

NEW REQUIREMENTS IN REVISED FORM 3CA, 3CB & 3CD

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Key Reference Material

- CBDT's Notification No. 33/2018/F No.370142/9/2018-TPL dated 20th July 2018;
- ICAI's Implementation Guide w.r.t. Notification No. 33/2018 dated 20/7/2018;
- CBDT's Circular No. 6/2018 dated 17/8/2018;
- ICAI's Guidance Note on Audit u/s 44AB;
- E-CA Journal for the month of August 2018 containing following resource material-
 - a. Overview of Tax Audit and Auditor's Responsibilities;
 - b. Use of Jurisprudence in Tax Audit-Harmonious Approach; and
 - c. Recent Changes and FAQs on e-Filing of Tax Audit Report
- Documentation and Compliance for Audits and Reviews – CA Pramod Jain

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- ❖ Back to basics - Turnover Limit for Audit u/s 44AB
- ❖ Changes in Form 3CD pursuant to Notification Dated 20/7/2018 and Order Dated 17/8/2018
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Turnover Limit for Audit u/s 44AB

Category of Taxpayer	Turnover Limit
Business (Not opting Presumptive Income Scheme)	1 crore
Professionals (Not opting Presumptive Income Scheme)	50 lakhs
Business opting Presumptive Income scheme u/s 44AD	2 crores
Professionals opting Presumptive Income scheme u/s 44ADA	50 lakhs

Recent Changes in Form 3CD



- Vide Notification No. 33/2018/F. No. 370142/9/2018-TPL dated 20 July 2018, the CBDT has amended the Income-Tax Rules, 1962 in respect of Form 3CD.
- New key reporting requirements post amendment in such rule are incorporated in Form no. 3CD and are effective from 20 August 2018.
- These amendment in Form 3CD are covered in 10 different clauses of said notification.

- However, subsequently, vide order dated 17/8/2018, the CBDT has postponed implementation of reporting requirements under proposed clause 30C (regarding GAAR) and proposed clause 44 (regarding GST compliance) till 31/3/2019.
- Prior to amendment dt. 20/7/18, there were 41 clauses in Form 3CD which have now increased to 43 clauses post amendment.
- Clause by clause proposed amendments are discussed hereunder-

1. Details of GST Registration No. (cl. 4)

The taxpayers are now required to give GSTIN along with the details of other Indirect Tax registration no. like Sales Tax, Service Tax, Central Excise, Etc. in **Clause no. 4** of Form 3CD.

2	Address of the Assessee *	<input type="text"/> <input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/>
3	Permanent Account Number (PAN) *	<input type="text"/>	
4(a)	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 *	<input type="text" value="Yes"/>	

(b)S.NO.	Type	Registration /Identification Number
1	<input type="checkbox"/>	<input type="text" value="Select"/>
<div> Add  Delete</div>		
5	Status	<input type="text" value="Select"/>
6	Previous year	<input type="text"/> to <input type="text"/>
7	Assessment	<input type="text" value="Select"/>
8	Indicate the relevant clause of section 44AB under which the audit has been conducted *	
S.No.	Relevant clause of section 44AB under which the audit has been conducted	

Points to Ponder-

- Details required in this clause are to be obtained from the assessee.
- As auditor, we must obtain a copy of registration certificate clearly mentioning registration under relevant law.
- The information may be obtained in following format from assessee (see SA 580 : Written Representation)-

Sr No.	Relevant Ind. Tax Law which required registration	Place of Business for which regn. Is in place	Registration / Identification N..

- What if the assessee has not obtained registration even-though required to obtain the same???

2. Details of Allowance u/s. 32AD (Cl. 19)

- The assessee has to give details of deduction claimed in Profit & Loss A/c on account of investment made by him in new plant & Machinery in notified backward areas in certain states in **Clause No. 19** of the Form 3CD.
- Such states are Bihar, Telangana and West Bengal.
- Details of Amount Debited to P&L A/c and Amount Admissible under act are required to be given in this clause.

Select

32AC

32AD

33AB

33ABA

35(1)(i)

35(1)(ii)

35(1)(ia)

35(1)(iii)

35(1)(iv)

35(2AA)

35(2AB)

35ABA

35ABB

35AC

35AD

35CCA

35CCB

35CCC

35CCD



35D

35DD

35DDA



35F

19 Amounts admissible under sections:

S.No.		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.
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<div> </div>			

20 (a) Any sum paid to an employee as or dividend. [Section 36(1)(ii)]

commission for services rendered, where such sum was otherwise payable to him as profits

S.No.		Description	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<div> </div>			

(b) Details of contributions received

employees for various funds as referred to in section 36(1)(va):




Points to Ponder

- In case the assessee has obtained a separate audit report for claiming deduction under this section, we must make a reference to that report while giving the details under this clause.
- The amount not debited to P&L Account and eligible for deduction - ???




3. Deemed Income u/s 32AD (cl. 24)

If the newly purchased asset is sold within the lock in period as mentioned in section 32AD (i.e. 5 years), the amount of deduction claimed earlier will be treated as deemed income and has to be shown in **Clause No. 24** of Form 3CD.

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

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


25 Any amount of profit chargeable to tax under section 41 and computation thereof.

S.No.		Name of person	Amount of income	Section	Description of Transaction	Computation if any
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	Select 	<input type="text"/>	<input type="text"/>
 Add  Delete						

26 (i) In respect of any sum referred to in clause (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 preceeding previous year and was

(a) paid during the previous year;

S.No.	Section	Nature of liability	Amount
1			
 Import CSV  Fill Data  Clear Data			

[CSV Template](#) [Help](#)

4. Regarding Sec. 43B(g) – Railway Assets (cl. 26)

- Infact, this amendment in form 3CD should have come last year itself.
- Clause (g) was inserted in section 43B where any sum payable by the assessee to the Indian Railways for use of railway asset is covered.
- Since this amendment was brought by Finance Act 2016 w.e.f. 1/4/2017, necessary reporting requirement in clause 26 is made.

