation to export of goods/ service need not necessarily mean business outside India.



Determining the taxability as per the act

▪ Income Tax Act:

- However, there could be various services which are neither consultancy or technical in nature, such as service of auditing or service of testing outside India.
- Hence, in case of service which would neither fall under technical, managerial or consultancy in nature could fall under the nature of business connection u/s 9(1)(i) of the Income tax act and could be taxable as business income in India.

Determining the taxability as per the DTAA

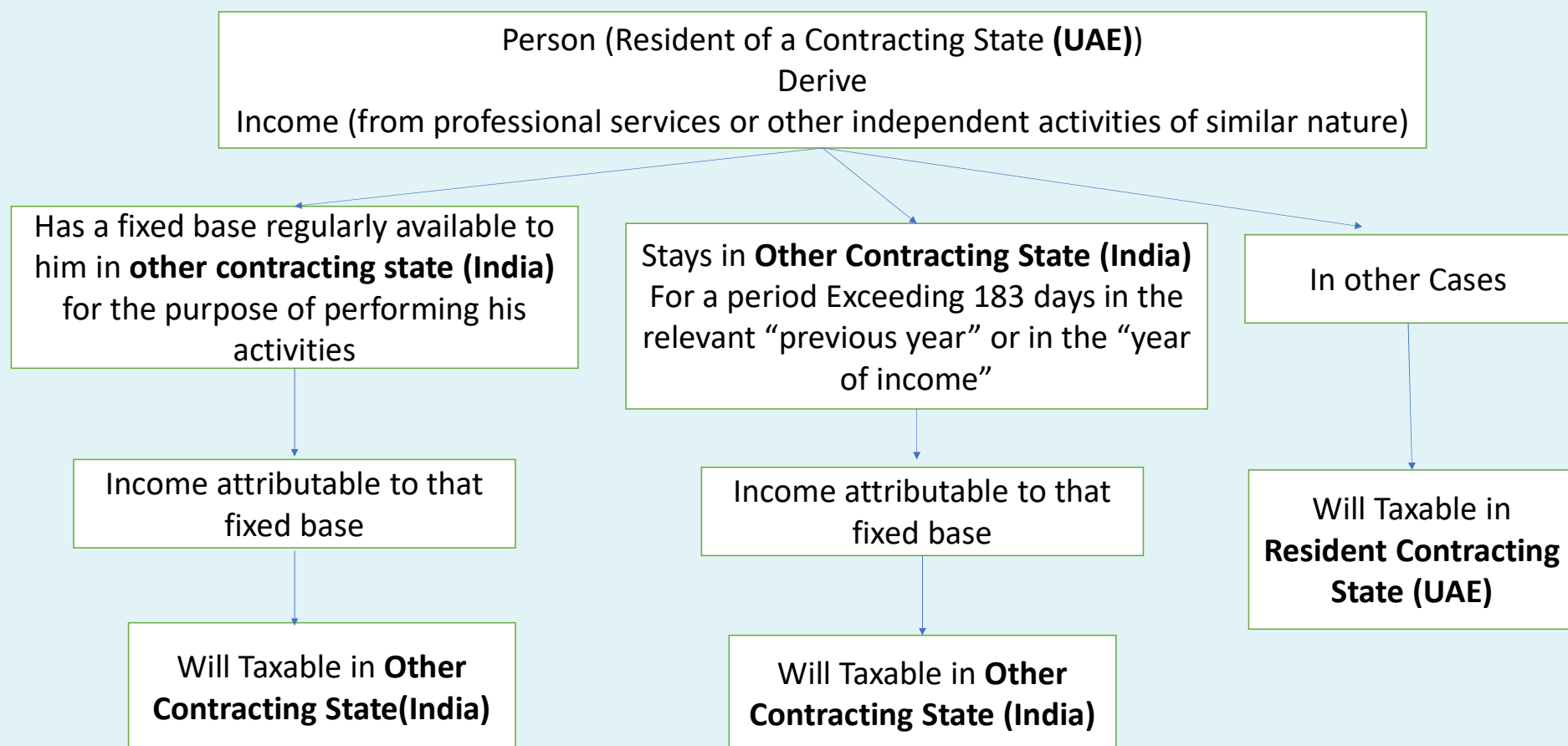
▪ Professional Services as per DTAA:

- While determining taxability under DTAA we need to first check whether the nature of service fall under any of the 2 category i.e. FTS or Independent personal service. Independent personal service includes independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.
- If the service falls under the above definition then we shall choose specific over general and determine taxability under such article of Independent personal service.

▪ Example:

- Mr. Sheikh Resident of UAE Providing Professional services to Mr. Shyam resident in India. What will be the taxability in the following three cases:
 - a) Mr. Sheikh has fix base in India and the income is attributable to India
 - b) Mr. Sheikh stays in India for 185 days in the relevant P.Y.
 - c) Mr. Sheikh provide the services from UAE itself.

Determining the taxability as per the DTAA



Determining the taxability as per the DTAA

- However, if the service does not fall under the definition of Independent personal service as in various DTAA such Article only cover individual (For eg: India-Germany DTAA) and in such case we need to check whether such service would fall under FTS.
- If the service does not fall under FTS as well then we need to check if this is the business of service provider and whether it has PE in India or not. If the service provider does not have PE in India then such service will not be taxable in India.
- Some case laws in relation to such independent personal services are as under:
 - Grant Thornton India LLP v. Joint Commissioner of Income-tax [2023] 157 taxmann.com 546 (Delhi - Trib.) Dt. March 31, 2023
 - Poddar Pigments Ltd. v. A. CIT, Circle-20(1) [2020] 117 taxmann.com 728 (Delhi - Trib.) Dt. July 2, 2020

Reference of previous SITGs of International Business Transactions

S. No.	Services offered	Link
Part- I	Project Review, Feasibility Study, and its Report	Click Here
Part- II	Survey and related services	Click Here
Part- III	Reimbursement of International transactions	Click Here
Part- IV	Managerial Services	Click Here
Part- V	Repair Maintenance and Related Services	Click Here



Visit our website blog for previous case laws.-

<https://jainshrimal.com/blog/#taxgyaan>



Join Whatsapp group for discussion on International taxation
By scanning the QR-

I N T E R N A T I O N A L T A X A T I O N

Jain Shrimal & Co.



Disclaimer

- This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- Jain Shrimal & Co. has taken reasonable care to ensure that the information in this presentation is accurate. It however accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation.
- This presentation is based on the information available to us at the time of preparing the same, all of which are subject to changes that may, directly or indirectly impact the information and statements given in this presentation.
- Neither Jain Shrimal & co. nor any person associated with us will be responsible for any loss however sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments, and seek appropriate professional advice.

I N T E R N A T I O N A L T A X A T I O N

Jain Shrimal & Co.

