

# Recent Amendments in Form 3CD

Applicable for A.Y. 2018-19 w.e.f. 20-08-2018

[Notification No. 33/2018 dated 20/07/2018]

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# Recent Amendments in Form 3CD

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## The Income-tax (8th Amendment) Rules, 2018

- In the Income-tax Rules, 1962, in Appendix II, in Form No. 3CD, changes are introduced.
- They shall come into force from the 20<sup>th</sup> day of August, 2018.
- Notification No. 33/2018 dated 20/07/2018

# Recent Amendments in Form 3CD

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Clause No.	Name	Type of Change
<b>4</b>	Whether the assessee is liable to pay indirect tax. If yes, furnish the registration no./ identification no. allotted for the same	<b>Amended</b>
<b>19</b>	Amounts admissible u/s 32AC- 35E	<b>Amended</b>
<b>24</b>	Deemed profits u/s 32AC/32AD/33AB/33ABA/33AC	<b>Amended</b>
<b>26</b>	Payments u/s 43B	<b>Amended</b>
<b>29A</b>	Advance received on capital asset forfeited	<b>Newly Inserted</b>
<b>29B</b>	Income from gifts exceeding Rs. 50,000	<b>Newly Inserted</b>
<b>30A</b>	Details about “Primary Adjustment” in transfer pricing	<b>Newly Inserted</b>
<b>30B</b>	Limitation of interest deduction for borrowings from Associated Enterprises up to 30% of EBITDA	<b>Newly Inserted</b>
<b>30C</b>	Details of Impermissible Avoidance Agreement	<b>Newly Inserted</b>

# Recent Amendments in Form 3CD Contd....

Clause No.	Name	Type of Change
<b>31(ba)</b>	Receipts more than Rs. 2,00,000/- u/s 269ST (received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account i.e. Cash Receipts)	<b>Newly Inserted</b>
<b>31(bb)</b>	Receipts more than Rs. 2,00,000/- u/s 269ST (received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft)	<b>Newly Inserted</b>
<b>31(bc)</b>	Payment made more than Rs. 2,00,000/- u/s 269ST (paid otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account i.e. Cash paid)	<b>Newly Inserted</b>
<b>31(bd)</b>	Payment made more than Rs. 2,00,000/- u/s 269ST (paid by a cheque or bank draft, not being an account payee cheque or an account payee bank draft)	<b>Newly Inserted</b>
<b>31(c)</b>	Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T	<b>Amended</b>

# Recent Amendments in Form 3CD

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Clause No.	Name	Type of Change
<b>31(d)</b>	Repayment of loan or deposit or any specified advance u/s 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account	<b>Amended</b>
<b>31(e)</b>	Repayment of loan or deposit or any specified advance u/s 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft	<b>Amended</b>
<b>34(b)</b>	Furnishing of tax deducted or collected statement	<b>Amended</b>
<b>36A</b>	Dividend received u/s 2(22)(e)	<b>Newly Inserted</b>
<b>42</b>	Details w.r.t. Form 61, Form 61A and Form 61B	<b>Newly Inserted</b>
<b>43</b>	Details w.r.t. Country by Country (CBC) reporting as referred in section 286	<b>Newly Inserted</b>
<b>44</b>	Break-up of total expenditure of entities registered or not registered under the GST	<b>Newly Inserted</b>

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# General Changes due to Amendment in Income Tax Act

# Clause no. 4

[Amended]

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## Old Clause:

‘Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, customs duty, etc. If yes, please furnish the registration number or any other identification number allotted for the same.’

## Amendment by Income tax (18<sup>th</sup> Amendment) Rules, 2018

‘Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, goods and services tax, customs duty, etc. If yes, please furnish the registration number or GST number or any other identification number allotted for the same.’

**Brief:** Applicability of GST and if yes, then GSTIN have to mentioned.

# Clause no. 4

8

## Format in e-utility.....

S:NO	Type	Registration /Identification Number
1	Select	
	Select	
	Central Excise Duty	
	Central Custom Duty	Select
	Service Tax	01/04/2013 to 31/03/2014
	Sales Tax/VAT	
	State Excise Duty	2014-15
	Other Indirect Tax/duty	relevant clause of section 44AB under which the audit has been conducted *

**Note:** This utility is subject to changes as introduced in this clause vide Notification No. 33/2018 dated 20/07/2018 ( As discussed above). However, in case of no change in utility, the auditor may fill GST related information under 'Other Indirect Tax/Duty'.



# Clause no. 19

[Amended]

9

**Clause 19 (Amended)** - in the table, after the row with entry “32AC”, the row with entry “32AD” shall be inserted;

i.e. **Allowance under Section 32AD\* is to be reported which should be 15% of actual cost of new asset.**

***\*Section 32AD - investment in new plant or machinery in notified backward areas in certain States***

# Clause no. 19

*[Amended]*

10

Amounts admissible under Sections:

Section	Amount debited to profit and loss account	Amounts admissible as per the provisions of the Income Tax Act, 1961 and also fulfils the conditions, if any specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf

**Note:** This utility is subject to changes as introduced in this clause vide Notification dated 33/2018 dated 20/07/2018 ( As discussed above)

# Issues on Clause 19.....

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- ❑ The Auditor should report the amount debited to the P&L Account and the amount admissible under the provisions of the Income Tax Act/Rules/other guidelines/circular, etc..
- ❑ The tax auditor needs to specify the capital expense incurred and allowed as deduction for Computation of Profit & Gain as per the provisions of Income Tax Act/Rules/other guidelines/circular, etc. under this Clause.
- ❑ **The tax auditor is also required to report whether the conditions specified in these Sections have been fulfilled by the assessee or not.**
- ❑ In case the auditor relies on a judicial pronouncement. He may mention the fact in his observations para provided in Form No. 3CA or Form No. 3CB, as the case may be.

# Clause no. 24

[Amended]

12

**Clause 24 (Amended)** - after the words “32AC or”, the words “32AD or” shall be inserted.

i.e. Deemed gains under Section 32AD\* to be reported if the new asset in respect of which the amount of deduction is availed under this section, is sold before the expiry of 5 years.

***\*Section 32AD - investment in new plant or machinery in notified backward areas in certain States***

# Clause no. 24

13

## Format in e-utility.....

S.No.	Section	Description	Amount
1	Select ▼	<input type="text"/>	<input type="text"/>

**Note:** This utility is subject to changes as introduced in this clause vide Notification dated 33/2018 dated 20/07/2018 ( *As discussed above* )

# Section 32AD- Inserted by the Finance Act, 2015, w.e.f. 1-4-2016. Contd....

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- ❑ **Section 32AD was inserted to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if—**
  - (a) he sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 in any notified backward areas in the State of Andhra Pradesh, State of Bihar, State of West Bengal and the State of Telangana; and
  - (b) the new assets are acquired and installed for the purposes of the said undertaking or enterprise during the period beginning from the 1st April, 2015 to 31st March, 2020.
  
- ❑ If any new asset acquired and installed by the assessee is sold or otherwise transferred, except in connection with the amalgamation or demerger or re-organisation of business referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47, within a period of five years from the date of its installation, the amount of deduction allowed under this section in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

**Clause 26 (Amended)** - Inclusion of clause (g) of section 43B

**i.e. the amount payable to the Indian Railways for use of its assets, is to be reported.**

- ❑ An amendment by the **Finance Act, 2016 (w.e.f. 01.04.2017)** in sec 43B(Certain deductions to be only on actual payment) includes the following:

***“any sum payable by the assessee to the Indian Railways for the use of railway assets”***

- ❑ And, thus change is also made in line with above amendment for reporting purpose as well.

