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Voices on Reporting

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1

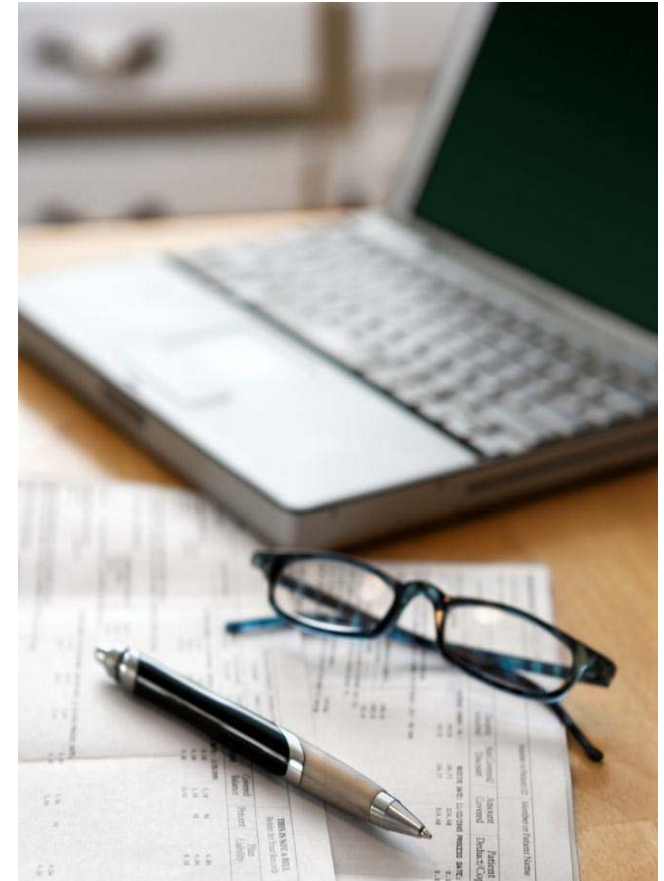
Recent amendments in tax audit forms

2

Key amendments to clause 49 of the Equity Listing Agreement

The Central Board of Direct Taxes (CBDT) amendment

- On 25 July 2014 CBDT has amended Form No. 3CA, Form No. 3CB and Form No. 3CD
- On 20 August 2014 CBDT extended the due date for obtaining and furnishing of the report on audit for AY 2014-15 to 30 November 2014
- On 11 September 2014 ICAI issued the guidance note on tax audit under section 44AB of the Income Tax Act, 1961 (IT Act).



Earlier

Form 3CA/Form 3CB

‘Opinion on true and correct particulars’

+

Form 3CD

Part A: 6 Clauses

Part B: 26 Clauses

Annexure I: Abstract of financials

Annexure II: FBT Details

Now

Form 3CA/3CB

‘Opinion on true and correct particulars along with *observations/ qualifications*’

+

Form 3CD

Part A: 8 Clauses

Part B: 33 Clauses

No Annexures

Clause 4

Tax auditor to report whether the assessee is liable to pay indirect taxes like excise duty, service tax, sales tax, customs duty, etc. If yes, furnish the registration number or any other identification number allotted for the same.

- The term 'indirect tax' is neither defined in the IT Act nor under any other law and levy of indirect taxes on various transactions may differ from state to state
- Guidance note mentions that
 - the auditor would rely on management representation to ascertain applicability of all indirect taxes and the information would be disclosed as per the registration certificate
 - if the indirect tax law does not require any registration, appropriate identification number may be reported in this clause
 - If the auditor **prima facie** is of the opinion that any of the indirect tax laws are applicable but the assessee is not registered, the auditor is under obligation to report the same appropriately.

Clause 8

Indicate the relevant clause of section 44AB of the IT Act under which the audit has been conducted.

- Tax audit under section 44AB is required in accordance with the provisions of clause (a) to (d)
- Applicable clause of section 44AB need to be disclosed.

Clause 11(b)

List of books of account maintained and the address at which the books of account are kept.

- In case the books of accounts are kept at more than one location, the detailed address of each such location along with the details of books of account maintained thereof to be mentioned
- Guidance note mentions that
 - Any forms filed under the Companies Act for the maintenance of books of account at a place other than the registered office would also be relevant
 - In case the books of account are maintained and generated through a computer system, the address of the place where the server is located or the principal place of business/head office or registered office by whatever name called to be mentioned.

