

ANALYSIS OF CHANGES AND NEW INSERTIONS IN REVISED FORM 3CD

**(Vide notification no 33/2018 dated
20/07/2018 w.e.f 20.08.2018)**

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CBDT Notifies Amendments in Form 3CD (Tax Audit Report), applicable from 20 Aug. 2018: Income-tax (8th Amendment) Rules, 2018 as contained in Appendix II of IT Rules 1962.

The CBDT has notified the **Income-tax (8th Amendment) Rules, 2018** making substantial changes in the Format of Tax Audit Report (Form 3CD), whereby new/ revised reporting requirements relating to GST, SFT, Cash Transactions, Transfer Pricing, etc. have been prescribed, applicable w.e.f. 20 Aug. 2018.

There are 6 amendments in the existing clauses of the form 3CD and 10 different new insertions/ additional clauses for disclosure purposes as summarized under:

Sl.	3CD Point No.	Remarks
1	4 (amended)	GSTIN to be mentioned.
2	19(amended)	Allowances under Section 32AD to be reported (Addl Depreciation, Inv. Allowance, etc.)
3	24(amended)	Deemed gains u/s 32AD to be reported.
4	26(amended)	Reporting of any sum payable to Railways u/s 43B(g) which is not allowable as deduction for non-payment.
5	29A (new)	Reporting of amount chargeable u/s 56(2)(ix) as 'income from other sources'
6	29B (new)	Reporting of amount chargeable u/s 56(2)(x) as 'income from other sources'
7	30A (new)	Reporting details of Primary Adjustments to Transfer Price u/s 92CE(1)
8	30B (new)	Reporting details of interest expenditure incurred exceeding one crore rupees as referred u/s 94B(1)

Sl.	3CD Point No.	Remarks
9	30C (new)	Reporting details of impermissible avoidance arrangements, as referred to in section 96
10	31(ba), 31(bb), 31(bc), 31(bd) (new)	Reporting details of each cash receipt or payment in excess of the limit specified u/s 269ST
11	31(c), 31(d), 31(e)(amended)	Clauses amended.
12	34(b)(amended)	Reporting details of transactions not disclosed in TDS/ TCS Returns
13	36A (new)	Reporting details of any dividend receipts u/s 2(22)(e)
14	42 (new)	Reporting details of transactions not disclosed/ specified in Form No. 61/ 61A/ 61B
15	43 (new)	Reporting whether assessee or its parent entity or alternate reporting entity is liable to furnish the report (CbCR) u/s 286(2)
16	44 (new)	Reporting Break-up of total expenditure into expenditure with registered or not registered entities under the GST

- **Can 3CD be amended in the middle of the audit season?**
- **General Rule:** Law as it stands amended on the first day of April of any financial year must apply to the assessment, and any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year,
 - ✓ Karimtharuvi Tea Estate Ltd. v. State of Kerala [1966] 60 ITR 262
 - ✓ Andhra Cements Co. Ltd. vs CIT [1998] 232 ITR 364 (Andhra Pradesh)

CLAUSE 4 OF FORM 3 CD
OLD FORM 3CD

FORM NO. 3CD

[See rule 6G(2)]

Statement of particulars required to be furnished under section 44AB of the
Income-tax Act, 1961

PART - A

4	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	:	
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SR NO 4 OF APPENDIX II OF FORM 3 CD

Amendment made

GSTIN & GSTIN number to be mentioned

- after the words “sales tax,”, the words “goods and services tax,” shall be inserted;
- after the words “registration number or”, the words “GST number or” shall be inserted

NEW FORM 3CD

FORM NO. 3CD

[See rule 6G(2)]

Statement of particulars required to be furnished under section 44AB of the Income-tax Act,
1961

PART - A

4	Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, <i>goods and services tax</i> customs duty, etc. if yes, please furnish the registration number <i>GST number</i> or any other identification number allotted for the same
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CLAUSE 19 of Form 3 CD

Existing Clause
Amounts admissible under sections: 32 AC 33 AB 35 DDA 35 E
Amendment made
<u>Allowances under Section 32 AD to be reported(Additional Depreciation, Investment Allowance etc)</u> • the row with entry “32AD” shall be inserted

Sr no 19 of Appendix II of Form 3 CD

NEW FORM 3CD

19. 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 conditions, if any specified under the relevant 14 provisions of Income Tax Act, 1961 or Income Tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf.
32AC		
32AD		
33AB		
33ABA		
35(1)(i)		
35(1)(ii)		
35(1)(ia)		
35(1)(iii)		
35(1)(iv)		
35(2AA)		

Sr no 19 of Appendix II of Form 3 CD

NEW FORM 3CD

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 conditions, if any specified under the relevant 14 provisions of Income Tax Act, 1961 or Income Tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf.
35(2AB)		
35ABB		
35AC		
35AD		
35CCA		
35CCB		
35CCC		
35CCD		
35D		
35DD		
35DDA		
35E		

CLAUSE 24 FORM 3 CD

OLD FORM 3CD

24	Amounts deemed to be profits and gains under section 32AC or 33AB or 33ABA or 33AC.	
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Amendment made

Deemed Gains under section 32 AD to be reported

- after the words “32AC or”, the words “32AD or” shall be inserted

NEW FORM 3CD

24	Amounts deemed to be profits and gains under section 32AC <i>or 32AD</i> or 33AB or 33ABA or 33AC.	
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CLAUSE 26 OF FORM 3 CD

Existing Clause
In respect of any sum referred to in clauses (a),(b), (c), (d), (e) or (f) of section 43B
Amendment made
<u>Reporting of any sum payable to Railways under section 43 B(g) which is not allowable as deduction for non payment</u> <ul style="list-style-type: none">• for the words “or (f)”, the words “, (f) or (g)” shall be substituted

CLAUSE 26 OF FORM 3 CD

NEW FORM 3CD

26	In respect of any sum referred to in clauses (a), (b), (c), (d), (e), (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;	
		(b)	not paid during the previous year.	
	(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);	
		(b)	not paid on or before the aforesaid date.	
	(State whether sales tax, customs duty, excise duty or any other indirect tax, levy, cess, impost, etc., is passed through the profit and loss account.)			

