



One Day Seminar on Direct Taxes – Recent Developments

(ICAI)

Tax Audit – Recent updates

TAX AUDIT - OVERVIEW

- Tax Audit - Section 44AB of the Income Tax Act 1961 ('the Act'):
 - ✓ Person carrying on business - if total sales, turnover or gross receipts exceeds Rupees one crore in any previous year.
 - ✓ Person carrying on profession - if the gross receipts exceeds Rupees fifty lakhs in any previous year.
 - ✓ Person carrying on business (specified in section 44AE, 44BB or 44BBB) and claims that the profits or gains of such businesses to be lower than profits deemed in that section any previous year.
 - ✓ Person carrying on business specified in section 44AD and claims such income to be lower than the profits deemed to be profits of his business and his income exceeds maximum amount not chargeable to tax any previous year.
 - ✓ Person carrying on business specified in section 44AD and his income exceeds maximum amount not chargeable to tax in any previous year.
- As per Rule 6G(2) of the Income-tax Rules, 1962 ('the Rules), the details/ particulars as required under section 44AB of the Act shall be provided in Form 3CD along with Audit Report - 3CA or 3CB as applicable under section 44AB of the Act.
- An analysis of clauses and reporting requirements in Form 3CD are provided in the ensuing slides.

Clauses in Form 3CD - Analysis



Clauses in Form 3CD - Analysis

Clause No.	Particulars
1	Name of the Assessee
2	Address of the Assessee
3	Permanent Account Number ('PAN') of the Assessee
4	GST Registration Number or any other registration number allotted by the Government for payment of indirect taxes
5	Status of the Assessee
6	Previous year from
7	Assessment year
8	Relevant clause of section 44AB under which audit has been conducted
9	a) In case of firm/ AOP, provide details about the partner/ member and their profit sharing ratio b) Any changes in the partners/ members and their profit sharing ratio
10	a) Nature of every business or profession carried on b) changes to clause a if any and particulars of such change
11	a) Books of accounts prescribed under section 44AA of the Act b) Books of accounts maintained by the Assessee c) Books of accounts examined by the Tax Auditor
12	Whether the Profit and Loss account includes any profits and gains assessable on presumptive basis. If yes, provide amount and relevant section

Other Clauses in Form 3CD – Reporting requirements



Clauses in Form 3CD - Analysis

Clause 13, 14 AND 15 – Method of accounting/ Valuation of closing stock/ Conversion of capital asset into stock-in-trade

Clause 13	Clause 14	Clause 15
<p><u>Key disclosure requirements:</u></p> <p>a) Method of accounting employed in the previous year</p> <p>b) Any change in the method of accounting employed when compared to previous year</p> <p>c) If yes to (b), details of such change and the effect in profit or loss</p> <p>d) Any adjustments made to the profit or loss for complying with the provisions of Income Computation and Disclosure Standards notified under section 145(2)</p> <p>e) If yes to (d), provide details of such adjustments</p> <p>f) Disclosure as per ICDS – Provided in ensuing slides</p>	<p><u>Key disclosure requirements:</u></p> <p>a) Method of valuation of closing stock employed in the previous year</p> <p>b) In case of deviation from the method of valuation prescribed under section 145A - If yes, effect thereof on the profit or loss</p>	<p><u>Key disclosure requirements:</u></p> <p>a) Particulars of the capital asset converted into stock-in-trade</p> <ul style="list-style-type: none">• Description of the capital asset• Date of acquisition• Cost of acquisition• Amount at which the capital asset is converted into stock-in-trade

