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# Spotted & Reported

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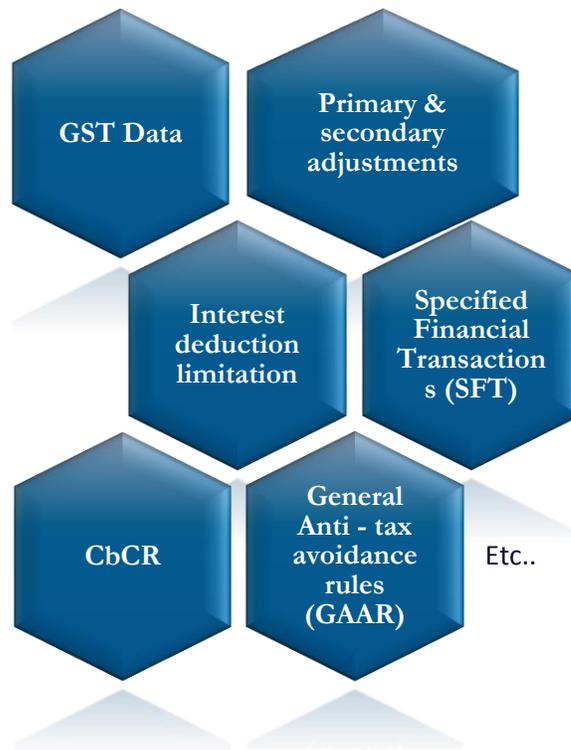
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## **CBDT Amends the Tax Audit Report (Form 3CD)**

### **In brief:**

Recently, the Central Board of Direct Taxes (CBDT) has issued a Notification amending the Income-tax Rules, 1962 (the Rules) with respect to the Tax Audit Report (Form no. 3CD) which is required to be certified by an auditor under Section 44AB of the Income-tax Act, 1961 (the Act). The amended rules shall come into force with effect from 20 August 2018.

The amended Form no. 3CD beside includes disclosures on the following:



In detail:

The summarized modifications in Form 3cd (clause wise):

Clause No.	Revised or New specifications as per revised Form 3CD
Clause 4	GST registration number to be reported if the Assessee is liable to pay GST
Clauses 19 & 24	<p>Reporting relating to the deduction as per Section 32AD* of the Act. The clause seeks disclosure of:</p> <ol style="list-style-type: none"><li>i. Amount debited to profit and loss account (clause 19)</li><li>ii. Amount admissible (clause 19)</li><li>iii. Amount deemed to be profits and gains. (clause 24)</li></ol> <p>*Section 32AD - Where an assessee, sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after the 1st day of April, 2015 in any backward area notified by the Central Government in this behalf, in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal, and acquires and installs any new asset for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April, 2015 and ending before the 1st day of April, 2020 in the said backward area, then, there shall be allowed a deduction of a sum equal to fifteen per cent of the actual cost of such new asset for the assessment year relevant to the previous year in which such new asset is installed.</p>
Clause 29A	<p>The clause seeks disclosure of nature and amount of income/ receipts as per section 56(2)(ix) and 56(2)(x).</p> <p><u>56(2)(ix)</u> - Advance money forfeited relating to the transfer of capital asset. <u>56(2)(x)</u> - Receipt of any sum of money or immovable property or movable property received without consideration/ inadequate consideration</p> <p><u>What is Section 56 (2)(ix)?</u> any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if, —</p> <ol style="list-style-type: none"><li>(a) Such sum is forfeited; and</li><li>(b) The negotiations do not result in transfer of such capital asset;</li></ol> <p>Will be treated as “Income from other sources” Clause 29A requires the assessee to disclose any such receipts:</p> <ol style="list-style-type: none"><li>(i) The nature and</li><li>(ii) Amount of such receipts</li></ol>

When is Section 56(2)(x) applicable?

When any person receives, in any previous year, from any person or persons on or after the 1st day of April 2017, —

- (a) Any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;
- (b) Any immovable property, —
  - (A) Without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;
  - (B) For a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Following item (B) shall be substituted for the existing item (B) of sub-clause (b) of clause (x) of sub-section (2) of section 56 by the Finance Act, 2018, i.e. 1-4-2019:

- (B) For a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely: —
  - (i) The amount of fifty thousand rupees; and
  - (ii) The amount equal to five per cent of the consideration
- (c) Any property, other than immovable property, —
  - (A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;
  - (B) For a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration

Clause 29B requires the assessee to disclose any such receipts:

- (i) the nature and
- (ii) amount of such receipts thereof:

Clause  
30A

Disclosure regarding primary and secondary adjustments:

- i. Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year?
- ii. If yes, then furnish the following details:-
  - Under which clause of sub-section (1) of section 92CE primary adjustment is made?
  - Amount of primary adjustment
- iii. Whether the excess money with AE is required to be repatriated to India as per Section 92CE\*(2)?
  - If yes, whether the excess money has been repatriated within the prescribed time

- If no, then disclose the amount of imputed interest income on such excess money which has not been repatriated within the prescribed time.