- Payments for the use of railway assets **would not include basic rail freight, as such freight is for the service of transport and not for use of railway assets.**
- The distinction between contracts of transportation and contracts for user (hire) of assets has been brought out, in the context of tax deduction at source, by the High Courts and the Tribunal in the following cases:
 - *CIT (TDS) v Swayam Shipping Services (P.) Ltd.* [2011] 339 ITR 647 (Guj)
 - *CIT v Reliance Engineering Associates (P) Ltd* [2012] 209 Taxman 351 (Guj)
 - *ACIT(TDS) v Lotus Valley Education Society* [2014] 223 Taxman 82 (All)(MAG)
 - *CIT v Apeejay School, Apeejay School Campus* [2014] 226 Taxman

Then What is Included

- Sums payable for use of railway assets would however include **amounts payable for hire of railway wagons, or for hire of rail sidings, or lease rent payable for use of railways land or buildings.**
- In case of payments for use of hoardings/display panels put up on railway premises, whether the payment is for use of railway assets would depend upon the terms of the contract.

- In case the payment is being made by an advertising agency to the railways for putting up hoardings/display panels on railway premises, **such payment would amount to payment for use of railway assets**, as the payment is for the use of space on the premises.
- However, where an advertiser is making payment to the railways for display of advertisements on hoardings/displays in railway premises, **such a payment is in the nature of payment for the services of advertisement, and not for the use of railway assets.**

Tax Auditor Needs To -

- ✓ obtain a list of amounts payable to the railways for the previous year from the assessee,
- ✓ verify the correctness of such amounts.
- ✓ thereafter he needs to analyse such amounts, bifurcating them between payments for the use of railway assets and other payments.
- ✓ He thereafter needs to verify the applicability of section 43B to such amounts, by checking the dates of payment of such amounts.

5. Income Chargeable As IOS u/s.

56(2)(ix) (cl. 29A)

- If any amount is chargeable under the head 'income from other sources' u/s 56(2)(ix), then the nature of the income and the amount are required to be disclosed in **Clause No. 29A**.
- Sec. 56(2)(ix) states that, any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset shall be chargeable to income tax under the head IOS if,—
 - a) such sum is forfeited; **and**
 - b) the negotiations do not result in transfer of such capital asset;

Points to Ponder

- Section 56(2)(ix) was inserted by the Finance Act 2014, w.e.f. AY 2015-16.
- It provides for taxability as 'Income from Other Sources' of any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if such sum is forfeited and the negotiations do not result in transfer of such capital asset.
- Prior to such amendment, section 51 provided for deduction of such amount forfeited from the cost or written down value of the asset.
- Section 51 has now been amended to provide that any amount taxed under section 56(2)(ix) shall not be deducted from the cost or written down value.
- However, there was no reporting requirement till now .

- The auditor is not required to report any such forfeited amount **if it is in respect of a personal capital asset**, where neither the asset, the advance nor the forfeiture is recorded in the books of account relating to the business or profession.
- The requirement of reporting arises only on forfeiture of such amount.
- If an advance has been received and has been outstanding for a considerable period of time, there is no requirement to report such amount unless and until it is forfeited by an act of the assessee.

- Only forfeiture of amounts received as advance towards transfer of a capital asset is required to be reported under this clause.
- Any advances received and forfeited towards sale of stock-in-trade would be taxable under section 28(i), and would not be required to be reported since the amount would be credited to profit & loss account.
- A mere notice of forfeiture by the assessee, **which is contested by the other party**, may not amount to a forfeiture.
- In such a case, **if the amount is not written back by the assessee**, reporting of such amount is not required merely on the grounds of issue of notice of forfeiture.
- In case such amount is written back by the assessee, such amount should be reported under this clause, giving the stand of the assessee.

- The Supreme Court, in the case of **Bankura Municipality v. Lalji Raja and Sons** AIR 1953 SC 248, 250 has observed:

"According to the dictionary meaning of the word 'forfeiture', the loss or the deprivation of goods has got to be in consequence of a crime, offence or breach of engagement or has to be by way of penalty of the transgression or a punishment for an offence Unless the loss or deprivation of the goods is by way of a penalty or punishment for a crime, offence or breach of engagement, it would not come within the definition of forfeiture."

- The tax auditor should therefore **obtain a certificate from the assessee regarding all such advances received** towards transfer of capital assets which have forfeited during the year.

