

JUST IN...

- Applicant–Russian company is not liable to pay tax under provisions of the Income–tax Act read with India – Russia DTAA in respect of amount received from NTPC for execution of offshore supply contract as all transactions took place outside India; materials were shipped outside India, title and property passed outside India and payment was received outside India
- Demarcated space in warehouse of Independent Service Provider (ISP) constitutes fixed place of business within meaning of Article 5.1 of Indo–Singapore DTAA
- When notice is served through Courier extra caution is required; caution has to be necessarily in the form of proper identification of the person upon whom the notice is service
- Transfer Pricing: TNM method requires comparison of net profit margins and not operating margins of enterprises
- SEZs : Procurement, Import and Export of Prohibited and Restricted Goods

DIRECT TAX LAWS

FROM AAR

- » **APPLICANT-RUSSIAN COMPANY IS NOT LIABLE TO PAY TAX UNDER PROVISIONS OF THE INCOME-TAX ACT READ WITH INDIA – RUSSIA DTAA IN RESPECT OF AMOUNT RECEIVED FROM NTPC FOR EXECUTION OF OFFSHORE SUPPLY CONTRACT AS ALL TRANSACTIONS TOOK PLACE OUTSIDE INDIA; MATERIALS WERE SHIPPED OUTSIDE INDIA, TITLE AND PROPERTY PASSED OUTSIDE INDIA AND PAYMENT WAS RECEIVED OUTSIDE INDIA**

The clauses in the offshore supply contract Agreement regarding transfer of ownership, the payment mechanism in the form of letter of credit which ensures the credit of the amount in foreign currency to the applicant's foreign bank account on receipt of shipment advice and the insurance clause would go to establish that the transaction of sale and the concomitant transfer of title took place outside the Indian territory; the documents relating to a sample

transaction filed by the applicant i.e. the certificate of origin, the bill of lading, the bill of entry as well as the commercial invoice reinforces the conclusion that the ownership and property in goods passed outside India.

AUTHORITY FOR ADVANCE RULINGS(INCOME-TAX), NEW DELHI

Joint Stock Company Foreign Economic Association “Technopromexport”, In re

AAR No. 827 of 2009

February 25, 2010

R U L I N G

Per Shri J. Khosla, Member:

The applicant is a company incorporated in Russia and also is tax resident of that country. It is one of the leading companies in the field of power project construction and export of electric power and is further engaged in the business of construction and commissioning of power project. In response to the tender floated by the National Thermal Power Corporation (NTPC), the applicant successfully bid the tender and three separate following contracts are entered into with the NTPC: 1.(1) Offshore supply contract - Contract No. CS-9558-102-2-FC-COA- 4520 dated 25.3.2005. ('Offshore supply contract No. 4520) for design, engineering, manufacture, inspection and testing at supplier's works, packing, forwarding and dispatch from manufacturer's works to the port of disembarkation in India of all offshore plant & equipment including mandatory spares.

(2) Onshore supply contract – Contract No. CS-9558-102-2-SC-COA- 4521 dated 25.3.2005.

(3) Onshore services contract – Contract No. CS-9558-102-2- TC-COA-4522 dated 25.3.2005 In this case we are concerned only with the offshore supply contract No. 4520 and therefore, it is unnecessary to delve into other contracts. The value of the offshore supply contract is US\$ 391,121,452 (Rs. 17,084,185,023/-) to be paid in foreign currency in execution of off-shore supply contract. According to the applicant, the transaction of off-shore plant and equipment etc. was completed outside India and that the property in goods passed to NTPC outside India and no portion of income from the off-shore supply accrues or arises to the applicant in India or received from the NTPC within India and therefore it is not liable to pay any tax under the Income-tax Act.

2. Against this background the applicant seeks the ruling of this Authority on the following question in order to know its tax liability:

(1) On the facts and circumstances of the case, whether the amounts received/receivable by Joint Stock Company Foreign Economic Association “Technopromexport” ('Applicant' or 'JSC Technopromexport') from National Thermal Power Corporation Limited ('NTPC') under Contract No. CS-9558-102-2-FC-COA-4520 dated 25 March 2005 ('Offshore supply contract no. 4520'), for Offshore supply of all plant and equipment including mandatory

