

TAX FLASH NEWS

28 August 2018



ICAI implementation guide on the amendments to Tax Audit Report (Form 3CD)

Background

The Central Board of Direct Taxes (CBDT)¹ amended the Tax Audit Report (Form 3CD) and substantially enhanced the reporting requirements of the tax auditor².

Recently, the Direct Taxes Committee of Institute of Chartered Accountants of India (ICAI) has released the 'Implementation Guide' on the amendments made to Form 3CD to enable the taxpayers and auditors to implement the changes in the best possible manner.

On 17 August 2018, CBDT issued a Circular³ stating that the reporting requirements with respect to Goods and Services Tax (GST) and General Anti Avoidance Rules (GAAR) shall be kept in abeyance till 31 March 2019. The said reporting requirements have not been considered in this Implementation Guide.

The 'Implementation Guide' is summarised as follows:

Deduction under Section 32AD

Clause 19 of Form No 3CD requires quantifications of the amount debited to profit and loss account and the amounts admissible under various provisions⁴ of the Income-tax Act, 1961 (the Act). This clause has now been amended to include Section 32AD.

Section 32AD inserted by the Finance Act 2015 with effect from Assessment Year 2016-17, entitles the taxpayer to claim an allowance of 15 per cent in the year of installation of the actual cost of new plant and machinery installed by the taxpayer for manufacture or production of any article or thing, on

or after 1 April 2015 but before 1 April 2020, in any notified backward area in the states of Andhra Pradesh, Bihar, West Bengal and Telangana. This is a one-time benefit available in the year of installation of the new asset by the eligible undertaking and is available over and above the claim of depreciation, as well as the additional depreciation of 35 per cent available under Section 32(1)(iiia) for the same backward areas.

The tax auditor should verify the list of plant and machinery installed during the previous year in such backward areas for the manufacture of an article or thing. He should thereafter confirm that such plant and machinery does not fall within the exclusions to the definition of 'new asset' contained in Section 32AD(4). He can then compute the amount of eligible deduction under Section 32AD. There will be no disclosure required of amount debited to profit & loss account, which should be treated as nil since the deduction is linked to the cost of plant and machinery, which would be treated as an asset in the balance sheet, and not to any expenditure.

Clause 24 so far required disclosure of amounts deemed to be profits and gains under Section 32AC, or 33AB, or 33ABA or 33AC. This clause has been amended to also require reporting of amounts deemed to be profits and gains under Section 32AD. Under Section 32AD(2), if any new asset, in respect of which deduction under Section 32AD had been allowed, is sold or otherwise transferred⁵ within a period of five years from the date of its installation, the amount of deduction allowed earlier under Section 32AD in respect of such asset is deemed to be the profits and gains of business of the previous year in which the asset is sold or otherwise transferred.

¹ Notification No. 33/2018/F No.370142/9/2018-TPL, dated 20 July 2018
² CBDT amends the Tax Audit Report (Form 3CD) - The link for the KPMG Flash News on the subject is as follows:

<http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-CBDT-amends-the-Tax-Audit-Report-1.pdf>

³ Circular No. 6 of 2018 dated, 17 August 2018

⁴ Sections 32AC, 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(iiia), 35(1)(iii), 35(1)(iv), 35(2AA), 35(2AB), 35ABB, 35AC, 35AD, 35CCA, 35CCB, 35CCC, 35CCD, 35D, 35DD, 35DDA and 35E

⁵ Except in cases of amalgamation, demerger or reorganisation of business referred to in section 47 (xiii), (xiib) or (xiv)

The tax auditor should verify whether any assets in the backward districts have been sold, and if so, whether deduction under Section 32AD has been allowed in respect of such assets. If any deduction has been allowed, the amount of such deduction should be quantified. Capital gains arising on transfer of the asset are not required to be reported. The reporting should be done giving a description of the asset sold, the date of installation, the original cost and the quantum of deduction allowed which is now taxable as profits and gains of business or profession.

Amount Chargeable under Section 56(2)(ix)⁶

A new Clause 29A has been inserted, requiring disclosure of whether any amount is chargeable to tax under Section 56(2)(ix), and if so, to furnish prescribed details of such income. 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 taxpayer.