5. Income Chargeable As IOS u/s. 56(2)(x) (cl. 29B)

- If any amount is chargeable under the head 'income from other sources' u/s 56(2)(ix), then the **nature of the income** and the **amount** are required to be disclosed in **Clause No. 29B**.
- S. 56(2)(x) states that, where any person receives, in any previous year, from any person or persons on or after the 1/4/2017,—
 - a) any sum of money, without consideration, the aggregate value of which exceeds Rs. 50,000/-, the whole of the aggregate value of such sum
 - b) any immovable property,—
 - (A) without consideration, the stamp duty value of which exceeds Rs. 50,000/-, the stamp duty value of such property;
 - (B) for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs. 50,000/-, the stamp duty value of such property as exceeds such consideration

29 A(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?

Select

(b) If yes, please furnish the following details:

S.No.		Nature of income	Amount
1	<input type="checkbox"/>		


 

29 B(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)

Select

(b) If yes, please furnish the following details:

S.No.		Nature of income	Amount (in Rs.)
1	<input type="checkbox"/>		

30 Details of any amount borrowed on hundi or any amount due thereon (including interest on the amount borrowed) repaid, otherwise than through an account payee cheque. [Section 69D]

Select

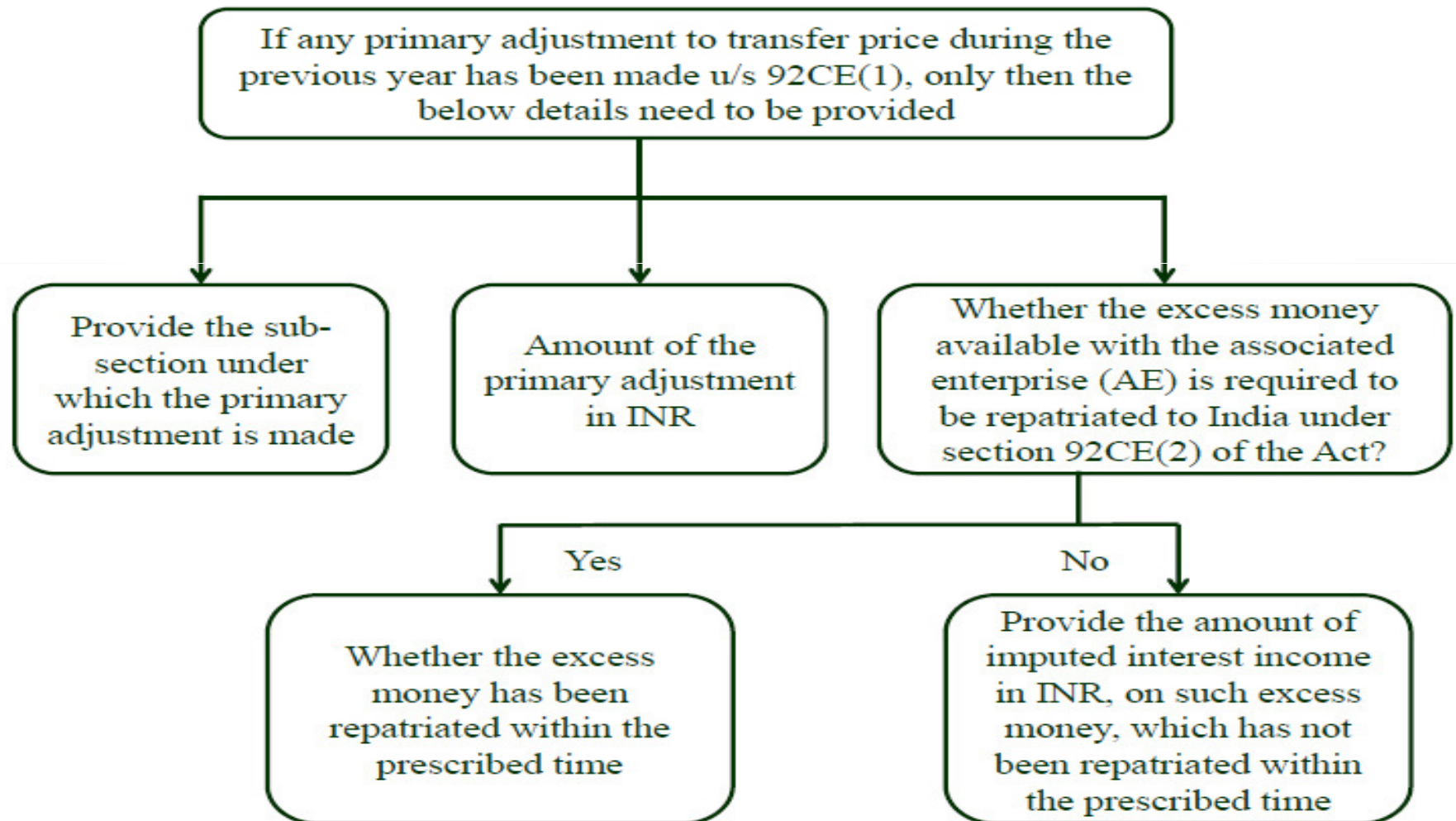
- Section 56(2)(x) was introduced by the Finance Act 2017, w.e.f. AY 2017-18.
- However, since it applies to amounts or assets received on or after 1/4/2017, it effectively applies w.e.f. AY 18-19.
- Needless to state here that clause 28 has now become redundant.
- Under this section, the following amounts/value of assets received by an assessee from any person or persons are chargeable to tax as Income from Other Sources:
 - (i) Any sum of money, received without consideration, if it exceeds Rs. 50,000

- (ii) A. Stamp duty value of any immovable property received without consideration, SD value of which exceeds Rs. 50,000
B. Stamp duty value in excess of the consideration of any immovable property received, where the SD value exceeds the consideration by more than Rs. 50,000.
- (iii) A. Aggregate FMV of property, other than immovable property, without consideration, where the aggregate FMV of such property exceeds Rs. 50,000
B. Aggregate Fair market value of property, other than immovable property, in excess of the consideration, where the aggregate fair market value exceeds the consideration by more than Rs. 50,000.

- The tax auditor is required to report –
 - ✓ the nature of income; and
 - ✓ the amount of income chargeable under this clause.
- In the nature of income –
 - ✓ the details of the asset received; and
 - ✓ the date of receipt should be given.
- While stating the amount of income, **a computation of how such income has been arrived at should be provided**, giving the fair market value or stamp duty value of the asset and the amount of consideration.

