

## **Fee paid for conducting market research & advising on new technological developments in China is FTS**

**Summary – The Delhi AAR in a recent case of Guangzhou Usha International Ltd., (the Assessee) held that where Chinese subsidiary of Indian holding company provides services in China in connection with procurement of goods by Indian company from Chinese vendors, specialized services of market research and information on new developments in China with regard to technology/product/process upgrade etc., fees received, by Chinese company is chargeable to tax in India to extent of full amount received as fees for technical services at the rate of 10% of gross amount**

### **Facts**

- The applicant is a wholly owned Chinese subsidiary of an Indian holding company UIL.
- The appellant has sought advance ruling on the following questions:

Whether service fee received/receivable by it from UIL for providing services in connection with procurement of goods by UIL from vendors in China and other related services provided in China is taxable in India ?

If taxable, whether same is chargeable to the extent of full amount received by it or only to the extent of mark up received at 10 percent over and above the actual cost incurred by it in providing services in China?

If taxable, what would be the nature of the service fees for the purpose of taxability and what rate of income tax same will be chargeable?

### **RULINGS OF AAR**

- The applicant is not only identifying the products but also generating new ideas for UIL after conducting market research. It is also evaluating the credit, organization, finance, production facility etc. and based on this evaluation it is giving advice in the form of a report to UIL.
- Such evaluation can be given only by an expert in the specific area. The applicant company is also providing information on the new developments in China with regard to technology/product/process upgrade. These are specialized services requiring special skill, acumen and knowledge. These services are definitely in the nature of consultancy services.

- As UIL was unable to do this on its own and could not find any professional in India for these purposes, it had to approach the applicant located in China, who offered their services.
- The applicant had the skill, acumen and knowledge in the specialized field of evaluation of credit, organization, finance and production facility of an organization, in conducting market research, in giving expert advice for improvement of high quality of standards, advising on new development in China with regard to technology/product/process up gradation.
- The UIL asks for advice from the applicant and refer to the source of information provided by the applicant. The nature of these services in a specialized field would surely come within the ambit of the term 'consultancy services'.
- Following the decision of AAR in DANFOSS Industries Private Limited (AAR 606 to 2002) and Timken India Limited (AAR No.617 of 2003) entire amount received by appellant was liable to be taxed in India and accordingly the applicant was obliged to withhold Income-tax at appropriate rate. Thus rate of tax is 10% on the gross amount under the DTAA.

#### **CONCLUSION**

- The amount of service fees received by the applicant from UIL for providing consultancy services are taxable in India.
- The service fee received by the applicant is chargeable to tax to the extent of full amount received by it.
- The service fee received is taxable in India as fees for technical services at the rate of 10% of the gross amount.