# Clause no. 26

16

In respect of any sum referred to in Clause (a), (b), (c), (d), (e) or (f) or (g) of Section 43B, the liability for which :-

**A.** Pre-existed on the first day of the Previous Year but was not allowed in the assessment of any preceding Previous Year and was

(a) Paid during the Previous Year;

S.No.	Section	Nature of Liability	Amount

(b) Not paid during the Previous Year

S.No.	Section	Nature of Liability	Amount

**Note:** This utility is subject to changes as introduced in this clause vide Notification dated 33/2018 dated 20/07/2018 ( *As discussed above* )



# Clause no. 26

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B. Was incurred in the previous year and was

(a) paid on or before the due date for furnishing the return of income of the previous year under Section 139(1);

S.No.	Section	Nature of Liability	Amount

(b) not paid on or before the aforesaid date

S.No.	Section	Nature of liability	Amount

*(State whether sales-tax, customs duty, excise duty or any other indirect tax, levy, cess, impost, etc. is passed through the profit & loss account.)*

e-Utility provides space for remarks

# Clause no. 29A

[Newly Inserted]

18

- a) Whether any amount is to be included as income chargeable under the head income from other sources as referred to in clause (ix) of sub-section (2) of section 56? **(Yes/No)**
- b) If yes, please furnish the following details:
  - i. Nature of income
  - ii. Amount thereof

**Brief:** Advance received on capital asset forfeited to be reported under this clause.

*\*Whether an amount is forfeited or not cannot be detected with ordinary auditing techniques. The only indication of a forfeiture can be a long-standing credit not being paid. However, the indication is available not in the year of forfeiture. Detection of forfeiture in the very year of forfeiture is a subject matter of investigation that one who is empowered to summon other documents and enforce attendance of parties can do. This casts an onerous duty on the tax auditor.*

# Clause no. 29A

**Section 56 (2)**: In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely:

.....

(ix) any sum of money received as an advance or otherwise in the course of negotiations for **transfer of a capital asset**, if,—

(a) such sum is forfeited; and

(b) the negotiations do not result in transfer of such capital asset;

**[inserted by Finance (No. 2) Act, 2014, w.e.f. 01-04-2015]**

# Clause no. 29B

*[Newly Inserted]*

20

- a) Whether any amount is to be included as income chargeable under the head income from other sources as referred to in clause (x) of sub-section (2) of section 56? **(Yes/No)**
- b) If yes, please furnish the following details:
  - i. Nature of income
  - ii. Amount (in Rs.) thereof

**Brief:** Income of gifts exceeding Rs. 50,000 is to be reported under this clause

# Section 56(2)(x) - inserted by Finance Act 2017 w.e.f. 1st April, 2017

- (x) where 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, 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

**[item (B) substituted by the Finance Act, 2018, w.e.f. 1-4-2019]**

Contd....

**Provided that** where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause:

**Provided further that** the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement for transfer of such immovable property:

**Provided also that** where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections;

**(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:

**Provided that** this clause shall not apply to any sum of money or any property received—

- (I) from any relative; or
- (II) on the occasion of the marriage of the individual; or
- (III) under a will or by way of inheritance; or
- (IV) in contemplation of death of the payer or donor, as the case may be; or
- (V) from any local authority as defined in the *Explanation* to clause (20) of section 10; or
- (VI) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or
- (VII) from or by any trust or institution registered under section 12AA; or
- (VIII) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or
- (IX) by way of transaction not regarded as transfer under clause (i) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vich) or clause (vid) or clause (vii) of section 47.

*Explanation.*— For the purposes of this clause, the expressions “assessable”, “fair market value”, “jewellery”, “property”, “relative” and “stamp duty value” shall have the same meanings respectively assigned to them in the *Explanation* to clause (vii).’

# Section 56(2)(x)....

## Brief Impact:

- The receipt of any sum of money or property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources".
- Clause (x) shall be applicable to all assessee whereas clause (vii) & (viii) are applicable to specific assesseees (i.e. Individuals/ HUF and firm or a company not being a company in which the public are substantially interested).



# Issues for Consideration u/s 56(2)(x)

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The section will lead to double taxation of the same income on deeming basis as explained in the example below:

## Example:

- 'X' transfers his unquoted shares purchased at a cost of Rs.8 lakhs to 'Y' at Rs. 10 lakhs whereas the FMV of the shares as determined in the prescribed manner is Rs. 1 crore. Then in this situation, the provisions of Section 50CA would be attracted in the hands of the seller, whose full value of consideration for computation of capital gains would be Rs.1 crore. Further, 'Y' who is purchaser would be liable to tax under section 56(2)(x)(c) on Rs. 90 lakhs (i.e. Rs. 1 crore less Rs. 10 lakhs) as income from other sources.
- Hence, **the difference of Rs.90 lakhs between FMV & actual consideration will be taxable:**
  - a) Under section 50CA, in the hands of seller; and
  - b) Under section 56(2)(x), in the hands of recipient.
- A similar consequence of **double taxation resulting on account of the provisions of section 50C/43CA & 56(2)(x)(b).**

## Issues in respect of Clause 29A & 29B

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- The Auditor would have to apply professional judgement as to what would fall under these provisions or not, would require to be evaluated on facts & circumstances of transactions.
- It may be difficult to locate all transactions and it may also involve a time consuming effort. It may not be possible to verify the list of all persons covered by this section and therefore, the information supplied by the assessee can be relied upon. Where the tax auditor relies upon the information in this regard furnished to him by the assessee it would be advisable to make an appropriate disclosure.
- In case tax auditor is involved in proprietary concern audit but not the individual account audit, then proper disclaimer should be given in the observation para in Form 3CA or Form 3CB, as the case may be.

## Clause (ba) Newly Inserted

Particulars of **each receipt** in an amount exceeding the limit specified in **section 269ST**, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year, **where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account:-**

- i. Name, address and Permanent Account Number (if available with the assessee) of the payer;
- ii. Nature of transaction;
- iii. Amount of receipt (in Rs.);
- iv. Date of receipt

# Clause no. 31

## Clause (bb) Newly Inserted

Particulars of **each receipt** in an amount exceeding the limit specified in section **269ST**, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, **received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft**, during the previous year:

- i. Name, address and Permanent Account Number (if available with the assessee) of the payer;
- ii. Amount of receipt (in Rs.)

# Clause no. 3I

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## Clause (bc) Newly Inserted

Particulars of **each payment** made in an amount exceeding the limit specified in **section 269ST**, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, **otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account** during the previous year:-

- i. Name, address and Permanent Account Number (if available with the assessee) of the payee;
- ii. Nature of transaction;
- iii. Amount of payment (in Rs.);
- iv. Date of payment

# Clause no. 31

## Clause (bd) Newly Inserted

Particulars of **each payment** in an amount exceeding the limit specified in **section 269ST**, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, **made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft**, during the previous year:

- i. Name, address and Permanent Account Number (if available with the assessee) of the payee;
- ii. Amount of payment (in Rs.);

# Clause no. 31

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*Particulars at (ba), (bb), (bc) and (bd) need not be given in the case of receipt by or payment to a Government company, a banking Company, a post office savings bank, a cooperative bank or in the case of transactions referred to in section 269SS or in the case of persons referred to in Notification No. S.O. 2065(E) dated 3<sup>rd</sup> July, 2017*

