

# TAX AUDIT & TAX AUDIT REPORT



13<sup>th</sup> August, 2018

Presentation by:

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**CVO Chartered & Cost Accountants' Association**

# COVERAGE

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- Purpose & Introduction
- Documentation requirements
- Amendments in form 3CD
- Existing clauses of form 3CD
- Conclusion

# PURPOSE OF TAX AUDIT

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- Prior to 1984 - Accounts & ITR of non-corporate assesseees, CA - not supposed to investigate - accounts produced - correctness [G.M. Dandekar (1952) 22 ITR 0235 ]
- Finance Act, 1984 - cast onus on tax payers other than companies and co-operative societies – audited accounts
- Objectives – reflect correct income & deductions
- Facilitate in administration and compliance function
- Save time of AO
- Check on fraudulent practices

# INTRODUCTION

- Section 44AB of the Income-tax Act, 1961
- Trigger point – applicability
  - Business - sales, turnover or gross receipts > **Rs. 1 crore**
  - Profession - gross receipts > **Rs. 50 lakhs**
  - Presumptive taxation
- Tax Audit Report – Form 3CA, 3CB, 3CD
- Due Date – 30<sup>th</sup> September or 30<sup>th</sup> November
- **Sec 271B – Failure to get accounts audited – Penalty is lower of : 0.5% of sales, turnover or gross receipts or 150,000/-**
- True and Fair v/s True and Correct
  - **Penalty – 271J – Rs 10,000 - for furnishing inaccurate information**

# Applicability

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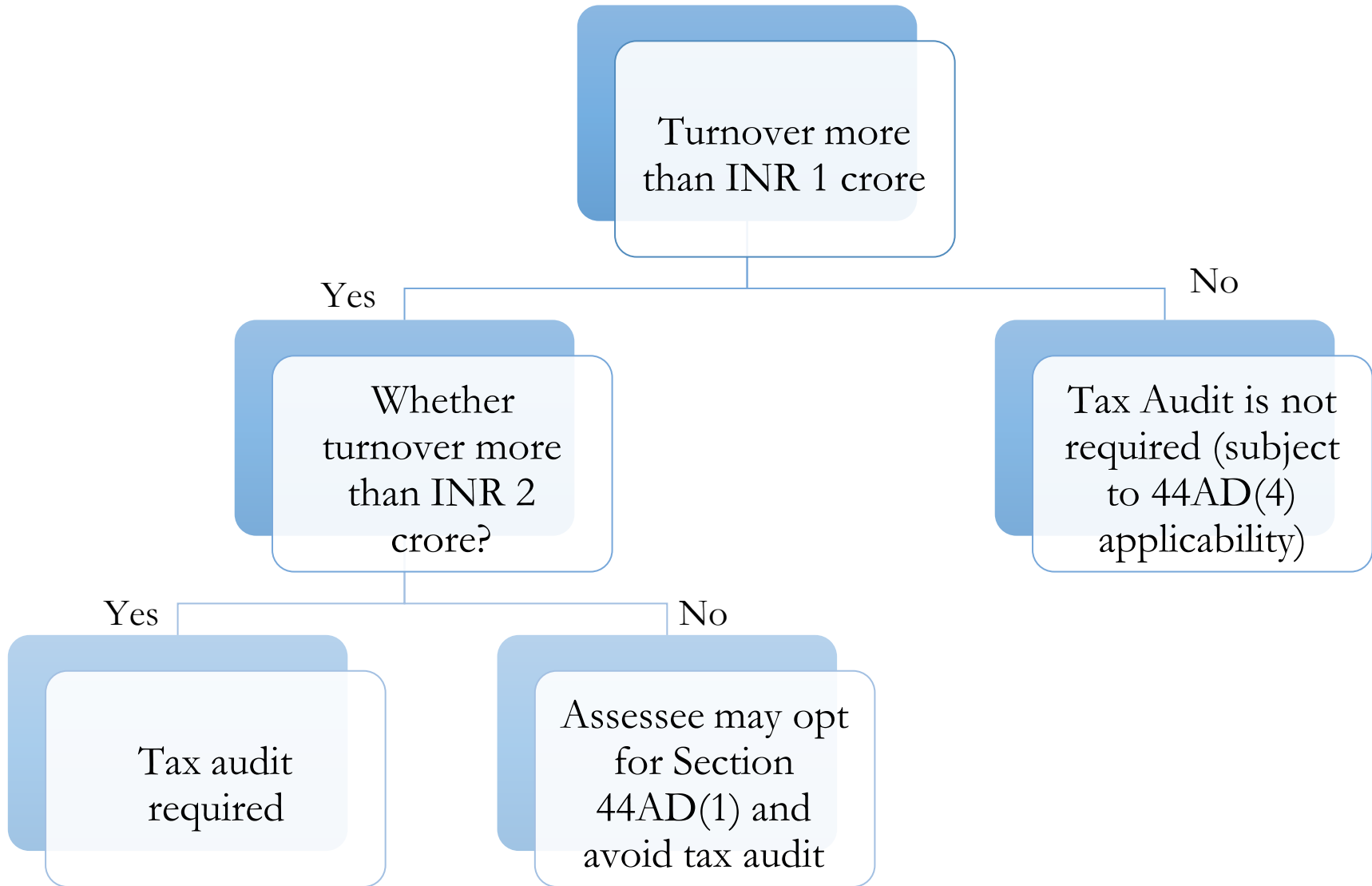
*Every Person is required to get tax audit done if:*

