LALIT BAJAJ & ASSOCIATES

VOLUME II, ISSUE 6

CONNECTION

AUGUST 2013

INSIDE THIS ISSUE:

INCOME TAX SCRUTINY NORMS FY 2013-14	4
ALL ABOUT STT	5
ULIP	6
CBDT CLARIFICATION FOR TDS DEFAULTERS	8

JUST TO REMIND YOU:

- **Aug 15 - E Payment of PF for July**
- **Aug 21 - Submission of MVAT Return for July**
- **Aug 31 - Service Tax Return for half year ended March**

AUDIT OF GOVERNANCE IN CORPORATE ENTITIES

"Corporate governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company."

Consultative Paper on review of Corporate Governance norms in India, SEBI.

Governance - Scope and Responsibility

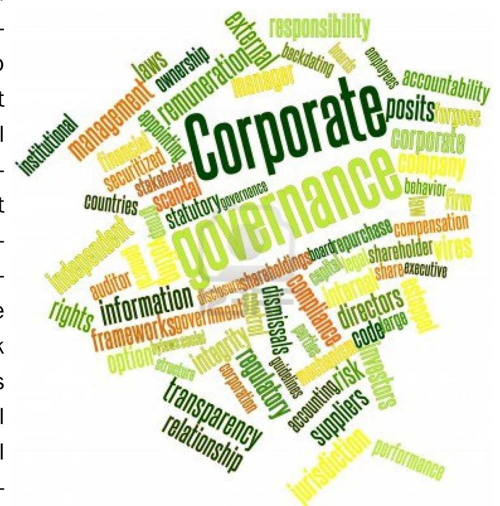
In the challenging and constantly changing corporate environment, the statutory auditors are burdened with the enormous responsibility of ensuring appropriate disclosure of governance practices in entities audited by them.

As defined by the Auditing pronouncements of our Institute, governance constitutes the role of persons or organizations with the responsibility of overseeing the strategic directions of the entity and the obligations related to the accountability of the entity.

The audit of an entity normally involves understanding entity level controls, evaluation of design and implementation of appropriate controls in an organization, assessing risks related to material misstatement and internal control over financial reporting. Therefore, as part of the audit, the auditor gains a limited understanding of the governance framework restricted to aspects having direct financial impact on the financial statements. In a statutory audit, the auditor is not expected to take responsibility for endorsing business decisions and propriety aspects, which is part of governance. Therefore typically an audit of governance encompasses understanding and reviewing the tone at the top, appropriate risk management framework and practices and the adherence to a pronounced code of governance.

In our scenario, however, the responsibility for the audit of governance in a corporate entity is limited to:

(a) Verification and certification of compliance and disclosure of matters listed in clause 49 of the Listing Agreement,



(b) Reading of other information furnished in the annual report along with the financial statements by a corporate entity with the objective of identifying material inconsistencies in matters reported thereon in comparison to the financial statements attested by the auditor under SA720.

Certification of Corporate Governance

Our examination of corporate governance is limited to the review of procedures and implementation thereof adopted by a company for ensuring compli-

ance of the conditions of corporate governance stipulated in clause 49 which are related to the following aspects:

(1) Composition of the board, attendance details of directors and board meetings.

(2) Description of terms of reference and composition of directors meetings and attendance for audit committee and remuneration committee;

(3) Remuneration policy and details of remuneration to directors,

(4) Grievances of shareholders and compliance of shares pending,

(5) Details of general body meeting,

(6) Disclosure of related party transactions,

(7) Compliance of whistle blower policy and other compliances of mandatory requirements of clause 49. Our certification is neither an audit nor an expression of opinion on the conduct of the corporate governance.

Challenges in certification

The challenges in this certification could be with specific reference to the company's philosophy, terms of reference of the audit committee, disclosure of related party transactions, and also management disclosures which are laid out in the Management Discussion and Analysis (MD&A) of the Annual Report. Our responsibility is to review the procedure and the implementation of the above matters, and these are subjective as they cannot be easily opined upon for adequacy of compliance or otherwise.

Subjectivity factors relate to culture, size of the organization, level of maturity of the enterprise, exposure to best corporate practices for those charged with governance and so on. Another challenge is that the evidence of implementation of these aspects could very often not be visible in a growing entity or may be informal, leading to lack of audit trail.

The auditor is expected to review the disclosure of the risk management framework and policies but is not expected to express an opinion on the implementation status of the steps envisaged under risk management framework by an entity. The auditor looks at the compliance of statutory norms for classification of a director as independent or otherwise. The independence of mind or existence of matters which could be a threat to independence to the existing directors cannot be assessed by verification of records.

