

# NEWSLETTER

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DAMANIA & VARAIYA  
Chartered Accountants



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# INCOME TAX

## Ganapathi Media – Chennai Tribunal

### **Sub: Whether Copyright or Sale**

The assessee Company acquired right to telecast cinematography film through a satellite for a period of 99 years. The Company claimed that this transaction was in the nature of purchase and therefore did not deduct any

tax under section 194J of The IT Act. The AO claimed that since it is only an assignment of right, the assessee had to deduct tax u/s. 194J.

The Tribunal held that the copyright subsists for a

period of 60 years.

Therefore, the right given to the assessee beyond a period of 60 years has to be treated as sale of the right for cinematographic film and not subject to tax deduction u/s. 194J.

## Superline Construction – Mumbai Tribunal

### **Sub: Section 68 – Receipt of share application money from alleged bogus shareholders.**

During the year, the assessee Company received Rs. 85 Lacs towards share application money. Based

on the investigation report and statement from Company officials, the AO proceeded to make addition of Rs. 40 Lacs

on account of bogus share application money received from three different Companies.

# INCOME TAX *(cont.)*

The Assessee produced proof of banking instruments as documentary evidence and further substantiated details of the investors from the website of Ministry of Corporate Affairs. It contended that it had fully discharged the burden of proof by establishing identity, creditworthiness and genuineness of the transactions.

The Mumbai Tribunal held that such receipt cannot be regarded as undisclosed income of the assessee Company. In case the department has information about the alleged bogus shareholders, they should proceed to reopen individual assessments of investors. Based on the facts and circumstances, the Tribunal deleted the addition in the hands of the assessee Company.

## **Micro Ink Ltd. – Ahmedabad Tribunal**

### **Sub: Issue of Corporate Guarantee – an “International transaction”?**

The Assessee Company was engaged in the business of manufacturing of Ink had a subsidiary Company in USA (FCO). It issued corporate guarantee on behalf of FCO without charging any consideration. It contended that the guarantee did not cost it anything. It was in the nature of quasi capital and not in the nature of any services. Therefore no income is required to be imputed. The TPO however proceeded to make transfer pricing adjustment by computing Arms Length Price of corporate guarantee.

The Ahmedabad Tribunal explaining the law on Corporate Guarantee held as follows:

As per Section 92B, an International Transaction means a transaction between two or more AEs either or both of whom are non-residents, in the nature of Purchases, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any transaction having a bearing on the profits, income, losses or assets of such enterprises.

Explanation to Section 92B provides that the expression international transaction includes capital financing, including any type of long term or short term borrowing, lending or guarantee and provision of services.

The explanation has to be read with the main provision. A transaction of capital financing and provision of services can be covered only under residual part of the definition of international transaction i.e. “Any transaction having a bearing on the profits, income, losses or assets of such enterprises”. In other words, the impact on profits, income, losses or assets must be real and not contingent or hypothetical for a transaction of capital financing or provision of services to fall under the ambit of international transaction.

Further, it is not correct to compare corporate guarantee with bank guarantee. Bank guarantee are generally fully secured by deposits and securities and banks charge guarantee fee. However, corporate guarantee are issued based on the business needs and group synergies and not based on risks assessment or underlying assets as in case of the banks.

# INCOME TAX *(cont.)*

In fact corporate guarantee are provided to compensate for lack of core strength of the subsidiary Company for raising finances from bank. Therefore transaction of bank guarantee is in the nature of shareholder activity and not that of provision of services. Therefore it is outside the ambit of 'international transaction.'

Further, where issue of guarantee does not have a bearing on profits, income, losses or assets, it does not constitute an international transaction and therefore no TP adjustment is required to be made.

## **CBDT enhances monetary limits for filing appeals by the Department:**

**As a measure to reduce litigation**, CBDT vide circular 21/2015 increased monetary limits for filing appeals by the department before the Tribunals, High Courts and SLP before Supreme Courts. These instructions would apply retrospectively to pending appeals as well and that all appeals below the specified tax limits should be withdrawn/not pressed.