## Issues on clause 31 (ba), (bb), (bc) & (bd)

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- ❑ The transactions reported under Form 61A for SFT must be included under clause 31(ba) & 31(bb) according to respective mode of transaction and reporting requirements.
- ❑ It may be possible that the transactions reported u/s 269SS & 269T would require to report again u/s 269ST (i.e. transactions more than Rs. 2,00,000/-), as section 269ST covers reporting of all the transactions of Rs.2,00,000/- or more, whether trade or non-trade.
- ❑ There may be practical difficulties in verifying whether the transactions are done by account payee cheque or account payee bank draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available. In the absence of satisfactory evidence, the guidance given by ICAI to the tax auditor has been given to make a suitable comment in his report as suggested:  
*“It is not possible for me/us to verify whether loans or deposits have been taken or accepted otherwise than by an account payee cheque or account payee bank draft, as the necessary evidence is not in the possession of the assessee”*



# Section 269ST: Mode of undertaking <sup>Contd....</sup> transactions *(Inserted by the Finance Act, 2017 w.e.f. 01.04.2017)*

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- ❑ It is provided that no person shall receive an amount of **two lakh rupees or more** in aggregate from a person **in a day** or in respect of a **single transaction**; or in respect of transactions **relating to one event or occasion from a person, otherwise than** by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.
- ❑ It is further said that **restriction shall not apply to receipts by** Government, any banking company, post office savings bank or co-operative bank, **Transactions of nature referred in Section 269SS or persons or class of persons** central govt may notify.
- ❑ **The newly inserted provision is a move towards cash less economy and to reduce circulation of black Money.**

# Circulars or Notification issued in respect of section 269ST

- ❑ It is clarified that in respect of receipt in the nature of repayment of loan by non-banking financial companies (NBFCs) and housing finance companies (HFCs), the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST. **[Circular No. 22 of 2017 dated 03/07/2017]**
- ❑ It is clarified that cash sale of the agricultural produce by its cultivator to the trader for an amount of Rs 2 Lakh or more is prohibited under section 269ST of the Act in the case of the cultivator. **[Circular No. 27 of 2017 dated 03/11/2017]**

# Circulars or Notification issued in respect of section 269ST

Contd....

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## The Receipts/ Entities which are Exempt from Provisions u/s 269ST of the Income Tax Act, 1961 [Notification No. 57 /2017, dated 03/07/2017 w.e.f. 01/04/2017]

- ❑ The provision of section 269ST shall not apply to the following, namely:-
  - (a) receipt by a business correspondent on behalf of a banking company or co-operative bank, in accordance with the guidelines issued by the Reserve Bank of India;
  - (b) receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or co-operative bank, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007);
  - (c) receipt from an agent by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007);
  - (d) receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards;
  - (e) receipt which is not includible in the total income under clause (17A) of section 10 of the Income-tax Act, 1961.

# Clause no. 31

36

## Clause (c ) amended

Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year:—

- i. name, address and Permanent Account Number (if available with the assessee) of the payee;
- ii. amount of the repayment;
- iii. maximum amount outstanding in the account at any time during the previous year;
- iv. whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account;
- v. in case the repayment was made by cheque or bank draft, whether the same was ~~taken or accepted~~ repaid\* by an account payee cheque or an account payee bank draft.

(\* As corrected by Income –tax (18th Amendment) Rules, 2018 w.e.f 20-08-2018)

# Clause no. 31

37

## Clause (d) amended

Particulars of **repayment of loan or deposit or any specified advance** in an amount exceeding the limit specified in **section 269T received otherwise** than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:—

- i. name, address and Permanent Account Number (if available with the assessee) of the payer;
- ii. amount of repayment of\* loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.

(\* As corrected by Income –tax (18th Amendment) Rules, 2018 w.e.f 20-08-2018)

# Clause no. 31

38

## Clause (e) amended

Particulars of **repayment of loan or deposit or any specified advance** in an amount exceeding the limit specified in **section 269T received** by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year:—

- i. name, address and Permanent Account Number (if available with the assessee) of the payer;
- ii. amount of **repayment of\*** loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year.

(Particulars at (c), (d) and (e) need not be given in the case of a repayment of any loan or deposit or any specified advance taken or accepted from the Government, Government company, banking company or a corporation established by the Central, State or Provincial Act)

(\* As corrected by Income –tax (18th Amendment) Rules, 2018 w.e.f 20-08-2018)

# Issues on Clause no. 31

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- ❑ ECS, RTGS and NEFT etc. are now allowed as permissible mode to accept or repay the deposit or loan specified u/s 269SS & 269T respectively. (Amendment by Finance Act, 2014)
- ❑ Transaction of Current A/c also covered in 'Deposits'.
- ❑ In case of mixed A/c, transactions only related to Loans/Deposits are to be reported.
- ❑ Opening balance of Loan A/c is to be considered for calculation of 'maximum amount outstanding'.
- ❑ Security Deposit against contract etc are covered under Deposits'.
- ❑ In respect of reporting of Account payee cheque or bank draft, appropriate comment should be provided in the tax audit report, as earlier discussed in respect of clause 31(ba) to (bd)

## Accepting/ Repaying Loans/ Advances via Journal Entries:

- ❑ The provisions of Section 269SS of the Act does not get attracted merely for transfer of amount to a loan account in the form of book entry. **CIT Vs. Worldwide Township Projects Ltd., [2014] 367 ITR 433 (Delhi)**
- ❑ **Contrary view has been taken by High Court of Bombay in CIT vs Triumph International Finance (I) Ltd. [2012] 345 ITR 270 (Bombay)** wherein held that repayment of loan/deposit by merely debiting account through journal entries contravenes provisions of Section 269T.
- ❑ Further, held by **ITAT- Bombay in Lodha Builders Pvt Ltd vs. ACIT, [2014] 34 ITR(T) 157**, that penalty cannot be levied u/s 271D and 271E if the transactions are bona fide & genuine even where accepting/ repaying loans/ advances via journal entries contravenes s. 269SS & 269T.



# Issues on Clause no. 31

- ❑ Where the transaction is by an A/c Payee Cheque and no payment was made in Cash. Provisions of Sec 269SS shall not be attracted. **CIT Vs Noida Toll Bridge Co. Ltd 262 ITR 260 (Del)**
- ❑ If the cheque or bank draft through which loan is received is 'crossed' but words 'account payee' is not written in the crossing but the transaction is otherwise genuine and the bank confirms that these amounts have been deposited in assessee's account and are as per the banking norms and there was no flaw in the transaction, penalty under Section 271D is not imposable for such a trivial violation. **CIT v. Makhija Construction Co. [2002] 123 Taxman 1003 (MP)**

# Issue on clause 31 – Applicability of 269SS on Share Application money

- Share application money partakes the character of a deposit even if it cannot be considered as a loan within the meaning of section 269SS. Since it is payable in specie on refusal to allot shares and was repayable if recalled by the applicant, before allotment of shares and the conclusion of the contract. Therefore, acceptance of share application money in cash amounting to Rs. 20,000 or more would violate provisions of section 269SS. **Balotia Engineering Works (P) Ltd. Vs. CIT (2005) 275 ITR 0399 (Jhar.)**.
- However, in **DIT (Exemption) v. Acme Educational Society [2010] 326 ITR 146**, it was held that a loan grants temporary use of money, or temporary accommodation, and that the essence of a deposit is that there must be a liability to return it to the party by whom or on whose behalf it has been made, on fulfilment of certain conditions. If these tests are applied to the receipt of share application money, it may be seen that the receipt of share application monies from other companies for allotment of shares cannot be treated as receipt of loan or deposit. **Also see CIT Vs I.P. India (P.) Ltd. [2012] 343 ITR 353 (Delhi)**
- Where the assessee was under bonafide belief that share application money was neither loans or deposits, penalty u/s 271D could not be levied **CIT Vs Object Frontier Software (P.) Ltd. [2017] 244 Taxman 292 (Madras)**

# Clause no. 34

*[Amended]*

43

## Clause (b) substituted

- ❑ whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details:

Tax deduction and collection Account Number (TAN)	Type of Form	Due date for furnishing	Date of furnishing , if furnished	Whether the statement of tax deducted or collected contains information about all details/ transactions which are required to be reported. <b>If not, please furnish list of details/ transactions which are not reported.;</b>

**Brief:** Clause 34(b) has been substituted i.e. Details with respect to transactions not disclosed in TDS Return/ TCS Return is to be mentioned.