- **Business** – Total sales, turnover or gross receipts > Rs. 1 crore in the Previous Year.  
If presumptive taxation u/s 44AD opted, then tax audit not applicable if total sales, turnover or gross receipts < Rs. 2 crore
- **Profession** - Gross receipts > Rs. 50 lakh in any previous year
- **Presumptive taxation** u/s. 44AE , 44BB and 44BBB - lower than prescribed
- **Sec. 44ADA** – Income is claimed to be lower than profit deemed u/s 44ADA + income exceeds basic exemption limit
- **44AD (4)** applicable + income exceeds basic exemption limit

# Section 44AD and Section 44ADA

Section	Particulars
44AD	<ul style="list-style-type: none"><li>- Applicable to individual, HUF and partnership firm</li><li>- Threshold limit upto 2 cr → business (Press Release dtd 20/06/16)</li><li>- 44AD(1) - Higher of 8% of sales, turnover or gross receipts or actual income → deemed to be profits and gains from profession</li><li>- No deduction u/s. 30 to 38</li><li>- Advance tax – 15<sup>th</sup> March</li><li>- Section 44AD(4) - 5 year condition</li></ul>
44ADA	<ul style="list-style-type: none"><li>- Presumptive taxation → profession – upto 50 lakhs</li><li>- Higher of 50% of gross receipts or actual income → deemed to be profits and gains from profession</li><li>- No deduction u/s. 30 to 38</li><li>- Maintenance of books u/s. 44AA(1)</li><li>- Tax audit u/s. 44AB(d)</li><li>- Advance Tax-15<sup>th</sup> March (Finance Act, 2017)</li></ul>

# Applicability of tax audit in cases of Section 44AD (Presumptive Taxation)



# Applicability of tax audit in cases of Section 44AD (Presumptive Taxation)

## Situation A – Turnover and/or gross receipts exceeds INR 2 crores

Particulars	Scenario 1	Scenario 2
Turnover	2.2 crores	2.2 crores
Profits offered by the Assessee to tax	< 8%	> 8%
Whether Section 44AD(1) option available?	No – turnover exceeds INR 2 crore	
Whether Tax audit applicable?	44AB(a) – turnover / gross receipts exceeds INR 1 crore	

## Situation B – Turnover and/or gross receipts exceeds INR 1 crore but less than INR 2 crores (assumption – 2<sup>nd</sup> or 3<sup>rd</sup> year of the Assessee for 44AD)

Particulars	Scenario 1	Scenario 2
Turnover	1.5 crores	1.5 crores
Profits offered by the Assessee to tax	< 8%	> 8%
Section 44AD(1) opted?	Option to avail 44AD(1) available. But since profits offered are less than presumptive profits, 44AD(1) is not opted	Yes – 44AD(1) opted
Whether Tax audit applicable?	Since 44AD(1) not opted, proviso to Section 44AB is not applicable. Hence tax audit applicable under Section 44AB(a) – turnover / gross receipts exceeds INR 1 crore and also 44AB(e) - 44AD(4) got applicable	Proviso to section 44AB applies - turnover / gross receipts < 2 crore and profits offered as per Section 44AD(1)



# Applicability of tax audit in cases of Section 44AD (Presumptive Taxation)

## Situation C – Turnover and/or gross receipts less than INR 1 crore (assumption – 2<sup>nd</sup> or 3<sup>rd</sup> year of the Assessee for 44AD)

Particulars	Scenario 1	Scenario 2
Turnover	80 lakhs	80 lakhs
Profits offered by the Assessee to tax	< 8%	> 8%
Whether Section 44AD(1) opted?	Option to avail 44AD(1) available. But since profits offered are less than presumptive profits, 44AD(1) is not opted	Yes – 44AD(1) opted
Whether Tax audit applicable?	Since 44AD(1) not opted, proviso to Section 44AB is not applicable. Hence tax audit applicable under Section 44AB(e) – 44AD(4) got applicable	No – since turnover does not exceed INR 1 crore

