

## Facts of the case

It is very important to understand the facts of the case as they come to us in bits and pieces and not in one go.

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Relevant portion of the Delhi HC Judgement

2. A brief background of the facts is necessary. FOWC is a UK tax resident company incorporated on 7 March 2001. Consequent to agreements entered into between the Federation Internationale de l'Automobile ("FIA" an international motor sports events regulating association), Formula One Asset Management Limited („FOAM") and FOWC, FOAM licensed all commercial rights in the FIA Formula One World Championship (Championship") to FOWC for 100-year term effective from 1 January 2011. FOWC entered into a "Race Promotion Contract" („RPC") dated 13 September 2011, by which it granted to Jaypee Sports the right („Right") to host, stage and promote the Formula One Grand Prix of India event for a consideration of USD 40 millions. An Artworks License Agreement (ALA) contemplated in RPC was also entered into between FOWC and Jaypee the same day, i.e. 13.09.2011, permitting the use of certain marks and intellectual property belonging to FOWC for a consideration of USD 1. The RPC of 2011 was preceded by another RPC of 25-10-2007; FOWC and Jaypee signed it. IA is a regulatory body; it regulates the FIA Formula One World Championship which has been the premier form of motor racing since its inception in 1950. The formula, so called is with reference to a set of rules that all participants' cars must conform to. F1 seasons consist of a series of races, known as Grand Prix (from French, meaning grand prizes), held across the world on specially designed and built F1 circuits across 26 different locales.

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4.F1 Grand Prix events are held under the aegis of the FIA F1World championship's competition -in which F1 racing cars, assembled and manufactured strictly in terms of the F1 Technical regulations, compete against each other, under F1 Sporting Regulations and the F1 International Sporting Code framed and made effective by the FIA. F1 drivers across the world have the ability, competence and skill to drive an F1 car and participate in F1 racing events. About 12 to 15 teams typically compete in these championships in any one

35 annual racing season. Some celebrated and well-known participants are the Ferrari, McLaren, Red Bull teams etc. The teams assemble and construct their vehicles, which comply with defined technical specifications and engage drivers who can successfully maneuver the F1 cars in the racing events. All teams known as "Constructors" enter into a contract, known as the "Concorde Agreement" with FOWC and the FIA. In these agreements they undertake to  
40 participate to the best of their ability, in every F1 event included in the official annual F1 racing calendar. They also bind themselves to an unequivocal negative covenant with FOWC that they would not participate in any other similar motor racing event whatsoever nor would they promote in any manner any other rival event. The F1 racing teams exclusively participate in about 19 to 21 listed F1 annual racing events on the official racing calendar,  
45 set by the FIA. This is, in effect, a closed circuit event since no team other than those bound by contract with FOWC are permitted participation.

5. Every F1 racing event is hosted, promoted and staged by a promoter with whom FOWC as the right holder, enters into contract and whose event is nominated by the CRH (i.e Contract  
50 Right Holder, which is in effect, FOWC), to the FIA for inclusion in the official F1 racing calendar. In other words FOWC is the exclusive nominating body at whose instance the event promoter is permitted participation. The points scored by each F1 racing team in every event is listed in the official racing calendar and it counts towards the Constructors championship and the Driver's championship for the racing season as a whole. Any team's  
55 position in these championships at the end of the season determines, together with certain other factors which are elaborately dealt with in the Concorde agreement, (which in the present instance, was latest in the series of Concorde agreements the last being the one of 2009) the prize money payable to the teams for their participation during the season. Grant of a right to host, stage and promote the F1 racing event therefore carries with it a covenant  
60 or representation that F1 racing teams with their cars, drivers and other auxiliary and supporting staff will participate in the motor racing event hosted at the promoter's motor racing circuit displaying the highest levels of technical skill achievement etc. in the fields of construction of single seat motorcars to attain the highest levels of performance in the world. These teams and the FOWC also represent that the highest levels of skill in racing  
65 management and maintenance of the cars would be on display in the event. All these are a part of the relevant contractual provisions, embodied in RPC 2011.