CLAUSE 29A FORM 3 CD

NEWLY INSERTED IN FORM 3CD

29A.	<i>(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)</i>	
	<i>(b) If yes, please furnish the following details:</i>	
	<i>(i) Nature of income</i>	
	<i>(ii) Amount thereof</i>	

CLAUSE 29A FORM 3 CD

NEWLY INSERTED IN FORM 3CD

29B.	<i>(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)</i>	
	<i>(b) If yes, please furnish the following details:</i>	
	<i>(i) Nature of income</i>	

56(2)(x): What is taxable?

<i>Property</i>	<i>Mode of receipt</i>	<i>Amount liable to tax</i>
Sum of money	Without consideration	Whole of the aggregate value of money received
Immovable property	Without consideration	Stamp duty value of immovable property
Immovable property	For a consideration less than stamp duty value by Rs. 50,000	Stamp duty value of immovable property in excess of the consideration
Movable property	Without consideration	Whole of the aggregate of fair market value (as per prescribed method) of movable property
Movable property	For a consideration less than fair market value (as per prescribed method) by Rs. 50,000	Aggregate fair market value (as per prescribed method) of movable property in excess of the consideration

56(2)(x): Reliefs?

- Gifts Received **from**:

- Relative
- any local authority as defined in the Explanation to clause (20) of section 10
- Entity referred to u/s 10(23C)
- Trust or institution registered under section 12A / 12AA
- from an individual by a trust created or established solely for the benefit of relative of the individual.

- Gift received on the occasion of the **marriage**

- Under a **will** or by way of **inheritance**

- In contemplation of death of the payer or donor

- By way of transaction not regarded as transfer under some clauses of Sec 47

- Gifts received **by**:

- Trust or institution registered under section 12A or section 12AA
- Trust or institution covered under 10(23C)(iv)/(v)/(vi)/(via)

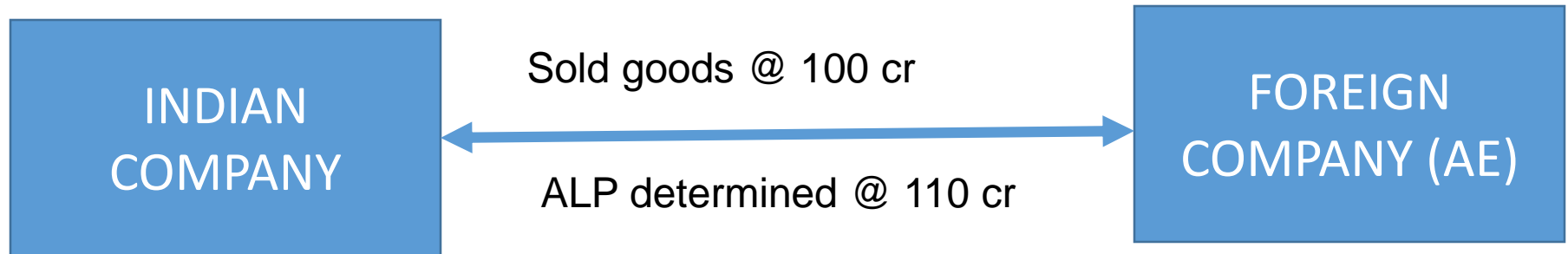
CLAUSE 30A of New Form 3CD

30A. *(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*

92CE : Bird's Eye View



- 10 Crores is the primary adjustment
- 10 Crores will be added to income of Indian company under TP provisions
- 10 Crores to be repatriated to India within prescribed time
- If not 10 Crores shall be deemed to be Advance made by Indian Company to Foreign AE
- Interest in respect of such deemed advance shall be taxed in the hands of the Indian Entity : Secondary Adjustment

92CE: Situations where primary adjustment could result into Secondary adjustment.

92CE. (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:

92CE: No Secondary Adjustments in following cases.

Proviso to Sec 92CE(1):

- If primary adjustment does not exceed **1 Crore**
- Primary adjustment relates to AY 16-17 or earlier years

Time Limit to repatriate funds into India.

Rule 10CB: Repatriate within 90 days from :

Adjustment by / under	Time Limit: 90 Days from
Suo-moto by Assessee	Due date of return of income u/s 139(1)
Assessing officer	Date of order of the AO or appellate authority
Advance Pricing Arrangement	Due date for filing return u/s 139(1)
Safe Harbour Rules	Due date for filing return u/s 139(1)
Mutual Agreement Procedure under DTAA	Due date for filing return u/s 139(1)

Rate of Interest

Rule 10CB(2):

- If transaction is denominated in **INR** : marginal cost of fund lending rate of SBI as on 1st of April of the relevant previous year plus 325 basis points
- If transaction is denominated in **Foreign Currency**: at six month London Interbank Offered Rate as on 30th September of the relevant previous year plus 300 basis points

92CE: Issues

- Period of interest?
- Primary adjustment made by CIT(A), would 92CE(1) apply?
- In case of multiple adjustments limit of 1 Crore is per adjustment or in aggregate?
- How to account for secondary adjustment
 - Where moneys are repatriated into India
 - Where moneys are not repatriated into India
- In the year in which secondary adjustment is accounted in books there would be a MAT implication
- Can such deemed advance u/s 92CE result in deemed dividend u/s 2(22)(e)?
- Should the interest also be repatriated into India?
- Can there be interest on interest?

CLAUSE 30A of New Form 3CD

30A. (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*

Clause 30A - Summary

If any primary adjustment to transfer price during the previous year has been made u/s 92CE(1), only then the below details need to be provided

Provide the subsection under which the primary adjustment is made

Amount of the primary adjustment in INR

Whether the excess money available with the associated enterprise (AE) is required to be repatriated to India under section 92CE(2) of the Act?

