

# IS THE ISSUE OF TAXABILITY OF SOFTWARE IN INDIA SETTLED?

The Supreme Court has recently held that purchase of software is not a royalty and will not be liable to tax in India. It has laid rest to a 20 year old controversy with different courts giving different rulings on this issue. However, not all software are covered by this ruling.

## 1. What kind of software is not royalty?

- a. Software purchased by Indian end-user from a Non-resident (NR) supplier
- b. Indian distributors purchasing software from NR and re-selling to end users.
- c. NR distributor purchasing from NR supplier and re-selling same to Indian end users.
- d. Software embedded into hardware/ forming part of the single equipment

## 2. Why the above are not Royalty?

In the above there is only a right to use the end product i.e software. There is no right to use the copyright in this software.

## 3. So how is payment to purchase of software taxed now?

- a. If the required documents to avail the DTAA benefit is not available, then the provisions Section 9(1)(vi) of the Income Tax Act may apply and this needs to be analysed further. Or,
- b. If the NR has a PE / Business connection in India and this is attributable to such PE / Business connection, then would be taxed as business profits; Or,
- c. Applicability of the Provisions of the Equalisation Levy also need to be checked.

## HOW CAN WE HELP?

*Since there is a Risk of disallowance U/s 40A for non deduction of TDS or EL, this needs to be carefully analysed on a case to case basis.*

In case you wish to reach us in respect of any queries on this or any other transaction with Non-resident, please do reach out to Bhamini GS on + 91 98458 04212 or email us at [info@annveshan.com](mailto:info@annveshan.com).