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70 9. There was no agreement between FOWC and Formula One Licensing B.V., proprietor of the  
trade marks, for transfer or licensing of such rights in favour of FOWC. The license was given  
by FOWC to Jaypee for the permitted use, in the territory, of the licensed marks and  
materials. The licensed marks and materials are defined to include marks stated above. The  
"permitted use" is defined to mean incidental use of the licensed marks strictly for the  
75 purpose of hosting, staging and promoting the event. It was furthermore argued that from a  
combined reading of Concorde and other agreements what emerged was that Jaypee did not  
have to make any payment to FOWC for hosting, staging and promoting any motor racing  
event. The payment became necessary for one and the only reason that the mark of  
"Formula One World Championship" or "Grand Prix of India" was to be used to make the  
80 event a part of the calendar of F1 World Championship. It was also asserted that the marks  
were not used in a secondary manner, or incidentally, rather, Jaypee used the marks  
prominently because of their fame and reputation. Licensing of the mark gave Jaypee the  
right to hold the F1 championship or Grand Prix of India event. This position was also  
supported by the fact that the promoter's rights stipulated in the Concorde agreement  
85 clearly list out as being (i) right to promote the event. (ii) right to designate the event as  
Formula One Championship event. Given the relative lack of knowledge of the F1 sporting  
event, use of the mark became crucial and necessary. The crowds visiting the circuit or  
watching from home were drawn towards the name F1, which they were familiar with and  
not the car or circuit specifications that the event associates itself with. The revenue arising  
90 from the commercial rights, be it sale of tickets, advertisement rights or broadcasting rights  
are, therefore, all attributable to the name of the event more than anything else.

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95 51. It would, for the purposes of deciding whether FOWC carried on business in India, through  
a fixed place of business (which the revenue argues is the Buddh international circuit) be  
necessary to consider the conditions and stipulations in the RPC.

'The following, in the opinion of the Court, are material conditions necessary for  
100 determination of whether FOWC had a PE in India:

(a) The Buddh International Circuit, is defined in Clause 1(q), as one suitable in every respect  
for the staging of the event, including permanent buildings, permanent structure, track  
105 laid-out, amenities, spectator viewing facilities, paddock building, media centre, car parks,

helipads, garages, race control and administration, office administration, fuel and storage, tyre store, utilities, including backup power supplies, concrete-based areas suitable to host competitors and sponsor, vending and exhibition areas, international TV compounds etc. These specifications are more elaborately spelt out in Clause 5(e) which states that a circuit  
110 shall be constructed, laid out and prepared in accordance with the agreement, i.e. RPC, "in a form and manner approved by the FOWC and the FIA".

(b) The inclusion of the event is through the FOWC's actions. In terms of its arrangement with the FIA, it is the exclusive agency through which any particular circuit is introduced for an  
115 event in a given calendar year.

(c) The term of the RPC is 5 years according to Clauses 3.3 and 3.4.

(d) In terms of Clause 11, Jaypee is obliged to take all action necessary to ensure that the pit,  
120 paddock buildings and surrounding areas within the circuit and land are open to receive the competitors, FOWC, affiliates of FOWC, FOWC's contractors and licensees, other personnel and equipment at all times during the period commencing 14 days before the race and ending 7 days after the race. It also has to assure security to these areas.

(e) Under Clause 14, the promoter is obliged to authorize access to parts of the circuit not  
125 open to the main public only through passes issued by the FOWC. Under Clause 14(b), the public cannot have access to the cars in any of the places where the competitor's mechanics may be called upon to work on them and under Clause 14(c), the validity of passes issued by FOWC is unquestionable.

130 (f) Under Clause 18.1, throughout the term during the access period, from the test session held at the circuit till the end of the event, the promoter, i.e. Jaypee cannot permit, access, enable, procure or in any manner encourage others to make, create, store, record or transmit any sound recording or visual or audio-visual footage whatsoever, for broadcast or  
135 any other purpose, of any of at or pertaining to the event, including cars, drivers, competitors etc. and in fact cannot make any such recording etc. within the confines of the circuit or the land over which Jaypee itself has control.

(g) Under Clause 18.2, Jaypee has to ensure that the terms of the ticket sale, giving  
140 admittance to the event include a condition imposed on the ticket holder not to make any kind of recording or take any recording device that can store or transmit any part of the

event and that the ticket holder as a spectator could be filmed and a sound made by him could be recorded for broadcast or any other such item that the FOWC could impose on Jaypee.

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*(h) Jaypee is obliged to engage a third party approved by FOWC to carry out and perform on its behalf all service relating to the origination of the international television feed and host broadcasting for each event during the term specified in the guidelines published by FOWC and provided to Jaypee.*

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(i) Jaypee unconditionally and irrevocably under Clause 19.2 assigned to FOWC all copyright and other intellectual property rights, titles and interest which it may now or may in future possess, in any image or recording or other presentation or recording in any image/form whatsoever for the duration of the rights and also give consent to FOWC to deal with such

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rights as it pleased.

(j) Clause 20.1 obliged Jaypee to ensure that those accredited and authorized by FOWC were permitted to enter upon the premises to make sound, television or recordings or transmissions or make films or other pictures and use the facilities throughout the access period and also undertook to accord to such personnel all help and facilities that FOWC would require, including assistance for consent, permission or authorization with any local authority.

