



PMC Cell – MM

Oil and Natural Gas Corporation Ltd

Corporate Materials Management

2nd Floor, Tower-A, Deendayal Urja Bhawan,

5, Nelson Mandela Marg, Vasant Kunj, New Delhi -110 070

Tel – (011)26752004 Fax – (011) 26129091

Circular No. 51/2020-cum-BL Amendment No. BL/01/122

No: MAT/ MAT/PMC/13(117)Corp tax/2020

Dated: 28.10.2020

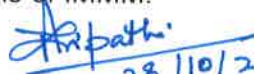
Sub: Provisions related to Corporate Tax in standard conditions

Reference is invited to various provisions on Corporate Tax in standard tender/contract conditions. Corporate Tax Department has reviewed the said provisions and based on input from CTD, the modifications have been made to the standard tender/contract conditions pertaining to Corporate Tax as per annexure-A.

Reference is also invited to provisions under para 34.9.4 of IMMM, pertaining to Corporate Tax, applicable in tax protected contracts. Said provisions stipulate that in exceptional cases where Direct Tax (es) arising under the contracts are to borne by ONGC, contracts of such nature should be entered into with the approval of Director concerned & Director (Finance).

In this context, it is clarified that in case of tax protected cases i.e., cases in which the Indian income tax liability of a non-resident Contractor is to be borne by ONGC, the higher tax liability, if any, resulting from delayed/non-submission of a Indian Income-tax Permanent Account Number (hereinafter "PAN"), TRC, Form No. 10F and/or PE particulars would increase ONGC cost. Thus, the requirement of PAN, TRC and PE particulars is more acute in cases of tax protected contracts. Therefore, before agreeing to award a tax protected contract, it may be insisted upon the non-resident contractors to submit all the requisite documents and details viz., Permanent Account Number (PAN) (or if PAN is not available the prescribed details and documents in lieu of PAN), Tax Residency Certificate (TRC), Form no. 10F and no PE confirmation within the specified time after award of the contract/work order/purchase order.

Accordingly, all concerned are advised to incorporate provision as enclosed at Annexure-B, in the contract condition of tax protected cases after obtaining approval of Competent Authority as per aforesaid provisions of IMMM.


28/10/2020
(A P Tripathi)

ED-Chief MM Services

Distribution: (Through ONGC's intranet website '<https://reports.ongc.co.in>').

All concerned may download the circular from the site. Hard copies are not distributed separately.

Copy to:

1. EO to CMD, ONGC, New Delhi.
2. CEA to Director (T&FS) / Director (Offshore) / Director (HR) / Director (Exploration)/Director (Onshore) / Director (Finance), ONGC, New Delhi.
3. CVO, ONGC, New Delhi.

Annexure-A

Clause no.	Existing Provisions	Modified Provisions	Remarks
Instruction to Bidders / Annexure-I			
12.1 (ii) of Service Contracts 13.1.2 (ii) of "Booklet MM-01"	Whether by carrying on activities in relation to its engagement by ONGC, the non-resident constitutes an Installation/Construction PE or a Service PE in India in terms of the DTAA between India and his country of tax residence?	Whether by carrying on activities in relation to its engagement by ONGC, the non-resident constitutes an Installation/Construction PE or a Service PE, <u>or a PE in any other manner</u> , in India in terms of the DTAA between India and his country of tax residence?	Underlined portion modified
-Sub-clause (vii) of clause 12.1 of "Service Contracts" -Sub-clause (vii) of clause 13.1.2 of "Booklet MM-01"	If the non-resident has an Indian Income Tax Permanent Account Number (PAN), what is that PAN?	If the non-resident has an Indian Income Tax Permanent Account Number (PAN), what is that PAN? <u>If the non-resident does not have a PAN but has a Tax Identification Number (TIN) allotted in his country of tax residence, what is that TIN?</u>	Underlined portion added
Note at the end of clause 13.1.2 of "Booklet MM-01"	Note: In pure supply cases where installation and commissioning is not involved, <u>TRC and Form 10F shall not be required to be submitted by the</u>	Note: In pure supply cases where installation and commissioning is not involved, <u>the non-resident supplier shall, at its option, submit either TRC and</u>	Underlined portion added/modified