6. Primary Adjustments in certain cases [Sec. 92CE] (cl. 30A)

The details are to be shown in **Clause No. 30A**



Role of Auditor (for this clause)

- For this purpose, the tax auditor should obtain a certificate from the assessee, as to
 - ❖ what transfer pricing adjustments have been made in the return/(s) of income filed during the previous year,
 - ❖ whether any advance pricing agreement was entered into during the previous year,
 - ❖ whether any transfer pricing adjustment was made/confirmed in an assessment order/appellate authority order passed during the previous year, or
 - ❖ whether any agreement has been arrived at under a Mutual Agreement Procedure during the previous year.
- The tax auditor should also verify tax records to check whether there is any such occurrence.

- The tax auditor then needs to report the relevant clause of section 92CE(1) under which the relevant adjustment falls, and the amount of adjustment.
- In this regard, the auditor should also obtain a prior management representation on the information obtained to be true and accurate, basis which he should make the disclosure in the tax audit report.
- Hence the primary onus should be with the management.

30 A(a) Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year.

Select ▼

(b) If yes, please furnish the following details

S.No.		Under which clause of sub-section (1) of section 92CE primary adjustment is made ?	Amount (in Rs.) of primary adjustment	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.	If yes, whether the excess money has been repatriated within the prescribed time.	If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time	Expected date of repatriation of money
1	<input type="checkbox"/>	Select ▼		Select ▼	Select ▼		DD/MM/YYYY
<div> Add Delete </div>							

30 B(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

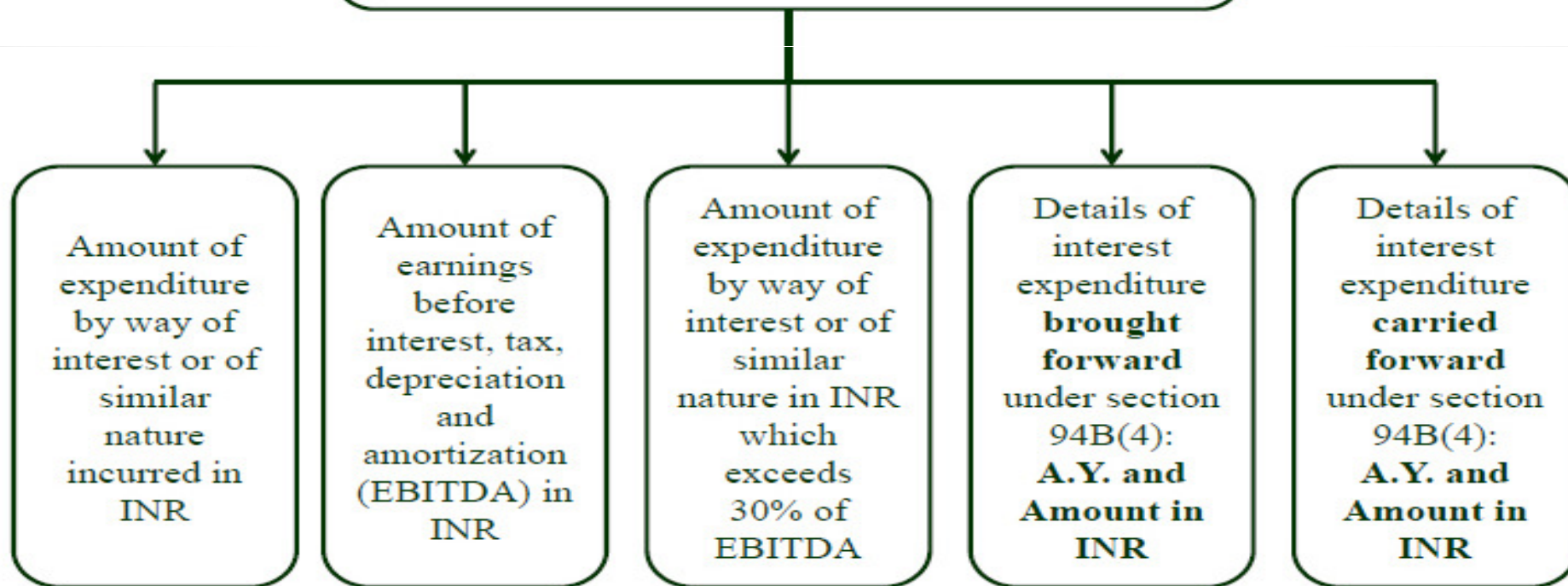
Select ▼

(b) If yes, please furnish the following details

S.No.	Amount (in Rs.) of expenditure by way of	Earnings before interest, tax, depreciation and	Amount (in Rs.) of expenditure by way of interest or of similar nature as	Details of interest expenditure brought forward as per sub-section (4) of section 94B.	Details of interest expenditure carried forward as per sub-section (4) of section 94B:
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6. Limitation on Interest Ded. in certain cases [S. 94B] (cl. 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:



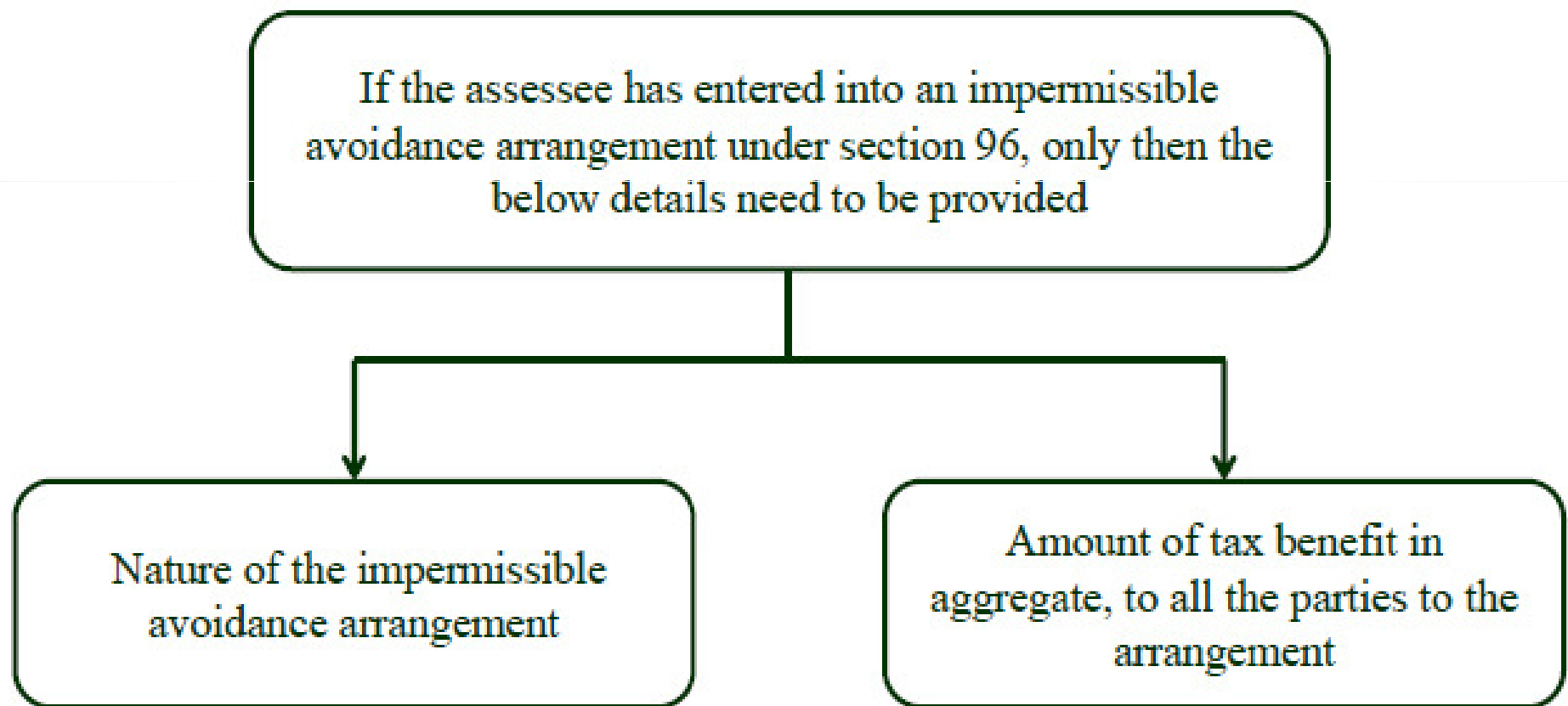
Select

(b) If yes, please furnish the following details

S.No.		Amount (in Rs.) of expenditure by way of interest or of similar nature incurred	Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.)	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.	Details of interest expenditure brought forward as per sub-section (4) of section 94B.		Details of interest expenditure carried forward as per sub-section (4) of section 94B:	
					Assessment Year	Amount (in Rs.)	Assessment Year	Amount (in Rs.)
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="Select"/>	<input type="text"/>	<input type="text" value="Select"/>	<input type="text"/>

6. General Anti-Avoidance Rules[Sec. 96]

The details are to be shown in **Clause No. 30C** - now deferred till **31.3.2019**



1	<input type="checkbox"/>				Select		Select	
<div>+ Add - Delete</div>								

30 C(a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year.(This Clause is applicable from 1st April,2019) ←
(b)If yes, please furnish the following details

Select

S.No.		Nature of the impermissible avoidance arrangement	Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement
1	<input type="checkbox"/>	Select	
<div>+ Add - Delete</div>			

- The Central Board of Direct Taxes (CBDT) vide Circular No. 6/2018/F.No. 370142/9/2018-TPL dated 17 August 2018 has deferred the reporting under the proposed Clause 30C of the Tax Audit Report till 31st March 2019.
- Therefore, for Tax Audit Report to be furnished on or after 20th August, 2018 but before 01st April, 2019, the tax auditors will not be required to furnish details called for under the said clause 30C of the Tax Audit Report.

7. Disclosure Requirements u/s 269ST (cl 31)

The following details are to be shown in **Cl 31** viz.

- ✓ Name, Address and PAN of the payer/payee,
- ✓ Nature of Transaction,
- ✓ Amount of Receipt/Payment,
- ✓ Date of Receipt/Payment




for the following transactions:

- Particulars of **receipts** exceeding the limit specified in Sec. 269ST, when received **otherwise** by a cheque or a bank draft or use of ECS through a bank a/c are to be given at **sub-clause (ba)**.




7. Disclosure requirements under Sec.269ST

- Particulars of **RECEIPTS** exceeding the limit specified in Sec. 269ST, when received by a cheque or bank draft, **not being an account payee cheque or an account payee bank draft**, are to be given at **sub-clause (bb)**.
- Particulars of **PAYMENTS** exceeding the limit specified in Sec. 269ST, when received **otherwise** by a cheque or a bank draft or use of ECS through a bank a/c are to be given at **sub-clause (bc)**.
- Particulars of **PAYMENTS** exceeding the limit specified in Sec. 269ST, when received by a cheque or bank draft, **not being an account payee cheque or an account payee bank draft**, are to be given at **sub-clause (bd)**.