# TURNOVER / GROSS RECEIPTS

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- Whether following to be included while computing Turnover / Gross receipts – **[refer Para 5.11 of GN of ICAI]**
  - Sales tax, Excise duty
  - Trade discount, Cash discount
  - Sale of scrap, Sales returns
  - Dividend income
  - Sale proceeds of investments and fixed assets
  - Share of profit of partner [exempt u/s 10(2A)]
- Turnover for speculative / derivative transaction – **[refer Para 5.12 of GN of ICAI]**
  - Favorable and unfavorable difference in absolute terms
- Difference between turnover and gross receipts?

# Other Points

- Ceiling on Tax Audit Assignments → ≤ 60 Tax Audits(G.N. Para 9.24)
- Audits → 44AD & 44AE → excluded from above limits (G. N. Para 9.25)
- Can Internal Auditor conduct Tax Audit?
  - 281<sup>st</sup> Meeting → Council of ICAI, (G. N. Para 9.21)
- Delay in Furnishing of Tax Audit Report → Who is liable? (G.N Para 7.1)
- Whether Assessee can remove Tax Auditor? (G.N. Para 9.22)
- Exempt Income- Liability to tax audit? (G.N. Para 6.1)

# BUSINESS v/s PROFESSION

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## ➤ Business

- “Business” includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture [S. 2 (13)]

## ➤ Profession

- “Profession” includes vocation [S. 2 (36)] - vocation not defined under Act
- List of professions mentioned in S. 44AA - Additional requirements w.r.t maintenance of books of accounts

## ➤ Judicial Pronouncements

- Barendra Prasad Roy – (1981) 129 ITR 295 (SC)
- Manmohan Das – (1966) 59 ITR 699 (SC)

# BUSINESS v/s PROFESSION

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- Sec 271A – Penalty of 25,000/- for failure to maintain books as prescribed u/s. 44AA
- Whether Company can carry on profession ?
  - ITO vs. Ashalok Nursing Home (P) Ltd (ITA 2455/Del/2003)
- Whether dealing in shares / PMS is business?
  - Shares - Stock-in-Trade vs. Investments – (CBDT Circulars)
- Shares sold frequently after a short duration of holding - Intention to earn profits quickly – Business Income
  - Devji Nenshi Palani v. ITO (2013) 55 SOT 192 (Mum ITAT)
  - DCIT v Mukeshbhai Babulal Shah (2013) 57 SOT 45 (Rajkot ITAT)

# BUSINESS v/s CAPITAL GAINS

## Transfer of listed shares & securities

- Assessee treats it as stock in trade, then business income
- If held for more than 12 months, capital gains (Circular No. 06/2016 dtd 29Feb,2016)

## Transfer of unlisted shares

- Income to be considered under Capital Gains (Notification No. 225/12/2016/ITA II dtd 2May, 2016)
- AO may take a contrary view in specified situations

Circular No.  
4/2007 dtd 15  
June 2007

- Reflected in books of accounts
- Frequency and magnitude of transactions
- Motive to earn profit/dividend
- Two portfolios

# DOCUMENTATION REQUIREMENT

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- Compliance with SA 230 – Audit Documentation
- Necessary working papers to substantiate the following
  - audit was planned and sufficient appropriate audit evidence collected;
  - work done while conducting the audit and by whom;
  - explanations and information given to him during the course of the audit and by whom;
  - the judicial pronouncements relied upon by him while making the audit report;
  - decision on the various points taken;

# SAMPLING

- Compliance with SA 530 – Audit Sampling
- Objective : To draw conclusion about the population based on samples
- < 100% of population , sample representative of the population
- Statistical & Non-statistical sampling methods
- Reduce Sampling Risk
- Deviations / Misstatements → Additional Procedures → Evaluate the effect → Form an opinion





# DOCUMENTATION REQUIREMENT

## Permanent File

- PAN, TAN
- Indirect Tax Registration Numbers
- Registered Office / Branch Details
- Partnership Deed, MOA/ AOA

## Current File

- All the working papers collected while doing the audit for that particular year starting with appointment letter and ending with a management representation letter

# TAX AUDIT APPROACH

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- Awareness - Applicability of tax audit, applicable form
- Knowledge - Income tax provisions and amendments
- Knowledge - Clients business, accounting policies
- Reference – Previous tax audit reports
- Review of financials, director report
- Publications issued by ICAI
- Relevance of notes - implications of matters reported