Only forfeiture of amounts received as advance towards the transfer of a capital asset is required to be reported under this clause. Any advances received and forfeited towards the 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 forfeiture has to be either in terms of the right to forfeit such advance under the contractual terms of the agreement, or as agreed upon with the prospective purchaser. It has to have the sanction of law or the contract. It has to be a positive action on the part of the taxpayer. However, once the taxpayer has forfeited the amount, then the matter will become the subject of reporting under this clause. A mere notice of forfeiture by the taxpayer, 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 taxpayer, reporting of such amount is not required merely on the grounds of the issue of notice of forfeiture. In case such amount is written back by the taxpayer, such amount should be reported under this clause, giving the stand of the taxpayer.

⁶ Taxability as 'Income from Other Sources' of any sum of money received as an advance or otherwise in the course of negotiations for the transfer of a capital asset, if such sum is forfeited and the negotiations do not result in the transfer of such capital asset

If the taxpayer contends that the amount has not been forfeited, the tax auditor may look at the totality of developments and may obtain a management representation. Further, even if the taxpayer has forfeited the amount without the right to forfeit, if there is no action by the other party, the amount so forfeited may become income under sub clause (ix) and the tax auditor should report such forfeiture with an appropriate note.

Mere unilateral writing back of an advance by credit to the profit and loss account, asset account or capital account may not by itself amount to an act of forfeiture by the taxpayer. Such a write-back is, however, an indication of a possible act of forfeiture, which needs further verification by the tax auditor. It is advisable for the tax auditor to disclose all such acts of unilateral write backs as well, out of abundant precaution, with an appropriate note regarding the stand taken by the taxpayer. In this regard reference has been made on the decision of the Supreme Court in the case of Bankura Municipality v. Lalji Raja and Sons⁷.

The tax auditor should, therefore, obtain a certificate from the taxpayer regarding all such advances received towards the transfer of capital assets which have been forfeited during the year. The advance might have been received during the previous year or earlier. For the purpose of this clause, the previous year in which forfeiture takes place is relevant. The auditor should also examine whether any amount of such advances has been written back during the year, and examine the basis of such write back to determine whether such write back was on account of an act of forfeiture. A write-back without an act of forfeiture is generally unlikely, and therefore, if the taxpayer contends that he has written the advance back but that it is not a case of forfeiture, then the tax auditor will have to exercise professional judgement and should report accordingly.

Income chargeable under Section 56(2)(x)⁸

A new Clause 29B has also been introduced, requiring reporting of amount includible as income chargeable under the head 'Income from Other Sources' under Section 56(2)(x).

The tax auditor should obtain a certificate from the taxpayer regarding any such receipts during the year, either received in his business or profession or recorded in the books of account of such business or profession. The tax auditor should

⁷ Bankura Municipality v. Lalji Raja and Sons AIR 1953 SC 248, 250

⁸ Taxability as 'Income from other sources' on receipts without consideration or for inadequate consideration

also scrutinise the books of account to verify whether receipt of any such amount or asset has been recorded therein. In case there are any such receipts, in case of immovable property, the value adopted for stamp duty purposes on the date of transfer is to be taken for computing income under this section. However, where an agreement fixing the consideration has been entered into before the date of registration, and at least a part of the consideration has been paid by account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of such agreement for transfer, the stamp duty value on the date of such agreement may be adopted.

In a case where the taxpayer has disputed the stamp duty value before the stamp authorities, and such dispute is pending as on the date of finalisation of the audit, the tax auditor should state such fact, stating both the stamp duty value adopted by the stamp authorities as well as the stamp duty value claimed by the taxpayer to be the correct value in such dispute.

In case of other assets, the provisions of Rule 11UA(1) read with Rule 11U of the Income-tax Rules, 1962 (the Rules) are to be followed for determination of the fair market value, to compute the income under this section. Wherever there is a dispute or doubt as to the valuation of an asset, it would be advisable for the tax auditor to request the taxpayer to obtain a valuation report from a registered valuer. The report of the tax auditor may then be based on such valuation report.

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.

Reporting with respect to cash transactions exceeding the specified limit

- Section 269ST was introduced by the Finance Act, 2017 with effect from 1 April 2017. It provides that no person shall receive sum of INR2 lakh or more
 - in aggregate from a person in a day; or
 - in respect of a single transaction; or
 - in respect of transactions relating to one event or occasion from a person
- New sub-clauses have been introduced under Clause 31 which deal with reporting of transactions of receipts and payments in excess of the specified limit made otherwise than by the modes specified in Section 269ST.