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(k) Under Clause 21, Jaypee was prohibited from causing, permitting, enabling assisting or in any manner encouraging display of any advertisement (other than the normal advertisement displayed on any competitor's cars) or other displays on, near or which could be seen from the circuit or the land which, in the opinion of the FOWC, could prevent lawful transmission of images or recordings of the event. FOWC's say in this regard was final.

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(l) In the Director's report of FOWC, the company significantly mentioned that its current company had entered into an agreement with FIA as a result of which FOWC acquired commercial interests in the championship which became operative from 01.11.2011 and that in exploitation of such commercial rights in the championship, the total revenues generated was US\$ 1205 million. There is an express advertence of the Indian part of the turn-over – inasmuch as the report said that the company paid US\$ 127 million to FOM in return of provision of services.

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180 52. It is evident that for the duration of the event as well as two weeks prior to it and a week succeeding it, FOWC had full access through its personnel, the team contracted to it, both racing as well as spectator teams and could also dictate who were authorized to enter the areas reserved for it. No doubt, in terms of the agreement, i.e. RPC, Jaypee was designated as the promoter or the event host. A look at the RPC and its terms as well as the other terms contained in the agreement between the Jaypee on the one hand and All Sports, Beta Prema 2 as well as FOAM show that Jaypee's capacity to act - though it promoted the event, was  
185 extremely restricted. At all material times, FOWC had access - exclusively, to the circuit, and all the spaces where the teams were located. Jaypee created the circuit for the purposes of the event and other events; yet, during the event, i.e. the F1 Championship, no other event was possible.

190 Did FOWC carry on business and if so, did it carry on business and commercial activity in India?

56. It is quite apparent that save a limited class of rights (those relating to paddock entry, ticketing, hospitality at the venue and a restricted class of advertising), all commercial  
195 exploitation rights vest exclusively with FOWC. FOWC did accept them and was entitled to charge fees or such other consideration as it deemed appropriate for the recording, telecasting, broadcasting and creation of internet and media rights, including data transmission, and all other such commercially exploitable rights. In addition, FOWC charged, by Clause 24 of RPC-2011, a fee of US\$ 40 million annually from Jaypee, in relation to the  
200 race event or FIA F1 Championship event conducted on the circuit in India.

57. It is also noteworthy that by virtue of the Concorde Agreement, the teams have undertaken to engage in every race - with the added condition that each team would involve  
205 two cars for every race in any circuit chosen by FOWC. RPC-2011 also assured that the FOWC would ensure that such team did in fact participate in the event in the Budh Circuit. This is an important fact- which shows that the entire event, i.e. F1 FIA Championship in the circuit was organized and controlled in every sense of the term by FOWC. The peculiarity of this activity is such that FOWC's dominant role is evident; it is the moving spirit with all  
210 pervasive presence and control through the teams, which are contracted to participate in the event. In fact, it creates the event, i.e. the race. Each actor, such the promoter / Jaypee, the racing teams, the constructing teams and the other affiliates, plays a part in the event. FOWC's participation and the undertakings given to it by each of these actors, who are

215 responsible for the event as a whole, brings out its central and dominant role. If Jaypee is the  
event promoter, which owns the title to the circuit in the sense that it owns the land, FOWC  
is the commercial rights owner of the event, by virtue of the Concorde Agreement. FIA  
parted with all its rights over each commercial right it possessed to FOWC. The bulk of the  
revenue earned is through media, television and other related rights. The terms or the basis  
of those rights is the event. The conceptualization of the event and the right to include it in  
220 any particular circuit, such as Buddh Circuit is that of the FOWC; it decides the venue and  
the participating teams are bound to it to compete in the race in the terms agreed with the  
FOWC. All these, in the opinion of the Court, unequivocally, show that the FOWC carried on  
business in India for the duration of the race (and for two weeks before the race and a week  
thereafter). Every right, which it possessed was monetized; the US\$ 40 million which Jaypee  
225 paid was only a part of that commercial exploitation by the FOWC.