Clause no.	Existing Provisions	Modified Provisions	Remarks
	<p>supplier. However, in such cases the authorized signatory of the non-resident supplier shall furnish following declaration, along with the bid:</p> <p>"I_____(full name of the authorized signatory) in my capacity as_____(designation of the authorized signatory) of_____(full name of the non-resident supplier) do hereby confirm that_____(full name of the non-resident supplier) does not have a business connection in India in terms of the Indian Income-tax Act, 1961, that no tax liability accrues to it in India, and should any tax liability arises in India, the same shall be to its account</p> <p style="text-align: right;">----- Signature"</p>	<p><u>Form 10F OR</u> the authorized signatory of the non-resident supplier shall furnish following declaration, along with the bid:</p> <p>"I_____(full name of the authorized signatory) in my capacity as_____(designation of the authorized signatory) of_____(full name of the non-resident supplier) do hereby confirm that_____(full name of the non-resident supplier) does not have a business connection in India in terms of the Indian Income-tax Act, 1961, that no tax liability accrues to it in India, and should any tax liability arises in India, the same shall be to its account</p> <p style="text-align: right;">----- Signature"</p>	
General Contract Conditions /Annexure-II			
Note (ii) under clause 1.7 of "Booklet MM-01"	In pure supply cases where installation and commissioning is not involved, <u>TRC and Form 10F shall not be required to be submitted by the supplier. However, in such cases the authorized signatory of the non-resident supplier shall furnish a declaration along with the bid as per 'Note' under clause 13.1.2 of Annexure-I and Note No. (iii) under clause 39.1.1 of Annexure-II.</u>	In pure supply cases, where installation and commissioning is not involved, <u>the non-resident supplier shall, at its option, furnish TRC and Form 10F OR</u> a declaration along with the bid as per 'Note' under clause 13.1.2 of Annexure-I and Note No. (iii) under clause 39.1.1 of Annexure-II.	Underlined portion added/modified
Clause 40.3 of	A non-resident Supplier i.e., a Supplier who	A non-resident Supplier i.e., a Supplier who	Underlined

Clause no.	Existing Provisions	Modified Provisions	Remarks
"Booklet MM-01"	<p>is not an Indian tax resident according to the Indian Income Tax Act, 1961, has the option to obtain on its own either (A) a Certificate u/s. 195(3) of the Income Tax Act, 1961, or (B) a Certificate u/s. 197 of the Income Tax Act, 1961, and furnish the said Certificate u/s. 195(3) or the Certificate u/s.197, as the case may be, to ONGC along with each of its Invoices. In case the non resident Contractor wishes to exercise this option, it should convey the same in writing to ONGC within 15 days from the date of issue of LOA/NOA and an option so exercised shall be final and cannot be changed during the currency of this Supply Order. In case an option is so exercised, ONGC shall deduct tax at source in accordance with the directions contained in the Certificate u/s. 195(3) or the Certificate u/s. 197, as the case may be, as in force at the point in time when tax is required to be deducted at source.</p>	<p>is not an Indian tax resident according to the Indian Income Tax Act, 1961, has the option to obtain on its own either (A) a Certificate u/s. 195(3) of the Income Tax Act, 1961, or (B) a Certificate u/s. 197 of the Income Tax Act, 1961, and furnish the said Certificate u/s. 195(3) or the Certificate u/s.197, as the case may be, to ONGC along with each of its Invoices. In case the non resident Contractor wishes to exercise this option, it should convey the same in writing to ONGC within 15 days from the date of issue of LOA/NOA and an option so exercised shall be final and cannot be changed during the currency of this Supply Order. In case an option is so exercised, ONGC shall deduct tax at source in accordance with the directions contained in the Certificate u/s. 195(3) or the Certificate u/s. 197, as the case may be, as in force at the point in time when tax is required to be deducted at source.</p> <p><u><i>If after having exercised the option to obtain and furnish a certificate u/s. 195(3) or a certificate u/s. 197, the non-resident Supplier does not furnish a certificate u/s. 195(3)/197 along with any of its invoices, if any TDS is deductible from sums payable to the non-resident supplier ONGC shall deduct TDS at the maximum marginal income-tax rate applicable to the non-resident Supplier as increased by applicable surcharge and education</i></u></p>	portion added