Yes

Whether the excess money has been repatriated within the prescribed time

No

Provide the amount of imputed interest income in INR, on such excess money, which has not been repatriated within the prescribed time

CLAUSE 30B

30B.(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:—

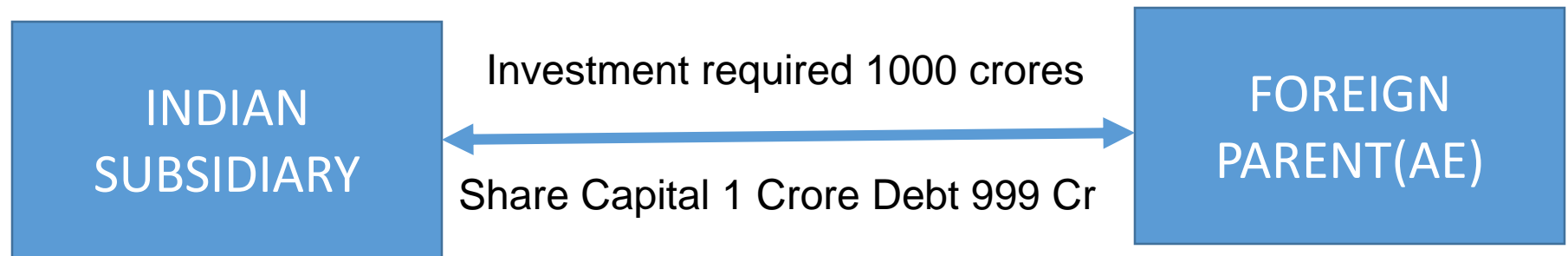
- i. Amount (in Rs.) of expenditure by way of interest or of similar nature incurred:*
- ii. Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.):*
- iii. Amount (in Rs.) of expenditure by way interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above :*
- 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.)

Sec 94B:



- Indian Company claims interest cost in respect of debt of 999 Crore
- Debt is routed through jurisdictions where interest is not taxable or taxable at low rates
- 94B now restricts deduction in respect of such interests to 30% of EBITDA
- 94B is not applicable to small cases – i.e. where interest payout is not more than 1 Crore

Sec 94B: Illustration

YEAR 1:

- EBITDA is Rs. 100 Crores
- Interest paid to AEs and deemed AEs – 35 Crores
- In computing taxable profits of such entity in respect of interest paid to AE (even if under ALP) deduction shall be restricted to 30 Crores.
- The difference 5 Crores can be carried forward for 8 AYs and can be claimed as deduction, subject to overall limit of 30%.

contd...

Sec 94B: Illustration

YEAR 2:

- EBITDA is Rs. 150 Crores
- Interest paid to AEs in current year – 43 Crores
- b/f interest of previous year – 5 Crores
- Total interest sought to be claimed as deduction – $43 + 5 = 48$ Crores
- 30% of 150 Crores – 45 Crores
- Interest deduction to be restricted at 45 Crores
- Difference 3 Crores to be carried forward

CLAUSE 30B

30B.(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 interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above :*
- 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.)

Limitation on interest deduction in certain cases [section 94B] [Clause 30B]

If the assessee has incurred expenditure by way of interest or of similar nature exceeding INR one crore under section 94B(1), only then the below details need to be provided:

Amount of expenditure by way of interest or of similar nature incurred in INR

Amount of earnings before interest, tax, depreciation and amortization (EBITDA) in INR

Amount of expenditure by way of interest or of similar nature in INR which exceeds 30% of EBITDA

Details of interest expenditure **brought forward** under section 94B(4):
A.Y. and Amount in INR

Details of interest expenditure **carried forward** under section 94B(4):
A.Y. and Amount in INR