Clause 11(c)

List of books of account and nature of relevant documents examined.

- The clause has been amended to specify the nature of relevant documents examined.
- Guidance note mentions that reference to the supporting documents/relevant documents examined by the auditor is also required to be made under this clause, in addition to the list of books of account examined.

Clause 17

Where any land, building or both is transferred during the previous year for a consideration less than the value adopted or assessed or assessable by any authority of a state government referred to in section 43CA or section 50C of the IT Act, furnish details of the property, consideration received or accrued and the value adopted or assessed or assessable.

- Disclosure is to be given only if the consideration received is less than the value adopted or assessed or assessable by any authority of a state government.
- Guidance note mentions that
 - In case, the property is registered, value as per the registered sale deed needs to be disclosed
 - In case, the property is not registered, the relevant documents from the authorities or value provided by a third party expert may be considered
 - In exceptional cases, where assessable value can not be supported by the relevant documents, it may result in an observation in the tax audit report.

Clause 21 (b)

Clause has been amended to require detailed disclosures in respect of amount inadmissible under section 40(a)

- Any amount paid which is of a nature referred to in sub-clause (i) and (ia) of section 40(a) on which tax is deductible at source but has not been deducted or after deduction has not been deposited
- Any sum paid on account of wealth tax
- Any amount paid of the nature prescribed under sub-clause (iib) of section 40(a), which is levied exclusively on or which is appropriated directly or indirectly from a state government undertaking by the state government
- Any amount of salary which is paid outside India or to a non-resident and if the tax has not been paid thereon nor deducted therefrom under chapter XVII-B
- Any payment to provident or other funds referred to in sub-clause (iv) unless the assessee has made effective arrangement to secure that tax shall be deducted at source from any payment made from the fund which is chargeable to tax under the head 'salaries'
- Any tax actually paid by an employer referred to in clause (10CC) of section 10.

Note: In respect of the above referred payments, details of individual transactions including date of payment, amount of payment, nature of payment and name and address of the payee is also to be disclosed. Further, in case, tax is deducted and not deposited within the prescribed time, amount of tax deducted is also to be mentioned.

Clause 21 (d)

Details of payments referred to in section 40A(3A) read with rule 6DD if not made by an account payee cheque drawn on a bank or account payee bank draft.

- Following disclosures are required to be made under clause 21(d):
 - Date of payment
 - Nature of payment
 - Amount
 - Name and permanent account number of the payee, if available
- The guidance note mentions that the tax auditor would rely upon certificate from the management of a company in respect of the above payments in addition to performing procedures on test check basis.

Clause 28

If during the previous year the assessee has received any property, being share of a company not being a company in which the public are substantially interested, without consideration or for inadequate consideration as referred to in section 56(2)(viiia), details are required to be furnished.

Clause 29

If during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib), details are required to be furnished.

Clause 32(c) to (e) Losses in speculation business

- If the assessee has incurred any speculation loss referred to in section 73 and 73A, details of same are required to be furnished.
- The guidance note mentions that details are required to be mentioned only for the loss incurred during the year. If the assessee has brought forward losses, the same is not required to be disclosed.

Clause 33 Section-wise details of deductions admissible under chapter III (section 10A, section 10AA of the IT Act).

- Clause has been amended to include deductions, if any, admissible under chapter III in addition to the current requirement to disclose section wise deductions under chapter VIA.
- Further, reporting responsibilities of the auditor have been increased to report that the amount admissible fulfils the conditions, if any, specified under the relevant provisions of the IT Act or IT Rules or any other guidelines, circular, etc. issued in this behalf.

Clause 34(a)

If the assessee is required to deduct or collect tax as per the provisions of chapter XVII-B or chapter XVII-BB, prescribed details are required to be furnished.

- Clause has been amended to include detailed disclosures including following:
 - (1) Tax deduction number
 - (2) Section reference
 - (3) Nature of payment
 - (4) Total amount of payment of the nature specified in (3) above
 - (5) Total amount on which tax was required to be deducted out of (4) above
 - (6) Total amount on which tax was deducted at the specified rate out of (5) above
 - (7) Amount of tax deducted out of (6) above
 - (8) Total amount out of which tax was deducted at less than specified rate out of (7) above
 - (9) Amount of tax deducted on (8) above
 - (10) Amount of tax deducted but not deposited
- Above details are also to be disclosed for tax collected at source.