# APPLICABLE FORM

## Form 3CA / 3CD

- Accounts audited under any other law (financial year audited same as previous year)

## Form 3CB / 3CD

- Accounts audited under any other law (financial year audited different from previous year) – Circular No. 561 dated 22<sup>nd</sup> May, 1990
- Accounts not audited under any other law

# FORM 3CD

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- Income Tax (Eighth Amendment) Rules, 2018 – Comes into force from **20<sup>th</sup> August, 2018**
- Significant changes in reporting requirements vide Notification No. 33/2018 dated 20<sup>th</sup> July, 2018 (Existing clauses modified, several new clauses added)
- Tax audit reports uploaded prior to 20th July / 20<sup>th</sup> August - whether to be revised?
- Onerous responsibility on tax auditor to verify whether data reported is “true and correct”
- Importance of adequate documentation – to safeguard potential risks
- **Responsibility of the management**

# Form 3CD – New Clauses

## Revised Form 3CD

Clause No	Particulars
29A	<p>(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)</p> <p>(b) If yes, please furnish the following details:</p> <ul style="list-style-type: none"><li>(i) Nature of income</li><li>(ii) Amount (in Rs.) thereof</li></ul>

- Section 56(2)(ix) introduced in Finance Act 2014
- Purpose - to tax the advance amounts initially received against the capital asset in the course of negotiation and later forfeited and no transfer effected
- Scrutinise the balance sheet advances and/or other income

# Form 3CD – New Clauses

## Revised Form 3CD

Clause No	Particulars
29B	<p>(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)</p> <p>(b) If yes, please furnish the following details:</p> <ul style="list-style-type: none"><li>(i) Nature of income</li><li>(ii) Amount (in Rs.) thereof</li></ul>

- Section 56(2)(x) introduced in Finance Act 2017
- Section widened the scope of taxability of any sum of money, immovable property or any other property received by one person from another person for no consideration or inadequate consideration.

# Form 3CD – New Clauses

## Revised Form 3CD

Clause No	Particulars
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 in the format specified

- Primary adjustments as mentioned in Section 92CE (introduced vide Finance Act 2017)
- Emergence of the concept of secondary adjustment with insertion of Section 92CE
- Additional reporting requirements in the Form 3CD (Refer next slide)

# Form 3CD – New Clauses

## Clause 30A - Additional reporting requirements in the Form 3CD

Primary adjustment to transfer pricing made u/s. 92CE, following disclosures to be made

Relevant sub-section of Section 92CE under which primary adjustment is being 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 as per section 92CE(2)?

Yes

Whether the excess amount has been repatriated within time?

No

Such excess amount which has not been repatriated within the prescribed time to be treated as advance given to the AE. Need to provide the amount of imputed interest income on the same



# Form 3CD – New Clauses

## Revised Form 3CD

Clause No	Particulars
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 in the format specified

- Section 94B – Inserted vide Finance Act 2017 – to limit the interest deduction in certain cases and to bring in the concept of “Thin Capitalisation”
- Restrictions on deduction to be claimed:
  - 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) (or)
  - Interest paid or payable to associated enterprisewhichever is less
- Certain relaxations provided by this section
- Need to report the amount of interest expenditure, EBIDTA of the previous year, Amount of interest expense over 30% of EBIDTA, interest expenditure brought forward (relevant AY and amounts), interest expenditure carried forward (relevant AYs and amounts)

# Form 3CD – New Clauses

## Revised Form 3CD

Clause No	Particulars
30C	<p>(a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No. )</p> <p>(b) If yes, please specify:—</p> <p>(i) Nature of impermissible avoidance arrangement:</p> <p>(ii) Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement:</p>

- Section 96 (impermissible avoidance agreement) falls under the Chapter X-A (General Anti Avoidance Rule)
- Inserted to curb arrangements which create such rights between the parties to the agreement, (by misuse of the provisions of the Act), which would not have been created in normal course between parties dealing at arm's length.
- Where the tax auditor is of the view that a particular arrangement falls under this provisions - state the nature of such arrangement and the tax benefit created in the previous year to all parties in aggregate

# Form 3CD – New Clauses

Revised Form 3CD	
Clause No	Particulars
36A	<p>(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.)</p> <p>(b) If yes, please furnish the following details:—</p> <ul style="list-style-type: none"><li>(i) Amount received (in Rs.)</li><li>(ii) Date of receipt</li></ul>

- Section 2(22)(e) – if a company in which public are not substantially interested makes any payment by way of loan or advance to any person –
- who holds not less than 10 percent voting power or
  - to any other person in which such shareholder has substantial interest
- then such payment, to the extent of accumulated profits, will be treated as deemed dividend.