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.

- The particulars required under these sub-clauses need not be given in case of a receipt by or a payment to a government company, a banking company, a post office savings bank, cooperative bank or in the case of transactions referred to in Section 269SS or in the case of persons referred to in the Notification⁹. Effectively, particulars are not required to be furnished of transactions to which provisions of Section 269ST do not apply. It may be noted that neither Section 269ST nor the notifications issued under this section exclude a government company from the application of the provisions of Section 269ST. However, in view of the note under the sub-clauses, particulars required under these sub-clauses need not be given in case of a government company. On the other hand, provisions of Section 269ST do not apply to any receipt by the government. However, the note under sub clauses does not specifically refer to receipt by or payment to the government. Considering the provisions of Section 269ST, particulars of the payments made to the government need not be included and a suitable note may be given to the effect that details of payments made to government have not been included in the particulars.
- Section 269ST does not distinguish between receipt on capital account and revenue account. Similarly, new sub-clauses 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, the particulars of such transactions will have to be reported under these clauses.
- While it is comparatively simple to work out receipts or payments to or from a single person in a day, the tax auditor will have to exercise

⁹ Notification No. S.O. 2065(E), dated 3 July 2017

- care and caution while arriving at the particulars of receipts or payments pertaining to a single transaction or relating to a single event or occasion. The tax auditor will need to link all receipts or payments, as the case may be, otherwise than by the modes specified in this section received/made in respect of a single transaction and verify if the aggregate amount exceeds the limits specified in Section 269ST. Whether the receipts or payments, as the case may be, are pertaining to a single transaction or different transaction will depend on the facts of the case. A single invoice may relate to multiple transactions and vice-versa, multiple bills may relate to a single transaction. The tax auditor will have to exercise his judgement to decide whether the receipts/payments are pertaining to a single transaction.
- Similarly, the tax auditor will have to exercise judgement in deciding whether receipts/payments though pertaining to more than one transaction, pertain to a single event or occasion.
 - It is possible that the taxpayer may have purchased goods or services while simultaneously it may have sold goods or services to the same party consideration for which exceeds INR2 lakh. 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. The tax auditor may give the appropriate note to the effect that such set off not being a receipt or payment has not been included.
 - If such receipts or payments are otherwise than by account payee cheque or an account payee draft or by use of electronic clearing system through a bank account, then the tax auditor will have to verify the mode of the receipt or payment. The tax auditor will have to classify the receipt or the payment, as the case may be, as under:
 - Otherwise than by the cheque or bank draft or use of electronic clearing system through a bank account
 - By cheque or bank draft not being an account payee cheque or an account payee bank draft.

- Where the receipts or the payments, as the case may be, pertain to a single transaction or transactions relating to one event or occasion, such receipts/payments may be grouped together while reporting. The tax auditor may also keep in his record date of the receipts and date of the payments reported under, although the same is not required to be reported.
- Where payment is made by cheque or demand draft, there will be practical difficulties in verifying whether the relevant receipt or payment is by account payee cheque or account payee draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available. In the absence of satisfactory evidence, the guidance given by the Council of the ICAI in similar cases to the tax auditors is to be followed¹⁰. The tax auditor, in his report, may make suggested comment¹¹ while reporting.
- The tax auditor should maintain the specified information¹² in his working papers for the purpose of reporting of receipts.

Details/transactions which are not reported in the statement of TDS/TCS

- As per the existing Form 3CD, the taxpayer is required to furnish details of the statement of TDS or TCS. It is now required to disclose whether the statement of tax deducted or collected at source contains information about all details/transactions which are required to be reported. The substituted sub-clause 34(b) 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 (TDS) and tax collected at source (TCS) is concerned.

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 TDS or TCS. Wherever there is a failure to report the transaction in the statement of tax collected or deducted at source the tax auditor will have to report the same.

¹⁰ Refer para 49.6 of the 'Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961' 2014 Edition

¹¹ 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 taxpayer

¹² As per table given in the Implementation Guide

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 Form No. 3CA/3CB.

Deemed dividend

- In order to enable reporting under the new Clause 36A, the tax auditor should obtain from the taxpayer a certificate containing a list of closely held companies in which he is the beneficial owner of shares carrying not less than 10 per cent of the voting power and list of concerns in which he has a substantial interest.

