CHAPTER - 6

STATUTORY LEVIES

6.1 Income Tax

6.1.1 Income tax is a tax on the income of a person or company, whether real or deemed, in cash or in kind. Income tax is one of the major sources of revenue to the Government. This tax is levied, administered and collected by the Central Government. However tax proceeds are shared between Central Govt. and the State Governments on the basis of recommendation made by the Finance Commission, which is appointed by the President of India every 5 years.

6.1.2 At present the Law of Income Tax is governed by the Income Tax Act 1961 and is administered by the Central Board of Direct Taxes (CBDT). The Board has framed various rules for administration of income tax which are known as Income Tax Rules 1962. They are amended and modified from time to time as required due to changing circumstances. The rates of income tax are provided by the Finance Act passed by the Parliament every year along with Annual Budget.

6.1.3. Income Tax Law comprises the following:-

1) Income Tax Act 1961 as amended by Parliament upto date.
2) Annual Finance Act passed by Parliament.
3) Income Tax Rules 1962 as made and amended upto date by CBDT.
4) Judgements rendered by competent Courts of Law.
5) Circulars and Notifications issued by CBDT from time to time.

6.1.4 TDS on payment to Contractors

6.1.4.1 Section 194 (c) of the Income Tax Act 1961, provides for deduction of income tax at source at the rate of 2% (plus educational cess) on the payment made to the Contractor by Government, local authority, statutory corporation, etc. The provision contained in this Section applies only in relation to Works Contract, Labour Contract and Composite Contract and do not cover the contract for sale of goods.

6.1.4.2 Accordingly, most of the purchase contracts which are concluded for sale of goods do not attract the provision of Section 194 (c) of the Income Tax Act. However supply contract included an 'element of works' will attract Section 194 (c). It is difficult to formulate rigid general guidelines for the purpose of determining whether the contract has an 'element of works' for the purpose of deducting income tax in terms of Section 194 (c) ibid the following clarifications are given for guidelines :-

Where the contract is concluded only for supply of plant & machinery or equipment and no erection and commissioning is involved.	No need for deduction of tax at source as it is only sale of goods.
Contract pertaining to supply of machinery and plant and also for erection and commissioning by the firm and charges for supply and erection are indicated separately in the contract.	Deduction of 2% income tax under Section 194 (c) of Income Tax Act 1961 on the charges for erection and commissioning in addition to the service tax as applicable.
Contract for supply of plant and machinery and erection and commissioning is done free by the firm i.e. the charges are included in the contract price and are not separately quoted.	Deduction of 2% income tax under Section 194 (c) of Income Tax Act 1961 should be made along with Service Tax.
Contract pertaining to supply of machinery from overseas supplier or by their Indian Agent where only supervision of erection and commissioning is done by the firm at the consignee's premises. The supervision of erection and commissioning can be either free or at extra cost. In these types of contracts the contract provides for the service of one or two engineers for supervising the erection and commissioning activities, whereas the actual erection etc. is done by the consignee.	Deduction of tax at source to be examined on merit with reference to the terms and conditions governing each case. Please also refer to Section 115 (B) of Income Tax Act 1961.
Contract pertaining to supply of machinery and equipment from overseas contractor and its installation and commissioning is also carried out by the Principals. The contract provides separate charges for supply and erection.	Deduction of tax at source to be examined on merit with reference to terms and conditions governing each case. Please refer to Section 115 (B) of Income Tax Act 1961 also.
Fabrication Contracts where materials are issued by the Department as free issue material and the major portion of the Contract is only labour charges	Deduction of 2% income tax under Section 194 (c) of the Income Tax Act on the contract value.
Fabrication Contracts where part of the material is to be procured by the supplier and some quantity of material is issued by the Department as free issue material.	Deduction of tax at source to be examined on the merit of each case.
Contracts concluded for manufacture of material/equipment where some components are issued as free issue material to be installed in the equipment being manufactured.	Deduction of tax at source to be examined on the merit of each case.

6.1.4.3 In case where charges for installation and commissioning are shown separately in the contract, 2% income tax will be deducted on that portion of the contract and in cases where in addition to supply there is some works portion for which no separate provision is made, and then 2% IT will be deduced on the entire value of the Contract.

6.1.4.4 As per Section 115 (B) the amount of Income Tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of 30% of such fees for technical services are received in pursuance of an agreement made on or before the 31st day of May 1997 and 20% where such fees for technical services are received in pursuance of an agreement made after 31st day of May 1997 but before the 1st day of June 2005 (115BB) and the amount of income tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of 10% if such fees for technical services are received in pursuance of an agreement made on or after the 1st day of June 2005.

6.1.4.5 In cases where there is a semblance of doubt regarding recovery of income tax at source in contracts, it would be advisable to act on the safer side and recover income tax from the payment to be made. The supplier can on the basis of income tax recovery certificate issued to him (presently quarterly returns) move the IT authority for refund or adjustment of the deducted amount of IT as the case may be.

6.1.4.6 A specific endorsement will be made in all such Contracts where deduction of IT at source is necessary.

6.1.4.7 In clearing Agency Contract, where reimbursement is allowed by the Accounts Officer, charges like port dues, freight, insurance and customs duty, etc. will not attract provisions of Section 194 (c) of the Income Tax Act 1961. On the other hand charges like loading and unloading, cranage and handling charges, transportation charges if claimed separately will come under the purview of 'labour' contract and will entail deduction of IT at source along with agency transaction charges.

6.1.4.8 Deduction of tax at source will be made at the time of payment to the Contractor. No deduction will be required to be made if the consideration of the Contract does not exceed Rs. 20,000/-. If payment has already been made without deducting any tax at source, the authorities or persons responsible for making payment renders himself for penal provision contained in Section 201 & 276 (b) of IT Act. The tax deducted at source will be credited to Income Tax under the head of account indicated through monthly account.

6.1.4.9 If any refund of tax is claimed by a contractor on account of any excess recovery made by the Accounts Officer in the course of payment, the refund will be made by the IT Department only on the basis of a certificate (now quarterly return) issued by the concerned Accounts Officer.

6.1.5 Dispensation of issue of Form 16-A by the Accounts Officer

With effect from 1.4.2005, the scheme of dematerialization of TDS certificate was introduced. As per this all deductors will have to file quarterly TDS return giving deductee wise break up of all deductions made by them. These returns will be filed on electronic format with Tax Information Network (TIN). TIN will verify particulars relating to deposit of TDS given in these quarterly TDS returns with corresponding information relating to credit of TDS received through On Line Tax Accounting System (OLTAS). Thereafter, deductee wise particulars of TDS will be posted to the ledger account of each deductee identified by their PAN. After the close of the year TIN will issue annual statements of TDS to each deductee under Section 203 AA of IT Act giving full particulars of all taxes deducted on his behalf by different deductors. This will ensure that all taxes deducted or deposited in government account and the deductions made by the deductors are reconciled with the credits claimed by different deductees in their respective return of income. This will eliminate possibility of bogus TDS certificates and related TDS frauds. This will eventually eliminate issue of TDS certificates by deductors and the requirement on the part of deductees to enclose the same with their respective returns of income.