\*Section 92CE of the Act ('Secondary adjustment')\*

According to this section, where there has been any primary transfer pricing adjustments made in the case of an assessee, under various circumstances (viz. suo motu by the assessee, by the assessing officer, as per safe harbor rules, etc.), the assessee is required to make a secondary adjustment provided:

- Such primary adjustment is more than 1 crore; and
- The adjustment pertains to assessment year on or after 1 April 2016

This provision also provides that where such amount is not recovered, then such balance should be treated as an advance given to the AE and recovered along with interest.

Details required to be reported under this clause are as follows:

- Reference of relevant section
- Amount of primary adjustment
- Where repatriation is required to be made in India as per section 92CE and if the same is made within prescribed time
- Computation of interest income on such excess money not repatriated to India

\*Secondary adjustment – A secondary adjustment has been defined to mean an adjustment in the books of account of the taxpayer and its AE to reflect that the actual allocation of profits between the taxpayer and its AE are consistent with the transfer price determined as a result of primary adjustment.

Clause  
30B

Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B\*? If Yes, Disclose the below:

- Amount of expenditure by way of interest or of similar nature incurred.
- EBITDA\* during the previous year.
- Excess Interest\*
- Details of interest expenditure brought forward as per Section 94B(4)\*
- Details of interest expenditure carried forward as per Section 94B(4)\*

Explanations for the above:

\*Section 94B(1) : Where an Indian company, or a permanent establishment of a foreign company in India (other than company engaged in the business of banking or insurance) being the borrower, incurs any expenditure by way of interest or of similar nature exceeding 1 Cr which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not

	<p>be deductible in computation of income under the said head to the extent that it arises from excess interest.</p> <p>* EBITDA : Earnings before interest, tax, depreciation and amortization</p> <p>* The excess interest is lesser of below:</p> <p>a) An amount of total interest paid or payable in excess of 30% of EBITDA of the borrower in the previous year, or</p> <p>b) Interest paid or payable to associated enterprises for that previous year.</p> <p>* Section 94B(4): Where for any assessment year, the interest expenditure is not wholly deducted against income under the head "Profits and gains of business or profession", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with Section 94B(2).</p>
<p>Clause 30C</p>	<p>Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96*, during the previous year? If yes, then disclose the below:</p> <p>i. Nature of the impermissible avoidance arrangement</p> <p>ii. Amount of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement</p> <p><u>Explanations for the above:</u></p> <p>New clause introduced for section 96 of the Act ('GAAR')</p> <p>Section 96 (impermissible avoidance agreement) falls under the Chapter X-A (General Anti Avoidance Rule). This section was inserted to curb such arrangements where an agreement creates such rights between the parties to the agreement, by misuse of the provisions of the Act, which would not have been created in normal course between parties dealing at arm's length. Under this clause, where the tax auditor is of the view that a particular arrangement falls under this provisions of the act then they are supposed to state the nature of such arrangement and the tax benefit created in the previous year to all parties in aggregate.</p> <p>*Monetary limit of Rs.3 Crores is applicable for the above.</p>
<p>Clause 31</p>	<p>Reporting details of each cash receipt or payment in excess of the limit specified under section 269 ST – (for both recipient and payer)</p> <p>Restriction on receiving by any person of an amount exceeding INR two lakh in aggregate from a person in a day; or in respect of a single transaction; or in respect of one event otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system. Where this section of the act is applicable only to the recipient, the disclosure requirements even mandate the payer to make the relevant disclosures such as the name, address and PAN of the party involved, nature of transactions, amount and date of payment. However, nature of</p>

transactions and date of payment is not required if it is received or paid by a cheque or bank draft, not being an account payee cheque or an account payee bank draft.

**Clause 36A**

Reporting of the amounts received as deemed dividend under section 2(22)(e) of the Act. And the disclosures are :

- i. Amount Received.
- ii. Date of Receipt.

This clause concentrates on section 2(22)(e) i.e. deemed dividend

Under section 2(22)(e), if the assessee has received any payment by a company, not being a company in which public are substantially interested, to the extent of accumulated profits:

- By way of advance or loan to shareholders, being a person who is a beneficial owner of shares (but not for shares entitled to fixed rate of dividend)
- To any concern in which such shareholder is a member or a partner and in which he has a substantial interest
- Or any payment on behalf of, or for the individual benefit of any such shareholder.