- 31 b(a) 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

S.No.		Name of the Payer	Address of the Payer	Permanent Account Number (if available with the assessee) of the Payer	Nature of transaction	Amount of receipt	Date Of receipt
1		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
 Add  Delete							

- 31 b(b) 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 :-

S.No.		Name of the Payer	Address of the Payer	Permanent Account Number (if available with the assessee) of the Payer	Amount of receipt
1		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
 Add  Delete					

- Section 269ST was introduced by the Finance Act, 2017 w.e.f.1-4-2017. It provides that no person shall receive sum of Rs. 2 lakh 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 demand draft or by use of electronic clearing system through a bank account.
- Contravention of section 269ST **attracts penalty under section 271DA.**

Exclusions-

Under Notification No. S.O. 1057(E) [Notification No. 28/2017, F.No.370142/10/2017-TPL] dated 5th April, 2017, provisions of section 269ST do not apply to receipt **by any person** from an entity referred to in sub-clause (b) of clause (i) of the proviso to section 269ST i.e. any banking company, post office savings bank and co-operative bank .

(NBFCs not included in this exclusion list).

Under Notification No. S.O. 2065(E) [No. 57 /2017, F.No.370142/10/2017-TPL] dated 3 July 2017, the Central Government has specified that the provisions of section 269ST **shall not apply** to the following receipts:

- a) receipt by a business correspondent on behalf of a banking company or co-operative bank, in accordance with the guidelines issued by RBI;
 - b) receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or cooperative bank, in accordance with the authorisation issued by RBI under the Payment and Settlement Systems Act, 2007;
 - c) receipt from an agent by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the RBI under the Payment and Settlement Systems Act, 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 u/s 10
- (17A) of the Income-tax Act, 1961 (awards received). •

Points to Ponder

- Section 269ST does not distinguish between receipt on capital account and revenue account.
- Similarly, sub-clauses 31 (ba), (bb), (bc) and (bd) do not distinguish between receipts and payments on capital account and revenue account.
- Once the receipt or the payment, as the case may be, exceeds the limit specified in section 269ST, the particulars of such transactions will have to be reported under these clauses.
- This fact should be kept in mind by us while examining the books of account and records of the assessee.

As per **Circular No. 22 of 2017 (F.No.370142/10/2017-TPL)** dated 3/7/17, the CBDT has clarified that

'in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one installment 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 installments paid for the loan shall not be aggregated for the purposes of determining applicability of the provisions of section 269ST.'

Points to Ponder (contd.)



- It is possible that the assessee may have purchased goods or services while simultaneously he may have sold goods or services to the same party, the consideration for which exceeds Rs. 2 lakhs.
- In such a case if the amount of consideration for purchase is set off against the amount receivable for the sale of goods or services, **such set off is not a receipt** as contemplated under section 269ST.
- If the amount of such set off exceeds Rs. 2 lakhs, we must give appropriate note to the effect that such set off, not being a receipt or payment, has not been included in the particulars given and the relevant sub-clause.

Proposed Disclosure



- In the absence of satisfactory evidence, the Council of the ICAI has given guidance to us in similar cases to make a suitable comment. **(Refer para 49.6 of the 'GN on Tax Audit u/s 44AB Act, 2014 Edition.)**
- We may make a comment in the report as suggested below while reporting under **sub-clauses 31(bb) and 31(bd):**

“It is not possible for me/us to verify whether the receipts/payments have been accepted/made otherwise than by an account payee cheque or an account payee bank draft, as necessary evidence is not in the position of the assessee”.

- 31 b(c) 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

S.No.		Name of the Payee	Address of the Payee	Permanent Account Number (if available with the assessee) of the Payee	Nature of transaction	Amount of Payment	Date Of Payment
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
 Add  Delete							

- 31 b(d) 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

S.No.		Name of the Payee	Address of the Payee	Permanent Account Number (if available with the assessee) of the Payee	Amount of Payment
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
 Add  Delete					

8. Details Regarding Tax Deducted or Collected (cl. 34)

In **Clause 34(b)**, if the assessee is required to furnish statement of TDS/TCS, as per the provisions of Chapter XVII-B or Chapter XVII-BB, then the following details would be required to be reported:

Tax dedn. and collection A/c No. (TAN)	Type of form	Due date for furnishing	Date of Furnishing, if furnished	Whether the statement of TDS/TCS contains information about all details/transactions which were required to be reported but not disclosed by the assessee

Points to Ponder

- Reporting requirements under clause 34(a) itself were considerable, particularly, columns (5) and (8) of the table.
- The substituted sub-clause widens the scope considerably of the reporting requirements **so far as information about details and transactions required to be reported in the statement of tax deducted at source and tax collected at source.**
- Under the substituted sub-clause, the tax auditor is required to furnish a list of details/transactions which are not reported in the statement of tax deducted at source and statement of tax collected at source.
- The reporting requirement is notwithstanding the fact that the assessee has furnished the statements of tax deducted at source and tax collected at source within the prescribed time.
- Thus, the tax auditor will have to identify the transactions in respect of which tax was required to be deducted at source or collected at source and verify whether these transactions have been appropriately reported in the relevant form of the statement of tax deducted at source or tax collected at source.

Points to Ponder (contd.)