# Form 3CD – New Clauses

## Revised Form 3CD

Clause No	Particulars
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 the details in specified format

- Requires the auditor to ensure if all the required details have been submitted and if not, then the unreported details/ transactions are required to be reported in Form 3CD
- Reporting of details of submission and due date of the respective forms with the income-tax
- Form 61, 61A and 61B relate to information to be filed in respect of specified financial transactions, etc.

# Form 3CD – New Clauses

Revised Form 3CD	
Clause No	Particulars
43	<p>(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)</p> <p>(b) If yes, please furnish the following details :</p> <ul style="list-style-type: none"><li>(i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity</li><li>(ii) Name of parent entity</li><li>(iii) Name of alternate reporting entity (if applicable)</li><li>(iv) Date of furnishing of report</li></ul>

- Section 286 r.w.r 10DB specifies the Companies liable to comply with CbCR requirements
- Entities to whom CbCR is applicable need to comply with reporting requirements of Form 3CEAC and 3CEAD, wherever applicable
- Details of parent entity, alternate reporting entity and date of furnishing of these reports are to be mentioned under this clause of TAR

# Form 3CD – New Clauses

Revised Form 3CD						
Clause No	Particulars					
44	Break-up of total expenditure of entities registered or not registered under the GST in the specified format					
Sr. 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 entites	
(1)	(2)	(3)	(4)	(5)	(6)	(7)

➤ This clause requires breakdown of entire expenditure debited to Profit & Loss a/c into the following heads:

- Relating to goods or services exempt under GST
- Relating to entities falling under composition scheme
- Relating to other registered entities
- Relating to entities not registered under GST

# Form 3CD – New clauses

## Revised Form 3CD

Particulars	via otherwise than by a cheque or bank draft	via cheque or bank draft, not being an account payee cheque or an account payee bank draft
<b><u>Each receipt</u></b> in an amount <i>exceeding the limit specified in Section 269ST</i> in aggregate from <i>one person in one day</i> or <i>in respect of a single transaction</i> or <i>in respect of transactions relating to one event or occasion from a person</i>	Reporting under clause 31(ba)	Reporting under clause 31(bb)
<b><u>Each payment</u></b> in an amount <i>exceeding the limit specified in Section 269ST</i> in aggregate from <i>one person in one day</i> or <i>in respect of a single transaction</i> or <i>in respect of transactions relating to one event or occasion from a person</i>	Reporting under clause 31(bc)	Reporting under clause 31(bd)

- Section 269ST limited only to receipts exceeding INR 2 lakhs.
- However, reporting in Tax Audit Report extended to payments as well

# Form 3CD – Amended clauses

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## CLAUSE 4 – INDIRECT TAX REGISTRATION

- GST registration number to be stated now along with registrations under other indirect tax laws
- Need to have basic knowledge of indirect tax laws
- Reporting for foreign indirect tax registration number ??
- Examples of reporting: GST, Excise duty, VAT, LBT, Entertainment tax etc.

### Documentation requirement

- Indirect tax registration certificate
- Any registration obtained / ceased during the year
- Written representation for list of taxes applicable



# Form 3CD – Amended clauses

Revised Form 3CD		Old Form 3CD	
Clause No	Particulars	Clause No	Particulars
19	Amount admissible under sections: (a) 32AC (b) <b>32AD</b> (c) 33AB (d) 33ABA (e) 35(1)(i) (f) 35(1)(ii) (g) 35(1)(iia) (h) 35(1)(iii) (i) 35(1)(iv) (j) 35(2AA) (k) 35(2AB) (l) 35ABB (m) 35AC (n) 35AD (o) 35CCA (p) 35CCB (q) 35CCC (r) 35CCD (s) 35D (t) 35DD (u) 35DDA (v) 35E (In Specified format)	19	Amount admissible under sections: (a) 32AC (b) 33AB (c) 33ABA (d) 35(1)(i) (e) 35(1)(ii) (f) 35(1)(iia) (g) 35(1)(iii) (h) 35(1)(iv) (i) 35(2AA) (j) 35(2AB) (k) 35ABB (l) 35AC (m) 35AD (n) 35CCA (o) 35CCB (p) 35CCC (q) 35CCD (r) 35D (s) 35DD (t) 35DDA (u) 35E (In Specified format)
24	Amounts deemed to be profits and gains under section 32AC or <b>32AD</b> or 33AB or 33ABA or 33AC.	24	Amounts deemed to be profits and gains under section 32AC or 33AB or 33ABA or 33AC

➤ **32AD** - Investment in new plant or machinery in notified backward areas in certain States