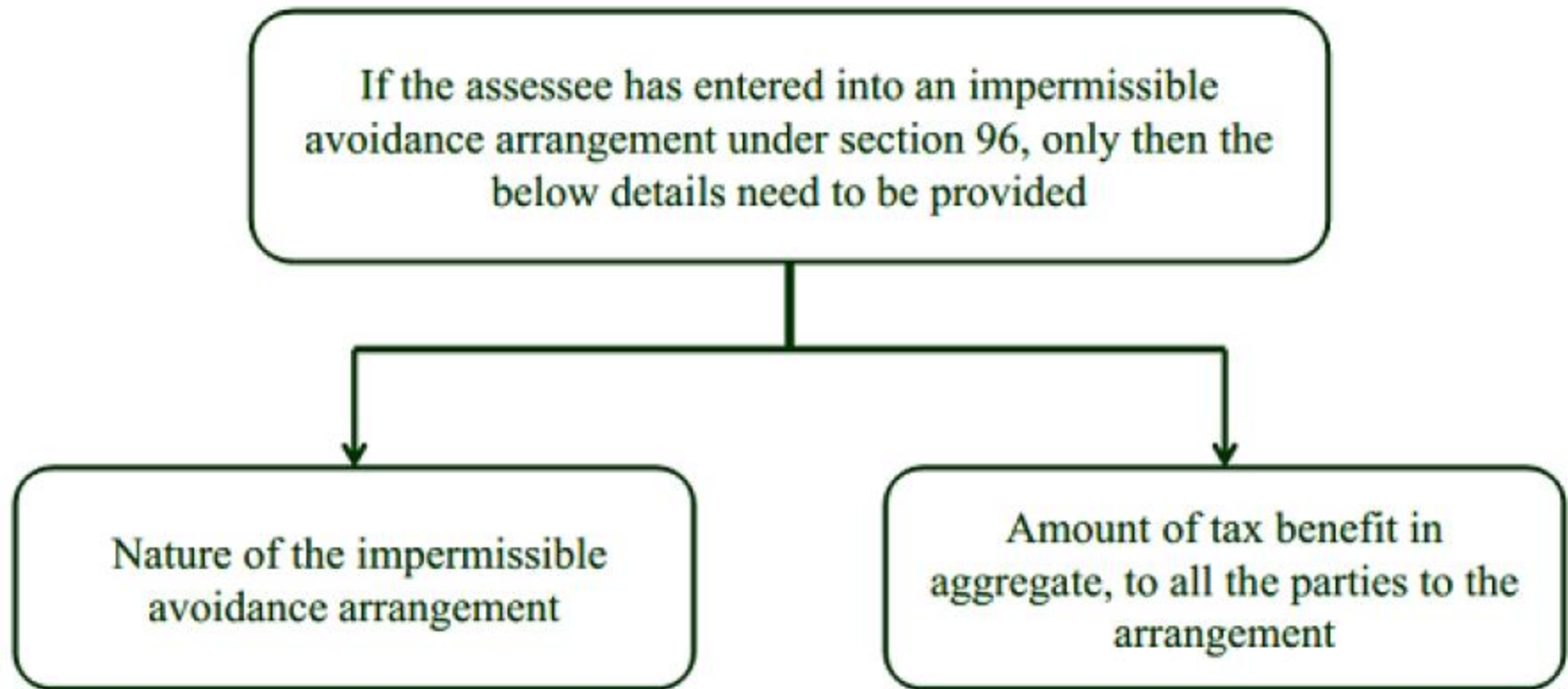
CLAUSE 30C

30C. (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 impermissible avoidance arrangement:*
- ii. Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement:*

General Anti-Avoidance Rule [section 96] [Clause 30C]



Impermissible avoidance arrangement.

96. (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.

Arrangement will lack commercial substance if:

97.

- (a) the **substance** or effect of the arrangement as a whole, is inconsistent with, or **differs** significantly **from, the form** of its individual steps or a part; or
- (b) it involves or includes—
 - (i) **round trip financing**;
 - (ii) an **accommodating party**;
 - (iii) elements that have effect of offsetting or cancelling each other; or
 - (iv) a transaction which is conducted through one or more persons and **disguises** the value, location, source, ownership or control of funds which is the subject matter of such transaction; or
- (c) it involves the location of an asset or of a transaction or of the place of residence of any party which is without any substantial commercial purpose other than obtaining a tax benefit (but for the provisions of this Chapter) for a party..

ICAI Representation on Form 3CD

5. Insertion of Clause 30C:

Clause 30C(a) requires reporting on whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96. If the answer is in the affirmative, the nature of impermissible avoidance agreement and the amount of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement has to be specified.

*Specific anti avoidance rules provisions under the Income tax Act, 1961, like clubbing provisions, transfer pricing provisions, etc. have definite criteria by which the tax auditor can ascertain whether or not the assessee has complied with the provisions. However, **the criteria specified under section 96(1) are not definite and clear cut and may involve extensive investigation to ascertain whether an agreement falls within its scope.***

ICAI Representation on Form 3CD

Without conducting a detailed investigation, it would not be possible for a tax auditor to enter into such tasks considering the limited scope of tax audit and further it would not be practically possible to carry out such detailed investigation in each case, since the tax audit has to be completed and report has to be filed by the prescribed due date i.e., 30th September of the assessment year. Therefore, considering that the question of determining whether an agreement is an impermissible avoidance agreement involves detailed investigation, the same should be kept out of the scope of tax audit.

An impermissible avoidance arrangement is the one that attracts general anti avoidance measures as per the GAAR provisions. Such arrangements are purposefully designed by the entities/persons to avoid a tax.

ICAI Representation on Form 3CD

There is a thin line of distinction between tax planning & purposeful tax evasion and would be very difficult for a tax auditor to himself decide on the complex subject and make comment whether such an arrangement is an impermissible avoidance arrangement.

Further, it is also difficult even for an AO or CIT to determine whether an arrangement is an impermissible avoidance arrangement. It is only the Approving Panel which can declare an arrangement as impermissible avoidance arrangement.

Therefore, no responsibility should be cast on the auditor to determine whether a particular arrangement is impermissible or not. At the most the clause may be suitably modified containing to reporting of relevant objective details and information and without requiring expression of opinion by the tax auditor.

Suggestion : It is suggested that the Clause 30C may be reconsidered and should be deleted or modified to address the concerns regarding determination of impermissible avoidance agreement.

SR NO 31(ba) OF APPENDIX II OF FORM 3 CD

NEWLY INSERTED IN FORM 3CD

31. (ba) 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;*

SR NO 31(ba), 31(bb) OF APPENDIX II OF FORM 3 CD

NEWLY INSERTED IN FORM 3CD

(bb) 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 occasions 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.);*

SR NO 31(ba), 31(bb), 31(bc) OF APPENDIX II OF FORM 3 CD

NEWLY INSERTED IN FORM 3CD

(bc) 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 occasions 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;*

SR NO 31(ba), 31(bb), 31(bd) OF APPENDIX II OF FORM 3 CD

NEWLY INSERTED IN FORM 3CD

(bd) 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 occasions 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.);

(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 3rd July, 2017)

31 – Cash receipts more than INR 2,00,000 under Section 269ST is to be reported.

[Mode of undertaking transactions.

269ST. No person shall receive an amount of two lakh rupees or more -

- (a) in aggregate from a person in a day; or
- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account:

Provided that the provisions of this section shall not apply to—

(i) any receipt by -

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(ii) transactions of the nature referred to in section 269SS;

(iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.

Explanation.—For the purposes of this section,—

(a) "banking company" shall have the same meaning as assigned to it in clause (i) of the Explanation to section 269SS;

(b) "co-operative bank" shall have the same meaning as assigned to it in clause (ii) of the Explanation to section 269SS.]