The limits are as below:

<b>Sr. No.</b>	<b>Appeals in Income Tax matters</b>	<b>Monetary limit (Rs.)</b>
1.	Before Appellate Tribunal	10,00,000/-
2.	Before High Court	20,00,000/-
3.	Before Supreme Court	25,00,000/-

It is clarified that an appeal **should not** be filed merely because the tax effect exceeds the monetary limit as prescribed above. Filing of appeal is to be decided **on merit** of the case.

*Compiled by: CA Malay Damania, Partner*

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## Amendment in Rule 37BB of Income Tax Rules, 1962

The significant changes under the amended rules are:

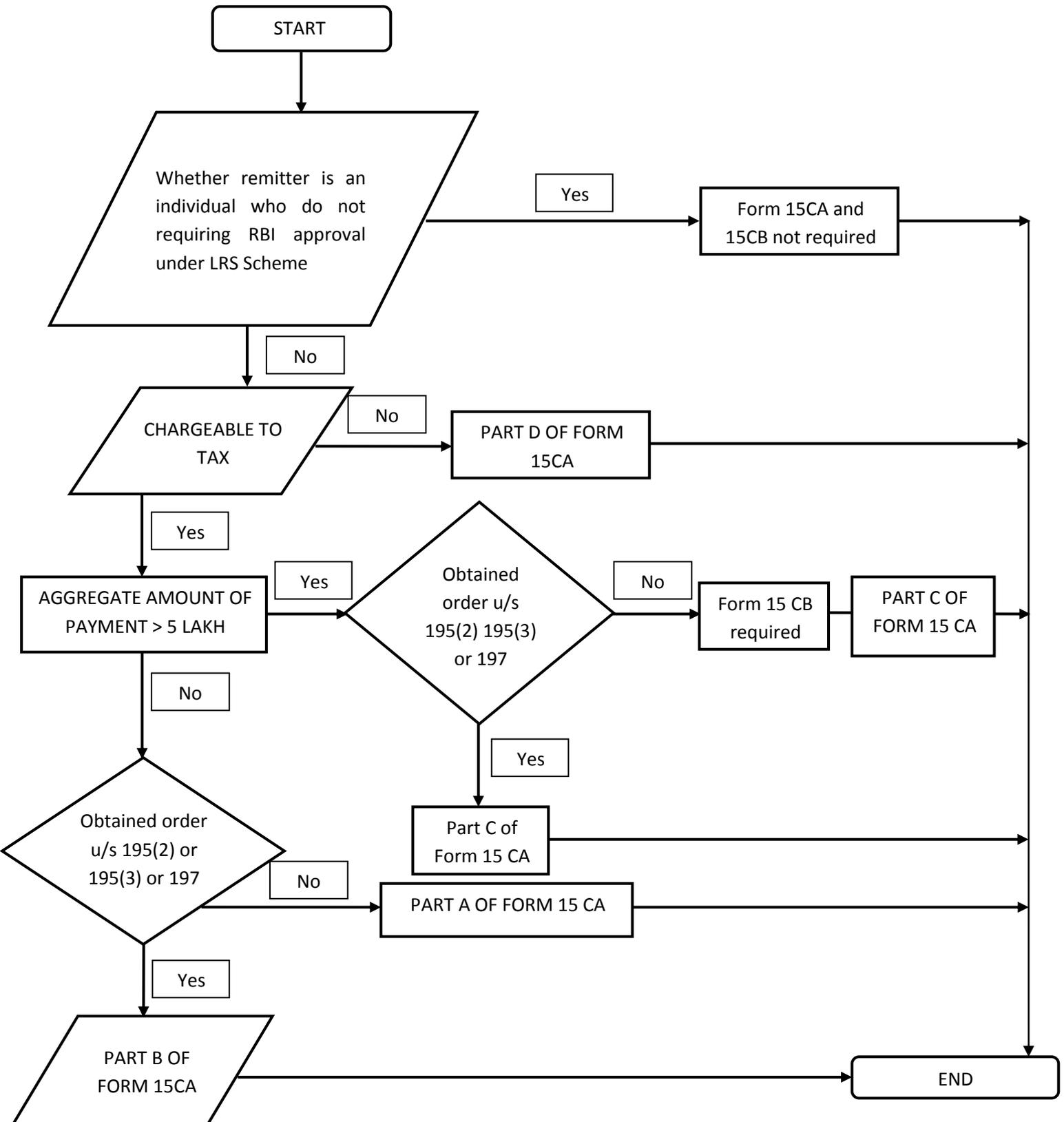
- No Form 15CA and 15CB will be required to be furnished by an Individual for any remittance which do not require RBI approval under its Liberalised Remittance Scheme (LRS)
- Further list of payments of specified nature mentioned in Rule 37 BB which does not require submission of Forms 15CA and 15CB has been expanded from 28 items to 33 items including payments for Import of Goods.