While it would be simpler to understand related party transactions by the definition, scope and requirements under the relevant accounting standard, the auditor's responsibility is significant under SA 315 where the auditor is required to inquire regarding identity of related parties which are likely to form a part of risk management procedure and obtain information regarding:

- The entity's ownership and governance structures
- The types of investments that the entity is making and plans to make and
- The way the entity is structured and how it is financed.

This casts a significant responsibility on the auditor to ensure: (a) completeness of identification of material related party transactions by appropriate risk assessment procedures; (b) appropriate disclosure of such transactions in the audited financial statements; (c) consistency of information disclosed in the directors report and audited financial statements.

It is worthy to note that certification of compliance of a corporate governance framework gives no assurance of the effective functioning of governance in accordance with specific statutory requirements prescribed in clause 49.

Audit of other information – SA720.

Under SA720, the auditor is

expected to respond appropriately when documents containing audited financial statements and the auditor's report thereon include other information that could undermine the credibility of those financial statements and the auditor's report.

Other information which constitutes financial and non-financial information stipulated by law and regulation or custom could be inconsistent if contradictory information is contained in the financials or information appearing in the annual report is incorrectly stated or presented.

If one would list out the other information which is published along with the audited financial statements, it would cover financial highlights, notices of meetings, report of the Board of Directors, Management discussion and analysis etc. The auditor is expected to read this information and identify material inconsistencies.

A material inconsistency is one which may raise doubt about the audit conclusions drawn from audit evidence previously obtained which forms the basis for the opinion on the financial statements. Material inconsistency in information could arise in areas, such as, information of future existence of the entity which would be questionable, information on business matters raising doubt on impairment of assets, new ventures with related parties not disclosed in the financial statements, government regulatory changes and other subsequent events which would seemingly have a bearing on the future of the entity.

Material inconsistency in figures could arise out of differences in classification and presentation of account balances in financial highlights, ratios, comparative information due to differences in interpretation using management discretion.

Challenges in Implementation

The most significant challenge for implementation of this standard may be availability and completeness of information on these aspects at the time of completion of the audit. A second aspect would be on determination of what is material, as it would be an area of judgment impacted by different criteria.

Perception of Auditor's Role

That an audit endorses the entity's policy decision and provides a positive assurance that business is a safe investment and will not fail is a misunderstanding of society with respect to the roles and responsibilities of the auditor and the objective of the audit itself. With this scenario in today's environment, the challenge for an auditor today is perception of the society that a certification of compliance of clause 49 is a certification of effective governance in a corporate entity. Much awareness needs to be created from the specific responsibilities of the auditor regarding the governance and the limitations to the scope of the work to be performed by an auditor.

The certification of governance is a seal of the existence of a framework and not a seal of the effective implementation thereof – "For corporate governance is not a matter or right or wrong "it is more nuanced than that" - Advocate John Myburgh.

"For Corporate Governance is not a matter of right or wrong "it is more nuanced than that"

INCOME TAX SCRUTINY NORMS - FY 2013-14

In supersession of earlier instructions on selection of scrutiny cases under compulsory manual during the financial year 2013-14, the Board hereby lays down the following procedure and criteria for manual selection of returns/ cases for scrutiny during the financial-year 2013-2017:

1. The targets for completion of scrutiny assessments and strategy of framing quality assessments as contained in Central Action plan document for Financial Year 2013-2014 has to be complied with. It is being reiterated that all scrutiny assessments including the cases selected under manual criteria will be completed through AST system software only.

2. The following categories of cases / returns shall be compulsorily scrutinized:-

a) Cases where value of international transaction as defined u/s 92B of IT Act exceeds Rs. 15 crores.

b) Cases involving addition in an earlier assessment year on the issue of transfer pricing in excess of Rs. 10 Crores or more which is confirmed in appeal or is pending before an appellate authority.

c) Cases involving addition in an earlier assessment year in excess of Rs. 10 lacs on a substantial and recurring question of law or fact which is confirmed in appeal or is pending before an appellate authority.

d) all assessments pertaining to Survey under section 133A of the IT Act excluding the cases where there are no impounded books of accounts/documents and returned income excluding any disclosure made during the Survey is not less than returned income of preceding assessment year. However, where assessee retracts the disclosure made during the Survey will not be covered by this exclusion.

e) Assessment in search and seizure cases to be made under sections 158B, 158BC, 158BD, 153A & 153C read with 143(3) of the IT Act.

f) All returns filed in response to notice u/s 147/148 of the IT Act.

g) Cases claiming exemption of income u/s 11 or u/s 10 (23C) which are hit by proviso (s) to Section 2(15) of IT Act.

h) Entities which received Donations from countries abroad in excess of Rs. One crore during the Financial Year 2011-2012 (relevant for the A.Y. 2012-2013) under the provisions of Foreign Contribution Regulation Act (FCRA). Such Information is maintained by Ministry of Home Affairs and is available on its Website (http://mha.nic.in/fcra.htm). Respective Cadre-Controlling chief Commissioners / Directors – General of Income-tax may identify the cases pertaining to their respective jurisdiction after downloading from the website and disseminate the information to various field offices.

i) Cases in respect of which information is received from other Government Department(s) or other authorities pointing out tax -evasion. The Assessing Officer shall record reasons in such cases and take approval from jurisdictional CCIT/DGIT before selecting such case for scrutiny.