Sr no 31(c), (d) & (e) of Appendix II of Form 3 CD

Amended Clauses

(c)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:-

(v) in case the repayment was made by cheque or bank draft, whether the same was **repaid** by an account payee cheque or an account payee bank draft.

(d) 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:-

(ii) repayment 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.

(e) 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:-

(ii) repayment 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.

CLAUSE 34(b) OF FORM 3 CD
OLD FORM 3CD

(b) Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time. **If not**, 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 transactions which are required to be reported
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SR NO 34(b) OF APPENDIX II OF FORM 3 CD

NEW FORM 3CD

34(b) *Whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details :*

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

CLAUSE 34(b) issues:

- Tax audit u/s 44AB now also includes audit of TDS returns.
- TDS compliance is generally done on a test check basis and is practically not feasible in many cases to do a transaction audit.
- Following special reporting requirements are to be kept in mind:
 - Deductions made in the course of audit – TDS returns to be revised.
 - Where declaration in Form 15G/15H..are received the same have to be reported in TDS returns
 - Where declaration is received u/s 194C(6) (Transporter with less than 10 carriages)
 - Cases where there was no deduction in view of certificate of no deduction of tax under section 197
 - Cases where no tax was deducted in view of the notification issued under sub-section (1F) of section 197A
 - Purchase of software NOTIFICATION NO. S.O. 1323(E) [NO.21/2012(F.NO.14)
 - Bank guarantee commissions; Credit card / debit card commission to a scheduled bank (other than foreign bank) - NOTIFICATION NO. SO 2143(E) [NO.47/2016]

ICAI Representation on Form 3CD

6. Substitution of Clause 34(b) – may be deleted

*In clause 34, particulars about tax deducted or collected at source (TDS/TCS) are to be given. Under current clause 34(b), if the assessee has not furnished the statement of TDS or TCS within the prescribed time to the Tax Authorities, certain particulars are to be given. This clause 34(b) is now substituted and requires the tax auditor to state (i) TAN, (ii) Type of Form, (iii) Due date for furnishing the statement of TDS/TCS to Tax Authorities (iv) Date of furnishing the statements of TDS/TCS and (v) Whether this statement contains information about all details/transactions which are required to be reported. If not, a list of details/transactions not reported to be given. It is pertinent to note that at present such list of unreported items is not required to be given. **Preparation of such list is the additional requirement and consequent added responsibility put on the tax auditor.***

ICAI Representation on Form 3CD

It is neither feasible nor practicable to certify the desired details particularly when there are large number of transactions.

Again, there could be genuine differences of opinion with respect to liability to TDS. As the assessee separately files TDS returns, there is no justification for repetition of details via Form No. 3CD.

Suggestion : It is suggested that the new clause 34(b) may be omitted and status quo may be maintained.

SR NO 36A OF APPENDIX II OF FORM 3 CD**NEWLY INSERTED IN FORM 3CD**

36A	<i>(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.)</i>		
	<i>(b)</i>	<i>If yes, please furnish the following details:—</i>	
	<i>(i)</i>	<i>Amount received (in Rs.):</i>	
	<i>(ii)</i>	<i>Date of receipt:</i>	

36A-Dividend received under Section 2(22)(e) is required to be reported here.

Definitions.

2(22)(e) "dividend" includes—

- any payment by a company,
- not being a company in which the public are substantially interested,
- of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987,
- by way of advance or loan to a shareholder,
- being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power,
- or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)
- or any payment by any such company on behalf, or for the individual benefit, of any such shareholder,
- to the extent to which the company in either case possesses accumulated profits;

but "dividend" does not include—

- (i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets ;

(ia) a distribution made in accordance with sub-clause (c) or sub-clause (d) insofar as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st day of March, 1964, and before the 1st day of April, 1965;
- (ii) any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company ;
- (iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off;

- (iv) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956 (1 of 1956);
- (v) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).

Explanation 2.—The expression "accumulated profits" in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation, but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place.

[Explanation 2A.—In the case of an amalgamated company, the accumulated profits, whether capitalised or not, or loss, as the case may be, shall be increased by the accumulated profits, whether capitalised or not, of the amalgamating company on the date of amalgamation.]

Explanation 3.—For the purposes of this clause,—

- (a) "concern" means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company ;
- (b) a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the income of such concern

ICAI Representation on Form 3CD

7. Insertion of New Clause 36A – may be omitted / reconsider

New clause 36A requires the reporting of details of dividend received by an assessee under section 2(22)(e) of the Income-tax Act, 1961. Basically, this clause involves opinion of the tax auditor as to which dividend will fall under section 2(22)(e) of the Income-tax Act, 1961 as the assessee himself will not agree to it and provide the details. Therefore, it requires investigation and opinion on the part of the auditor. Hence, it needs to be modified or deleted from the tax audit form.

ICAI Representation on Form 3CD

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.

ICAI Representation on Form 3CD

Moreover, in several cases, Courts have held that the “accumulated profits” have to be of such nature as from which distribution of dividend is possible. Apart from the distributable nature of accumulated profits (Hari Prasad Jayantilal & Co., vs V S Gupta ITO (1966) 59 ITR 794 (SC)), Courts have also interpreted the term “accumulated profits” as meaning revenue profits, not capital profits. The relevant case laws in this regard are: Tea Estate India Pvt Ltd., v CIT (1976) 103 ITR 785 (SC); First Income-tax officer v. Short Brothers (P) Ltd (1966) 60 ITR 83(SC); CIT v Mangesh J. Sanzgiri(1979) 119 ITR 962 (Bom). Section 41(2) profit is not part of accumulated profit (CIT v Urmila Ramesh (1998) 230 ITR 422 (SC))

ICAI Representation on Form 3CD

Therefore, it would be unfair if the auditor is asked to certify that a transaction is a case of “deemed dividend”. Such determination whether a receipt is a deemed dividend or not is more of an assessment function.