The additional list of exempted payments of specified nature is:

- i) Advance payment against import of goods;
  - ii) Payment towards imports-settlement of invoice;
  - iii) Imports by diplomatic missions;
  - iv) Intermediary trade;
  - v) Import below Rs.5 Lakh- (for use by ECD offices)
- A CA certificate in Form No.15CB will be required to be furnished only in respect of such payment made to non-residents which are chargeable to tax and the aggregate total amount of payment to the single person during the year exceeds Rs.5 Lakh.
  - The amended rules will become **applicable from 01.04.2016.**

Further procedures regarding filing of Form 15CA and 15CB has been explained via flow chart given below.

## FLOWCHART OF CHANGES IN PROCEDURES OF FORM 15CA & 15CB W.E.F.01.04.2016



# Transfer Pricing

## INTRA GROUP SERVICES AND SHAREHOLDER ACTIVITIES

### ➤ **Overview:**

Almost all MNE groups do require diversity of services for all of its group members, whether it is administrative, technical, financial or commercial. These services can be related to management, coordination and control functions for the entire group. In general such services will be performed centrally – at the level of the ultimate parent company – and charged to the other group companies that require these services in order to be fully operational. Independent companies in need of certain services might obtain these services from a service provider that specializes in those types of services or in some cases this company (i.e. the independent company) might perform the services by itself.

On the other hand, a member of an MNE group in need of such a service may obtain it directly or indirectly from independent companies, or from one or more related companies which are part of the same MNE group (i.e. intra-group) or may perform the service itself. If a company obtains such services from a related party, under certain conditions (provided below) these will be considered as intra-group services.

### ✓ **Some common intra-group services are provided below:**

- Legal services
- Accounting services
- Central auditing services
- Financing advice
- Human resource management
- IT services

### ✓ **Main Issue:**

There are two issues in the analysis of transfer pricing for intra group services:

- Determining whether intra group services have been rendered.
- Determining an arm's length charge.

### ➤ **Determining whether intra group service have been rendered:**

The determination of whether intra-group service have been rendered or not depends on whether the activity provides a respective group member with economic or commercial value to enhance its commercial position or not. This can be determined by considering whether an independent enterprise would be willing to pay for the activity if performed for it by an independent enterprise or would have performed the activity in-house for itself. If the activity is one for which the independent enterprise would not have been willing to pay or perform for itself, the activity ordinarily should not be considered as an intra group service under the arm's length principle. There are some specific services that need attention that will not qualify as intra-group services. The following discussions highlight few of such cases:

# Transfer Pricing *(cont.)*

## ✓ Shareholders Activity/Services:

The OECD guidelines defines shareholder activity as “An activity which is performed by a member of an MNE group (usually the parent company or a regional holding company) solely because of its ownership interest in one or more other group members, i.e. in its capacity as shareholder.

The UN guidelines define shareholder services as “Services performed by a member of a multinational group (usually the parent company or a holding company) in its capacity as a shareholder, for example preparation of consolidated accounts.