- As stated in paragraph 59.2 of the 'Guidance Note on Tax Audit u/s 44AB' (Edition 2014), 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.
- There may be occasions when the tax auditor may not agree with the interpretation/view taken by the auditee.
- In such cases the tax auditor may report about the views as observation in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be.
- Interesting to observe that CBDT has not asked the tax auditor to quantify the amount of late filing fees,
 - like in case of reporting for clause 34(c). •

9. Deemed Dividend u/s 2(22)(e) – (cl. 36A)



If the assessee has received any amount in the nature of dividend under section 2(22)(e), then the amount received and the date of receipt are required to be disclosed in **Clause 36A**.

•

•


36 In the case of Domestic Company, details of tax on distributed profits under section 115-O in the following forms :-

S.No.		(a) Total amount of distributed profits	(b) Amount of reduction as referred to in section 115-O(1A) (i)	(c) Amount of reduction as referred to in section 115-O(1A) (ii)	(d) Total tax paid thereon	(e) Date of Payment with Amounts	
						Amount	Dates of payment
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

 Add
  Delete



A(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.

Select 

(b) If yes, please furnish the following details:-

S.No.		Amount received (in Rs.)	Date of receipt
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>

 Add
  Delete

Points to Ponder

- In order to enable reporting under this clause, the **tax auditor should obtain from the assessee a certificate** containing
 - ❑ list of closely held companies in which he is beneficial owner of shares carrying not less than 10% of the voting power; and
 - ❑ list of concerns in which he has substantial interest.
- The tax auditor should also obtain a certificate from the assessee giving
 - ❑ particulars of any loans or advances received by any concern in which he has substantial interest from any closely held company in which he is beneficial owner of shares carrying not less than 10% voting power.
- These certificates are necessary since the tax auditor may not be able to verify the above from the books of account of the assessee.
- The tax auditor should include appropriate remarks of his inability to independently verify the information and reliance on the certificates obtained from the assessee.
- These remarks may be included in clause 3) of Form No. 3CA
 - or clause (5) of Form 3CB, as the case may be. •

...continued

- As mentioned earlier, the dividend taxable under section 2(22)(e) is restricted to accumulated profits on the date of payment. Thus, the accumulated profits have to be determined as on the date of the payment. Further, if at any time earlier any amount has been taxed under any of the clauses of section 2(22), the accumulated profits will have to be reduced by the amount so taxed.
- The tax auditor may not be able to determine the accumulated profits of the closely held company making the payment for various reasons.
- He will not have access to the records of such closely held company, the payment would often be during the course of a financial year and accounts will not have been made up as of the date of payment.
- The tax auditor in such a case may arrive at the accumulated profits by appropriating the profit for the year on a time basis.
- In such a case the auditor should include appropriate remarks.

....continued

- There may be business transactions between the closely held company and the concerns in which the assessee has substantial interest.
- Various courts have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e).
- CBDT has issued Circular No. 19/2017 dt 12/6/17 accepting this position.
- The circular gives various illustrations and citation of judicial decisions.
- Considering the circular, business advance or trade advances from closely held companies to the assessee or concerns in which the assessee has substantial interest are out of the purview of 2(22)(e) and need not be reported as dividend under this clause of Form No. 3CD.

....continued

- It may be noted that any payment made after 1 April 2018 which satisfies the conditions of sub-clause (e) of clause (22) of section 2, would be subject to Dividend Distribution Tax under section 115-O in the hands of the company making the payment and not in the hands of the shareholder.

10. Furnishing of Specified Financial Transaction (cl. 42)

The assessee has to furnish the following details in **Clause 42** if he was required to furnish Form No. 61/61A/61B:

I.T. Dept Reporting Entity Identification Number	Type of Form	Due Date for furnishing	Date of furnishing, if furnished	Details of transactions which were required to be reported in form 61, form 61A, and form 61B, but not disclosed by the assessee.
•				•

Point to Ponder

- The tax auditor should verify whether the assessee has entered into any transaction where the other party was required to quote PAN.
- He should verify whether the assessee has obtained declaration in Form No. 60 where the other party has not furnished his PAN.
- Wherever the assessee has received declarations in Form No. 60, the auditor should verify if the assessee has filed Form No. 61 including therein all the necessary particulars.

....continued

- Needless to mention here that Form No. 61 is to be filed by 31st October where declarations in Form No. 60 have been received before 30 September;
- and
- by 30th April where declarations in Form No. 60 have been received by 31st March of the immediately preceding financial year.
- Form No. 61 is to be filed through online transmission of electronic data to a server designated for this purpose.

Form 61A

- The tax auditor should ascertain whether the assessee is required to report any transactions under section 285BA read with Rule 114E.
- It may be noted that specified transactions include issue of bonds, issue of shares buyback of shares by a listed company.
- These transactions may not happen every year and hence special attention should be given in the year when a company assessee issues any security or a listed company undertakes buyback of shares.
- Specified transactions include receipt of cash payment exceeding Rs. 2 lakh for sale by any person (who is liable for audit u/s 44AB) of goods and services of any nature other than those specified at serial numbers 1 to 10 in the Table in sub-rule (2).