It is further submitted that many of the recipients will not be subject to tax audits. The probability of payers being subject to tax audit is far higher than the possibility of recipients being subject to tax audit. The requirement in this new clause may be redrafted and the same may be sought from the payers and the requirement should be confined to pertain to only seeking of relevant information and not seeking opinion of applicability of section 2(22)(e).

Suggestion: It is suggested to suitably amend clause 36A or to delete it from the tax audit form.

SR NO 42 OF APPENDIX II OF FORM 3 CD

NEWLY INSERTED IN FORM 3CD

42. (a) *Whether the assessee is required to furnish statement in Form No.61 or Form No.61A or Form 61B? (Yes/No)*

(b) *If yes, please furnish :*

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

Form 61

- Rule 114B contains list of transactions where PAN is required to be quoted
 - Sale or purchase of a motor vehicle
 - Opening a bank account / demat account
 - Application for credit / debit card
 - **Payment to a hotel or restaurant exceeding 50,000/- in cash (at a time)**
 - Payment for foreign travel / purchase of forex in cash (>50,000/-)
 - Purchase of Mutual fund (>50,000/-)
 - **Purchase of debentures / bonds from issuing co (>50,000)**
 - Cash deposits in banks >50,000/-
 - Purchase of DDs in cash > 50,000/-
 - Fixed deposit in cash > 50,000/-
 -
 -
 - **Sale or purchase, by any person, of goods or services of any nature (> 2,00,000/-)**
Note even if transaction is not in cash this requirement stays

Form 61 contd..

- If the person does not have a PAN he shall make a declaration in Form 60
- Under Rule 114C there is a responsibility to ensure that PAN has been correctly furnished and Form 60 has complete particulars.
- Form 60 so obtained has to be furnished Electronically in Form 61
- Who should upload Form 61: [Rule 114D]

Transaction under Rule 114B	Requirement to upload
Payment to a hotel or restaurant exceeding 50,000/- in cash (at a time)	Only if the entity is required to get audited u/s 44AB
Payment for foreign travel / purchase of forex (>50,000/-)	
Sale or purchase, by any person, of goods or services of any nature (> 2,00,000/-)	
Other cases	Upload Form 61 even if no tax audit

Form 61 contd..

- When to upload Form 61

Period when declaration is received	Due date to file Form 61
Declarations received by the 30th September	31 st of Oct
Declarations received by 31 st Mar	30 th Apr

- Consequences of not filing: Penalty u/s 272B – Rs. 10,000/-
- Contents of Form 61: contd...

B.1	REPORT NUMBER (To be provided for each person being reported)		
B.1.1	Report Serial Number		
B.1.2	Original Report Serial Number		
B.2	PERSON DETAILS		
B.2.1	Person Name		
B.2.2	Date of birth/Incorporation		
B.2.3	Father's Name (for individuals)		
B.2.4	PAN Acknowledgement		
B.2.5	Aadhaar Number		
B.2.6	Address		
B.2.7	City / Town		
B.2.8	Postal Code		
B.2.9	State Code		Insert 2 character code
B.2.10	Country Code		Insert 2 character code
B.2.11	Mobile/Telephone Number		
B.2.12	Estimated agricultural income		
B.2.13	Estimated non-agricultural income		
B.2.14	Remarks		
B.3	FINANCIAL TRANSACTION SUMMARY		
B.3.1	Transaction Date		
B.3.2	Transaction ID		
B.3.3	Transaction Type		Insert 2 character code
B.3.4	Transaction Amount		
B.3.5	Transaction Mode		Insert 2 character code

Rule 114E: Furnishing of statement of financial transaction Form 61A

Nature and value of transaction	Class of person (reporting person)
<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 Reserve Bank of India under section 18 of the Payment and Settlement Systems Act, 2007 (51 of 2007).</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, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act).</p>

Rule 114E: Furnishing of statement of financial transaction Form 61A

Nature and value of transaction	Class of person (reporting person)
<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>	<p>(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);</p> <p>(ii) Post Master General¹⁰ as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898).</p>
<p>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.</p>	<p>(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);</p> <p>(ii) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898);</p> <p>(iii) Nidhi¹⁰ referred to in section 406 of the Companies Act, 2013 (18 of 2013);</p> <p>(iv) Non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934 (6 of 1934), to hold or accept deposit from public.</p>

Rule 114E: Furnishing of statement of financial transaction Form 61A

Nature and value of transaction	Class of person (reporting person)
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 or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act) or any other company or institution issuing credit card.
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.

Rule 114E: Furnishing of statement of financial transaction Form 61A

Nature and value of transaction	Class of person (reporting person)
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.
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 (18 of 2013).
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.

Rule 114E: Furnishing of statement of financial transaction Form 61A

Nature and value of transaction	Class of person (reporting person)
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 in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).
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 under section 3 of the Registration Act, 1908 or Registrar or Sub-Registrar appointed under section 6 of that Act.
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.

Rule 114E: Furnishing of statement of financial transaction Form 61A

<i>Nature and value of transaction</i>	<i>Class of person (reporting person)</i>
Cash deposits during the period 09 th November, 2016 to 30 th December, 2016 aggregating to— (i) twelve lakh fifty thousand rupees or more, in one or more current account of a person; or (ii) two lakh fifty thousand rupees or more, in one or more accounts (other than a current account) of a person	<i>A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898).]</i>
Cash deposits during the period 1 st of April, 2016 to 9 th November, 2016 in respect of accounts that are reportable under Sl.No.12. (i.e. above)	" do "

Rule 114E: Furnishing of statement of financial transaction Form 61A

Consequences of default:

- Incorrect particulars : 50,000 [Sec 271FAA]
- Delay in filing : 1,000 Rs. per day [Sec 271FA]

Frequency of return : Annual

Due Date : 31st of May

ICAI Representation on Form 3CD

8. Insertion of new clause 42 – modification required.

Under this clause, if the assessee is required to file Forms 61, 61A or 61B with appropriate authorities, the particulars relating to the same will have to be furnished. These particulars are (i) Income tax Department Reporting Entity Identification number, (ii) Type of Form, (iii) Due date for furnishing the statement, (iv) date of furnishing the same and (v) whether the form contains the information about all details / transactions which are required to be reported. If this is not done, a list of the details / transactions which are not reported.