Then the amount so received, has to be reported in the respective annexure to the clause

**Clause 42**

Reporting requirements in respect of Form 61, Form 61A, and Form 61B.

If the assessee is required to furnish statement in forms mentioned above, then the disclosures are as follows:

Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the Form contains information about all details/ transactions which are required to be reported. If not, please furnish list of the details/transactions which are not reported.

Explanations for the above:

- i. Form 61: Statement containing particulars of declaration received in Form No.60
- ii. Form 61A: SFT by specified reporting persons.
- iii. Form 61B: Statement of reportable account by prescribed reporting financial institution, as section 285B of the Act.
- iv. Specified financial transaction means any—
  - Transaction of purchase, sale or exchange of goods or property or right or interest in a property, or
  - Transaction for rendering any service, or
  - Transaction under a works contract, or
  - Transaction by way of an investment made or an expenditure incurred, or
  - Transaction for taking or accepting any loan or deposit.

**Clause  
43**

Reporting requirements relating to furnishing of CbCR , if the assessee or its parent entity or alternative reporting entity is liable to furnish the same as per sub-section (2) of section 286, then the disclosures are as follows:

- i. Report furnished by which entity? The Assessee or Parent or alternative reporting entity?
- ii. Name of the parent entity
- iii. Name of alternative reporting entity (if applicable)
- iv. Date of furnishing of report.

Explanations for the above:

Section 286(2): Read with Rule 10DB(3) every parent entity\* or the alternate reporting entity, resident in India shall furnish the report in respect of international group of which it is constituent in Form 3CEAD.

Glimpse upon Form 3CEAD:

- This form is also furnished to “Director General of Income Tax (Risk Assessment)”.
- Report in form 3CEAD shall be furnished to DGIT (RA) on or before the due date for furnishing the return of income as specified in section 139(1).
- Information required in form 3CEAD:
  - a. Name, address and PAN of reporting entity.
  - b. Whether reporting entity is parent entity of the international group.
  - c. Detail of allocation of Income Taxes and Business activity by tax jurisdiction.
  - d. List of all the constituent entities of the multinational enterprises group included in each aggregation per tax jurisdiction.

\*Every person, being a constituent entity of an international group shall be required to do the above:

- (i) if the consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds five hundred crore rupees; and
- (ii) the aggregate value of international transactions,—
  - (A) during the accounting year, as per the books of account, exceeds fifty crore rupees, or
  - (B) in respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds ten crore rupees.

**Clause  
44**

Sl. No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure relating to entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
(1)	(2)	(3)	(4)	(5)	(6)	(7)

With respect to Clause 44 in the tax audit annexure i.e. the clause pertaining to GST

- While reporting expenses, expenses of both revenue and capital in nature have to be reported. The other columns of the clause have to be filled in accordance with GSTR - 3B that have been filed.
- In order to avoid future discrepancies, a thorough reconciliation has to be done between the books of account that are maintained and GSTR - 3B.
- Input credit as per Books of account should be matched with GSTR 2.
- Assessee should maintain a comprehensive list of vendors
- Also, it is to be noted that solely expenses incurred under Reverse Charge Mechanism has to be reported under the column "Relating to other registered entities" i.e. column (5).
- Enclosed "Annexure 1" gives the format for reconciliation between Books of Account and GSTR – 3B. (Attached in the mail)

## Our Comments

The Notification mainly focuses on expanding the scope of Form 3CD and to provide certain additional disclosures and such disclosures would certainly help tax department to obtain a first level review of information already reported in other

CBDT has widened the scope of Form 3CD by including disclosures with respect to impermissible avoidance arrangement under the provisions of General Anti-Avoidance Rule (GAAR); transfer pricing related disclosures like secondary adjustment, interest limitation, CbCR; GST related disclosures, etc.

With respect to disclosure relating to provisions of GAAR, there are no objective criteria laid down in law to determine whether a transaction would be subject to GAAR and there is a lot of subjectivity involved therein. Further, the tax auditor not only has to determine the tax benefit arising to the taxpayer but also has to determine the tax benefit arising to all parties involved in the arrangement. The issue is that these parties may not be the clients of the tax auditor and could even be in other countries. Therefore, it may turn out to be quite onerous for the tax auditor to report these details.

While the introduction of the transfer pricing provisions in the law in the past few years has required the taxpayers to undertake the necessary compliances, this consolidation of information in the tax audit report shall provide all the relevant information to the tax authorities in one place and enable them to focus their enquiries/questions. Amendment to Form 3CD would increase the compliance burden on the taxpayers and they may face further challenges reporting mechanism.



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