The tax auditor should also obtain a certificate from the taxpayer 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 a beneficial owner of shares carrying not less than 10 per cent 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 taxpayer. The tax auditor should include appropriate remarks of his inability to independently verify the information and reliance on the certificates obtained from the taxpayer. These remarks may be included in Form No. 3CA/3CB.

- The tax auditor should also verify Form 26AS in the case of the taxpayer to know if the closely held company has deducted tax at source from any payment made by it to the taxpayer or the concern under Section 194. This will indicate the view taken by the closely held company making the payment. The tax auditor may consider the same before coming to a conclusion.
- So far as any payment by the closely held company made on behalf of or for the individual benefit of the taxpayer is concerned, there may not be any record available for the auditor to verify the same. In such a case auditor may make appropriate remarks in Form No. 3CA/3CB. It may be noted that if the closely held company has made payment on behalf of or for the individual benefit of the taxpayer in his capacity, say, as the managing director of the closely held company and if such payment has been considered as part of the taxpayer's remuneration, the same payment is not again chargeable to tax under Section 2(22)(e) and is not required to be reported under this clause.

- Whether an amount is chargeable to tax as dividend under Section 2(22)(e) has always been a subject matter of litigation before various judicial forums. The tax auditor needs to consider various issues while reporting under this clause, e.g. wherever the beneficial shareholder is not the registered shareholder and the closely held company has given loan or advance to the beneficial shareholder or to a concern, the tax auditor should make an appropriate remark about the basis of reporting in Form No. 3CA/3CB.
- Further, the tax auditor may not be able to determine the accumulated profits of the closely held company making the payment for various reasons. The tax auditor 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 in Form No. 3CA/3CB about the methodology adopted by him.
- Business advance or trade advances from closely held companies to the taxpayer or concerns in which the taxpayer has a substantial interest are out of the purview of Section 2(22)(e) and need not be reported dividend under this clause of Form No. 3CD.
- The taxpayer or the concern may maintain two accounts of the closely held company in its books of account. Amounts received from the closely held company and the amount receivable from the closely held company may be accounted in two separate accounts. In such a case the tax auditor will have to consider whether, for reporting under this clause only net amount should be considered.
- The taxpayer or the concern may have a current account of the closely held company in its books of account. In such a case there could be various transactions accounted for in such a current account. The tax auditor will have to consider if all the transactions in such a current account are on account of normal business transactions or the transactions are in the nature of loans or advances received by the taxpayer or the concern.

- Considering various judicial decisions, the tax auditor will have to take a considered view while reporting under this clause. If reliance has been placed on any judicial decision, a reference of the same may be given by the tax auditor as observations in Form No. 3CA/3CB.
- It may be noted that any payment made after 1 April 2018 which satisfies the conditions of Section 2(22)(e), would be subject to Dividend Distribution Tax (DDT) under Section 115-O in the hands of the company making the payment and not in the hands of the shareholder.

Furnishing of Form 61, 61A and 61B

- New Clause 42 has been introduced where the tax auditor has to report that whether the taxpayer is required to furnish a statement of the specified financial transaction (in Form No.61 or Form No. 61A or Form No. 61B).
- With respect to Form 61, the tax auditor should verify whether the taxpayer has entered into any transaction where the other party was required to quote PAN. He should verify whether the taxpayer has obtained declaration in Form No. 60 where the other party has not furnished his PAN. Wherever the taxpayer has received declarations in Form No. 60, the auditor should verify if the taxpayer has filed Form No. 61 including therein all the necessary particulars.
- With respect to Form 61A, the tax auditor should ascertain whether the taxpayer is required to report any transactions under Section 285BA read with Rule 114E. It may be noted that specified transactions under Section 285BA include the issue of bonds, issue of shares, buy-back of shares by a listed company, etc. These transactions may not happen every year and hence special attention should be given in the year when a company taxpayer issues any security or a listed company undertakes buyback of shares.

While verifying the same, the tax auditor should ensure that the provisions of Rule 114E(3)¹³ have been properly considered and applied. Failure to do so may result in a 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.

¹³ The Rule 114E(3) provides for aggregation of amounts for arriving at the threshold limit for reporting

- With respect to Form 61B¹⁴, the tax auditor should review the due diligence procedures carried out by the taxpayer in accordance with provisions of Rule 114H and the results of such procedures. The tax auditor should review the list of Reportable Accounts identified by the due diligence process and the information to be maintained and reported by the taxpayer.