Clauses in Form 3CD - Analysis

Clause 13 - Disclosure requirements as per ICDS

S.No	ICDS Name	Disclosure Requirement as per ICDS
I	Accounting Policies	<p>a) All Significant Accounting Policies adopted by a person shall be disclosed.</p> <p>b) If fundamental accounting assumptions of going concern, consistency and accrual not followed, specific disclosure is required.</p>
II	Valuation of Inventories	<p>a) Accounting Policies adopted in measuring inventories including the cost formulae used. Where Standard Costing has been used as a measurement of cost, details of such inventories and a confirmation of the fact that standard cost approximates the actual cost; and</p> <p>b) Total carrying amount of inventories and its classification appropriate to a person.</p>
III	Construction Contracts	<p>The amount of contract revenue recognised as revenue in the period; and</p> <p>a) The methods used to determine the stage of completion of contracts in progress.</p> <p>b) For contracts in progress at the reporting date, namely:- Amount of costs incurred and recognized profits (less recognized losses) upto the reporting date; amount of advances received and amount of retentions.</p>
IV	Revenue Recognition	<p>a) In a transaction involving sale of good, total amount not recognised as revenue during PY due to lack of reasonably certainty of its ultimate collection along with nature of uncertainty;</p> <p>b) Amount of revenue from service transaction recognised as revenue during the PY;</p> <p>c) Method used to determine the stage of completion of service transactions in progress; and</p> <p>d) For service transactions in progress at end of PY: Amount of costs incurred and recognised profits (less recognized losses) upto end of PY, amount of advances received and amount of retentions.</p>

Clauses in Form 3CD - Analysis

Clause 13 - Disclosure requirements as per ICDS

S.No	ICDS Name	Disclosure Requirement as per ICDS
V	Tangible Fixed Assets	<p>a) Description of asset or block of assets;</p> <p>b) Rate of depreciation;</p> <p>c) Actual cost or WDV, as the case may be;</p> <p>d) Additions or deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of— CENVAT credit claimed and allowed under CENVAT Credit Rules, 2004; Change in rate of exchange of currency; Subsidy or grant or reimbursement, by whatever name called;</p> <p>e) Depreciation Allowable; and</p> <p>f) Written down value at the end of year.</p>
VII	Government Grants	<p>a) Nature and extent of Government grants recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets during the previous year;</p> <p>b) Nature and extent of Government grants recognised during the previous year as income;</p> <p>c) Nature and extent of Government grants not recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets and reasons thereof; and</p> <p>d) Nature and extent of Government grants not recognised during the previous year as income and reasons thereof.</p>
IX	Borrowing Costs	<p>a) Accounting policy adopted for borrowing costs;</p> <p>b) Amount of borrowing costs capitalised during the previous year.</p>

Clauses in Form 3CD - Analysis

Clause 13 - Disclosure requirements as per ICDS

S.NO.	ICDS Name	Disclosure Requirement as per ICDS
X	Provisions, Contingent Liabilities and Contingent Assets	<p>a) In respect of each class of provisions:</p> <ul style="list-style-type: none">- Brief description of the nature of the obligation;- Carrying amount at the beginning and end of the PY;- Additional provisions made during the PY, including increases to existing provisions;- Amounts used, that is incurred and charged against the provision, during the PY;- Unused amounts reversed during the PY; and- Amount of any expected reimbursement, stating amount of asset that is recognised for that expected reimbursement. <p>b) In respect of Contingent Assets:</p> <ul style="list-style-type: none">- Brief description of the nature of the asset and related income;- Carrying amount of asset at the beginning and end of the PY;- Additional amount of asset and related income recognised during the year, including increases to assets and related income already recognised; and- Amount of asset and related income reversed during the PY.

Clauses in Form 3CD - Analysis

CLAUSE 16 AND 17 – ITEMS NOT CREDITED TO PROFIT AND LOSS ACCOUNT/ COMPLIANCE UNDER SECTION 43CA OR 50C

Clause 16 Amounts not credited to profit and loss account	Clause 17 Compliance under section 43CA or 50C
<p>The description along with the amounts for the following items has to be disclosed:</p> <ul style="list-style-type: none">a) The items falling within the scope of section 28;b) The proforma credits, drawbacks, refund of duty of customs, excise, service tax, sales tax, value added tax or Goods and Service Tax where such credits, drawbacks or refunds are admitted as due by the authorities concerned;c) Escalation claims accepted during the year;d) Any other item of income;	<p>The following details have to be disclosed if any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed by any authority of a State Government referred to in section 43CA or 50C:</p> <ul style="list-style-type: none">- Details of the property- Address of the property- Consideration received or accrued- Value adopted or assessed or assessable

Clauses in Form 3CD - Analysis

CLAUSE 18, 19 AND 20 – DEPRECIATION AS PER INCOME TAX ACT 1961, ADMISSIBLE ITEMS UNDER SECTIONS AND BONUS IN LIEU OF DIVIDEND OR PROFITS