# Issues on Clause no. 34(b)

Contd....

- ❑ The Tax Auditor cannot merely rely on information provided by the client but have to examine books of account to determine the transaction on which provisions of Chapter-XVII B and Chapter XIIBB apply.
- ❑ Whether it is practically possible for the tax auditor to verify all the transactions to report compliance with provisions of Chapter XVII-B or XVII-BB, where the tax audit is time bound like in Banks.
- ❑ A disclaimer may be provided by the tax auditor
  - Option provided in Form 3CA and Form 3CB under Qualification Type -  
**“TDS returns could not be verified with the books of account”**
- ❑ The information given in this clause should tally with the disallowances reported u/s 40(a) in clause 21(b) to the extent applicable.

**Disclaimer:** During the year, it is not possible for us to verify whether all the transactions of the assessee due to voluminous entries in the books of account and the transactions have been verified on test-check basis and information provided by the assessee.

# Clause no. 36A

*[Newly Inserted]*

45

- a) Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of section 2? (Yes/No)
- b) If yes, please furnish the following details:-
  - i. Amount received (in Rs.)
  - ii. Date of receipt

**Brief:** Dividend received u/s 2(22)(e) is required to be reported under this clause

# Provisions of Deemed Dividend u/s Section 2(22)(e) of the Income Tax Act, 1961.....

Any payment by a company, not being a company in which the public are substantially interested, of any sum by way of advance or loan to.....

## A Shareholder

or

## Any Concern

or

## Any Person

- ❑ being the beneficial owner of shares
- ❑ holding not less than 10% of voting power

- ❑ in which such shareholder is a member or a partner
- ❑ and in which he has a substantial interest

- ❑ on behalf, or for the individual benefit of any such shareholder

to the extent to which the company possesses Accumulated profits.

### **Meaning of “Substantial Interest”:**

Person shall be deemed to have a substantial interest in a concern, other than a company, if he is, during the previous year, beneficially entitled to not less than 20% of the income of such concern.

In the case of Company-a person should beneficially hold at least 20% Equity Share capital of the company.

## Issues on Clause 36A.....

47

- ❑ The Auditor would have to apply professional judgement as to what would fall under this provisions or not, would require to evaluated on facts & circumstances of transactions.
- ❑ The tax auditor would have to check all the investment in shares held by the assessee in the closely held companies during the year and also have to check whether assessee was also beneficial shareholder of that with 10% voting power in that company at any time during the concerned year. If Yes, then the tax auditor also have to verify whether any amount received from those companies covered under the applicable provisions or not.
- ❑ If the tax auditor is being placed reliance on any judicial pronouncement in respect of this section, then it should be reported in his audit report and proper working paper should be maintained in this regard.
- ❑ The management representation obtained in respect of this should be maintained properly for further reference.
- ❑ A disclaimer may be provided by the tax auditor in his audit report under Form 3CA or Form 3CB as the case may be.

## Issues on Clause 36A.....

48

- Whether it is practically possible for the tax auditor to verify all the transactions to report compliance with provisions. **As in those cases where payment is made to concern or persons, on behalf of assessee, which may taxed under the provisions of section 2(22)(e) of the Act in the hands of the assessee, would not be possible on the part of the tax auditor to verify.** Hence, the auditor would have to place reliance of the information provided by the assessee in this regard and proper disclosure should be made for this.
- **Whether an amount is deemed to be dividend under section 2(22)(e) of the Act or not, in many cases depends upon whether the payer company had “accumulated profits” or not.** This cannot be known from the records of the recipient of the tainted amount since it is only the accounts of the payer that one can know whether he had ‘accumulated profits’. It is not known how the auditor, in the course of audit of the person who received the tainted amount, can know whether the other party had accumulated profits or not. This information is confidential and even the person in receipt of the amount cannot provide this information.



# Clause no. 42

*[Newly Inserted]*

49

- a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Yes/No)
- b) If yes, please furnish:

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.

**Brief:** Details w.r.t. Form 61 (details of No PAN/ Form 60 received), Form 61A (statement of Specified Financial Transactions), Form 61B (Statement of Reportable Account), is to be reported here.

# Issues on Clause no. 42

Contd....

- ❑ The Tax Auditor cannot merely rely on information provided by the client but have to examine books of account to determine the transaction on which provisions and rules.
- ❑ The tax auditor should take into consideration the status of the assessee and the applicability of relevant provisions. As regards the applicability of the provisions, the tax auditor should take into consideration the relevant sections, rules, notifications, circulars and various judicial pronouncements in relation to transactions of relevant payments or collections. Where the tax auditor is not agree with the view taken by the assessee, the auditor may report both views under observation para in Form 3CA. Or A disclaimer may be provided by the tax auditor.
- ❑ The information given in Form 61A should include all the sale transactions reported u/s 269ST in clause 31(ba) & (bb) to the extent applicable. Non-inclusion of any transaction may lead to reporting under this clause.

**Disclaimer**: During the year, it is extremely difficult for the tax auditor to verify each and every transaction in this regard. But the scope of the auditor is increased as the tax auditor have to report detail of each and every transaction which is not reported in the respective forms.

# Clause no. 42

51

Form No.	Who has to file?	Due Date of furnish	Authority
Form 61	Every person who has received any declaration in Form No. 60 (No PAN), on or after the 01.01.2016, in relation to a transaction specified in rule 114B, shall furnish a statement in Form No. 61 containing particulars of such declaration.	<ul style="list-style-type: none"> <li>• where the declarations are received by the 30<sup>th</sup> Sep., be furnished by the 31<sup>st</sup> October of that year; and</li> <li>• where the declarations are received by the 31<sup>st</sup> March, be furnished by the 30<sup>th</sup> April of the financial year immediately following the financial year in which the form is received.</li> </ul>	The form 61 shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose.

# Clause no. 42

52

Form No.	Who has to file?	Due Date of furnish	Authority
Form 61A	Statement of Financial Transactions (SFT) is a record of the statement of specified financial transactions which are required to be furnished u/s 285BA of the Act shall be furnished in Form No. 61A. The nature and value of transaction to be furnished by the reporting person as specified under Rule 114E.	The form 61A shall be furnished on or before the 31 <sup>st</sup> May, immediately following the financial year in which the transaction is registered or recorded.	It shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose.

# Clause no. 42

53

Form No.	Who has to file?	Due Date of furnish	Authority
Form 61B	<p>This is a statement of reportable account required to be furnished under section 285BA(1)(k) shall be furnished by a reporting financial institution in respect of each account which has been identified, pursuant to due diligence procedure specified in rule 114H, as a reportable account:</p> <p><i>Provided that where pursuant to such due diligence procedures no account is identified as a reportable account, a nil statement shall be furnished by the reporting financial institution.</i></p>	<p>The Form No. 61B shall be furnished for every calendar year by the 31st day of May following that year.</p>	<p>It shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data.</p>

# Transactions for which Form 6I comes into picture? [Rule – 114B]

54

S. No.	Nature of transaction	Value of transaction
1	Sale or purchase of a motor vehicle or vehicle, as defined in clause (28) of section 2 of the Motor Vehicles Act, 1988 which requires registration by a registering authority under Chapter IV of that Act, other than two wheeled vehicles.	All such transactions.
2	Opening an account [other than a time-deposit referred to at Sl. No.12 and a Basic Savings Bank Deposit Account] with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).	All such transactions.
3	Making an application to any banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution, for issue of a credit or debit card.	All such transactions.