# Form 3CD – Amended clauses

Revised Form 3CD		Old Form 3CD	
Clause No	Particulars	Clause No	Particulars
26	In respect of any sum referred to in clause (a), (b), (c), (d), (e) or (f) or <b>(g)</b> of section 43B, provide the details in the specified format	26	In respect of any sum referred to in clause (a), (b), (c), (d), (e) or (f) of section 43B, provide the details in the specified format

- Clause (g) of section 43B has been added for reporting under this clause
- It pertains to allowing of liability outstanding towards Indian Railways for use of their assets, on actual payment basis
- Other aspects of this clause explained in next slide

# CLAUSE 26 – LIABILITIES ALLOWED ON PAYMENT BASIS

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- Introduced to curb non payment of statutory dues
- S. 43B – certain specific liabilities covered
- Reporting in Two Parts -
  - Part A – Liability which pre existed on first day of previous year
  - Part B – Liability incurred during the year and paid before due date of filing of return u/s 139(1)
- Sum payable to Indian Railways for use of railway assets – covered under section 43B (inserted by Finance Act, 2016 and now a part of reporting under this clause)

## **Documentation requirement**

- List of items covered by S. 43B
- Details of provision made during the year
- Details of amount paid during the year/prior to due date of filing return of income

# Form 3CD – Amended clauses

Revised Form 3CD		Old Form 3CD	
Clause No	Particulars	Clause No	Particulars
34(b)	Whether the assessee <b>is required to furnish the statement of tax deducted or tax collected. If yes,</b> furnish the details in the specific format	34(b)	Whether the assessee <b>has furnished the statement of tax deducted and collected within the prescribed time. If not,</b> furnish the details in the specific format

- Earlier, reporting was required only if the Assessee had not furnished the TDS and TCS returns within the due date
- Now, if the Assessee is required to file TDS and TCS returns, reporting needs to be made in the specified format
- Requires the tax auditor to furnish the details/transactions which are not reported in the TDS/TCS return - Cumbersome and time consuming to verify for larger entities – Consider giving appropriate notes while reporting

# CLAUSE 34 – TDS REPORTING

- Clause 34(a) - requires reporting of deductible expenditure and TDS deducted
- Clause 34(b) – discussed earlier
- Clause 34(c) – requires reporting of interest paid u/s 201(1A)/206C(7) – some details available from Part G of Form 26AS
- In hand information regarding TDS/TCS default, non payment of interest would be available with tax officer
- Intention appears to cross verify the amount debited to P&L with amount on which tax is actually deducted

## **Documentation requirement**

- Copy of TDS / TCS Challans
- Copy of Acknowledgements of TDS / TCS return filed
- Form 26AS

# CLAUSE 34 – TDS REPORTING

## Clause 34(a) - Details of tax deducted or collected

TAN	Section	Nature of Payment	Total amount of Payment or Receipt of the nature specified in Col. (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted Or collected Out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of (7) and (9).
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	194J	Prof fee	1,00,000	80,000	80,000	8,000	0	0	0
	194J	Prof fee	1,00,000	80,000	60,000	6,000	20,000	1,000	0
	194J	Prof fee	1,00,000	80,000	60,000	6,000	20,000	1,000	1,500

## Clause 34(b) – Discussed earlier

## Clause 34(c) – Details of Interest paid u/s. 201(1A) /206C(7)

TAN	Amount of Interest Payable	Amount paid out of Col. (2)	Date of Payment
(1)	(2)	(3)	(4)

# CLAUSE 6 – PREVIOUS YEAR

- Relevant for businesses which are **set up** during the year
- S. 28 – Business carried on at any time during the previous year  
*“the profits and gains of any business or profession which was carried on by the assessee at any time **during the previous year**”*
- S. 3 - Determination of previous year  
*“business newly set up...., the previous year shall be the period beginning with the **date of setting up of the business and ending with the said financial year**”*
- Principles – set up of business were first laid down in
  - Western India Vegetable Products Ltd v. CIT– (1954) 26 ITR 151 (Bom HC)

Business is set up when major activities are completed and necessary infrastructures required for commencement of the business are in place.

## **Documentation requirement**

- Relevant facts establishing “set up date”

# CLAUSE 11 – BOOKS OF ACCOUNTS

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## Clause 11(b)

- What constitutes books of accounts – (Para 20.6 of GN of ICAI)
- Rule 6F – maintenance of specified books for some assessee
- In case where accounts are maintained at more than one location– address of all locations will have to be given

## Clause 11(c)

- Nature of relevant documents –wide and subjective term
- Examples of relevant documents – vouchers, invoices, valuation report, minutes, share certificates, agreement for sale, indirect tax returns etc.