ICAI Representation on Form 3CD

The above requirement will place additional burden on the tax auditor who will have to study the requirements of the following Sections, Rules and Forms;

- (a) Section 139A(5), Rules 114C and 114D and Forms 60 and 61. These deal with declarations received by the assessee in Form 60 from persons who have applied for PAN u/s 139A.*
- (b) Section 285BA, Rule 114E and Form 61A. This refers to obligation of person to furnish statement of financial transactions or reportable account u/s 285BA.*
- (c) Section 285BA, Rule 114G and Form 61B. This also relates to the requirements of Section 285BA relating to Annual information Reporting.*

Suggestion : It is suggested that clause 42 may be reconsidered.

SR NO 43 OF APPENDIX II OF FORM 3 CD

NEWLY INSERTED IN FORM 3CD

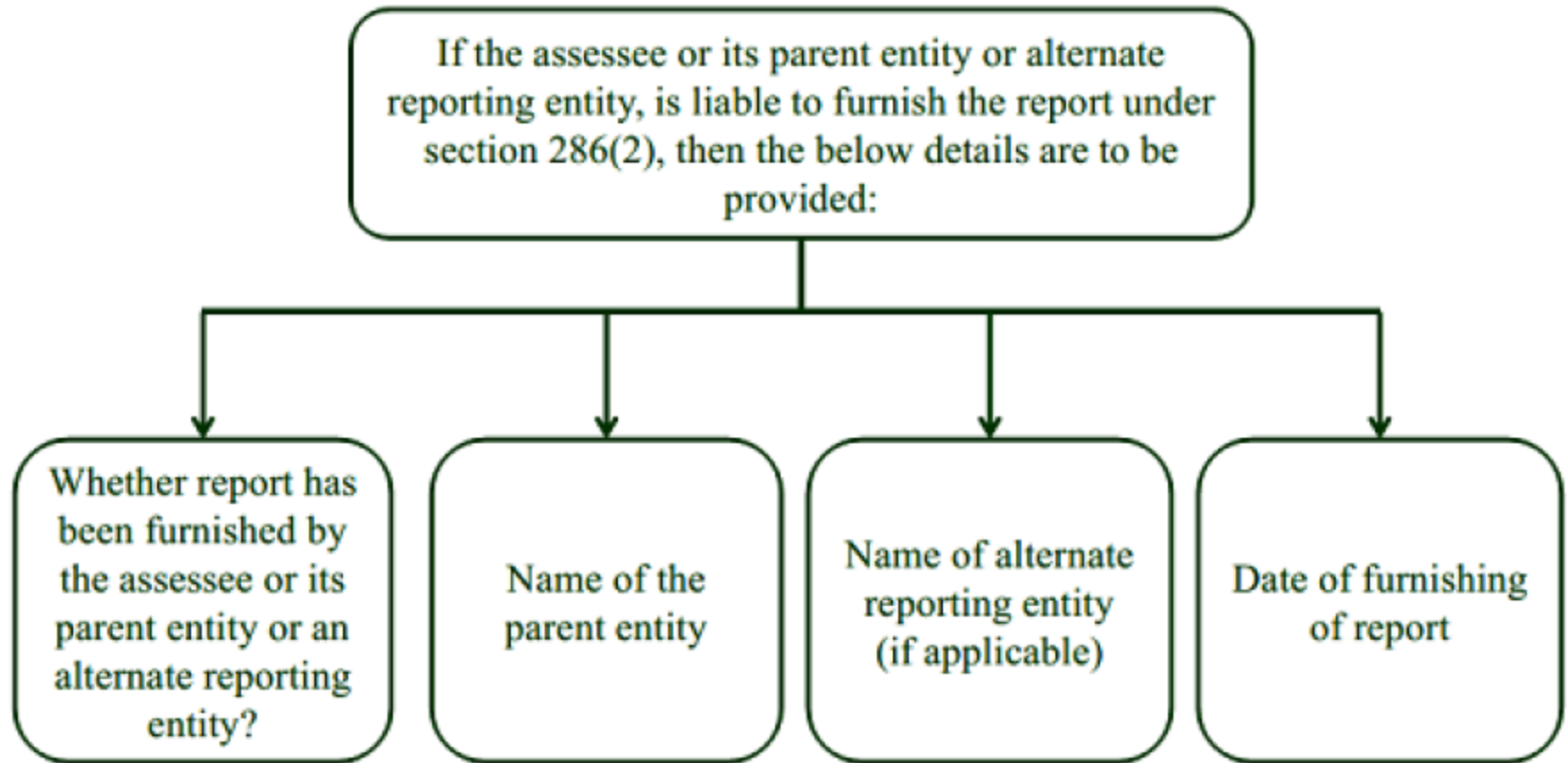
43. (a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286? (Yes/No)

(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*

NEWLY INSERTED IN FORM 3CD

Furnishing of report in respect of international group [section 286] [Clause 43]



[Furnishing of report in respect of international group.]

286. (1) Every constituent entity resident in India, shall, if it is constituent of an international group, the parent entity of which is not resident in India, notify the prescribed income-tax authority (herein referred to as prescribed authority) in the form and manner, on or before such date, as may be prescribed,—

(a) whether it is the alternate reporting entity of the international group; or

(b) the details of the parent entity or the alternate reporting entity, if any, of the international group, and the country or territory of which the said entities are resident.

(2) Every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority [within a period of twelve months from the end of the said reporting accounting year], in the form and manner as may be prescribed.