Clause 34 (b)

Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time. If not, please furnish the relevant details.

- Clause 34(b) requires the auditor to report the transactions with regard to each Tax Account Number (TAN) for which tax has been deducted but the return has either not been filed or has been filed after the expiry of the prescribed time
- Following additional disclosure is to be made with regard to each quarterly TDS/TCS statement(s) not filed within the prescribed time:
 - Type of form
 - due date of furnishing such statement
 - actual date of furnishing, if the statement(s) has been furnished
- The guidance note mentions that the auditor is required to state as to whether the statement of tax deducted or collected, which has been furnished beyond prescribed time contains information about all the transactions which are required to be reported.

Clause 34 (c)

Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7) of the IT Act. If yes, furnish the relevant details.

- If the assessee is liable to pay tax under section 201(1A) or section 206C(7) of the IT Act the following additional information is required to be disclosed:
 - Tax deduction and collection Account Number (TAN)
 - Amount of interest under section 201(1A)/206C(7) is payable
 - Amount paid out of column (2) along with date of payment.

Clause 36 Tax on distributed profits of domestic companies

- In addition to the total amount of distributed profits, total tax paid thereon and dates of payment, the following additional details are required:
 - amount of reduction as referred to in section 115-O(1A)(i) of the IT Act
 - amount of reduction as referred to in section 115-O(1A)(ii) of the IT Act.
- Previously, the amount of distributed profit was reported net of deductions referred to in sub-section 115-O(1A). With the insertion of above two sub-clauses, the amount of distributed profit and deductions under sub-section 115-O(1A) will be reported separately.

Clause 39

Whether any audit was conducted under section 72A of the Finance Act, 1994 in relation to valuation of taxable services, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

- The tax auditor is not required to make any detailed study of such report but has to take note of the details of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.
- The tax auditor need not express any opinion in a case where such audit has been ordered but the same has not been carried out.
- In cases where service tax audit, which might have been ordered is not completed by the time the tax auditor gives his report, the tax auditor has to report appropriately in this report.
- Information is required to be given only in respect of such service tax audit report the time period of which falls within the relevant previous year. In effect the information is required to be given in respect of that service tax audit report which is received upto the date of tax audit report.
- Similar changes have also been made in clause 37 and 38 in respect of cost audit and excise audit.

Clause 41

The details of demand raised or refund issued during the previous year under any tax laws other than the IT Act and Wealth tax Act, 1957 along with details of relevant proceedings to be furnished.

- If the demand/refund order is issued during the previous year but it pertains to a period other than the relevant previous year, the same has to be reported under this clause
- If there is any adjustment of refund against any demand, the same needs to be reported under this clause.

Annexure

Annexure (I) relating to abstract of balance sheet and statement of profit and loss and Annexure (II) relating to the value of the fringe benefits are no longer required to be annexed to the Form No. 3CD.

1

Recent amendments in tax audit forms

2

Key amendments to clause 49 of the Equity Listing Agreement.

Background

- Clause 49 amended by the Securities and Exchange Board of India (SEBI) on 17 April 2014
- Revised requirements to be effective from 1 October 2014
- SEBI has further amended clause 49 on 15 September 2014 to provide clarifications and address interpretational issues so as to ensure smooth compliance.

Key amendments to revised clause 49

Applicability and effective date

- **Applicability:** Applicable to all listed companies except following class of companies, till further announcement:
 - Companies having paid up equity share capital not exceeding INR100 million and net worth not exceeding INR250 million, as on the last day of the previous financial year
 - Companies whose equity share capital is listed exclusively on the SME (small and medium enterprises) platforms and SME-ITP (Institutional Trading Platforms).Such companies would need to comply with the requirements of clause 49 within six months from the date on which provisions become applicable to them.
- **Effective date:** Effective from 1 October 2014 except the provision relating to appointment of a woman director on board will be applicable from 1 April 2015.