## **Legislative Background**

230 India-UK treaty

### **ARTICLE 5**

#### **PERMANENT ESTABLISHMENT**

235 1. For the purposes of this Convention, the term "permanent establishment" means a fixed  
place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially :

- (a) a place of management;
- 240 (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) premises used as a sales outlet or for receiving or soliciting orders;
- 245 (g) a warehouse in relation to a person providing store facilities for others;
- (h) a mine, an oil or gas well, quarry or other place of extraction of natural  
resources;

250 (i) an installation or structure used for the exploration or exploitation of natural resources;

(j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than six months, or where such project or supervisory activity, being 255 incidental to the sale of machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment;

(k) the furnishing of services including managerial services, other than those 260 taxable under Article 13 (Royalties and fees for technical services), within a Contracting State by an enterprise through employees or other personnel, but only if:

(i) activities of that nature continue within that State for a period or periods aggregating more than 90 days within any twelve-month period; or

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(ii) services are performed within that State for an enterprise within the meaning of paragraph 1 of Article 10 (Associated enterprises) and continue for a period or periods aggregating more than 30 days within any twelve-month period:

270 Provided that for the purposes of this paragraph an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of, mineral oils in that State.

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3. The term "permanent establishment" shall not be deemed to include:

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

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(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

285 (c) *the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;*

(d) *the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;*

290 (e) *the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information or for scientific research, being activities solely of a preparatory or auxiliary character in the trade of business of the enterprise. However, this provision shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purpose or purposes other than the purposes*  
295 *specified in this paragraph;*

(f) *the maintenance of a fixed place of businesses solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of the paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or*  
300 *auxiliary character.*

4. *A person acting in a Contracting State for or on behalf of an enterprise of the other contracting State - other than an agent of an independent status to whom paragraph (5) of this Article applies, shall be deemed to be a permanent establishment of that enterprise in*  
305 *the first mentioned State if:*

(a) *he has, and habitually exercises in that State, an authority to negotiate and enter into contracts for or on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or*  
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(b) *he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise for or on behalf of the enterprise; or*

315 (c) *he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and the enterprises controlling, controlled by, or subject to the same common control, as that enterprise.*

320 5. An enterprise of a Contracting State shall not be deemed to have a permanent  
establishment in the other Contracting State merely because it carries on business in that  
other State through a broker, general commission agent or any other agent of an  
independent status, where such persons are acting in the ordinary course of their business.  
However, if the activities of such an agent are carried out wholly or almost wholly for the  
enterprise (or for the enterprise and other enterprises which are controlled by it or have a  
325 controlling interest in it or are subject to same common control) he shall not be considered to  
be an agent of an independent status for the purposes of this paragraph.

330 6. The fact that a company which is a resident of a Contracting State controls or is  
controlled by a company which is a resident of the other Contracting State, or which carries  
on business in that other State (whether through a permanent establishment or otherwise),  
shall not of itself constitute either company a permanent establishment of the other.

335 7. For the purposes of this Article the term "control", in relation to a company, means the  
ability to exercise control over the company's affairs by means of the direct or indirect  
holding of the greater part of the issued share capital or voting power in the company.

### **ARTICLE 13**

#### **ROYALTIES AND FEES FOR TECHNICAL SERVICES**

340 1. Royalties and fees for technical services arising in a Contracting State and paid to a  
resident of the other Contracting State may be taxed in that other State.

345 2. However, such royalties and fees for technical services may also be taxed in the  
Contracting State in which they arise and according to the law of that State; but if the  
beneficial owner of the royalties or fees for technical services is a resident of the other  
Contracting State, the tax so charged shall not exceed :

(a) in the case of royalties within paragraph 3(a) of this Articles, and fees for  
technical services within paragraphs 4(a) and (c) of this Article,—

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(i) during the first five years for which this Convention has effect ;

(aa) 15 per cent of the gross amount of such royalties or fees for technical services when the payer of the royalties or fees for technical services is the Government of the first-mentioned Contracting State or a political sub-division of that State, and

(bb) 20 per cent of the gross amount of such royalties or fees for technical services in all other cases; and

(ii) during subsequent years, 15 per cent of the gross amount of such royalties or fees for technical services; and

(b) in the case of royalties within paragraph 3(b) of this Article and fees for technical services defined in paragraph 4(b) of this Article, 10 per cent of the gross amount of such royalties and fees for technical services.

3. For the purposes of this Article, the term "royalties" means :

(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work, including cinematography films or work on films, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; and

(b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, other than income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic.

4. For the purposes of paragraph 2 of this Article, and subject to paragraph 5, of this Article, the term "fees for technical services" means payments of any kind of any person in consideration for the rendering of any technical or consultancy services (including the provision of services of a technical or other personnel) which :

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3(a) of this article is received ; or

390 (b) are ancillary and subsidiary to the enjoyment of the property for which a payment described in paragraph 3(b) of this Article is received ; or

(c) make available technical knowledge, experience, skill know-how or processes, or consist of the development and transfer of a technical plan or technical design.

