

AWS Cloud Payments: TDS Under Section 195 After the Supreme Court Development

Access to technology is not the same as transfer of technology.

This is a ` note for Indian companies paying for cloud infrastructure and SaaS, covering:

- a. What the Delhi High Court held, and what the Supreme Court did and did not decide;*
- b. The service-versus-right-to-use principle, and the "make available" test for FIS;*
- c. Where the principle helps, and where the facts still create exposure; and*
- d. Four limitations — treaty, contract, PE and GST — to check within your own organization*

What Happened, and the Principle It Settles

Indian customers paid **Amazon Web Services Inc., USA** for hosting, bandwidth and cloud computing without deducting tax at source. On Snapdeal's remittances, the Assessing Officer reopened AY 2014-15 and AY 2016-17, treating the receipts as royalty or fees for included services (FIS) on the footing that the customers were using AWS's servers, software and APIs. The ITAT rejected that view, the Delhi High Court affirmed the ITAT on 29 May 2025, and the Supreme Court dismissed the Revenue's Special Leave Petitions on 4 August 2026.

One correction to the headline

The Supreme Court merely dismissed the Revenue's SLPs. Under **Kunhayammed v. State of Kerala**, (2000) 6 SCC 359, a dismissal without reasons lays down no law under Article 141. So the Delhi High Court's AWS judgment — **CIT (IT)-1 v. Amazon Web Services Inc.**, 2025:DHC:4622-DB (29 May 2025) — is now final. It is in line with **Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT**, (2021) 432 ITR 471 (SC); **Salesforce.com Singapore Pte. Ltd.** (Delhi HC); **Telstra Singapore Pte. Ltd.**, (2024) 467 ITR 302 (Delhi); and **Urban Ladder Home Decor Solutions (P.) Ltd.**, (2025) 475 ITR 518, which also involved AWS payments.

Principle 1 — Using a technology-enabled service is not obtaining the right to use the technology

AWS owns and operates the servers, software and infrastructure. The customer stores data, runs applications and calls APIs, but receives no ownership or control of the infrastructure, no source code and no ability to exploit the IP commercially. The Court held that "use or right to use" equipment cannot be stretched merely because the provider uses sophisticated equipment to render its service: the infrastructure is used **by AWS to provide the service**, not handed to the customer.

Principle 2 — A technical service is not technology "made available"

AWS also supplied configuration guidance, cloud engineers and technical account managers, which the Department said was plainly technical and therefore FIS. That is not enough under Article 12(4)(b) of the India-US DTAA, which requires technical knowledge, skill, know-how or processes to be **made available** to the customer. Helping a customer use the platform does not transfer the technology; the customer must acquire the technical ability, not merely enjoy the benefit of a sophisticated service.

Note: Standard cloud and SaaS payments to an eligible treaty resident can fall outside royalty and FTS/FIS where the provider retains control of its infrastructure and IP, no technology is made available, and there is no relevant Indian permanent establishment.

Illustration: An Indian company pays ₹1.20 crores a year to AWS, USA for hosting and bandwidth. On these facts no tax need be withheld under Sec. 195 of the Act — but the standard agreement, a valid TRC, Form 10F and a no-PE declaration should be kept on record, and GST continues to apply under reverse charge.

Applying It, and Four Limitations

The exercise is a **service-versus-right analysis** for each payment, not a blanket conclusion for a class of vendor.

Indian company’s transaction	Effect of the AWS principle
Compute, storage, database and bandwidth from a US cloud provider	Strong case for no royalty or FIS — the classic fact pattern
Standardised foreign SaaS, CRM or ERP accessed entirely online	Strong support — the customer obtains no provider IP
Dedicated server placed exclusively under the customer’s control	Higher risk — begins to look like a right to use equipment
Source code, or rights to reproduce or sub-license software	Not protected — could still be royalty
Customised design or know-how enabling the customer to perform it independently	Possible FIS — the “make available” test may be met

A worked example

Indian Tech Pvt Ltd pays a US vendor USD 300,000 a year for compute, storage, bandwidth and standard support. The servers stay with the vendor, no source code or sublicensable IP passes, and a valid TRC is furnished with no PE in India: post-AWS, the payment stands on materially stronger ground as a service. Change one fact — the vendor builds a proprietary deployment architecture, trains Indian Tech’s engineers and hands over documentation sufficient to run the process independently — and that component needs a fresh FIS analysis.

Four limitations to check within your organisation

- **The treaty matters.** This was a US resident, and Article 12 of the India-US DTAA carries the “make available” requirement. Check the contracting entity, its residence, TRC and treaty entitlement for every payment.
- **The contract matters.** AWS retained all rights, title and interest, the customer receiving only a limited, non-transferable right of access. The label “cloud service” is not conclusive.
- **PE was not decided.** None was alleged, so the question was royalty and FIS alone. A provider’s Indian personnel or arrangements can raise the issue independently.
- **GST is separate.** Where the import-of-services conditions are met, IGST is payable under reverse charge with eligible credit.

Note: Two steps follow for Indian payers: review cloud and SaaS contracts against the rights-retained language the Court found decisive, and re-examine Form 15CA / 15CB positions and the documentation supporting treaty eligibility.

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