S. No.	<i>Nature of transaction</i>	<i>Value of transaction</i>
4	Opening of a demat account with a depository, participant, custodian of securities or any other person registered under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 .	All such transactions.
5	Payment to a hotel or restaurant against a bill or bills at any one time.	Payment in cash of an amount exceeding fifty thousand rupees
6	Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.	Payment in cash of an amount exceeding fifty thousand rupees.
7	Payment to a Mutual Fund for purchase of its units	Amount exceeding fifty thousand rupees.
8	Payment to a company or an institution for acquiring debentures or bonds issued by it.	Amount exceeding fifty thousand rupees
9	Payment to a company or an institution for acquiring debentures or bonds issued by it.	Amount exceeding fifty thousand rupees.

S. No.	Nature of transaction	Value of transaction
10	Deposit with,— <ul style="list-style-type: none"> <li>• Banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);</li> <li>• Post Office</li> </ul>	Cash Deposits exceeding fifty thousand rupees during any one day
11	Purchase of bank drafts or pay orders or banker's cheques from a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).	Payment in cash for an amount exceeding fifty thousand rupees during any one day.
12	A time deposit with,— <ul style="list-style-type: none"> <li>• a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);</li> <li>• a Post Office;</li> <li>• a Nidhi Company</li> <li>• a non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934 to hold or accept deposit from public.</li> </ul>	Amount exceeding fifty thousand rupees or aggregating to more than five lakh rupees during a financial year.



S. No.	Nature of transaction	Value of transaction
13	Payment for one or more pre-paid payment instruments, as defined in the policy guidelines for issuance and operation of pre-paid payment instruments issued by Reserve Bank of India under section 18 of the Payment and Settlement Systems Act, 2007 to a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution.	Payment in cash or by way of a bank draft or pay order or banker's cheque of an amount aggregating to more than fifty thousand rupees in a financial year.
14	Payment as life insurance premium to an insurer as defined in clause (9) of section 2 of the Insurance Act, 1938	Amount aggregating to more than fifty thousand rupees in a financial year.
15	A contract for sale or purchase of securities (other than shares) as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956	Amount exceeding one lakh rupees per transaction.
16	Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange.	Amount exceeding one lakh rupees per transaction.

S. No.	Nature of transaction	Value of transaction
17	Sale or purchase of any immovable property.	Amount exceeding ten lakh rupees or valued by stamp valuation authority referred to in section 50C of the Act at an amount exceeding ten lakh rupees.
18	Sale or purchase, by any person, of goods or services of any nature other than those specified at Sl. Nos. 1 to 17 of this Table, if any.	Amount exceeding two lakh rupees per transaction.

# Person who are liable to file Form 6I?

## [Rule – 114C]

59

- ❑ Any person being,—
- ❑ a registering officer or an Inspector-General appointed under the Registration Act, 1908;
- ❑ a person who sells the immovable property or motor vehicle;
- ❑ a manager or officer of a banking company or co-operative bank, as the case may be, referred to at Sl. No. 2 or 3 or 10 or 11 or 12 or 13 of rule 114B;
- ❑ post master;
- ❑ stock broker, sub-broker, share transfer agent, banker to an issue, trustee of a trust deed, registrar to issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediaries registered under the Securities and Exchange Board of India Act, 1992
- ❑ a depository, participant, custodian of securities or any other person registered under the Securities and Exchange Board of India Act, 1992 referred to at Sl. No. 4 of rule 114B;
- ❑ the principal officer of a company referred to at Sl. No. 3 or 4 or 8 or 12 or 13 or 15 or 16 of rule 114B;

- ❑ the principal officer of an institution referred to at Sl. No. 2 or 3 or 8 or 10 or 11 or 12 or 13 of rule 114B;
- ❑ any trustee or any other person duly authorised by the trustee of a Mutual Fund referred to at Sl. No. 7 of rule 114B;
- ❑ an officer of the Reserve Bank of India, constituted u/s 3 of the RBI Act, 1934 or of any agency bank authorised by the RBI;
- ❑ a manager or officer of an insurer referred to at Sl. No. 14 of rule 114B,
- ❑ Any person, being a person raising bills referred to at Sl. No. 5 or 6 or 18 of rule 114B, who, in relation to a transaction specified in the said Sl. No., has issued any document shall ensure after verification that permanent account number has been correctly furnished and the same shall be mentioned in such document, or as the case may be, a declaration in Form 60 has been duly furnished with complete particulars.
- ❑ **And, who is required to get his accounts audited under section 44AB of the Act.**

# For what and by whom Form 61A is filed?

[Rule - 114 E ]

61

S. No	Nature and value of transaction	Class of person (reporting person)
1	<p>a) Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to ten lakh rupees or more in a financial year.</p> <p>b) Payments made in cash aggregating to ten lakh rupees or more during the financial year for purchase of pre-paid instruments issued by RBI.</p> <p>c) Cash deposits or cash withdrawals (including through bearer's cheque) aggregating to fifty lakh rupees or more in a financial year, in or from one or more current account of a person.</p>	<p>A banking company or a co-operative bank to which the Banking Regulation Act applies (including any bank or banking institution referred to in section 51 of that Act).</p>
2	<p>Cash deposits aggregating to ten lakh rupees or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.</p>	<ul style="list-style-type: none"><li>• Same as above and,</li><li>• Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898.</li></ul>

S. No	Nature and value of transaction	Class of person (reporting person)
3	One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to ten lakh rupees or more in a financial year of a person.	<ul style="list-style-type: none"> <li>• Banking company and Post Master General as earlier,</li> <li>• Nidhi Companies</li> <li>• Non-banking financial company which holds a certificate of registration under section 45-IA of the RBI Act, to hold or accept deposit from public.</li> </ul>
4	Payments made by any person of an amount aggregating to— (i) one lakh rupees or more in cash; or (ii) ten lakh rupees or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year	A banking company as specified earlier and any other company or institution issuing credit card.
5	Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company).	A company or institution issuing bonds or debentures

S. No	Nature and value of transaction	Class of person (reporting person)
6	Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring shares (including share application money) issued by the company.	A company issuing shares.
7	Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to ten lakh rupees or more in a financial year.	A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013
8	Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.

S. No	Nature and value of transaction	Class of person (reporting person)
9	Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers cheque or draft or any other instrument of an amount aggregating to ten lakh rupees or more during a financial year.	Authorised person as referred to section 2(c) of the Foreign Exchange Management Act, 1999.
10	Purchase or sale by any person of immovable property for an amount of thirty lakh rupees or more or valued by the stamp valuation authority referred to in section 50C of the Act at thirty lakh rupees or more.	Inspector-General appointed u/s 3 of the Registration Act or Registrar or Sub-Registrar appointed under that Act.
11	Receipt of cash payment exceeding two lakh rupees for sale, by any person, of goods or services of any nature (other than those specified at Sl. Nos. 1 to 10 of this rule, if any.)	Any person who is liable for audit under section 44AB of the Act.