395 5. The definition of fees for technical services in paragraph 4 of this Article shall not include amounts paid :

400 (a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property, other than property described in paragraph 3(a) of this Article;

405 (b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships, or aircraft in international traffic;

(c) for teaching in or by educational institutions ;

410 (d) for services for the private use of the individual or individuals making the payment ; or

(e) to an employee of the person making the payments or to any individual or partnership for professional services as defined in Article 15 (Independent personal services) of this Convention.

415 6. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right, property or  
420 contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business profits) or Article 15 (Independent personal services) of this Convention, as the case may be, shall apply.

425 7. Royalties and fees for technical services shall be deemed to arise in a Contracting State  
 where the payer is that State itself, a political sub-division, a local authority or a resident of  
 that State. Where, however, the person paying the royalties or fees for technical services,  
 whether he is a resident of a Contracting State or not, has in a Contracting State a  
 permanent establishment or a fixed base in connection with which the obligation to make  
 430 payments was incurred and the payments are borne by that permanent establishment or  
 fixed base then the royalties or fees for technical services shall be deemed to arise in the  
 Contracting State in which the permanent establishment or fixed base is situated.

8. Where, owing to a special relationship between the payer and the beneficial owner or  
 435 between both of them and some other person, the amount of the royalties or fees for  
 technical services paid exceeds for whatever reason the amount which would have been paid  
 in the absence of such relationship, the provisions of this Article shall apply only to the  
 last-mentioned amount. In that case, the excess part of the payments shall remain taxable  
 according to the law of each Contracting State, due regard being had to the other provisions  
 440 of this Convention.

9. The provisions of this Article shall not apply if it was the main purposes or one of the main  
 purposes of any person concerned with the creation or assignment of the rights in respect of  
 which the royalties or fees for technical services are paid to take advantage of this Article by  
 445 means of that creation or assignment.

Section 9(1)(vi) of the Income Tax Act, 1961

(vi)	income by way of royalty <sup>53</sup> payable by—
(a)	the Government ; or
(b)	a person who is a resident, except where the royalty is payable in respect of any right property or information used or services utilised for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or
(c)	a person who is a non-resident, where the royalty is payable in respect of any right property or information used or services utilised for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India :

	<p><b>Provided</b> that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property, if such income is payable in pursuance of an agreement made before the 1st day of April, 1976, and the agreement is approved by the Central Government :</p>
	<p><a href="#">54</a><b>[Provided further</b> that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum payment made by a person, who is a resident, for the transfer of all or any rights (including the granting of a licence) in respect of computer software supplied by a non-resident manufacturer along with a computer or computer-based equipment under any scheme approved under the Policy on Computer Software Export, Software Development and Training 1986 of the Government of India.]</p>
	<p>Explanation 1.—For the purposes of the <a href="#">55</a>[first] proviso, an agreement made on or after the 1st day of April, 1976, shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date; so, however, that, where the recipient of the income by way of royalty is a foreign company, the agreement shall not be deemed to have been made before that date unless, before the expiry of the time allowed under sub-section (1), or sub-section (2) of section 139 (whether fixed originally or on extension) for furnishing the return of income for the assessment year commencing on the 1st day of April 1977, or the assessment year in respect of which such income first becomes chargeable to tax under this Act, whichever assessment year is later, the company exercises an option by furnishing a declaration in writing to the <a href="#">56</a>[Assessing] Officer (such option being final for that assessment year and for every subsequent assessment year) that the agreement may be regarded as an agreement made before the 1st day of April, 1976.</p>
	<p>Explanation 2.—For the purposes of this clause, "royalty" means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for—</p>
(i)	<p>the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property ;</p>
(ii)	<p>the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar</p>

	property ;
(iii)	the use of any patent, invention, model, design, secret formula or process or trade mark or similar property ;
(iv)	the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill ;
(iva)	the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;]
(v)	the transfer of all or any rights (including the granting of a licence) in respect of <a href="#">58</a> any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films ; or
(vi)	the rendering of any services in connection with the activities referred to in sub-clauses (i) to <a href="#">57</a> [(iv), (iva) and] (v).
	<a href="#">59</a> [Explanation 3.—For the purposes of this clause, "computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customized electronic data.]
	<a href="#">60</a> [Explanation 4.—For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.
	Explanation 5.—For the removal of doubts, it is hereby clarified that the royalty includes and has always included consideration in respect of any right, property or information, whether or not—
(a)	the possession or control of such right, property or information is with the payer;
(b)	such right, property or information is used directly by the payer;
(c)	the location of such right, property or information is in India.
	Explanation 6.—For the removal of doubts, it is hereby clarified that the expression "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable optic fibre or by any other similar technology, whether or not such process is secret;]