Related party transactions (RPT)

- **Definition of a related party (RP)** - RP means an entity related under the Companies Act, 2013 or under accounting standards thereby significantly contracting the coverage from the previous clause 49
- **Definition of a RPT**– SEBI has clarified that a RPT could include a single transaction or a group of transactions in a contract
- **Meaning of material RPT**- Monetary limit for determining materiality has been amended to 10 per cent of the annual *consolidated* turnover of the company as against five per cent of turnover or 20 per cent of networth.

Related party transactions (RPT)

▪ Approval of RPT

- The requirement to obtain prior approval of the audit committee has been amended. SEBI now allows omnibus approval of the audit committee for a RPT proposed to be entered subject to certain conditions
- Approval of audit committee for RPTs and approval of shareholders for material RPT is not required for a) transactions entered into between two government companies and b) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated and placed before shareholders in the general meeting for approval
- All entities meeting the definition of related party should abstain from voting irrespective of whether that entity is a party to the particular transaction or not. This is different from the Companies Act, 2013 requirements.

- **Disclosure:** Policy on dealing with RPT to be disclosed on the website of the company along with a web link in the annual report.

Independent directors

- **Pecuniary relationship** – Amendment reinstates the term ‘material’ in defining pecuniary relationship to be considered while considering related party transactions
- **Maximum tenure of independent directors** - Amendment aligns with the Companies Act, 2013
- **Letter of appointment-** Amendment requires terms and conditions of appointment to be disclosed on the website of the company as against the letter of appointment itself
- **Familiarisation programme:** Independent directors should be made familiar with the company, their roles, responsibilities, nature of industry, business model of the company, etc. as against undergoing a formal training. The Companies Act, 2013 requires appropriate induction, regular update and refreshment of their skills, knowledge and familiarity with the company.

Material subsidiaries

- **Disclosure of policy to determine material subsidiary** – Amendment requires disclosure on the website of the company and a web link to be given in the annual report
- **Disposal of shares in material subsidiary leading to loss of control or reducing shareholding below 50 per cent** – Approval of shareholders is not required if such divestment is made under a scheme of arrangement duly approved by a court/tribunal
- **Selling, disposing and leasing of assets of material subsidiaries amounting to more than 20 per cent of the assets of such subsidiary** - Prior approval of shareholders is not required if such transaction is made under a scheme of arrangement duly approved by a court/tribunal.



Q&A

Accounting and Auditing Update



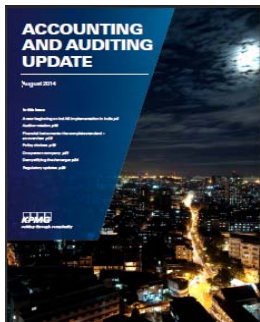
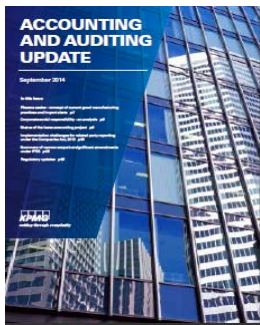
- Pharma sector - concept of current good manufacturing practices and import alerts
- Corporate social responsibility - an analysis
- Status of the lease accounting project
- Implementation challenges for related party reporting under the Companies Act, 2013
- Summary of narrow scope but significant amendments under IFRS
- Regulatory updates

First Notes



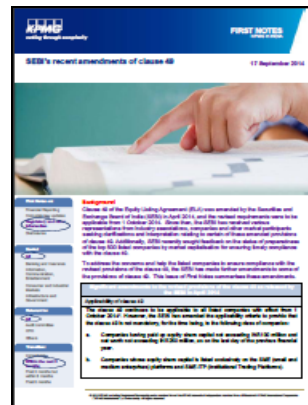
Clause 49 of the Equity Listing Agreement (ELA) was amended by the Securities and Exchange Board of India (SEBI) in April 2014, and the revised requirements were to be applicable from 1 October 2014. Since then, the SEBI has received various representations from industry associations, companies and other market participants seeking clarifications and interpretation relating to certain of these amended provisions of clause 49. Additionally, SEBI recently sought feedback on the status of preparedness of the top 500 listed companies by market capitalisation for ensuring timely compliance with the clause 49. To address the concerns and help the listed companies to ensure compliance with the revised provisions of the clause 49, the SEBI has made further amendments to some of the provisions of clause 49. Our First Notes summarises these amendments.

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