



**BACKGROUND** The controversy regarding determining the nature of software payment and pursuant classification as “Royalty” or “Business Income” and its resultant taxability under the Income-tax Act, 1961 (“the Act”) read with the provisions of the tax treaties has been ongoing for decades. Since the introduction of Clause (vi) dealing with income by way of “royalty” in Section 9(1) by the Finance Act, 1976, one has witnessed several changes to the provisions of the Act, including the landmark amendments made by the Finance Act, 2012 (with retrospective effect from 1 April 1976). The amendment to the definition of the term “Royalty” introduced by the Finance Act, 2012 further widened the gap between the said definition under the Act vis-à-vis under the tax treaties. The definition.....