Clause 18 Allowable depreciation as per IT Act	Clause 19 Admissible Items under sections	Clause 20 Bonus in lieu of dividend or profits
<p>The following particulars have to be disclosed in respect of each block of assets:</p> <ul style="list-style-type: none">- Block of assets / Class of assets- Rate of depreciation- Opening WDV / Actual- Additions made during the year- Deletions from the block- Depreciation allowable	<p>Disclosure of the following is required:</p> <ul style="list-style-type: none">- Section under particular expense is allowed- Amount debited to the profit and loss account- Admissible amounts as per the provisions of the Income Tax Act, 1961 upon fulfilling conditions specified under the IT Act, 1961 or IT Rules, 1962 or any other guidelines, circular etc., issued in this behalf	<p>In respect of payment of bonus or commission to an employee for the services rendered, where such sum was otherwise payable to him as dividend or profits [Section 36(1)(ii)], the following has to disclosed:</p> <p>20(a) The amount paid along with the description;</p> <p>20(b) Details of contributions received from employees for various funds referred to under Section 36(1)(va).</p>

Disallowances under the Act – Reporting requirements



Clauses in Form 3CD - Analysis

Clause No.	Particulars
21a	<p>The description and amounts of the following items of expenses debited to profit and loss account is required to be disclosed under clause 21(a) of Form 3CD.</p> <ul style="list-style-type: none">- Capital expenditure- Personal expenditure- Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party- Expenditure incurred at clubs being cost for club services and facilities used- Expenditure by way of penalty or fine for violation of any law for the time being force- Expenditure by way of any other penalty or fine not covered above- Expenditure incurred for any purpose which is an offence or which is prohibited by law

Clauses in Form 3CD - Analysis

Clause	Inadmissible Items	Amount of Payment	Nature of Payment	Name of the Payee	PAN of the Payee	Address	Amount of Tax Deducted	Amount out of (VI) deposited, if any
21b i)	Payment to non-resident referred to in sub-clause (i) (A) Payment on which TDS not deducted (B) Payment on which TDS has been deducted but not paid during the PY or in the subsequent year before the expiry of time provided in section 200(1)	<p style="text-align: center;">TO BE FURNISHED [Amount of tax deducted pertains to i(B) and last column to be excluded]</p> <p style="text-align: center;"><i>Please note that, this has to be reported expenditure wise as per the Profit and Loss account and not just a mere replication of data from Form 26Q & 27Q</i></p>						
21b ii)	Payment referred to in sub-clause (ia) (A) Payment on which TDS not deducted (B) Payment on which TDS has been deducted but not paid on or before the due date specified in 139(1)	<p style="text-align: center;">TO BE FURNISHED [Last two columns pertains to ii(B)]</p> <p style="text-align: center;"><i>Please note that, this has to be reported expenditure wise as per the Profit and Loss account and not just a mere replication of data from Form 26Q & 27Q</i></p>						

Clauses in Form 3CD - Analysis

S.No.	Inadmissible Items	Amount of Payment	Nature of Payment	Name of the Payee	PAN of the Payee	Address	Amount of Tax Deducted	Amount out of (VI) deposited, if any
21b iii)	Payment referred to in sub-clause (ib) (A) Payment on which TDS not deducted (B) Payment on which TDS has been deducted but not paid on or before the due date specified in 139(1)	<p style="text-align: center;">TO BE FURNISHED [Last two columns pertains to ii(B)]</p> <p style="text-align: center;"><i>Please note that, the has to be reported expenditure wise as per the Profit and Loss account and not just a mere replication of data from Form 26Q & 27Q</i></p>						

- (iv) Fringe benefit tax under sub-clause (ic)
- (v) Wealth tax under sub-clause (iia)
- (vi) Royalty, license fee, service fee etc. under sub-clause (iib)
- (vii) Salary payable to outside India / to a non resident without TDS etc. sub-clause (iii)
- (viii) Payment to PF / other fund etc. under sub-clause (iv)
- (ix) Tax paid by employer for perquisites

Clauses in Form 3CD - Analysis

Clause No.	Particulars
21c	Amounts debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof
21d	<p>Disallowance / deemed income under section 40A(3):</p> <p>(A) Examination of books of account and other relevant documents / evidence, whether the expenditure is covered under section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, the date, nature and amount of payment along with the name and PAN of the payee to be disclosed.</p> <p>(B) Examination of books of account and other relevant documents / evidence, whether the payment referred to in section 40A(3A) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, details of amount deemed to be the profits and gains of business or profession under section 40A (3A) to be disclosed.</p>
21e	Provision for payment of gratuity not allowable under section 40A(7)
21f	Any sum paid by the Assessee as an employer not allowable under section 40A(9)
21g	Particulars of any liability of a contingent nature
21h	Amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income
21i	Amount inadmissible under the proviso to section 36(1)(iii).