In case any reportable account has been omitted, or there is any error or omission in Form 61B, the same may be reported under the Form No. 3CD. The auditor should verify if the taxpayer has filed Form No. 61B for correcting errors or omissions in the form filed originally. In such a case the auditor should give details of both the forms filed. The errors in the original Form 61B which are corrected in the revised Form 61B need not be reported under Form No. 3CD.

The tax auditor should verify that Form 61B is duly signed by the designated director and filed.

Secondary Transfer Pricing Adjustments

A new Clause 30A has been introduced, requiring reporting of primary adjustments and various other details, for the purpose of making secondary adjustments under Section 92CE.

Section 92CE, providing for secondary transfer pricing adjustments, has been introduced by the Finance Act 2017, with effect from the assessment year 2018-19.

- The primary adjustment made in the relevant financial year needs to be disclosed irrespective of the previous year to which this adjustment pertains to.
- Tax auditor should obtain a certificate from the taxpayer on the primary adjustments made.
- Secondary adjustment required if primary adjustment pertains to assessment years 2017-18 or later years, and the amount of primary adjustment exceeds INR1 crore.
- Secondary adjustments are applicable only in respect of transfer pricing adjustments relating to international transactions
- Primary adjustments which do not warrant a secondary adjustment should also be reported

¹⁴ Statement of reportable accounts under Section 285BA

- With respect to reporting of interest income imputed, there is an ambiguity whether interest income imputed till the end of the previous year is to be reported or whether interest income imputed up to the date of furnishing of Form 3CD is to be reported
- In case the interest up to the date of filing of the Form 3CD is given, it is advisable for the tax auditor to provide a break-up of the amount of interest imputed till end of the relevant previous year and for the period post the end of the relevant previous year ending with the date of filing Form 3CD
- It is advisable that all secondary adjustment made during the year irrespective of the previous year the primary adjustment is made is to be reported to avoid a difference between the amounts reported in Form 3CD and the income tax return

Limitation on Interest Deduction

The newly inserted Clause 30B requires reporting for the purposes of examining allowability of expenditure by way of interest in respect of debt issued by a non-resident associated enterprise (AE) under Section 94B while computing income under the head 'Profits and Gains of Business or Profession'. Section 94B was inserted by the Finance Act 2017, with effect from the assessment year 2018-19.

- If the taxpayer is not a company or the PE of a foreign company, the provisions of section 94B do not apply, and details under this clause are not required to be provided.
- Further, the section would apply only where interest (or expenditure of similar nature) paid or payable to non-resident AE(s) (or in respect of a debt where an AE – resident or non-resident – has provided an implicit or explicit guarantee or matching deposit) exceeds INR1 crore during the year.
- In computing the limit of INR1 crore, only interest and expenditure of similar nature which is deductible while computing income under the head 'Profits and Gains of Business or Profession' should be considered, and not interest deductible under any other head of income or interest which is otherwise not deductible.

- There are two views as to whether it is the aggregate of all interest paid or payable to all non-resident AEs which is to be considered for the limit of INR1 crore, or whether interest paid or payable to each non-resident AE is to be examined vis-a-vis the limit of INR1 crore. Based on the view taken by the taxpayer, appropriate disclosure should be made in Form No. 3CD.
- While computing the EBITDA, the figures as per the final audited stand-alone accounts of the company should be considered, and not the figures as adjusted for the income tax computation after various allowances and disallowances.
- In item (iii) of sub-clause (b)¹⁵, in case the EBITDA is negative, the entire interest and other similar expenditure as per item (i) need to be given here, without any adjustment for the negative figure, the negative figure being taken as nil.
- The details of brought forward excess interest disallowed in earlier years, which has not been allowed as a deduction, and which is available for deduction during the year under audit (without considering the limitation during the year under audit), is required to be disclosed
- The details of carried forward excess interest are to be disclosed after reducing the brought forward excess interest allowable as a deduction during the year under audit, or adding the excess interest of the year, as the case may be.

CbC Report details

Clause 43 has been newly introduced in Form No. 3CD. The Finance Act, 2016 by introducing Section 286 in the Act, has introduced provisions relating to the Country by Country Report (CbCR) and Master File pursuant to the adoption of OECD's Base Erosion and Profit Shifting (BEPS), Action Plan 13 in India.

