CFO SERIES 3 of 3

ASA
Going The Extra Mile

TOP 10 RED FLAGS WHILE TAX PLANNING

SUMMARY | 22ND SEPTEMBER, 2021

The objective of this webinar was to flag some critical corporate tax issues of concern for the CFO given the complexity of tax laws, that need to be kept track of while taking care of the entire gamut of strategic and financial aspects of their companies.

In this webinar by ASA, Sunil Arora, Partner, Taxation, and Yogesh Mittal, CFO & Lead Strategy at JBM Environment Project, discussed certain red flags that CFOs must pay heed to and also discussed few measures, which can help augmenting cash through effective tax planning.

Almost every aspect of a business has changed due to the pandemic. One such being, **dealing with losses.** The key to successfully justify losses is to accurately state the cause and apply appropriate adjustments, while preparing a robust documentation. Arguments of taxpayers are only as good as the documentation they maintain. With an enhanced level of scrutiny from the transfer pricing perspective, the onus rests on taxpayers to demonstrate that the business loss is not owing to related party transactions. Given the complexities involved and the amounts at stake, alternate dispute resolution avenues such as APA, Safe Harbour etc. can also be evaluated.

Tax planning need not just be about paying less taxes, but can also be about availing refund of taxes already paid. One such area being **availing refund of dividend distribution taxes** paid in the past, in light of recent judicial pronouncements.

Two practical avenues for taxpayers that can help **augment cash** are:

a) Seek certificate of lower/NIL tax withholding

b) Proactively take measures to receive past years refund (including by way of seeking writ, if necessary)

An important area that requires attention while effecting tax planning, is to **avoid the possibility of contraventions** of tax laws, since the CFO (in his role as a Principal Officer) may be exposed to prosecution. Various offences such as failure to pay TDS/DDT/TCS, any attempt to evade tax, penalty or interest and /or payment thereof and failure to file return of income, invites possible fines and rigorous imprisonment of 3 months to 7 years. Compounding provisions apply, however, at the discretion of the tax authority and have limited opportunity. Few offences such as under Black Money Act, Benami Law, Foreign Assets, etc. are non-compoundable.

Adopting technology in tax function can help taxpayers maintain consistency in approach, avoid missing deadlines and also maintain an audit trail from a corporate governance perspective. Few areas where technology can be adopted:

- A dashboard that provides high level view of tax cost for critical decision making
- A ready repository of tax positions / view adopted on a global basis
- Robotic Process Automation of repetitive and voluminous tasks

Adoption of technology at both taxpayers and tax authorities end has been a boon and a bane. An example being the comprehensive information captured in Form 26AS, due to exchange of information among various tax authorities. Another area being the faceless assessment/ appeal regime where the taxpayer would be assessed mostly on the documentation provided.

Other tax planning measures and key considerations therein are:

- **Minimum Alternate Tax (MAT)** – Since MAT is to be applied on 'book profit' which include exempt and/or capital receipts, specific disclosures in audited financial statements stating exclusion of such incomes/receipts from MAT computation, may provide relief during litigation;
- **Share premium on investments** received by closely held companies require building a robust case involving a well-reasoned valuation report, documenting critical factors relating to investment etc;
- **Taxability of Computer Software** – with the landmark ruling favoring the taxpayer that grant of license or sale of copyrighted article does not amount to royalty, it is the need of hour for taxpayers to define the exact nature of the transaction through water tight agreements; while also evaluating the implications of such transactions from an Equalization Levy perspective.