Clause no.	Existing Provisions	Modified Provisions	Remarks
Clause 8.5.3 of Service Contracts Clause 15.4.3 of "Booklet MM-03"	<p>A non-resident Contractor i.e., a Contractor who is not an Indian tax resident according to the Indian Income Tax Act, 1961, has the option to obtain on its own either (A) a Certificate u/s. 195(3) of the Income Tax Act, 1961, or (B) a Certificate u/s. 197 of the Income Tax Act, 1961, and furnish the said Certificate u/s. 195(3) or the Certificate u/s.197, as the case may be, to ONGC along with each of its Invoices. In case the non resident Contractor wishes to exercise this option, it should convey the same in writing to ONGC at the time of signing the Contract and an option so exercised shall be final and cannot be changed during the currency of this Contract. In case an option is so exercised, ONGC shall deduct tax at source in accordance with the directions contained in the Certificate u/s. 195(3) or the Certificate u/s. 197, as the case may be, as in force at the point in time when tax is required to be deducted at source.</p>	<p><u>cess.</u></p> <p>A non-resident Contractor i.e., a Contractor who is not an Indian tax resident according to the Indian Income Tax Act, 1961, has the option to obtain on its own either (A) a Certificate u/s. 195(3) of the Income Tax Act, 1961, or (B) a Certificate u/s. 197 of the Income Tax Act, 1961, and furnish the said Certificate u/s. 195(3) or the Certificate u/s.197, as the case may be, to ONGC along with each of its Invoices. In case the non resident Contractor wishes to exercise this option, it should convey the same in writing to ONGC at the time of signing the Contract and an option so exercised shall be final and cannot be changed during the currency of this Contract. In case an option is so exercised, ONGC shall deduct tax at source in accordance with the directions contained in the Certificate u/s. 195(3) or the Certificate u/s. 197, as the case may be, as in force at the point in time when tax is required to be deducted at source.</p> <p><u>If after having exercised the option to obtain and furnish a certificate u/s. 195(3) or a certificate u/s. 197, the non-resident Supplier does not furnish a certificate u/s. 195(3)/197 along with any of its invoices, ONGC shall deduct TDS at the maximum marginal income-tax rate applicable to the non-resident Supplier as increased by applicable</u></p>	Underlined portion added

Clause no.	Existing Provisions	Modified Provisions	Remarks
<p>-Clause 8.5.7 of Service Contracts</p> <p>-Clause 40.7 of "Booklet MM-01"</p> <p>-Clause 15.4.7 of "Booklet MM-03"</p>	<p>As per the provisions of Section 206AA of Indian Income Tax Act, 1961, <u>effective from 01.04.2010</u>, any person entitled to receive any sum or income or amount, on which tax is deductible under the provisions of Act, is required to furnish his Permanent Account Number (PAN) to the person responsible for deducting tax at source. Therefore, in case the Contractor does not furnish its PAN, CORPORATION shall deduct tax at source as provided in the Income Tax Act, 1961, or in the relevant Finance Act, or as directed in the Certificates u/s 195(3) or 197 or Order u/s. 195(2) or as per Certificate obtained in Form 15CB, as the case may be, or at such higher rate as may be required by Section 206AA of Indian Income Tax Act, 1961, from time to time.</p>	<p><u>surcharge and education cess.</u></p> <p>As per the provisions of Section 206AA of Indian Income-tax Act, 1961, any person entitled to receive any sum or income or amount, on which tax is deductible under the provisions of the Act, is required to furnish its Permanent Account Number (PAN) to the person responsible for deducting tax at source <u>failing which tax is required to be deducted at higher of the normally applicable rate and the rate prescribed by section 206AA which is presently 20%.</u></p> <p><u>The provisions of section 206AA are, however, not applicable to a non-resident recipient not having a PAN if the non-resident furnishes prescribed details and documents in lieu of PAN viz., (i) name, email ID, contact no. of the non-resident; (ii) address of the non-resident in the country of tax residence (iii) tax residency certificate of the non-resident; and (iv) Tax Identification Number (TIN) of the non-resident allotted in the country of his tax residence.</u></p> <p>Therefore, in case the CONTRACTOR does not furnish its PAN <u>(or a non-resident CONTRACTOR does not furnish its PAN or the aforesaid prescribed information and documents)</u>, CORPORATION shall deduct tax at source as provided in the Income-tax Act, 1961, or in the</p>	<p>Underlined portion added/modified</p>