# Reporting Financial Institution

## [Rule – 114F]

65

**“Reporting financial institution”** means,-

- a) a financial institution (other than a non-reporting financial institution) which is resident in India, but excludes any branch of such institution, that is located outside India; and
- b) any branch, of a financial institution (other than a non-reporting financial institution) which is not resident in India, if that branch is located in India;

# Reportable person [Rule – 114F]

66

**Reportable person"** means,-

- a) one or more specified U.S. persons; or
- b) one or more persons other than,
  - i. a corporation, the stock of which is regularly traded on one or more established securities markets;
  - ii. any corporation that is a related entity of a corporation mentioned in item (i);
  - iii. a Governmental entity;
  - iv. an International organisation;
  - v. a Central bank; or
  - vi. a financial institution,
- c) that is a resident of any country or territory outside India (except the United States of America) under the tax laws of such country or territory or an estate of a decedent who was a resident of any country or territory outside India (except the United States of America) under the tax laws of such country or territory;

# Reportable Account

67

A **Reportable Account** means an account, which has been identified pursuant to the due diligence procedure, as held by:

- 1) A reportable person; or
- 2) An entity, not based in United States of America, with one or more controlling persons that is a specified U.S. person; or
- 3) A passive non-financial entity with one or more controlling persons that is a person described in sub-clause (b) of clause (8) of the rule 114F.

# Due Diligence Procedure [Rule 114H]

68

The RFI's need to identify the Reportable Accounts by carrying out due diligence procedures. There are different due diligence procedures for the accounts held by individuals and accounts held by entities. There is a further classification of accounts as :

- **"pre-existing account"** means a financial account maintained by a reporting financial institution as on,-
  - i. in case of a U.S. reportable account, the 30th June, 2014; and
  - ii. in case of other reportable account, the 31st December, 2015;
- **"new account"** means a financial account maintained by a reporting financial institution opened on or after,
  - i. in case of a U.S. reportable account, the 1st July, 2014; and (ii) in case of other reportable account, the 1st January, 2016;

The standardized approach to be applied for carrying out due diligence procedure ensures quality of information to be reported and exchanged. The rules also utilize the information available under the existing processes such as those for Anti Money Laundering purposes. This is particularly the case for Pre-existing Accounts where it is more challenging and costly for Financial Institutions to obtain new information from the Account Holder.

# Information to be maintained and reported [Rule – 114G]

69

After the RFI has identified the reportable accounts, RFI needs to report specific information in respect of each reportable account. As per Rule 114G(1), RFI needs to maintain and report the following information in case of each Reportable Account:

- The name, address, taxpayer identification number (assigned to the account holder by the country or territory of his residence for tax purposes) and date and place of birth (in the case of an individual) of each reportable person, that is an account holder of the account;
- In the case of any entity which is an account holder and which, after application of due diligence procedures prescribed in rule 114H, is identified as having one or more controlling persons that is a reportable person,-
  - a) The name and address of the entity, taxpayer identification number assigned to the entity by the country or territory of its residence; and
  - b) The name, address, date and place of birth of each such controlling person and taxpayer identification number assigned to such controlling person by the country or territory of his residence;

- The account number (or functional equivalent in the absence of an account number);
- The account balance or value (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) at the end of relevant calendar year or, if the account was closed during such year, immediately before closure;

# Clause no. 44

*[Newly Inserted]*

71

**Clause 44 - Break-up of total expenditure of entities registered or not registered under the GST, is required to be reported, as under::**

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)

**Note :** Persons who are required to file ITR – 6 but not required to get its accounts audited u/s 44AB, has also to provide above details in respect of transactions with a registered or unregistered supplier under GST in ITR – 6 Form (a New Schedule – GST is introduced for A.Y. 2018-19)





# Issues on clause 44

73

- ❑ Firstly, the Schedule GST is incorporated in **ITR – 6** only, i.e. also only for those companies who are not required to get their accounts audited. Whereas the reporting under Form 3CD covers all the assessee.
- ❑ Moreover, the reporting in ITR- 6 specify that the detail in respect of expenditure on or after 01 July, 2017 have to be filed. However, no such time is specified under this clause which leads to ambiguity that whether the aggregate of expenditure incurred during the year under consideration should be reported or the expenditure after 01/07/2017 only.
- ❑ Further, in ITR – 6, it is specified that the total amount of expenditure incurred during the year should be excluded of amount of rates and taxes mentioned in P&L account. However, no such exclusion is mentioned in this clause.
- ❑ **All these huge difference creates the doubt that the Government itself is not clear that what should be reported.**
- ❑ The expenditure on which GST is not applicable, such as salary, electricity bill, etc., may be reported under the category “Expenditure relating to entities not registered under GST”, as no specific column is given for reporting of these type of expenditure.
- ❑ In case of voluminous transactions, where it is practically not possible to verify each and every invoice, the auditor should take information from the assessee by management representation and should maintain proper working paper / documentation. A disclosure should also be made in this regard in his audit report.

# Changes due to Transfer Pricing Provisions

# Clause no. 30A

*[Newly Inserted]*

75

- a) Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year? **(Yes/No)**
- b) If yes, please furnish the following details:-
  - i. Under which clause of sub-section (1) of section 92CE primary adjustment is made?
  - ii. Amount (in Rs.) of primary adjustment:
  - iii. Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)
  - iv. If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)
  - v. If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time:

**Brief:** Details about “Primary Adjustment” in transfer pricing to be reported as per section 92CE

# Section 92CE: Secondary adjustment in

Contd....

**certain cases** *(Inserted by the Finance Act 2017, w.e.f. 01.04.2018)*

76

- (1)** Where a primary adjustment to transfer price,—
- i. has been made suo motu by the assessee in his return of income;
  - ii. made by the Assessing Officer has been accepted by the assessee;
  - iii. is determined by an advance pricing agreement entered into by the assessee under section 92CC;
  - iv. is made as per the safe harbour rules framed under section 92CB; or
  - v. is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation,

**the assessee shall make a secondary adjustment:**

**Provided** that nothing contained in this section shall apply, if,—

- i. the amount of primary adjustment made in any previous year does not exceed one crore rupees; and
- ii. the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.

# Section 92CE: Secondary adjustment in

Contd....

**certain cases** *(Inserted by the Finance Act 2018, w.e.f. 01.04.2018)*

77

**(2)** Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed.

**Meaning of "primary adjustment"** to a transfer price, means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;

**Meaning of "secondary adjustment"** means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

# Issues needs consideration on Clause 30A....

- Clause 30A(a) requires reporting on whether primary adjustment to transfer price, as referred to in section 92CE(1) has been made during the previous year. If the answer is in the affirmative, clause (b) requires further information on repatriation of excess money. Clause (b)(iv) particularly requires reporting on whether or not the excess money has been repatriated within the prescribed time.
- **It may be noted that time limit for repatriation of excess money is 90 days from the due date of filing of return.** [Rule 10CB of the Income-tax Rules, 1962] Therefore, with respect to primary adjustment made during the previous year 2017-18, the time limit for repatriation is upto 31st December, 2018. **Therefore, it is not possible for the tax auditor to report on whether excess money has been repatriated within the prescribed time.** Accordingly, a clarification is required that clause 30A(a) should therefore require reporting on whether primary adjustment to transfer price has been made during the immediately preceding previous year (P.Y. 2016-17, in the current context), in which case the reporting requirements under clause 30A(b) can be complied with.

# Clause no. 30B

*[Newly Inserted]*

79

- a) 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?  
**(Yes/No)**
- b) If yes, please furnish the following details:-
  - i. Amount (in Rs.) of expenditure by way of interest or of similar nature incurred:
  - ii. Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.)
  - iii. Amount (in Rs.) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above

**Brief:** Limitation of interest deduction for borrowings from Associated Enterprises upto 30% of EBITDA is to be reported in this clause

# Clause no. 30B

80

- IV. Details of interest expenditure brought forward as per sub-section (4) of section 94B:

A.Y.	Amount (in Rs.)