Other Clauses in Form 3CD – Reporting requirements



Clauses in Form 3CD - Analysis

Clause No.	Particulars
22	Disallowance of interest under section 23 of the Micro, Small and Medium Enterprises Development Ac, 2006
23	Payment made under section 40A(2)(b) of the Act - The particulars of name and PAN of the related person, the nature of transaction and the amount of payment made to persons specified under section 40A(2)(b).
24	Deemed income - The description of the amounts deemed to be the profits and gains under various sections viz. 32AC, 32AD, 33AB, 33AC or 33ABA
25	Profits chargeable to tax - Any amount of profit chargeable to tax under section 41 along with the name of the person, amount of income, description of the transaction and computation to be disclosed.
26	<p>Section 43B transactions:</p> <p>The nature of liability and the amount along with corresponding section to be disclosed in respect of sums referred to in clause (a) to (g) of section 43B for which:</p> <ul style="list-style-type: none">(A) The liability pre-existed on the first day of the previous year but was not allowed in the assessment of any preceeding previous year and was<ul style="list-style-type: none">(a) paid during the previous year;(b) not paid during the previous year.(B) Was incurred in the previous year and was<ul style="list-style-type: none">(a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1);(b) not paid on or before the aforesaid date.

FORM 3CD - CLAUSES

Clause No.	Particulars
27	<p>(State whether sales tax, customs duty, excise duty or any other indirect tax, levy, cess, impost, etc., is passed through the profit and loss account.)</p> <p>CENVAT credit or ITC availed or utilized</p> <p>(a) The amount of CENVAT credit or ITC availed or utilized during the previous year and its treatment in the profit and loss account to be disclosed.</p> <p>(b) The particulars of income or expenditure of prior period debited or credited to profit and loss account to be furnished.</p>
28	<p>Receipt of property for inadequate consideration</p> <p>Where the assessee has received any property, being share of a company not being a company in which the public are substantially interested, without consideration or for inadequate consideration as referred to in section 56(2)(viia) during the previous year, the following particulars are to be disclosed</p> <ul style="list-style-type: none">- Name of the person from whom the shares are received- PAN of the person- Name of the company whose shares are received- CIN of the company- No. of shares received- Amount of consideration paid- Fair market value of the shares

FORM 3CD - CLAUSES

Clause No.	Particulars
29	<p>Receipt of consideration for issue of shares</p> <p>Where the assessee has received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib) during the previous year, the following particulars are to be disclosed</p> <ul style="list-style-type: none">- Name of the person from whom consideration is received for issue of shares- PAN of the person- No. of shares issued- Amount of consideration received- Fair market value of the shares
29A	<p>(a) Any amount included as income chargeable under the head 'income from other sources' referred to in clause (ix) of sub-section (2) of section 56</p> <p>(b) If yes, the following details are to be disclosed</p> <ul style="list-style-type: none">- Nature of income and Amount thereof
29B	<p>(a) Any amount included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub-section (2) of section 56</p> <p>(b) If yes, the following details are to be disclosed</p> <ul style="list-style-type: none">- Nature of income and Amount thereof

Clauses in Form 3CD - Analysis

Clause No.	Particulars
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]
30A & B	<p>30A (a) Primary adjustment to transfer price, as referred to in sub-section 1) of section 92CE, has been made during the previous year</p> <p>(b) If yes, the following details have to be disclosed</p> <ul style="list-style-type: none"> (i) Under which clause of sub-section (1) of section 92CE primary adjustment is made (ii) Amount (in Rs.) of primary adjustment: (iii) 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 (iv) If yes, whether the excess money has been repatriated within the prescribed time (v) If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time <p>30B. (a) If any expenditure incurred by the Assessee 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</p> <p>(b) If yes, the following details to be furnished:</p> <ul style="list-style-type: none"> (i) Amount (in Rs.) of expenditure by way of interest or of similar nature incurred (ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.) (iii) Amount (in Rs.) of expenditure by way interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above (iv) Details of interest expenditure brought forward as per sub-section (4) of section 94B

