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Recent Update: Amendments in the **Tax Audit Report (Form 3CD)**

DATE: 26-07-2018

All Tax Audit Reports (Form 3CD) signed on or after 20th August, 2018 are subject to amendments issued by the Central Board of Direct Taxes (CBDT) vide Notification No. 33/2018/ F. No. 370142/9/2018-TPL dated 20th July 2018. Following are key additional reporting requirements incorporated in Form no. 3CD.

Clause no.	Particulars
Clause 4 - Registration details of indirect taxes	If the assessee is liable to pay GST, the GST registration numbers are to be furnished.
Clause 19 and 24 - Deduction for investment in new plant or machinery	Deduction claimed and deemed profits with regard to section 32AD is now required to be reported. Section 32AD allows deduction in respect of investment made w.e.f. 1-04-2016 in new plant or machinery in notified backward areas of Andhra Pradesh, Bihar, Telangana and West Bengal.
Clause 26 – Section 43B of the Act (Certain deductions on actual payment basis)	Amount payable by the assessee to Indian Railways for use of their assets shall be allowed as a deduction on actual payment basis. This is now required to be reported along with other payments u/s 43B in Form 3CD.
Insertion of clause 29A - Section 56(2)(ix) of the Act	Details of advance money forfeited without effecting transfer of Capital asset mentioning the: (i) Nature of income: (ii) Amount thereof:
Insertion of clause 29B - Section 56(2)(x) of the Act	Details of any sum of money, any property received by one person from another without or for inadequate consideration needs to be reported mentioning the: (i) Nature of income: (ii) Amount thereof:

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Clause no.	Particulars
<p>Insertion of clause 30A - Primary adjustment to transfer price</p>	<p>Section 92CE was introduced by the Finance Act, 2017 which brought in the concept of secondary adjustment in the Act. According to this section, where there has been any primary transfer pricing adjustments made in the case of an assessee, under various circumstances (viz. voluntarily by the assessee or by the AO or as per safe harbour rules etc.), the assessee is required to make a secondary adjustment provided:</p> <ul style="list-style-type: none"> • Such primary adjustment which pertains to assessment year on or after 1 April 2016 exceeds 1 crore. <p>This provision also provides that where such amount is not recovered, then such balance should be treated as an advance given to the AE and recovered along with interest.</p> <p>As per the new clause inserted, the following details with respect to such primary adjustment to transfer price are required to be furnished: -</p> <p>(i) The clause under which primary adjustment is made; (ii) Amount (Rs.) of primary adjustment; (iii) Whether repatriation to India of excess money available with the associated enterprise is required to be made? (iv) If yes, whether the excess money has been repatriated within the prescribed time; (v) If no, the amount of imputed interest income on such excess money which has not been repatriated within the prescribed time:</p>
<p>Insertion of clause 30B - Section 94B of the Act</p>	<p>Section 94B, introduced in Finance Act 2017 limits the interest deduction in certain cases and brings in the concept of 'Thin Capitalisation'.</p> <p>As per section 94B, from Financial year 2017-18, expenditure by way of interest or of similar nature exceeding INR one crore by an entity to its associated enterprises shall be restricted to the lower of:</p> <p>(i) 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) (or) (ii) Interest paid or payable to associated enterprise</p> <p>As per the new clause inserted, the following details with respect to interest or similar expenditure referred to in Sec 94B are to be furnished:</p> <p>(i) Amount of expenditure; (ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year; (iii) Expenditure exceeding 30% of EBITDA; (iv) Interest expenditure brought forward or carried forward.</p>

Clause no.	Particulars
Insertion of clause 30C - Section 96 of the Act	<p>Section 96 (impermissible avoidance agreement) under the Chapter X-A of the General Anti Avoidance Rule(GAAR) was inserted to curb arrangements where certain rights are created between parties to an agreement by misusing provisions of the Act, which would not have been created in normal course between parties dealing at arm's length.</p> <p>If the Tax auditor opines that a particular arrangement falls under this provision of the Act, then they are supposed to state:</p> <p>(i) the nature of such arrangement and</p> <p>(ii) the tax benefit created in the previous year to all parties in aggregate.</p>
Insertion of new sub-clauses under clause 31 – Section 269ST of the Act	<p>Form 3CD requires disclosure of amount under Section 269ST which restricts receipt of an amount exceeding INR 2 lakhs in aggregate otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system from a person in a day; or in respect of a single transaction; or in respect of one event.</p> <p>Although the restriction applies to the recipient of income, the 3CD disclosure requirements mandate even the payer to make relevant disclosures for the excess over 2 lakhs including:</p> <p>(i) Name, address and PAN (if available) of the party involved</p> <p>(ii) Nature of transaction</p> <p>(iii) Amount and date of receipt</p>
Amendments to language of sub-clauses in clause 31	<p>Certain amendments have been made sun-clause (c), (d) and (e) of clause 31 dealing with Section 269T of the Act.</p>
Clause 34 - Details of e-TDS returns	<p>Form 3CD now requires disclosure of unreported transactions in the e-TDS return. It is recommended to henceforth maintain detailed reconciliation of transactions to be disclosed in the e-TDS return.</p>
Insertion of clause 36A - Section 2(22)(e) of the Act	<p>Payment (to the extent of accumulated profits of the company) by way of loan or advance by a company in which public are not substantially interested, to a shareholder holding more than 10% voting power or to any other person in which such shareholder has substantial interest is required to be disclosed by the recipient of such deemed dividend detailing:</p> <p>(i) Amount of receipt</p> <p>(ii) Date of receipt</p>

Clause no.	Particulars
Insertion of clause 42 - Form no. 61, 61A and 61B	<p>Particulars regarding submission of the below forms with the Income tax are required to be reported in Form 3CD:</p> <p>(i) Form 61- Details of declaration of transactions undertaken and document collected without obtaining PAN of the document giver</p> <p>(ii) Form 61A -Reporting of specified financial transactions under Rule 114E of the Income tax Rules before due date (31 May)</p> <p>(iii) Form 61B - Statement of reportable accounts in accordance with FATCA and Common Reporting Standards for a calendar year.</p>
Insertion of clause 43 – Section 286 of the Act	<p>Entities to whom Country by Country Reporting (CbCR) u/s 286 of the Act is applicable are now required to furnish details of :</p> <p>(i) Entity furnishing the report (Assessee, Parent or alternate reporting entity);</p> <p>(ii) Date of furnishing report;</p> <p>(iii) Name of parent entity;</p> <p>(iv) Name of alternate reporting entity (if applicable)</p>
Insertion of clause 44 – Bifurcation of expenditure with respect to provisions of GST	<p>This clause requires disintegration of the entire expenditure debited to the Revenue statement into the below heads:</p> <p>(A) Payment to entities registered under GST:</p> <ol style="list-style-type: none"> 1. Relating to Exempt goods or services under GST 2. Relating to Entities falling under composition scheme 3. Relating to other registered entities <p>(B) Payment to entities not registered under GST</p>
Our Comments	<p>With the advent of these amendments, it is now clear that the CBDT is widening the scope to include international tax and other niche compliances such as CbCR, FATCA and CRS reporting. It is shifting the onus of basic verification onto the Tax auditors. The increasing reliance of the Tax authorities on the Tax Audit report has put considerable responsibility on the Tax auditors to ensure prima facie accuracy and completeness of transactions undertaken by entities during the year.</p> <p>Companies will now have to consider the compliance of Country-by-Country report (CbCR) under section 286 much before its stipulated due date of 31st March,2019 so as to adhere to compliance under the relevant clause of the Tax audit Report (Form 3CD).</p>