

Global Tax Update

India

Deloitte Tohmatsu Tax Co.

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1. Offshore supply taxable in India

The Tribunal¹ rendered its decision² that taxpayer engaged in supply of advanced equipment to telecom companies (based on facts) had business connection and permanent establishment in India. Taxability in India of offshore supply (i.e. sale of goods from outside India) has been a subject of litigation. This ruling affirms the principle that where the risk of rejection of supply is in India, there is extension of business of the taxpayer in India in respect of the supply of equipment to India. Taxpayers undertaking sale of goods from outside India may want to evaluate the impact of the said ruling on the facts of their specific cases.

2. Legal fees paid to an Indian partnership firm by Japanese company taxable as fees for technical service under India-Japan tax treaty

The Tribunal³ held⁴ that Article 14 of the India-Japan tax treaty (relating to independent personal services) deals with taxation of individuals only and legal fees paid to a partnership firm are taxable as fees for technical services under Article 12 of the India-Japan tax treaty.

3. External Trade Facilitation-Export of Goods and Services

The Reserve Bank of India ("RBI") has announced several measures pertaining to external trade to enhance export competitiveness and to help exporters and importers cope with the challenges posed by the COVID-19 pandemic.

Continuing with these efforts, RBI announced further liberalisation in policies governing export transactions⁵ for facilitating external trade – export of goods and services. An RBI circular provides additional authority to Authorized Dealer Banks (AD banks) for write-off of unrealised export bills, set-off of export receivables against import payables, refund of export proceeds, etc. Key amendments are as under:

"Write-off" of Unrealised Export Bills:

Presently, AD banks are permitted to allow write-off of unrealised export bills up to a certain limit beyond which the AD banks are required to seek directions from RBI.

With a view to simplifying the procedure, reduce the time taken for according approvals and thereby reducing the regulatory cost, the RBI has now delegated the power of allowing write-off to AD banks. AD banks can now approve write-off of export receivables without any limit in specified circumstances, viz., cases where overseas buyer has become insolvent or the settlement of the export proceeds to be received, has happened through the Indian embassy, Foreign Chamber of Commerce or similar organisations or if the goods had been destroyed by port/Customs/health authorities in the importing country.

¹ Delhi Bench of the Income-tax Appellate Tribunal

² Huawei Technologies Co Ltd v. ADIT [2020] 122 taxmann.com 130 (Delhi ITAT)

³ Mumbai bench of the Income-tax Appellate Tribunal

⁴ Amarchand & Mangaldas & Suresh A Shroff & Co. v. ACIT ITA No. 2613/Mum/19 (Mum ITAT)

⁵ through A.P. (DIR Series) Circular No. 8 dated 04 December 2020 (the 'Circular')

While calculating the percentage limit for write-off, the total export proceeds realised during the calendar year preceding the year in which the write-off is being done, has to be reckoned and considered. The exporter must be a regular customer of the AD bank for minimum period of 6 months and fully compliant with KYC/AML guidelines.

Set-off of Export Receivables against Import Payables:

Presently, AD banks allow exporters /importers to set-off their outstanding export receivables against outstanding import payables from/to the same overseas buyer/supplier.

RBI has now allowed AD banks to approve requests of Indian exporters / importers to set-off export receivables against import payables in respect of goods and services with their overseas group/associate companies, either on a net basis or gross basis, through an in-house or outsourced centralised settlement arrangement. Such an arrangement should be operationalised/supervised through/by one AD bank only. Set-off of export receivables against goods is not permitted against import payables for services and vice versa. The circular also includes other conditions for compliances for availing of this relaxation.

Refund of Export Proceeds:

Presently, AD banks through whom the export proceeds were originally realised, could consider requests for refund of export proceeds of goods exported from India and re-imported on account of poor quality. It has now been decided to allow AD banks to consider refund requests without insisting on re-import of goods, which had been auctioned/ destroyed by port/ Customs/ health authorities/ any other accredited agency in the importing country, subject to production of documentary evidence and compliance with conditions specified in the circular.

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