Clause no.	Existing Provisions	Modified Provisions	Remarks
		relevant Finance Act, or as directed in the Certificates u/s 195(3) or 197 or Order u/s. 195(2) or as per Certificate obtained in Form 15CB, as the case may be, or at such higher rate as may be required by Section 206AA of Indian Income-tax Act, 1961, from time to time.	
Note (iii) of the Notes in respect of Tax Residency Certificate after existing clause 40.8 of "Booklet MM-01"	<p>In pure supply cases where installation and commissioning is not involved, <u>TRC and Form 10F shall not be required to be submitted by the supplier. However, in such cases the authorized signatory of the non-resident supplier shall furnish following declaration, along with the bid:</u></p> <p>"I _____(full name of the authorized signatory) in my capacity as _____(designation of the authorized signatory) of _____(full name of the non-resident supplier) do hereby confirm that _____(full name of the non-resident supplier) does not have a business connection in India in terms of the Indian Income-tax Act, 1961, that no tax liability accrues to it in India, and should any tax liability arises in India, the same shall be to its account</p> <p style="text-align: right;">----- Signature"</p>	<p>In pure supply cases where installation and commissioning is not involved, <u>the non-resident supplier shall, at its option, submit either TRC and Form 10F OR the authorized signatory of the non-resident supplier shall furnish following declaration, along with the bid:</u></p> <p>"I _____(full name of the authorized signatory) in my capacity as _____(designation of the authorized signatory) of _____(full name of the non-resident supplier) do hereby confirm that _____(full name of the non-resident supplier) does not have a business connection in India in terms of the Indian Income-tax Act, 1961, that no tax liability accrues to it in India, and should any tax liability arises in India, the same shall be to its account</p> <p style="text-align: right;">----- Signature"</p>	Underlined portion added/modified
New Clause to be inserted as:	No provision exists	<i>As per section 94A of Indian Income-tax Act, 1961, the Central Government may, having regard to the lack of effective exchange of information with any</i>	New provisions added

Clause no.	Existing Provisions	Modified Provisions	Remarks
<p>-Clause 8.5.9 of Service Contracts</p> <p>-Clause 40.9 of "Booklet MM-01"</p> <p>-Clause 15.4.10 of "Booklet MM-03"</p> <p>Before <u>"Notes in respect of Tax Residency Certificate"</u>,</p>		<p><i>country or territory outside India, specify by notification in the Official Gazette such country or territory as a Notified Jurisdictional Area (NJA) in relation to transactions entered into by an Indian tax resident. One of the consequences of a country or territory being specified as NJA is that TDS from a person located in such country or territory (as defined in section 94A) is required to be deducted at higher of normally applicable rate or rate specified in section 94A of the Income-tax Act, which is presently 30%.</i></p> <p><i>Therefore, if the CONTRACTOR is a person located in a country or territory specified by the Government of India as NJA under section 94A of the Indian Income-tax Act, 1961, the CORPORATION shall deduct tax at source as directed in the Certificates u/s 195(3) or 197 or Order u/s. 195(2) , as the case may be, or at such higher rate as may be required by Section 94A of Indian Income-tax Act, 1961, as applicable.</i></p>	