# CLAUSE 13 – ICDS

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- Case of Chamber of Tax Consultants v. Union of India - the Hon'ble Delhi High Court largely struck down the applicability of ICDS for computing the total income
- To neutralize the above judgement and give statutory backing to provisions of ICDS, amendments proposed in Finance Act, 2018
- Adequate disclosures to be made in accordance with the amendments made under the Income tax Act, 1961 and the relevant ICDS

# CLAUSE 14 – DEVIATION FROM S. 145A

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- Dispute – AS-2 v/s 145A
- Exclusive v/s Inclusive method of accounting
- S. 145A is tax neutral - Hawkins Cooker – (2008) 14 DTR 206 Mum ITAT
- Judicial Pronouncement – adjustment not only to closing stock but opening stock also
- In case of deviation, format of reporting specified - Reference to GN of ICAI

## **Documentation requirement**

- Working paper for quantification of deviation

# CLAUSE 18 - DEPRECIATION

- Proper classification – based on legal precedents – important to claim depreciation
- Identification of assets eligible for higher depreciation
- **Budget Speech 2016-17 (paragraph 122) : Accelerated depreciation of maximum 40% - from AY 2017-18**
- Ascertainment of actual cost – S. 43(1)
- Capitalization of interest – 36(1)(iii) –Amendment by Finance Act 2015
- Foreign Currency adjustments – S. 43A
  - Impact of ICDS – Exchange difference on monetary items
- Depreciation available from the time asset is put to use
  - Exceptional cases – Depreciation allowable is the asset is ready to use – Chennai Petroleum Corporation Limited - [2013] 37 taxmann.com 332 (Madras HC)

# CLAUSE 18 - DEPRECIATION

- Asset used for business – active as well as passive use
  - Nirma Credit & Capital Ltd. (2008) 220 CTR 537 (SC)
  - Capital Bus Service P Ltd (1980) 123 ITR 404 (Delhi HC)
- Software – Capital vs revenue?
- Additional Depreciation u/s 32(1)(ia) – 20% depreciation if asset is put to use for more than 180 days, 10% if asset is put to use for less than 180 days
  - Addition < 180 days - Whether 10% depreciation available in next year? - Finance Act, 2015 – 3<sup>rd</sup> Proviso to section 32

## **Documentation requirement**

- Copies of sample bills in respect of asset purchased during the year
- Details of fixed asset sold, scrapped during the year (FA register)
- Evidences to substantiate put to use date
- Evidences to establish that asset is eligible for additional depreciation

# CLAUSE 20 – EMPLOYEE CONTRIBUTION TO FUNDS

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- S.2(24)(x) – Contribution received from employee
- S. 36(i)(va) – allowable as expenditure if paid within due date
- Due date as prescribed under respective laws
- Contribution paid after due date but before filing of return of income
  - AIMIL Ltd (2010) 321 ITR 508 (Delhi HC) – Favour
  - Gujarat State Road Transport Corp (2014) 265 CTR 64 (Guj HC) –Against
  - Bihar State Warehousing Corporation Ltd [2016] 71 taxmann.com 247 (Patna HC) – Favour (July 19,2016)
- Circular granting benefit of Grace period withdrawn – **Circular No. WSU/9(1) 2013/ Settlement**
- **Documentation** :Copies of PF / ESIC / labour welfare funds challans

# CLAUSE 21 – CASH PAYMENT S. 40A(3)

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- Disallowance for expenditure – where payment in cash beyond prescribed limits
- Exceptions provided in Rule 6DD
- Genuineness of payment and business compulsion – even if Rule 6DD exception does not apply – no disallowance - Anupam Tele Services .v. ITO – (2014) 88 CCH 035 (Gujarat HC)

## **Documentation requirement**

- Copy of Cash Book
- Evidences to substantiate that payment covered by Rule 6DD

# CLAUSE 21 – S. 14A – AMOUNT INADMISSIBLE

- Disallowance of ‘expenditure incurred in relation to income which does not form part of total income’
- AO is empowered to determine amount inadmissible as per Rule 8D only if not satisfied with correctness of –
  - assessee claim having regard to accounts of assessee, or
  - assessee claim of NIL expenditures incurred u/s. 14A
- Grounds to mitigate 14A disallowance
  - Sufficient own funds for investments
  - No Disallowance in absence of exempt income - Delite Enterprises
  - Disallowance cannot be in excess of expenditure incurred
  - Applicability to Stock in trade - India Advantage securities Ltd (ITA No. 6711 / Mum / 2011) (Mum ITAT) (2012)
- **Amended Rule 8D applicable from AY 2017-18** - Disallowance as per Rule 8D to be total of :
  - Expenditure directly relating to exempt income
  - 1% of Annual average of monthly average of investments (yielding exempt income)