The 1984 OECD Report no longer makes the deduction conditional upon the existence of an “accrued real benefit” and a “specific charge for the service”; it is recognized that under the approach preferred by the majority of member countries the costs of managerial, control and coordinating activities performed to improve the operation of the subsidiaries may be excluded from shareholders costs since these latter activities primarily benefit those subsidiaries. Consequently, difficulties in identifying and quantifying services with certainty do not make such services become shareholder activities if they are expected to provide a benefit for the subsidiary.

The 1995 Guidelines make a clear distinction between “shareholder activity” and “stewardship activities”. In particular, the latter covers a wider range of activities performed by a shareholder that may include the provision of services to other group members, as for example, services that would be provided by a coordinating centre. According to the 1995 Guidelines “stewardship activity” is a broader term that includes “shareholder activity” (that cannot be charged to the group companies) and some provision of services (that should be charged to the subsidiaries).

## ✓ Duplicative Services:

Duplicative services or stewardship services are those that a group member offers to any other member, which can be considered duplicate in the sense that the service is already performed by the recipient or by an unrelated third party on its behalf. In that case no intra-group services should be considered to be rendered by the group member.

Such stewardship or duplicative expenses are illustrated in the US Regulations in the context of a financial analysis for a subsidiary’s borrowing needs. When the subsidiary does not have personnel qualified to make the analysis, and does not make the analysis, the cost of the financial analysis done by the parent is required to be allocated to the subsidiary. If, however, the subsidiary has qualified financial staff that makes the analysis, the review of the analysis by the parent’s financial staff is duplicative and an allocation of such costs is not to be made to the subsidiary in such cases.

However, at the same time, it is also recognized that there may be some exceptions, i.e., a temporary circumstance or an opportunity to eliminate critical business risk. The instances of elimination of critical business risk would come into play, for example, while taking a second legal opinion or performing an external audit to avoid a risky or wrong business decision. In other words, when a valid business reason exists, those duplicate services may be considered intra-group services eligible for a management fee payment.

# Transfer Pricing *(cont.)*

## ✓ On Call Service:

The question is whether the availability of on call services is itself a separate service for which an arm's length charge (in addition to any charge for services actually rendered) should be determined. A parent company or a group service center may be on hand to provide services such as financial, managerial, technical, legal or tax advice and assistance to members of the group at any time. In that case, a service may be rendered to related companies by having staff, equipment, etc. available. An intra-group service would exist to the extent that it would be reasonable to expect an independent company in comparable circumstances to incur "standby" charges to ensure the availability of the services when they are required. It is not unknown, for example, for an independent enterprise to pay an annual "retainer" fee to a firm of lawyers to ensure entitlement to legal advice and representation if litigation is brought. These services may be available on call and they may vary in amount and importance from year to year. It is unlikely that an independent enterprise would incur stand-by charges where the potential need for the service was remote, where the advantage of having services on-call was negligible, or where the on-call services could be obtained promptly and readily from other sources without the need for stand-by arrangements. Thus, the benefit conferred on a group company by the on-call arrangements should be considered, perhaps by looking at the extent to which the services have been used over a period of several years rather than solely for the year in which a charge is to be made, before determining that an intra-group service is being provided.

## ✓ Services that provide incidental benefit:

The OECD Guidelines highlight another set of services which do not warrant an allocation — namely, services that result in an 'incidental benefit'. This refers to services performed by one group member, such as a shareholder or coordinating centre, for a particular group member or a set of group members, such that it also incidentally provides a benefit to other group members.

## ➤ Determining an arm's length charge:

The Charge for intra group services should be that would have been made and accepted between independent enterprises in comparable circumstances. Consequently, such transaction should not be treated differently for tax purposes from comparable transactions between independent enterprises, simply because the transactions are between enterprises that happen to be associated.

The arrangement made for charging for intra group services can be identified in two way i.e direct charge method and indirect charge method.