3. In order to ensure the quality of assessment orders, CCsIT/DGsIT would evolve suitable monitoring mechanism. They shall analyse at least 50 quality assessments of their respective charges and send the report to respective Zonal Member with copy to Member (IT) with suggestions for improvement by 30th April, 2014. CCsIT/ DGsIT would further ensure that cases selected for publication in 'let us share' are picked up from quality assessments as reported.

4. These Instructions may be brought to the notice of all

ALL ABOUT SECURITIES TRANSACTION TAX (STT)

Securities Transaction Tax (or STT in short), is the tax deduction that is applied to all your equity transactions. Introduced in the 2004 Union Budget by the then Finance Minister Mr. P Chidambaram, the deduction is to ensure that gains arising from securities transaction are taxed at source, thus preventing individuals from evading capital gains tax.

When Does One Pay STT?

Securities Transaction Tax is levied on every purchase or sale of securities that are listed on the Indian Stock Exchange. This would include shares, derivatives or equity-oriented mutual funds units. The rate of tax that is deducted is determined by the central government, and it varies with different types of transactions and securities. Deducted at source by the broker or AMC, at the time of the transaction itself, the net result is that it pushes up the cost of the transaction done.

Scope of STT

As per of the Securities Contracts (Regulation) Act, 1956, STT would be applicable for securities of the following nature.

- Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.
- Derivatives
- Units or any other instrument issued by any collective investment scheme to the investors in such schemes
- Security receipt as defined in section 2(zg) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- Government securities of equity nature
- Such other instruments as declared by the Central Government
- Rights or interest in securities
- Equity-oriented mutual funds

STT is not applicable for any off-market transaction.

STT and Capital Gains Tax on Securities

With effect from assessment year 2009-2010, the short term capital gain arising from the sale of shares or equity oriented mutual fund units, on which STT has been applied, would be taxed at a concessional tax rate of 15%(plus surcharge and education cess). Long term capital gains, of such similar transactions which have been subject to STT, is totally exempt from tax. For all transactions for which STT is not applied, the long term capital gains tax is at 10% without indexation and 20% with indexation. In such cases the short term capital gains tax is according to the normal progressive slab rates.

So the next time, your broker or AMC sends you your transaction bill or statement, remember that the extra bit you are paying over and above your transaction is nothing but the tax that has been levied. Whether it is purchase and sale of shares or mutual fund units, STT is here to stay and cannot be avoided.

“STT is not applicable for any off-market transaction.”

UNIT LINKED INSURANCE PLAN (ULIP)

A **Unit Linked Insurance Plan (ULIP)** is a product offered by insurance companies that unlike a pure insurance policy gives investors the benefits of both insurance and investment under a single integrated plan. Unit Linked Plans refer to Unit Linked Insurance Plans offered by insurance companies. These plans allow investors to direct part of their premiums into different types of funds (equity, debt, money market, hybrid etc.)

History

The first ULIP was launched in India in 1971 by Unit Trust of India (UTI) With the Government of India opening up the insurance sector to foreign investors in 2001 and the subsequent issue of major guidelines for ULIPs by the Insurance Regulatory and Development Authority (IRDA) in 2005,[3] several insurance companies forayed into the ULIP business leading to an over abundance of ULIP schemes being launched to serve the investment needs of those looking to invest in an investment cum insurance product.

Working Principle

A ULIP is basically a combination of insurance as well as investment. A part of the premium paid is utilized to provide insurance cover to the policy holder while the remaining portion is invested in various equity and debt schemes. The money collected by the insurance provider is utilized to form a pool of fund that is used to invest in various markets instruments (debt and equity) in varying proportions just the way it is done for mutual funds. Policy holders have the option of selecting the type of funds (debt or equity) or a mix of both based on their investment need and appetite. Just the way it is for mutual funds, ULIP policy holders are also allotted units and each unit has a net asset value (NAV) that is declared on a daily basis. The NAV is the value based on which the net rate of returns on ULIPs are determined. The NAV varies from one ULIP to another based on market conditions and the fund's performance.

Features

ULIP policy holders can make use of features such as top-up facilities, switching between various funds during the tenure of the policy, reduce or increase the level of protection, options to surrender, additional riders to enhance coverage and returns as well as tax benefits.