....61A continued

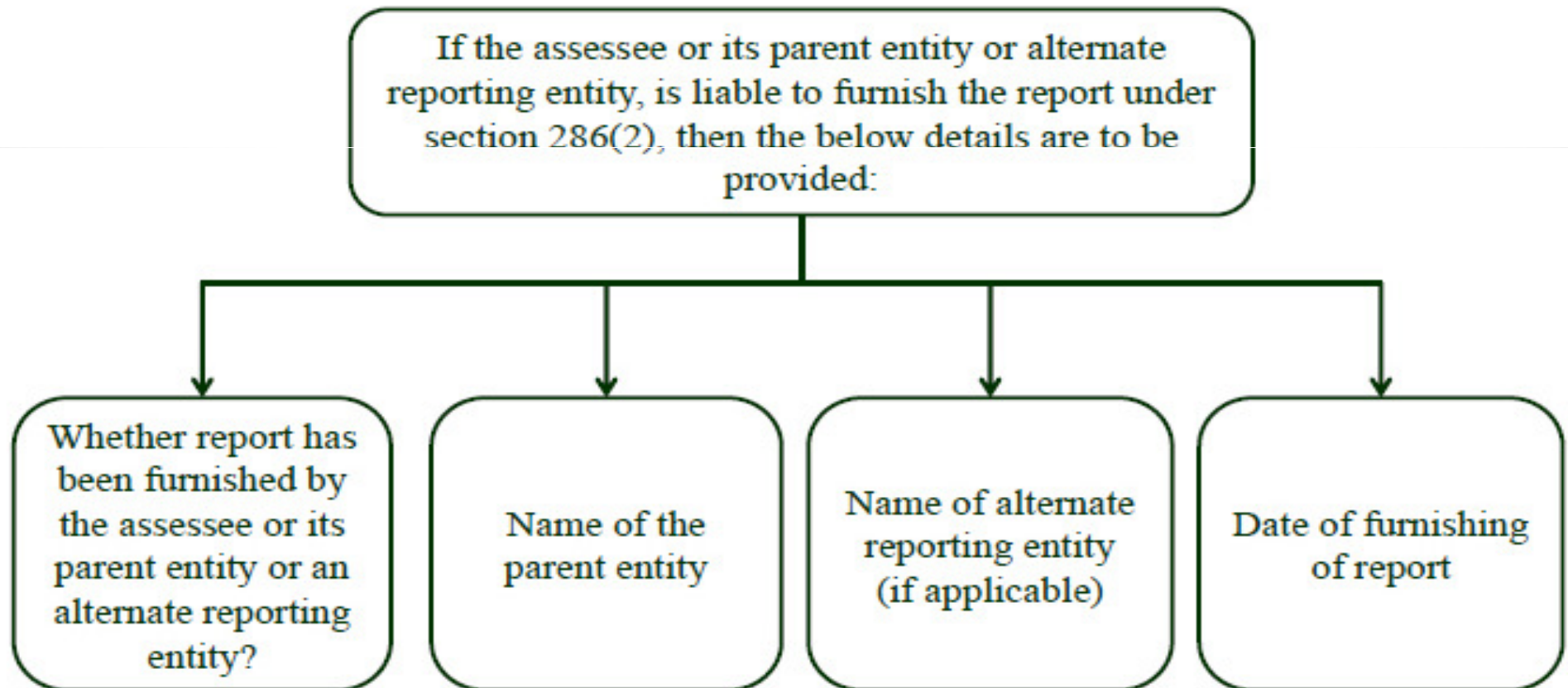
- The tax auditor should verify whether the assessee has received more than Rs. 2 lakh in cash in the financial year for sale of goods and services.
- While verifying the same, the tax auditor should ensure that the provisions of sub-rule (3) of Rule 114E have been properly considered and applied.
- Failure to do so may result in certain transaction not being reported.
- It may be noted that the payment may be received for various transactions and on different dates, and hence these may not be covered under section 269ST but will have to be reported under section 285BA.

Form 61B – Regarding FATCA

- For the purpose of the audit under section 44AB of the Act, the tax auditor should verify whether the assessee is an RFI (Reporting Financial Institution) as defined in the Rule 114F.
- If the assessee is RFI and not a non-reporting financial institution, further procedures should be carried out.
- Having decided that the entity is an RFI, the next step is to review the financial accounts of the RFI.
- CBDT has issued a detailed Guidance Note on FATCA and CRS.
- Its 4th version was released on 30th November 2016.
- The Tax Auditor should refer to the same. •

11. Furnishing of report in respect of international group [Sec. 286]

The details are to be shown in **Clause 43**



1	<input type="checkbox"/>	<input type="text"/>	Select	DD/MM/YYYY	DD/MM/YYYY	Select	<input type="text"/>
<div><div>+ Add</div><div>- Delete</div></div>							

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 Select

(b) If yes, please furnish the following details:

Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity	Name of parent entity	Name of alternate reporting entity (if applicable)	Date of furnishing of report
Select	<input type="text"/>	<input type="text"/>	DD/MM/YYYY

c) If Not due , please enter expected date of furnishing the report

DD/MM/YYYY

12. Breakup of Expenditure - GST

The assessee is required to disclose following break-up of total expenditure of entities registered or not registered under the GST in **Clause 44**:

SI No.	Total amt. of expenditure incurred during the year	Expenditure i.r.o entities registered under GST				Expenditure relating to entities not registered under GST
		Relating to goods & 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)

DD/MM/YYYY

(This Clause is applicable from 1st April,2019)

S.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	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

12. Breakup of Expenditure

- The Central Board of Direct Taxes (CBDT) vide Circular No. 6/2018/F.No. 370142/9/2018-TPL dated 17 August 2018 has deferred the reporting under the proposed Clause 44 of the Tax Audit Report till 31st March 2019.
- Therefore, for Tax Audit Report to be furnished on or after 20th August, 2018 but before 01st April, 2019, the tax auditors will not be required to furnish details called for under the said clause 44 of the Tax Audit Report.

Conclusion

- The new reporting requirements of Form no. 3CD seem to be very onerous and obligatory on taxpayers and chartered accountants.
- Only 3 words to sum up the proceedings – 'BEST OF LUCKS'

THANK
YOU!