- V. Details of interest expenditure carried forward as per sub-section (4) of section 94B:

A.Y.	Amount (in Rs.)



## Section 94B: Limitation on interest deduction in certain cases *(Inserted by the Finance Act 2017, w.e.f. 01.04.2018)*

Section 94B relates to interest expenses more than Rs.1 crore claimed by an entity, paid or payable to its associated enterprises (non-resident):

- 1) Interest expenses claimed by any entity to its associates enterprises restricted to 30% of its EBITDA or interest paid or payable to associates enterprises whichever is less.
- 2) Applicable to Indian Company or Permanent establishment of a foreign Company in India(Borrower)
- 3) Debt issued to Non Resident or to a permanent establishment of a non-resident and who is associated enterprises. (includes guarantee also)
- 4) Allow to carry forward of disallowed interest expenses for eight assessment years immediately succeeding the assessment year for which the disallowance was first made.
- 5) Maximum allowance in subsequent years is to extent of maximum allowable interest expenditure in that particular year.
- 6) Exclude Banks and insurance business.

# Issues on Clause no. 30B

- Reporting under this clause is required only if interest expenses more than Rs.1 crore claimed by an entity, paid or payable to its associated enterprises (non-resident) **(As threshold given in section 94B)**
- In this section, the meaning of “**similar nature**” is not explained and left behind to the judgement of the auditor - what is the nature of expenditure that can qualify to be of a “similar nature” to that of interest.
- It may be noted that whereas section **94B(1)** speaks of **disallowance of excess interest paid to non-resident associated enterprise of the borrower**, **section 94B(2) defines excess interest as total interest paid or payable in excess of 30% of EBITDA or interest paid or payable to associated enterprises, whichever is less.** On account of difference in the language used in sections 94B(1) and 94B(2), **it is not clear as to whether Clause 30B(b)(i) requires reporting of interest or of similar nature incurred only in relation to non-resident associated enterprises or the total expenditure by way of interest.** Hence, clarification is required to clearly specify the reporting requirement i.e. total expenditure by way of interest or of similar nature incurred or only in relation to non-

# Issues on Clause no. 30B

- Also, the section doesn't clarified the situation of disallowance under section 94B in case where company reporting a **negative EBITDA (i.e. cash losses)**. But as the amount of disallowance u/s 94B is dependent on the level of EBIDTA, therefore **the entire interest paid to an Associated Enterprise should be disallowed where the company reported negative EBITDA.**
  
- **The interest disallowed under section 94B can be carried forward for eight years in future. [section 94B(4)].** The same should have to report under clause 30(b)(iv).

Furthermore, clause 30B(iv) is not relevant for A.Y.2018-19, since section 94B has been inserted with effect from A.Y. 2018-19. However, it would be relevant for the subsequent assessment years.
  
- The tax auditor should indicate the amount debited to the Profit & Loss Account and the amount actually admissible in accordance with the applicable provisions of the law as stated under section 94B.

# Clause no. 43

*[Newly Inserted]*

84

- a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286 (Yes/No)
- b) If yes, please furnish the following details:
  - i. Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity
  - ii. Name of parent entity
  - iii. Name of alternate reporting entity (if applicable)
  - iv. Date of furnishing of report

**Brief:** Details w.r.t. Country by Country (CbC) reporting as referred in section 286 is required to be reported in this clause

## Section 286....

85

- **Section 286** contains provisions relating to specific reporting regime in the form of Country-by-Country Report (CbCR) in respect of an international group based on model legislation of Action Plan 13 of Base Erosion and Profit Shifting (BEPS) of the Organisation for Economic Co-operation and Development (OECD) and others.
- The country-by-country report requires multinational enterprises (MNEs) to report annually and for each tax jurisdiction in which they do business; the amount of revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their total employment, capital, accumulated earnings and tangible assets in each tax jurisdiction. Finally, it requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in.

## Section 286....

86

- The Country-by-Country (CbC) report has to be submitted by parent entity of an international group to the prescribed authority in its country of residence. This report is to be based on consolidated financial statement of the group.
- The provisions of this section shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed five thousand five hundred crore rupees (Rs. 5,500 Crore) **[For threshold, Refer Rule 10DB(6)]**
- Non furnishing of this information will entail penalty u/s 271AA and also u/s 271GB.

## Section 286....

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	Category	Form	Due Date
1	Parent entity or alternate reporting entity, resident in India <b>[Section 286(2)]</b>	<b>File CbCR in Form 3CEAD</b> (for every Accounting Year) to the Director General of Income-tax (Risk Assessment)	12 months from the end of reporting accounting year <b>[Amended by FA, 2018 w.r.e.f. 01/04/2017]</b>
2	Constituent entity (CE) resident in India, of Parent entity not resident in India <b>[Section 286(1)]</b>	<b>File CbCR in Form 3CEAC</b> to the Director General of Income-tax (Risk Assessment)  Vide this form the CE intimates: <ul style="list-style-type: none"> <li>• Whether it is alternate reporting entity of the group; or</li> <li>• The details of Parent entity or the alternate reporting entity and the country/territory of which said entity is a resident</li> </ul>	At least 2 months prior to the date of furnishing of CbCR in Form 3CEAD. <b>[Refer Rule 10DB(2)]</b>  <i>Since the deadline for filing of Form 3CEAD is amended, <u>then the deadline for filing the Form 3CEAC should be 10 Months from the end of reporting accounting year</u></i>

## Section 286....

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	Category	Form	Due Date
3	Constituent entity (CE) resident in India, of Parent entity not resident in India - Specified Cases <b><i>[Section 286(4) i.e. where parent entity is not obligated to file CbCR, no agreement for exchange of CbCR or Systematic Failure]</i></b>	<p><b>File CbCR in Form 3CEAD</b> (for every Accounting Year).</p> <p>In case there are more than one CEs resident in India, The international group may opt to designate a CE, wherein the Form 3CEAD has to be filed only by the designated CE. <b><i>[Proviso to Section 286(4)]</i></b>. In that case, the intimation of the same needs to be filed by the designated CE in the Form 3CEAE with the Director General of Income Tax (Risk Assessment)</p>	<p><b><u>For Filing of CbCR in Form 3CEAD</u></b> - 12 months from the end of reporting accounting year <b><i>[Amended by FA, 2018 w.r.e.f. 01/04/2017]</i></b></p> <p><b><u>For Filing of intimation of designated CE in Form 3CEAE</u></b> – the due date of filing this form has not been prescribed. <b><i>[Refer Rule 10DB(5)]</i></b></p>



# Issues for consideration u/s 286

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- The due date of filing the form 3CEAE has not been prescribed. This seems to have been missed inadvertently, however, the same can be aligned to two months prior to the date of furnishing of CbCR.
- Lastly, clarity is required with respect to the term 'accounting year' [defined in Section 286]. For CEs of foreign parent companies, the 'accounting year' is defined that the annual accounting period generally followed by such foreign parent in its country of residence. For an India constituent entity, following April to March fiscal year. The aggregation of international transactions on any other basis (calendar year or any other different fiscal year followed by its parent entity) would be a significant challenge.