ICAI Representation on Form 3CD

9. Insertion of New clause 43 – clarification required.

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.

ICAI Representation on Form 3CD

Here again, it may be noted that under section 286(2), the time limit for furnishing report in respect of international group has been extended upto a period of 12 months from the end of the reporting accounting year with retrospective effect from 01.04.2017. Therefore, for the reporting accounting year 2017-18, the time limit for furnishing the report is 31.03.2019. 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 is possible only in respect of the earlier reporting accounting year 2016-17.

Suggestion :It is suggested that clause 43 be suitably amended considering the fact that extended timeline under section 286(2) for accounting year 2017-18 will expire on 31.03.2019. i.e. after the due date of furnishing tax audit report for Assessment year 2018-19.

SR NO 44 OF APPENDIX II OF FORM 3 CD**NEWLY INSERTED IN FORM 3CD**

44. Break-up of total expenditure of entities registered or not registered under the GST:

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

44. Break-up of total expenditure of entities registered or not registered under the GST:

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)

Total Expenses include capital expenses and revenue expenses?

44. Break-up of total expenditure of entities registered or not registered under the GST:

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)

- Total expenses during the year suggests entire year's expense has to be reported.
- Header – “under the GST” suggests that only those expenses incurred under GST era i.e. July 17 to Mar 18 has to be considered

Contd...

44. Break-up of total expenditure of entities registered or not registered under the GST:

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)

- If a stand is taken that for 3CD entire year's expense has to be reported in the total expense column, how to categorise the expense in following cases:
 - Expenses relating to purchases from VAT registered dealers if
 - The VAT dealer is also registered under GST (normal scheme)
 - The VAT dealer is also registered under GST (composition scheme)
 - The VAT dealer is not registered under GST
 - Expenses relating to VAT composition dealers who may or may not be registered under GST. If registered may or may not be registered under GST composition
- Alternatively a stand can be taken that expenses incurred upto June 2017 are all from entities who were not registered under GST at that point of time and therefore entire expense for the period Apr to June may be dumped into Column 7 – Expenses relating to entities not registered under GST
 - Consequence : This would result in larger figure being reported under unregistered purchases

Schedule GST Break-up of total expenditure with entities registered or not registered under the GST (Details in respect of expenditure on or after 01st July, 2017 to be filled up by the assessee who is not liable to get accounts audited w/s 44AB)

DETAILS OF GST	Sl. No.	Total amount of Expenditure during the year (aggregate of expenditure reported at items 6, 8 to 35, 37 & 38 of Part-A-P&L / P&L – Ind AS)	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 ▶ Please refer to instructions for filling out this schedule.

- A similar reporting requirement is there in ITR 6 for companies with turnover less than 1 Crore. There the schedule is very clear that only expenses after 1st July 17 are to be reported.
- Can we draw inference of Govt's intent and even in 3CD give details of only those expenses incurred under GST era?
- Appropriate note can be given in the 3CD.
- But this would mean that the total expenses column reported in 3CD is much lower than the total expenses claimed in the ITR. This could result in a mismatch and trigger a scrutiny.

Relating to goods or services exempt from GST

- Sec 2(47) of CGST Act: "**exempt supply**" means supply of any goods or services or both which attracts **nil rate of tax** or which may be wholly **exempt from tax** under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and **includes non-taxable supply**;

44. Break-up of total expenditure of entities registered or not registered under the GST:

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)"

- Entity dealing in exempt goods and services may not be registered under GST. Eg: Petrol and Diesel.
- Such expenses to be filled under column 3 or column 7?

Relating to entities falling under composition scheme

44. Break-up of total expenditure of entities registered or not registered under the GST:

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)''

- How to identify whether a vendor is under composition or regular scheme?
 - Verify purchase document– Bill of supply vs Tax invoice
 - Verify online - <https://services.gst.gov.in/services/searchtp>

Issues in classification of expenses

- Diwali Pooja expenses paid in cash on 20.10.2017 – Rs. 10,451/-

Issues in classification of expenses

- Diwali Pooja expenses paid in cash on 20.10.2017 – Rs. 10,451/-

Particulars	Amount(Rs.)
Flowers	1750
Kapoor and Agarbathi	450
Sweets and Dry Fruits	4500
Paid to poojari	2500
Fruits	500
Kumkum and Haldi	250
Coconut	50
Vouchers not available	451

Issues in classification of expenses

- Travel expenses reimbursed to employee 31.12.2017 – Rs. /-

Particulars	Amount(Rs.)
Lodging Expenses	2500
Room Service	1500
Travel by KSRTC	250
Travel by Ola	750
Travel by Auto	300
Food expenses	750
Tips	150

Issues in classification of expenses

- Provision for expenses
- Depreciation
- Prepaid expenses of earlier years now debited to profit and loss account
- Salary costs
- Interest
- Bad debts
- Discounts and rebates allowed
- Contribution to PF / ESI
- Rates and taxes
- Round off

Practical Solutions – way out

1. Do a complete verification and provide these details on a **separate assignment basis**.

2. Ask client to prepare data and do test checks and give a disclaimer in audit report:

Clause 44- We have verified the breakup of expenses registered or not registered under GST, as provided by the assessee, in accordance with the Auditing Standards generally accepted in India and the recommendation of the Institute of Chartered Accountants of India which include test checks and the concept of materiality

3. Do not provide any information and give appropriate disclaimers in the Form 3CD:

Cause 44 – The assessee has submitted that books of accounts have not been maintained in a manner to provide GST breakup of expenses as there was no such requirement earlier. It would practically not be feasible to rewrite the entire books considering the new reporting requirement. Further expenses like depreciation, bad debts, discounts etc are not supplies under GST and therefore cannot be bifurcated as per requirements of Clause 44. In light of above and voluminous transactions we are unable to provide details as asked for under Clause 44 of Form 3CD.



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