# CLAUSE 21 – CAPITAL EXPENDITURE

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- Some test whether expenses capital / revenue in nature
  - Whether it brings into existence an asset or advantage of enduring benefit
  - Whether it is referable to fixed capital or fixed assets in contrast to circulating capital or current assets
  - Whether it is an expenditure to acquire an intangible asset
- Expenses on Computer Software – Whether capital or revenue in nature
  - CIT v. Raychem RPG Ltd –(2013) 346 ITR 138 (Bom HC)
  - Asahi India Safety Glass Ltd – (2012) 346 ITR 329 (Del HC)
  - Amway India Enterprises – (2008) 111 ITD 112 (Del ITAT) approved by Delhi HC



# CLAUSE 21 – FINE / PENALTIES

- Explanation 1 to S. 37(1) : expenses to be disallowed
  - Penalty or fine for violation of any law for the time being in force
  - Expenditure incurred for any purpose – offence – prohibited by law
- Nature of Penalty - Prakash Cotton Mills 201 ITR 684 (SC)
  - Compensatory / civil
  - Penal / criminal
  - Composite (Part Compensatory/Penal) – Malwa Vanaspati & Chemical Co  
225 ITR 383 (SC)
- Penalty → violation of law / violation of contract
- CBDT Circular No. 5/2012- Freebees provided in violation of Indian Medical Council Regulation, 2002 (IMC) – inadmissible u/s 37(1)

## **Documentation requirement**

- Copies of order / notices

# CLAUSE 21 – DISALLOWANCE U/S. 40(a)

- Non – deduction or Non – payment of TDS → disallowance of 30% (residents) / 100% (non residents) of expenditure → allowed in subsequent years on payment basis
- TDS on Provisions - If payee not identifiable – no disallowance
  - Pfizer Ltd - ITA No. 1667/Mum/2010 & IDBI 107 ITD 45 (Mum)
- Second proviso – If tax paid by the recipient – No disallowance to be made – Form 26A – Interest liability u/s 201
- Finance Act, 2016 Amendment – Equalisation Levy @ 6% to be deducted for amounts paid or payable to non resident for specified service (Online Advertisement)
  - Threshold limit → 1 lakh
  - Effective from 1<sup>st</sup> June, 2016 (AY 2017-18 onwards)
  - Non deduction of equalisation levy → disallowance of 100% of the expenditure u/s. 40(a)(ib) → allowed in subsequent years on payment basis

# CLAUSE 31 – SECTION 269SS / T

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- Clause 31(a) - Particulars of each loan or deposit taken or accepted exceeding the specified limit
- A/c payee cheque or A/c payee bank draft or use of electronic clearing system – mode of execution of loan transaction
- Transactions by Journal entry whether covered?
  - CIT Vs. Triumph International Finance (I) Ltd. 345 ITR 270 (Bom)
  - Ajitnath Hi-Tech Builders Private Limited 92 taxmann.com 228 (Bom)
- Insertion of new clause vide CBDT Notification 58/2017 dated 3rd July 2017 – reporting for “**specified sum**” accepted / repaid during the year
  - Specified Sum – any money in relation **to transfer of an immovable property** - whether or not the transfer takes place
  - Cumbersome reporting for Large Real Estate Builders

# CLAUSE 32 – BROUGHT FORWARD LOSS

- Nature of loss, Amount
- Amount as assessed, Remarks – Assessment pending, Status of appeal, etc.
- Change in shareholding
  - Last day of Year in which loss was incurred and year in which loss set off – 51% of the voting power beneficially held by same persons
  - Not applicable in certain cases
- Reporting Format:

Serial No.	Assessment Year	Nature of loss/ allowance (in Rs)	Amount as returned (in Rs)	Amount as assessed (give reference to relevant order)	Remarks
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# Clause 41 – Demand / Refund

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- Additional checks required to identify demand raised or refund issued during PY
- Greater reliability on management representation
- Basic knowledge of other laws - must
- Octroi Duty, Entry Tax, Cess on Royalty – not covered
- Refund **determined** but not issued whether to be reported ??
- Refund determined adjusted against outstanding demand – whether to be reported ?? (Para 68.2 of GN)

## Documentation requirement

- Copies of departmental orders where demand is raised / refund issued
- Contingent liability working

# CONCLUSION

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- Additional responsibilities on the tax auditor
- Emphasis on documentation & disclosures
- Learn, Unlearn & Relearn on a continuous basis





*THANK YOU*