CIRCULAR

Sub: Correct Deduction of Tax at Source (TDS) and its Timely Payment in cases of Works Contracts

1. Attention is invited to Section 36A of Delhi Value Added Tax (DVAT) Act, 2004 which provides for deduction of tax at source (TDS) on account of VAT liability on execution of works contract and its timely deposition in appropriate Government treasury by every person, including Central/State Governments, Union Territory Administrations, Government Departments including PWD, CPWD etc., Government Undertakings, Government Authorities/Boards, Local Bodies, Railways, Cantonment Boards, Hospitals etc., who is responsible for making any payment to any contractor/operator for execution of Works Contract.

2. Works contract is an integrated contract for supply of goods, and labour/services at a lumpsum price, and is distinct from normal sale of goods. In normal sale, the contractor transfers ascertained goods to contractor. In works contract, the predominant intention of the parties is not sale/purchase goods but to carry out certain work that involves supply of certain goods. Works contracts in relation to any movable and immovable goods/property include the following activities:

- Civil construction, whether residential or commercial or public, including electrification, water & sewerage works, sanitary works, etc.
- Fabrication & fixing of shutters/doors/gates, windows/grills, furniture, fixtures, fitting outs and other similar contracts.
- Flooring, plastering, white-washing, painting, polishing, Carpentry, interior decoration, etc.
- Renovation/improvement and/or alteration/modification to a good/property.
- Repair & maintenance, including those of vehicles.
- Annual Maintenance Contracts (AMCs) of equipments, such as air conditioners, photocopiers, desktops, printers, lifts, etc., where contractor is responsible for supply of spare parts and other material required for repairs, etc.
- Procurement, erection, fabrication, installation, commissioning, repair & maintenance of any plant, machinery, transformers, generators, lifts, escalators, equipment, weighing machines, air conditioners, air coolers, fire-fighting systems, audio-visual systems, security systems, computer systems, EPABX/telecommunication system and other similar contracts.
- Sanitation contracts
- Construction and maintenance of green houses.
- Manufacturing and processing.
- Assembling, erection, fitting out, etc. of any good.
The liability for payment of tax vests on the contractor/ operator but the contractee is supposed to deduct TDS while making payment to contractor. In this connection, the Circular No.F.4/PA/Special Zone/T&T/2012/S09-550 dated 5 December 2012 issued by Commissioner (VAT) (enclosed) may be referred whereby general guidelines and clarifications with regard to deduction of TDS have been circulated for compliance of the DVAT Act and Rules. The rate of TDS, however, has been revised by the Government to 4% uniformly w.e.f. 16.01.2013 for all types of contractors.

3. It has been observed that many Departments/ Organisations/ Local Bodies are not strictly complying with the TDS provisions under DVAT Act. They do not deduct TDS at all, deduct it at incorrect value, do not deposit it timely, and/ or do not file timely returns. This makes them liable to penalty and interest for delayed payment, in accordance with DVAT provisions. This liability will need to be borne by the individual responsible for the same and the Government will not permit the penalty and interest payment, if any levied by the VAT Department for violation of the DVAT provisions, to be debited against the official accounts of the Departments/ Organisations/ Local Bodies. Hence, all concerned must carefully apprise themselves of the requirement under TDS provisions and comply with the same in timely manner. Also, it may be ensured as part of tender conditions that the contractor/ operator to whom a work is awarded is registered with the Department of Trade & Taxes, GNCTD and carries a valid TIN Number issued by the Department of Trade & Taxes (DTT), GNCTD.

4. In case any clarification is required the organisation may contact the Commissioner DTT. The latter would, if required, conduct workshop/ conference for the concerned officials. Also, you may appoint a Nodal Officer for your organisation who can be contacted by the VAT Department for the purpose of any clarification/ information on the TDS aspect relating to your organisation. The name, designation, office address and telephone number of Nodal Officer may be communicated to the Commissioner VAT by 31st January, 2013.

(Shtki Sinha)
Pr. Secretary (Finance)

Dated: 17/1/2013

Enclosure: As above

Copy to:

1. Principal Secretary, PWD, GNCTD
2. Principal Secretary, Power, GNCTD
3. Principal Secretary, Development, GNCTD
4. Principal Secretary, Irrigation & Flood Control Department, GNCTD
5. Principal Secretary, TTE/Higher Education, GNCTD
6. Secretary Urban Development & Director (Local Bodies), GNCTD
7. Secretary GAD
8. Secretary Health & Family Welfare, GNCTD
9. Secretary, Environment & Forest, GNCTD
10. Vice Chairman, Delhi Development Authority
11. Director General, Central Public Works Department
12. Commissioner, Transport, GNCTD
13. Chairperson, New Delhi Municipal Committee
14. Commissioner, South Delhi Municipal Corporation
15. Commissioner, North Delhi Municipal Corporation
16. Commissioner, East Delhi Municipal Corporation
17. CEO, Delhi Jal Board
18. Director Education, GNCTD
19. Managing Director, DSIIDC Ltd.
20. Managing Director, DTTDC Ltd.
21. CEO, DUSIB
22. CMD, DTC
23. Managing Director, DT&TDC
24. CMD DTL / DPCL
25. Registrar Cooperative Societies
26. All HODs Central / State Governments, Railways, Cantonment Board, Hospitals, Local Bodies / Authorities........................................................................................................
GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE & TAXES
OFFICE OF THE COMMISSIONER VALUE ADDED TAX
VYAPAR BHAWAN, I.P. ESTATE, NEW DELHI – 110 002

CIRCULAR

Subject: Guidelines for tax deduction at source (TDS) by Government and Government Departments / Government Undertakings / Government Authorities / Boards awarding works contracts:

1. As per Section 36A of the Delhi VAT (DVAT) Act, 2004 every person, including Central / State Governments, Union Territory Administrations, Government Departments, including, PWD, CPWD, etc., Government Undertakings, Government Authorities / Boards, Local Bodies / Authorities, Railways, Cantonment Boards, Hospitals, etc., hereinafter called ‘Client’, are responsible for making any payment to any contractor / operator for Works Contract, is mandatorily liable to deduct TDS. The TDS for works contract under the DVAT Act, is in addition to the obligation of the client for TDS u/s 194C of the Income Tax Act.

2. As per Section 2(1)(zq) of DVAT Act “Works Contract” includes any agreement for carrying out for cash or for deferred payment or for valuable consideration, the construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, repair including AMCs, or commissioning of any moveable or immovable property. The term “Works Contracts” under DVAT Act refers to contracts which include material and labour, and does not include pure labour contracts.

3. Various compliances stipulated under the Delhi VAT Act are as under:
   a. Basic Exemption: Works contracts up to ₹ 20,000/- are exempt from TDS.
   b. When to deduct TDS: At time of credit of payment, whether in cash or any other mode, to the account of contractor.
   c. Rate of TDS:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Circumstances</th>
<th>Rate of TDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>If contractor, to whom payment is made, is not registered under the DVAT Act</td>
<td>4%</td>
</tr>
<tr>
<td>(ii)</td>
<td>In all other cases</td>
<td>2%</td>
</tr>
</tbody>
</table>

Note: If Commissioner, VAT, Government of NCT of Delhi issues a certificate for lower deduction of TDS against a works contract, the Contractee shall deduct TDS at such lower rate or deduct no tax as specified in certificate.

The Client is required to confirm, in writing, from the contractor whether the latter has opted for the composition scheme of the VAT Department for payment of works contract tax wherein tax rate is 3% of the entire turnover on account of works contracts executed in Delhi. In such case TDS @ 3% of the entire turnover i.e. 3% of the total awarded value on account of
upon all the assets of the person concerned and recoverable as arrears of land revenue.

4. This circular cannot be made use of for legal interpretation of provisions of law as it is clarificatory in nature. If any Client/contractor has any doubt, the matter may be referred to this office for further clarification.

(PRASHANT GOYAL)
Commissioner VAT
Government of NCT of Delhi

No. F.A/18/8/12 2012-13/17 dated 09-12-12

Dated: 09/12/12

Copy for information and with request to direct all the Drawing & Disbursing Officers under their jurisdiction for strict compliance:

1. Principal Secretary, PWD
2. Principal Secretary, Power
3. Principal Secretary, Development
4. Principal Secretary, Irrigation & Flood Control Department
5. Principal Secretary, TTE/Higher Education
6. Secretary Health & Family Welfare, Government of NCT of Delhi
7. Secretary, Environment & Forest, Government of NCT of Delhi
8. Vice Chairman, Delhi Development Authority
9. Commissioner Transport, Government of NCT of Delhi
10. Chairperson, New Delhi Municipal Committee
11. Commissioner, South Delhi Municipal Corporation
12. Commissioner, East Delhi Municipal Corporation
13. Commissioner, North Delhi Municipal Corporation
14. CEO, Delhi Jal Board
15. Director General, Central Public Works Department
16. Managing Director, DSIIDC Ltd.
17. CEO, DUSIB
18. CMD, DTC
19. Managing Director, DT&TDC
20. CMD DTI/DPCL
21. Registrar Cooperative Societies
22. All Additional Commissioners/ Joint Commissioners, Department of Trade & Taxes, GNCTD, for other Government Organisations under their jurisdiction