Types

There are a variety of ULIP plans to choose from based on the investment objectives of the investor, his risk appetite as well as the investment horizon. Some ULIPs play it safe by allocating a larger portion of the invested capital in debt instruments while others purely invest in equity. Again, all this is totally based on the type of ULIP chosen for investment and the investor preference and risk appetite.

Charges

Unlike traditional insurance policies, ULIP schemes have a list of applicable charges that are deducted from the payable premium The notable ones include policy administration charges, premium allocation charges, fund switching charges, mortality charges, and a policy surrender or withdrawal charge Some Insurer also charge "Guarantee Charge" as a percentage of Fund Value for built in minimum guarantee under the policy.

Risks

Since ULIP returns are directly linked to market performance and the investment risk in investment portfolio is borne entirely by the policy holder, one

" ULIP is basically a part of insurance as well as investment"

needs to thoroughly understand the risks involved and one's own risk absorption

capacity before deciding to invest in ULIPs.

Providers

There are several public and private sector insurance providers that either operate solo or have partnered with foreign insurance companies to sell unit linked insurance plans in India. The public insurance providers include LIC of India, SBI Life and Canara while some of the private insurance providers include ICICI Prudential, HDFC Life, Bajaj Allianz, Aviva Life Insurance and Kotak Mahindra Life.

Advantages

a. Liquidity

Unit Linked Plans have limited liquidity. One needs to stay invested for a minimum period of time as specified in the policy before redeeming the units.

b. Flexibility

Unit Linked Plans give you flexibility to invest as per your risk profile, financial commitments and convenience. You can choose to invest either in equity, or in debt or in hybrid fund and even change your investment strategy. Unit Linked Plans offer you a wide range of flexible options such as

The option to switch between investment funds to match your changing needs.

The facility to partially withdraw from your fund, subject to charges and conditions.

Single premium additions to enable the policy holder to invest additional sums of money (over and above the regular premium) as and when desired, subject to conditions.

c. Market linked returns: Unit linked plans give you an opportunity to earn market-linked returns as part of the premiums are invested in market linked funds which invest in different market instruments including debt instruments and equity in varying proportions.

d. Life protection, Investment and Savings: Unit linked plans offer the twin benefits of life insurance and savings at market-linked returns. Thus, you have the opportunity to invest your money to earn higher returns, while taking care of your protection needs. Investing in unit linked plans helps to inculcate a regular habit of saving and investing, which is important for building wealth over the long term.

e. Tax benefits

All Unit Linked Plans offer tax benefits under section 80C upto a maximum of Rs. 1,00,000/-

We're on the web!

www.bajajit.com

HAPPY INDEPENDENCE DAY

LALIT BAJAJ & ASSOCIATES

Office No. 5, Barsana,
Salasar Brij Bhoomi, Temba Road,
Near Maxus Mall, Bhayandar (W)
Thane - 401101
Phone: +91 - 22 - 28180400
+91 - 22 - 28040048
Email: admin@bajajit.com

Knowledge to fight....... Confidence to win...

CBDT CLARIFICATION FOR TDS DEFAULTERS

It has come to the notice of Income Tax Department that many times the tax deductors, after deducting TDS from specified payments, are deliberately not depositing the taxes so deducted in Government account and continue to deploy the funds so retained for business purposes or for personal use. Such retention of Government dues beyond the due date is an offence liable for prosecution under Section 276B of the Income Tax Act, 1961. The defaulter, if convicted, can be sentenced to Rigorous Imprisonment (RI) for a term which can extend upto seven years.

The TDS units of Income Tax Department have been taking up prosecution proceedings in suitable cases where TDS has been retained beyond the due date. The Central Board of Direct Taxes has partly modified existing guidelines for identification of cases for launching prosecution. As per the revised guidelines, the criterion of minimum retention period of 12 months has been dispensed with. For the benefit of public at large, it is now clarified that defaulters, who have retained the TDS deducted and failed to deposit the same in Government account within due date, shall be liable for prosecution, irrespective of the period of retention.

However, the offence u/s 276B of the Income Tax Act can be compounded by Chief Commissioner having jurisdiction on the case, either before or after the launching of prosecution proceedings. In the recent past, several defaulters have submitted petitions for compounding of such offences and compounding orders have also been passed by the Competent Authority in suitable cases.

Scan the QR

Disclaimer:

This newsletter is prepared strictly for private circulation and personal use only. This newsletter is for general guidance on matters of interest only and does not constitute any professional advice from us. One should not act upon the information contained in this newsletter without obtaining specific professional advice. Further, no representation or warranty (expressed or implied) is given as to the accuracy or completeness of the information contained in this newsletter.