## ✓ Direct Charge Method

In general direct charge method is of great practical convenience to tax administration because it allows the service performed and basis for payment to be clearly identified. It facilitates the determination of whether the charge is consistent with arm's length principle. For e.g. MNE group provides the service not only to associated enterprise but also to independent enterprises in comparable manner and as a significant part of its business, it could be presumed that MNE has the ability to demonstrate a separate basis for charge.

# Transfer Pricing *(cont.)*

## ✓ Indirect Charge Method

An indirect charge method for charging for intra group services is so difficult to apply in practice in many cases. In such cases, MNE groups may find they have few alternatives but to use cost allocation and apportionment methods which often force some degree of estimation or approximation, as a basis for calculating an arm's length charge.

The allocation might be based on turnover, or staff employed, or some other basis. Whether the allocation method is appropriate depends on the nature and usage of the service. For instance, the usage or provision of payroll services may be more related to the number of staff than to turnover, while the allocation of the stand-by costs of priority computer back-up could be allocated in proportion to relative expenditure on computer equipment by the group members.

Some examples of allocation keys are provided below:

- IT: number of PCs
- Business management software (e.g. SAP): number of licences
- Human Resources: headcount
- Health and safety: headcount
- Management development: headcount
- Tax, Accounting, etc.: turnover or size of balance sheet
- Marketing services: turnover
- Vehicle fleet management: number of cars

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*Compiled by: Monica Jain, Article Assistant*

# Mutual Fund

## FATCA Compliances in Mutual Fund

### Mutual-fund investors must provide additional information for supplementary KYC and Foreign Account Tax Compliance Act (FATCA):

Mutual Fund Investors must provide additional information for supplementary KYC (know your customer) and Foreign Account Tax Compliance Act (FATCA)/Common Reporting Standard (CRS) compliance to their mutual fund house. This is **mandatory for all applicants, including joint holders, guardians and those with the power of attorney**. If investors fail to update the information, they will not be able to transact (except redemptions) in mutual funds

This is mandatory for all Investments in mutual fund from 1<sup>st</sup> June,2015 including Systematic Investment Plan(SIP) which is running after 1<sup>st</sup> June,2015.

There is a lot of confusion among investors. There are so many queries, but they have not been answered in detail. Some queries that came our way:

- Should I update the information with every mutual fund I have invested?
- I have updated the information with CAMS, should I also update it with Karvy?
- Is there a single place where I can update the information and finish it off?
- Should I also update the information for the second holder?

To begin with,

- Investors can update their information either offline or online.
- Investors can pick up the form and fill it and submit it at investor-service centres and points of service of mutual funds.
- They can also visit the websites of their funds, Karvy, CAMS, etc., and take a printout of the form and fill it and mail it to the mutual-fund company.
- If investors have investments in just one or two mutual funds, they have the option of visiting those mutual-fund websites and updating the information online.
- If investors have investments in several mutual funds, they can visit the websites of registrars and transfer agents (RTAs) of mutual funds like CAMS and Karvy and update the information online. This is a relatively easy option as CAMS and Karvy together service almost every mutual fund in the country.

According to the website of CAMS, it services 15 mutual funds, viz., Birla Sun Life, DSP BlackRock, HDFC, HSBC, ICICI Prudential, IDFC, IIFL, JP Morgan, Kotak, L&T, PPFAS, SBI, Shriram, Tata and Union KBC.

# Mutual Fund *(cont.)*

These manage 60 per cent of the total assets managed by the industry. Karvy's website lists the names of 23 mutual funds serviced by the company: Axis, Baroda Pioneer, Goldman Sachs, BOI Axa, Canara Robeco, Deutche, Edelweiss, IDBI, Franklin Templeton, JM Mutual Fund, LIC Nomura, Mirae Asset, Motilal Oswal, Peerless, DHFL Pramerica, Principal, Quantum, Religare, Reliance, Sahara, Taurus and UTI.

