

1. **In view of amendment effective from 11-2-1994 to DTAA between India and UK, managerial services are not covered in definition of 'FTS', moreover The Treaty was amended with effect from 11-2-1994 and 'managerial services' was taken out from the ambit of FTS and a clause relating to 'make available' was inserted saying that in order to qualify as FTS such services and as such technical or consultancy service, if they do not meet criterion of 'make available', cannot be treated as FTS.**
India-UK Tax Treaty dated 11-11-1981 was amended with effect from 11-2-1994. Under article 13(4) of the Treaty, dated 11-11-1981 the FTS meant payments of any kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personnel services mentioned in article 15 (Independent Personnel Services), in consideration for services of a managerial, technical or consultancy in nature, including the provision of services of technical or other personnel. The Treaty was amended with effect from 11-2-1994 and 'managerial services' was taken out from the ambit of FTS and a clause relating to 'make available' was inserted saying that in order to qualify as FTS such services should make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design. Therefore, after the amendment effective from 11-2-1994 managerial services are not covered in the definition of 'FTS' and even the technical or consultancy services, if they do not meet the criteria of 'make available', cannot be treated as FTS. In this case the services provided by both agreements are managerial in nature only. The services under agreement No. 1 relate to review by GD and general guidance given by him on financial, operational, human resource, setting up targets and performance appraisal related matters. GD is providing these services from the UK mainly, his visits during a year are generally for short duration having aggregate number of days of visit in a year never exceeding 30 days. The applicant has provided simple e-mails sent by Director to MTL India which shows that his services generally related to human resource matters, cost control, fund management, quality and design reviews *etc.* are routine managerial activities and cannot be classified as technical or consultancy services. This Authority had ruled in the case of *Invensys Systems*, In re 317 ITR 438 (AAR - New Delhi) that even though some of the services may have the trappings of technical or consultancy service, looking at the nature and the predominant nature of the services, they primarily fall under the category of managerial services. Similar is the case in respect of services provided by Director. Moreover, by providing such services Director is not making available any technical knowledge of enduring benefit which would enable Indian company to apply them on their own in future. **Measurement Technology Ltd. United Kingdom, In re [2015] 376 ITR 461 (AAR-New Delhi)**

2. **A low risk captive software service provider cannot compared to high risk bearing companies.** After hearing rival contentions, perusing the papers on record and orders of authorities below, the submission of the assessee that Wipro Technology Services Ltd. cannot be considered as a comparable, in view of the binding judgment of the High Court in the assessee's own case for the year 2006-07 which was followed by the Coordinate Bench of the Tribunal in the assessee's own case for the year 2008-09 is upheld. Consistent with the view taken therein the Assessing Officer is directed to exclude Wipro Technology Services Ltd. as a comparable and recompute the arm's length price. No other issue has been argued by the assessee for the reason that the assessee believes, it would get total relief if this comparable of Wipro Technology Services Ltd. is eliminated. ***Agnity India Technologies (P.) Ltd. v. DCIT [2015] 154 ITD 312 (Delhi-Trib)***