



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(पोत परिवहन, सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Shipping, Road Transport and Highways)

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No. 11041/217/2007-Admn

17th January, 2007

POLICY MATTERS-ADMINISTRATION/FINANCE (04/2007)

(Decision taken on Finance Division File No. NHA/F&A/2001/152)

Sub: Guidelines on Incidence of Tax on payments to Consultants in Joint Venture/association between foreign consultant and local consultants.

Policy circular no. 11041/21/2002/Admn.III dated 26th February, 2004 has been issued as a guideline for tax at source on payments to consultants, contractors and expatriate staff of the consultants.

Para B of the above circular deals with the payments to foreign and local consultant where the foreign consultants in association with the local consultants enter with an agreement with NHA for consultancy work. Following are the types of the contract generally entered into:

- i) Contracts entered into with a Joint Venture (J.V.) of the foreign consultant and local consultants.
- ii) Contracts entered with an association of foreign and local consultants.

It has been observed in number of cases that the terms of payment among the consultant are not properly defined and in some cases one of the consultants ask for the payment of the whole contract sum. As the contracts are concluded with the JV or the association of consultants the payment should either be made to the Joint Venture or to the individual consultant based on the share of input duly supported by the Memorandum of Understanding (MoU) entered in to by the consultants. As the tax/TDS rate for the foreign and local consultants are different, to ensure proper tax compliance following procedure may be followed:

- i) Total Payments inclusive of local and foreign currency component should either be made to the Joint Venture and a separate bank account of the Joint Venture should be opened. Joint Venture should obtain PAN from the income tax department, which should be submitted before the payment. Obtaining of PAN is obligatory as per Income Tax Act. **OR**
- ii) In the case of payment is required to be made to the individual consultant, the same should be specifically defined in the Memorandum of Understanding (MoU) and share of payment may be quantified in the MoU. Share of payment defined in the MoU should be in conformity with the cost estimate submitted by the consultant. MoU should also mention that (i) Joint Venture or association of the consultant is not intended for any partnership of profit sharing and it is only for pulling up the resources together to carry out the assignment (ii) Each party to the MoU is responsible for their tax compliances. Parties to the contract to whom the payments to be made as per MoU should have their own PAN, which should be indicated in the MoU documents.

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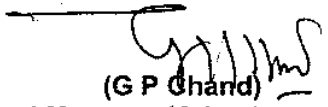
- iii) In the cases where there is a revision in the terms of payment (which should not be encouraged) subsequent to signing the contract with NHAI, the revised terms should be incorporated in the original agreement by way of an addendum to substantiate the payments made by NHAI according to the Memorandum of Understanding (MoU) signed by the Consultants.
- iv) Applicable rates of deduction of tax of source as per Income-Tax Act 1961 are as under:

Particulars	Residential Status	Rate applicable
Payments made towards fee for technical services to Consultants / Joint Venture	Resident	As per section 194J of the Income Tax Act, the rate is 5% (exclusive of surcharge and education cess)
Payments made for fees for technical services to foreign company/individual	Foreign/Non Resident Indian	As per section 195, the rate applicable is 10% in the case of contracts entered on or after 1 st June 2005 and 20% in the case of contracts entered prior to 1 st June 2005. (exclusive of surcharge and education cess)

Above rates are applicable for Financial Year 2006-07. Subsequent changes in the tax rate made in the Finance Act and notification issued from time to time will be applicable.

To ensure compliance of above, MoU may be made to form part of the agreement and the payment clause should be defined suitably.

This issues with the approval of Chairman, NHAI.


(G P Chand)
General Manager (Admn)

To :

PS to Chairman
PS/PA to all Members/CGMs/CVO
All GMs/DGMs
All PDs
Librarian/Hindi Officer