Annexure-B

Clauses Applicable in cases of a tax protected contract(s)

(NOT TO BE INCLUDED IN REGULAR STANDARD TENDER CONDITIONS)

The CONTRACTOR is liable to bear all direct taxes, levied/imposed on the CONTRACTOR, under the laws of India, as in force from time to time, except the Corporate Income Tax payable on the income arising out of this CONTRACT and chargeable under the Income Tax Act, 1961. Such Corporate Income Tax shall be borne and paid by the CORPORATION, subject to the following conditions;

- i. Primarily, the CONTRACTOR shall be responsible for ensuring compliance with all provisions of the direct tax laws of India including, but not limited to, the filing of appropriate Returns and shall promptly provide all information required by the CORPORATION for discharging any of its responsibilities under such laws in relation to or arising out of the CONTRACT.
- ii. The CONTRACTOR, however, also authorizes the CORPORATION, if the circumstances so warrant, to file a Return of Income on its behalf as representative assessee for every financial year during which it has received any sum from the CORPORATION for the work done under this CONTRACT, agrees to unconditionally and promptly provide to the CORPORATION all necessary information and certified/notarized copies of documents, and authorizes the CORPORATION to retain the relevant TDS Certificates with itself on the CONTRACTOR's behalf, as may be reasonably required by the CORPORATION for being able to file within the statutory time limit the Returns of Income, necessary appeals, petitions, etc. in a manner which is compliant with the provisions of the Income Tax Act, 1961.
- iii. The CONTRACTOR also hereby unconditionally authorizes the CORPORATION to apply for, take all necessary action, and receive into the CORPORATION's bank account(s) any refund of tax out of the tax paid by the CORPORATION in pursuance of this clause. Further, in case any refund of tax out of the tax paid by the CORPORATION in pursuance of this clause is received by the CONTRACTOR, it shall promptly make over the same to the CORPORATION.

The CONTRACTOR also agrees to furnish a Tax Residency Certificate issued by the Government of country or specified territory to the effect that the person named therein is a resident of that country or specified territory.

- iv. In accordance with Rule 21AB of the Income-tax Rules, 1962, along with the TRC, the non-resident shall also furnish the requisite information in the prescribed Form '10F' which is enclosed as Appendix ___ at Annexure-I of the tender document. (*suitable appendix No. to be indicated by the work center*).

Note: The CONTRACTOR shall furnish Tax Residency Certificate and Form 10F irrespective of whether he submits PAN or the prescribed details and documents in lieu of PAN, as per clause (vi) hereof.

v. TRCs and Form No. 10F submitted by the Contractor/Supplier should be valid for the entire duration of the contract. In case the validity of a TRC and Form No. 10F expires during the currency of the contract, fresh valid TRC(s) and Form No. 10F should be submitted by the supplier/contractor for the remaining part of the currency of the contract.

vi. The CONTRACTOR also agrees to furnish its Indian Permanent Account Number (PAN) or, if the non-resident does not have a PAN and is also not willing to obtain the same, then to furnish the following details and documents (in addition to TRC and 10F):-

(a) name, email ID, contact no. of the non-resident;

(b) address of the non-resident in the country of tax residence; and

(c) Tax Identification Number (TIN) of the non-resident in the country of his tax residence.

The CONTRACTOR shall furnish its PAN or, as the case may be, the above details at the earliest possible after the contract/work order/purchase order is entered into/placed, which should not be later than 30 days from the date of contract/work order/purchase order.

vii. Any delay in submission of PAN/prescribed details and documents [as referred to hereinbefore in clause (vi)], TRC, Form No. 10F and PE particulars, within the specified time may lead to the Indian Income Tax Department requiring ONGC to pay tax at a higher rate than at which it may otherwise have directed. The resultant increased tax liability shall be recovered from the CONTRACTOR.