- If you have investments only in mutual funds serviced by a single registrar, say, CAMS, you need to update the information only with that particular registrar. However,
- If you have investments in mutual funds serviced by both CAMS and Karvy, you must update the information with both of them.
- If you have investments in Sundaram Mutual Fund, you should do the compliance offline. That means you will have to take a printout of the form, fill it and mail it to the company.
- You can also visit the website of MF Utilities. Around 25 mutual funds participate with MF Utilities. If your investments are only in these funds, you can join MF Utilities and update your information in one go. However, remember that MF Utilities is a platform to buy and sell mutual-fund schemes across various participating AMCs. Investors should apply for a Common Account Number (CAN) to carry out transactions, including updating additional KYC and FATCA/CRS.

## **Website addresses (Shortened URLs)**

1. CAMS
2. Karvy
3. MF Utilities
4. Franklin India
5. Sundaram Mutual Fund

## **Documents & Information to keep these ready**

Details needed to generate one-time password: PAN, date of birth, folio number, bank account number Common Account Number (CAN), depending on the website

Extra inputs required

- Name
- Country of birth
- Place of birth
- Address for communication
- Gross annual income
- Occupation
- Are you politically exposed?
- Net worth
- Net worth date
- Source of wealth
- Is your country of tax residency other than India?

This information is part of Investor Awareness to comply the above Compliances and data is taken from reliable sources.

## Equity Link Saving Scheme (ELSS) Tax Saving Mutual Funds

An ELSS is a diversified equity mutual fund which has a majority of the corpus invested in equities. Since it is an equity fund, returns from an ELSS fund reflect returns from the equity or stocks.

ELSS funds have the ability to deliver superior returns - 14-16% over the long term. That's a full 6-8% above inflation. This return is not guaranteed though but historical evidence suggest that these returns are achievable over the long term.

You can invest upto Rs 150,000 in ELSS funds either as a lump sum or on a monthly basis (SIP) thereby spreading your investments over the course of the year. The latter also helps in reducing volatility that's typical of equity linked products.

You can invest in these mutual funds through an advisor or through an online portal

ELSS or Equity Linked Saving Scheme is a type of Mutual Fund investment that provides tax saving and capital appreciation.

This type of mutual fund has a lock in period of 3 years from the date of investment. This means if you start a Systematic Investment Plan in an ELSS, then each of your investments will be locked in for 3 years from the respective investment date.

Investors can exit ELSS by selling it after 3 years

### Advantages of investing in ELSS

- **Save Tax**  
ELSS investments up to 1,50,000 are eligible for deduction from your taxable income under section 80 C. Save a maximum of 46,350/- (depending on your income-tax slab)
- **Tax Free Returns**  
Capital gains arising from redemptions and dividends are tax free
- **Shortest lock-in period**  
ELSS has shortest lock in period of 3 years, compared to other tax saving instruments like PPF (15 yrs), NSC (6 yrs) and certain Bank FDs (5 yrs).
- **Grow your money**  
ELSS funds invest in equity related instruments - when the stock market rises, return on your investments also increases.

An ELSS is a diversified equity mutual fund which has a majority of the corpus invested in equities. Since it is an equity fund, returns from an ELSS fund reflect returns from the equity markets.

# Mutual Fund *(cont.)*

## HOW TAX SAVING OPTIONS SCORE

Based on returns, safety, flexibility, liquidity, costs, transparency & taxability

TAX-SAVING INSTRUMENT	RATING	RETURNS
ELSS Funds		17.8% (past 3 years)
Ulips		9.8% (past 3 years)
NPS		9.5% (past 3 years)
PPF		8.7% (for 2015-16)
Sukanya scheme		9.2% (for 2015-16)
Senior Citizen's Saving Scheme		9.3% (for 2015-16)
Bank FDs & NSCs		8-8.5% (for 2015-16)
Pension Plans		7-10.5% (past 3 years)
RGESS Funds		5-15% (past 1 year)
Insurance Policies		5.5-6% (for 20 year plan)

*Compiled by: Auriga Team*