## Issues on clause 43...

90

- Clause 43(a) requires reporting on whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in section 286(2). If the answer to the same is in the affirmative, Clause 43(b)(i) requires whether report has been furnished by the assessee or its parent entity or an alternate reporting entity.
- However, **under section 286(2), the time limit for furnishing report in respect of international group has been extended up to a period of 12 months from the end of the reporting accounting year (as amended by FA, 2018 w.r.e.f. 1.4.2017).** Therefore, for the reporting accounting year 2017-18, the time limit for furnishing the report is 31.3.2019. **Accordingly, for this reporting accounting year, the time limit for furnishing the report would not have expired on the due date of furnishing of tax audit report.** Therefore, such reporting may possible only

# Issues in respect of reporting of Transfer Pricing Transactions

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- The scope of work of the tax auditor is increased by incorporation of reporting of TP Transactions.
- In case the assessee has obtained a separate report for these transactions under any of these sections, the tax auditor must make a reference to that report while giving the details under these clauses and should also make a proper disclosure under this regard.
- In case the auditor relies on a judicial pronouncements, he may mention the fact in his observations para provided in Form 3CA and 3CB.
- The auditor should ensure the eligibility of the expenditure/ payment and compliance of the conditions prescribed in the section

# Changes due to Applicability of GAAR (General Anti Avoidance Rule)

# Clause no. 30C

*[Newly Inserted]*

93

- a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No)
- b) If yes, please specify:-
  - i. Nature of the impermissible avoidance arrangement:
  - ii. Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement;

**Brief:** Details of Impermissible Avoidance Agreement is to be furnished here as referred in section 96

# Section 96: Impermissible avoidance <sup>Contd....</sup> arrangement (w.e.f. 01/04/2018)

94

**(1)** *An impermissible avoidance arrangement means an arrangement, the main purpose of which is to obtain a tax benefit, and it—*

- a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;*
- b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;*
- c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or*
- d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.*

**(2)** *An arrangement shall be presumed, unless it is proved to the contrary by the assessee, to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.*

**This section is inserted by FA 2012 w.e.f. 01.04.2013 under Chapter X-A (General Anti-Avoidance Rule). However, By FA 2013, it was amended that the provisions of chapter X-A will come into force w.e.f. 01.04.2016. Further, by FA 2015 deferment of provisions of GAAR by 2 years i.e. from F.Y. 2017-18 (A.Y. 2018-19).**

# Issues on Clause No. 30C

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- ❑ **The onus of proof relating to the invocation of GAAR is on the tax authorities.** In the Finance Bill (as presented in Lok Sabha on March 16, 2012) the onus of establishing that the main purpose of the arrangement is not to obtain tax benefit, was on the taxpayer. However, this provision has been removed at the time of passing the Finance Bill in Lok Sabha.
- ❑ Whereas by incorporation of this clause under Tax Audit reporting, the accountability and responsibility of the tax auditor is increased. An effort is made to transfer the onus to the tax auditor.
- ❑ The tax auditor would have to apply his professional judgement and analysis to check the applicability of the provisions of law in this regard.

# Checklist for GAAR

96

- 1. Is there an arrangement?**
- 2. Has the assessee entered into the arrangement?**
- 3. Is there a tax benefit arising out of the arrangement?**
- 4. Is the main purpose of the arrangement to obtain a tax benefit?**
- 5. Is the tainted element test satisfied?**
  - Does the arrangement create rights, or obligations which are not ordinarily created between persons dealing at arm's length?
  - Does the arrangement result, directly or indirectly, in the misuse or abuse of the provisions of the Act? - Does the arrangement lack commercial substance?
  - Is the arrangement deemed to lack commercial substance under section 97?
  - Is the arrangement entered into, or carried out, by means, or in a manner which are not ordinarily employed for bona fide purposes?
- 6. Do any of the exclusions in Rule 10U(1) apply?**
  - Is the tax benefit in the relevant assessment year less than INR 3 crore?
  - Is the taxpayer an Foreign Portfolio Investor who qualifies under Rule 10U(1)(b)?
  - Is the investment made by a non-resident, by way of an offshore derivative instrument or otherwise, in an Foreign Portfolio Investor?
  - Does the income arise from transfer of investments made before 1 April 2017?



# Application of General Anti Avoidance Rule [Rule – 10U]

97

## 1. The provisions of Chapter X-A shall not apply to—

- a) an arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed a sum of **rupees three crore**;
- b) **a Foreign Institutional Investor,—**
  - i. who is an assessee under the Act;
  - ii. who has not taken benefit of an agreement referred to in section 90 or section 90A as the case may be; and
  - iii. who has invested in listed securities, or unlisted securities, with the prior permission of the competent authority, in accordance with the Securities and Exchange Board of India (Foreign Institutional Investor) Regulations, 1995 and such other regulations as may be applicable, in relation to such investments;

# Application of General Anti Avoidance Rule [Rule - 10U]

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- c) a person, being a non-resident**, in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly, in a Foreign Institutional Investor;
  - d) any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investments made before the [1<sup>st</sup> day of April, 2017] by such person.**
- 2) Without prejudice to the provisions of clause (d) of sub-rule (1), the provisions of Chapter X-A shall apply to any arrangement, irrespective of the date on which it has been entered into, in respect of the tax benefit obtained from the arrangement on or after the [1st day of April, 2017].

# Summary

# Key Highlights.....

100

- Increased reporting requirements for the assessee and the auditor.
- Examination of books of account and relevant documents along with declaration by the assesseees.
- Required to visit the locations at which books of account are being maintained.
- Tax auditor to determine assessed or assessable values of properties (land or building or both), value of shares of private company.
- Consolidation of details under various laws.
- Reporting requirement for Transfer Pricing Transactions, Applicability of GAAR, etc.
- *Changes introduced by Income –tax (18th Amendment) Rules, 2018 are applicable w.e.f 20-08-2018, therefore, further information about, how to fill the information in the report online, will be available only after new utility is launched in this respect.*
- During the audit, if the tax auditor is satisfied that the reporting under any clause is material and may effect the true and fair view of the financial statements, then the auditor should apply his professional judgement and should report according to SA – 700 (Forming an Opinion and reporting on Financial Statements)

## General principles to be kept in mind while preparing the statement of particulars for Form 3CD:

- a) Tax Auditor can rely upon the judicial pronouncements while taking any particular view about inclusion or exclusion of any items in the particulars to be furnished under any of the clauses specified in Form No.3CD.
- b) If there is a conflict of judicial opinion on any particular issue, Auditor may refer to the view which has been followed while giving the particulars under any specified clause.
- c) The AS, Guidance Notes, SA issued by the Institute from time to time should be followed.

# Important points to be considered by the tax auditor while furnishing the particulars in Form No.3CD....

- ❑ The information in Form No.3CD should be based on the books of account, records, documents, information and explanations made available to the tax auditor for his examination.
- ❑ If a particular item of income/ expenditure is covered in more than one of the specified clauses in the statement of particulars, a suitable cross reference to such items at the appropriate places.
- ❑ If there is any difference in the opinion of the tax auditor and that of the assessee in respect of any information furnished in Form No. 3CD, the tax auditor should state both the view points and also the relevant information in order to enable the tax authority to take a decision in the matter.
- ❑ If any particular clause in Form No.3CD is not applicable, he should state that the same is not applicable.
- ❑ In computing the allowance/ disallowance, the law applicable in the relevant year should keep in view, even though the form of audit report may not have been amended to bring it in conformity with the amended law.
- ❑ In case the auditor relies on a judicial pronouncement, mention the fact as his observations in clause (3) of Form No.3CA or clause (5) provided in Form No.3CB, as the case may be
- ❑ The tax auditor may qualify his report on matters in respect of which information is not furnished to him and state in his report that the relevant information has not been furnished by the assessee.

# Thank You!...

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