Definition:

As per many DTAAs, the term 'royalties' means:

- payments of any kind received as a ***consideration for the use of, or the right to use***, any copyright or a literary, artistic, or scientific work, including cinematograph films or work on film, 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, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; and
- payments of any kind received as a ***consideration for the use of, or the right to use,*** any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(*c*) or 3 of Article 8.

In short it can be noticed that more or less royalty as per the above definition is nothing but consideration paid for the use of or providing the right to use of a list of items.

As per Act, the term 'royalty' is defined in an exhaustive manner which *includes* consideration for:

- ***transfer of any rights to use*** in respect of patent, *invention*, model, design, secret formula or process or trade mark or similar property;
- ***imparting of any information*** concerning working of or use of patent, *invention*, model, design, secret formula or process or trademark or similar property

Examples:

Product	Underlying Content	What does Licensee get?	What does Purchaser get?
Medicines/Drugs	Patent	Right to manufacture	Ownership of medicine
T.V. Programme	Right to Telecast	Right to telecast	Entertainment
Books	Copyright	Right of reproduction	Ownership of book
P & M	Know-how/ Experience	License to manufacture and sell.	Ownership of process, skill, etc.,

Receipts forms Royalty

Receipts forms Price

From above the following simple points can be summarized w.r.t 'Royalty':

- It is result of owner's skill, effort, exertion, intellect and/or suffering.
- Owner's possession; usually constitutes his tool of trade.
- Not available publicly; possessed secretly.
- May or may not be registered / protected.
- Grantee is permitted to do what otherwise would be infringement and enabled to do what owner could have done.

India – USA DTAA:
Article 12 : Royalties and fees for included services *(As adapted and summarized)*

Royalties and fees for included services arising in *India* and paid to a resident of U*SA* may be taxed in *USA*.

- However, such royalties and fees for technical services may also be taxed in *India* [the State in which they arise] and according to the law of *India*; but if the beneficial owner of the royalties ………. is a resident of *USA*, the tax so charged shall not exceed…….. 15 per cent of the gross amount of such royalties.
- Treaty, almost always taxes royalty income on gross basis.
- Domestic law rate is 10% (plus SC) if the agreement is after 31st May, 2005.
- However different rules may apply when royalty income is effectively connected with assets or resources belonging to the Permanent Establishment (PE). Tax at normal rate on PE income net of expenses.

Discussion

✓ **Alienation of right**

Mr A owns a copyright in a software which he licenses to Mr B (say for a particular area) and allows Mr B to make copies and distribute. Therefore, payment by Mr B to Mr A for above is taxable as royalty.

✓ **Sale of Business Information Reports**

- Taxability of payments for standardized 'Business Information Reports' publicly available on the Internet upon payment of subscription charges. Such reports typically provide factual information about a company such as location, existence, operation, financial condition, pending litigation, etc., along with rating of the company.
- Even though such reports are copyright protected, payments for purchase of such reports are akin to payments for copyrighted article and not constituting "royalty". *[Dun & Bradstreet Espana S.A. 272 ITR 99 (AAR) and In re. ABC Ltd 284 ITR 1 (AAR)]*

✓ **Royalty income does not arise in India if there is no economic link between the payment of royalties and PE**

- NR Co. enters into an agreement with another NR Co. for rights to broadcast cricket matches in licensed territories which included India.
Held that royalty income does not arise in India in accordance with the India-Singapore tax treaty as there was no existence of an economic link between the payment of royalties and PE.

- Therefore mere existence of PE of a non-resident is not sufficient for royalty to arise in India. If there is no economic link between the liability for payment of royalties and the PE and if the PE does not bear the cost of the payment, the royalty cannot be said to be "in connection" with the PE or "borne by" the PE as under article 12(7).
[SET Satellite (Singapore) Pte Ltd v. ADIT (ITA No. 7349/Mum/2004)]

✓ **Payment received for sale of copyright article**

Held that the payment received by the foreign Co. towards the sale of copyright-article does not amount to royalty within the provisions of Article 12(3) of the India-USA tax treaty.
[DDIT v. Alcatel USA International Marketing Inc [2010-TII-123-ITAT-MUM-INTL]]