Under Section 286, an international group has to furnish CbCR containing information about the whole group comprising of various constituent entities.

Such a report is to be filed in India if the parent entity is resident of India or the international group has appointed a constituent entity which is resident in India to file CbCR on behalf of the whole group.

¹⁵ Amount of expenditure by way of interest, etc. which exceeds 30 per cent of EBITDA.

- The report under Section 286(2) is filed by the parent entity which is resident in India or the alternate reporting entity which is resident in India.
- For tax audit for the assessment year 2018-19, the tax auditor should comment upon report Section 286(2) that was required to be filed on or before 31 March 2018.
- The tax auditor should verify if the taxpayer is required to file the Form 3CEAC based on the satisfaction of the conditions prescribed
- The tax auditor should also verify if the taxpayer whose parent is a non-resident has filed Form No. 3CEAC.

The tax auditor may obtain a necessary certificate from the taxpayer in respect of constitution of the international.

Sums referred to in Section 43B

Clause 26 requires disclosure of sums incurred and paid, which are referred to in Section 43B(1) (a) to (f). The amended clause now also requires reporting of sums covered by Section 43B(1)(g). Clause (g) was inserted by the Finance Act 2016 and it refers to any sum payable by the taxpayer to the Indian Railways for the use of railway assets.

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 TDS, by the High Courts and the Tribunal in various judicial precedents¹⁶.

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 the use of railways land or buildings. In case of payments for the use of hoardings/display panels put up on railway premises, whether the payment is for the 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 the 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.

Apart from obtaining a list of amounts payable to the railways for the previous year from the taxpayer, and verifying the correctness of such amounts, the tax auditor 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.

Liability to GST and Furnishing of GST Number

Clause 4 of Form No. 3CD hitherto required the furnishing of information as to whether the taxpayer is liable to pay indirect tax like excise duty, service tax, sales tax, customs duty, etc. After sales tax, GST has also been added to the list of such taxes.

Therefore, the question of whether the taxpayer is liable to pay GST needs to be answered, along with liability to pay other indirect taxes. Even if the liability to pay is only under the reverse charge mechanism, the fact of being liable needs to be answered in the affirmative, with the clarification that such liability is only under the reverse charge mechanism.

In case the taxpayer is liable to GST, the GST registration number, i.e. the GSTIN needs to be furnished. Where the taxpayer has multiple GSTIN numbers, being registered under different states as well as under Central GST, all the GSTIN numbers allotted to the taxpayer need to be mentioned.

This amendment is merely a clarificatory amendment, as the earlier clause in any case referred to all indirect taxes, by using the term 'etc.'

Our comments

The implementation guide released by ICAI is a welcome move and would provide much-needed guidance to the tax auditor as well as the taxpayer in their pursuit to adhere to the reporting compliance required in accordance with the amendments to the tax audit report.

The amendment to Form No. 3CD has thrown several challenges for taxpayers and tax auditors, by mandating large reporting requirements, besides requiring sitting in judgement on certain contentious issues. The disclosures have new qualitative requirements posing a greater deal of subjectivity and onus of interpretation of tax law. Especially, disclosure requirements under Section 56(2)(x), transfer pricing related disclosure with

¹⁶ 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 307 (All); CIT v Bharat Electronics Ltd [2015] 230 Taxman 651 (All); CIT(TDS) v Indian Oil Corporation Ltd. [2018] 92 taxmann.com 281 (Uttarakhand); ITO(TDS) v Indian Oil Corp. (Marketing Division) [2012] 13 ITR(T) 79 (Del ITAT)

respect to secondary adjustments, etc. are not free from controversy and there is a lot of litigation involved on various contentious issues. This reporting will prove to be an onerous task on the tax auditor.

Though, the reporting with respect to GAAR has been kept in abeyance for one year, keeping in view the complexity involved the government should consider to remove these requirements because it would cast a wide responsibility on the auditor to evaluate various transactions and arrangements entered into by the taxpayer, and at the same time it may pose a significant challenge for the taxpayer to substantiate the genuineness and commercial rationale of various transactions to the tax auditor and the Revenue Authorities. Similarly, the reporting requirements for GST should also be removed.



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DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2,
Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road
Jaipur – 302 018.
Tel: +91 141 – 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi, Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus,
36/3-B, Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

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