Clauses in Form 3CD - Analysis

Claus e 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>

Clauses in Form 3CD - Analysis

Clause No.	Particulars
31	<p>a) Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year</p> <p>b) Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the pervious year</p> <p><i>b(a)</i> 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</p> <p><i>b(b)</i> 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</p> <p><i>b(c)</i> 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</p> <p><i>b(d)</i> 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</p> <p>c) Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous</p>

Clauses in Form 3CD - Analysis

Clause No.	Particulars
31	<p>d) Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year</p> <p>e) Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received by a cheque or bank which is not an account payee cheque or account payee bank draft during the previous year</p>
32	<p>a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available</p> <p>b) Whether a change in share holding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.</p> <p>c) Whether the Assessee has incurred any speculation loss referred to in section 73 during the previous year.</p> <p>d) Whether the Assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year</p> <p>e) In case of a company, please state that whether the company is deemed to be carrying on a speculation business as referred in explanation to section 73.</p>
33	Section-wise details of deductions, if any admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA).
34	<p>a) Whether the Assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish the relevant details</p> <p>b) Whether the Assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the relevant details</p> <p>c) Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7).</p>
35	<p>a) In the case of a trading concern, give quantitative details of principal items of goods traded</p> <p>b) In the case of manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products</p>

Clauses in Form 3CD - Analysis

Clause No.	Particulars
36	In the case of Domestic Company, details of tax on distributed profits under section 115-O in the following forms 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. A(b) If yes, please furnish the relevant details.
37	a) Whether any cost audit was carried out ? b) If yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor.
38	a) Whether any audit was conducted under the Central Excise Act, 1944 ? b) If yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.
39	a) Whether any audit was conducted under section 72A of the Finance Act, 1994 in relation to valuation of taxable services as may be reported/identified by the auditor? b) If yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.
40	a) Details regarding turnover, gross profit, etc., for the previous year and preceding previous year
41	a) Details of demand raised or refund issued during the previous year under any tax laws other than Income-tax Act, 1961 and Wealth tax Act, 1957 alongwith details of relevant proceedings.
42	a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? Select b) If yes, please furnish for form filing details
43	a) (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. b) If yes, please furnish the relevant details.
44	a) Break-up of total expenditure of entities registered or not registered under the GST:

Amendments to Form 3CD



Amendments to Form 3CD

- The Central Board of Direct Tax (CBDT) issued a notification amending Form 3CD with effect from 20 August 2018. Aimed to expand the scope of Form 3CD and to provide certain additional disclosures.
- Such disclosures would help tax authorities to obtain a first level review of information already reported in other forms (related to direct tax and transfer pricing). List of insertions and amendments to the Form 3CD:

Particulars	Details	Deferred
Summary of insertions	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?	No
	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?	No
	Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year?	No
	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?	No
	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	No
	Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Transaction with parties not having PAN)	No
	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?	No
	Break-up of total expenditure of entities registered or not registered under the GST	Till 31 March 2020
	Details of GSTIN to be reported instead of the service tax registration number	
	Whether the Assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year?	
	Allowance under section 32AD of the Act to be reported.	No
	Cash receipts more than INR 2,00,000 under section 269ST of the Act is to be reported.	No
	Whether the Assessee is required to furnish the statement of tax deducted or tax collected.	No

Section 56(2)(x) of the Act



Section 56(2)(x) of the Act

Extract of the section -



Section 56(2)(X)

The section is typically attracted in the following cases:

- Transfer of immovable property for a consideration of INR 50,000 (or an amount equal to 5% of the consideration – **with effect from 01 April 2019**) less than the stamp duty value of the asset.
- Transfer of assets covered within the definition of 'property' for a consideration of INR 50,000 less than the fair market value of such asset.
- Transfer of a sum of money, without consideration, to any other person (except from any relative, or on the occasion of marriage)

Section 56(2)(x) of the Act – Reporting requirements

Clause 29B – Reporting requirements:

(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)

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

(i) Nature of income:

(ii) Amount (in Rs.) thereof:";

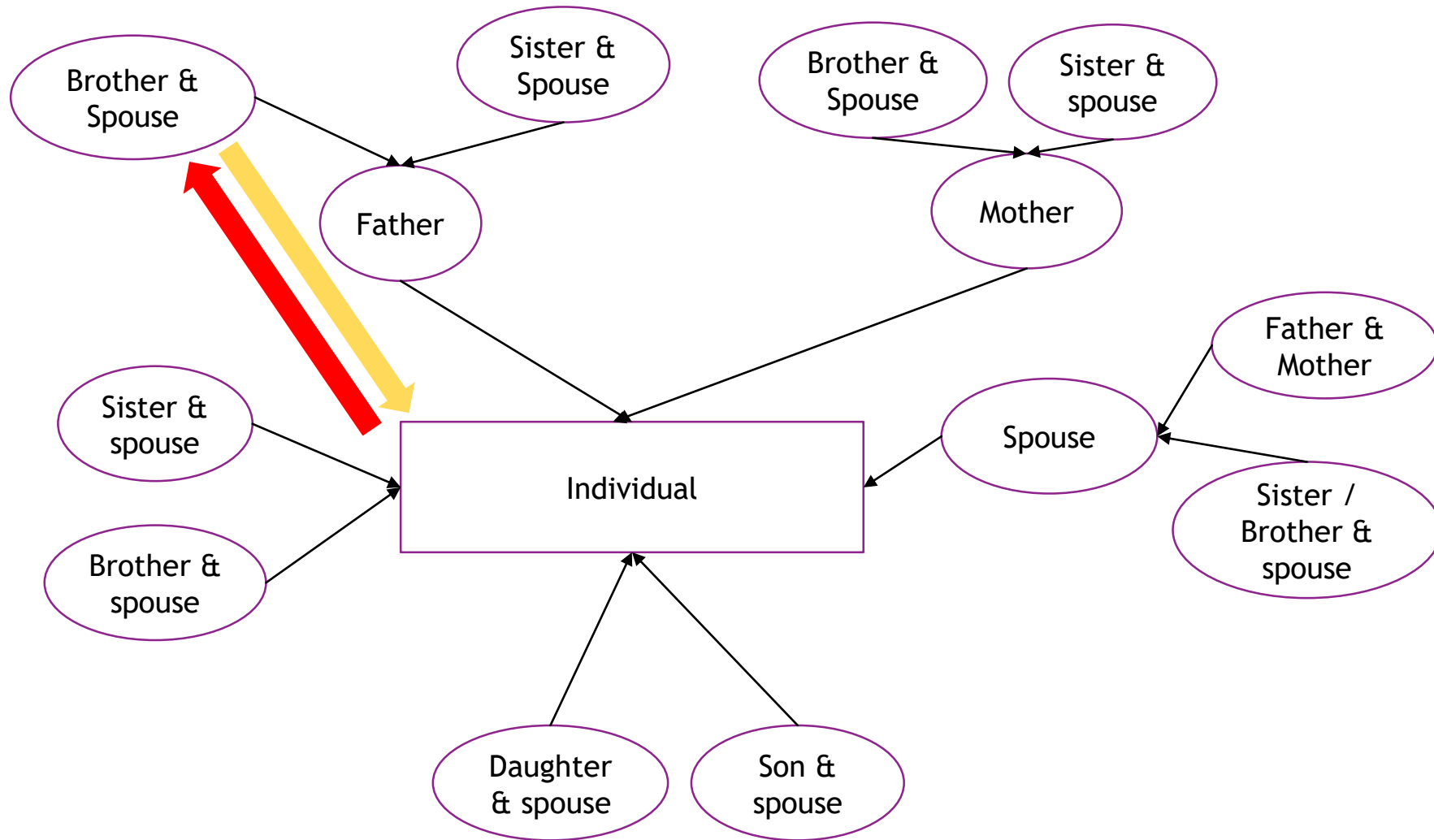
Points to be noted:

- ✓ The tax auditor should obtain a certificate from the taxpayer regarding any such receipts during the year
- ✓ The tax auditor should also scrutinize the books of account
- ✓ In case of immovable property, where the taxpayer has disputed the stamp duty value before the stamp authorities, state both the stamp duty value adopted by the stamp authorities as well as the stamp duty value claimed by the taxpayer
- ✓ In case of other assets, wherever there is a dispute or doubt, the tax auditor to request the taxpayer to obtain a valuation report from a registered valuer.
- ✓ While stating the amount of income, a computation of how such income has been arrived at should be provided

Section 56(2)(x) of the Act - Issues

- Rights issue of shares – Refer Sudhir Menon HUF v. ACIT [TS-146-ITAT-2014(Mum)]
- Bonus issue of shares
- Transferrable Development Rights (TDRs);
- Transfer of land – 50C / 43CA vs. 56(2)(x);
- Definition of relative;
- Stressed asset acquisition;
- Business Acquisition – 50B vs. 56(2)(x).

Definition of Relative- Section 56(2)(x) of the Act



Section 2(22)(e) of the Act - Deemed Dividend



Section 2(22)(e) of the Act – Reporting requirements

Clause - 36A.

(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)

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

(i) Amount received (in Rs.):

(ii) Date of receipt:

Points to be noted:

- The tax auditor should obtain a certificate containing a list of closely held companies in which the taxpayer 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. Also obtain a certificate from such shareholders with respect to 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
- Verify Form 26AS 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 of the Act. This will indicate the view taken by the closely held company. Remarks for any payment by the closely held company on behalf of or for the individual benefit of the taxpayer
- If reliance has been placed on any judicial precedents, a reference of the same may be given in Form No. 3CA/3CB. Include appropriate remarks about the methodology adopted to determine accumulated profits
- 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 DDT under section 115-O of the Act in the hands of the company making the payment and not in the hands of the shareholder
- It may be noted that if the closely held company has made payment on behalf of or for the taxpayer in his capacity - not required to be reported under this clause
- Business advance or trade advances need not to be reported

Taxability in the hands of the shareholder or company

- The intention behind the provisions of section 2(22)(e) of the Act is to tax dividend in the hands of shareholders.
- Further, the deeming provisions as it applies to the case of loans or advances by a company to a concern in which its shareholder has substantial interest, is based on the presumption that the loans or advances would ultimately be made available to the shareholders of the company giving the loan or advance.
- **Given the same the tax has to be levied on the shareholders of the company.**
- The above position has been upheld in the following judicial precedents:
 - ✓ Madhur Housing Dev. Co. (CA 3961 of 2013) (Supreme Court)
 - ✓ CIT v. Ankitech P Ltd. [2009] 218 ITR 239 (Delhi High Court)
 - ✓ CIT v. Universal Medicare P Ltd [2010] 190 Taxmann 144 (Bombay High Court)
- However, **with effect from** 01 April 2018, section 115-O of the Act has been amended to include dividend under section 2(22)(e) of the Act and the same would attract a DDT of 30 percent.

Section 2(22)(e) of the Act - Issues

- Beneficial shareholder vs. Registered shareholders
- Substantial part of business;
- Commercial expediency / Trade advances;
- Loans repaid during the same year;
- What is accumulated profits?
- Securities premium – Whether to be included in accumulated profits?
- Availability of accumulated profits;
- Beneficial ownership (Gopal and Sons (HUF) – Supreme Court).

Section 2(22)(e) – Substantial Part of business

- Under section 2(22), dividend does not include any advance or loan made to a shareholder or the concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company
- The term `substantial part' has not been defined in the Act. Some of the decisions have held that `substantial part' would indicate 20% i.e. where 20% or more funds have been deployed in the business of lending of money
 - ✓ Parle Plastics Ltd. [2011] 332 ITR 63 (Bom)
 - ✓ Jayant H. Modi [2015] 232 Taxman337 (Bom)
 - ✓ Shree BalajiGlass Manufacturing (P.) Ltd. [2016] 386 ITR 128 (Cal)
 - ✓ TanujHoldings (P.) Ltd. [2016] 46 ITR(T) 420 (Kol)
 - ✓ Rekha Modi [2007] 13 SOT 512 (Del)
 - ✓ Kishori Lal Agarwal [2014] 150 ITD 741 (Lucknow)

Section 2(22)(e) – Commercial Expediency / trade advances

- Advances which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' in section 2(22)(e) of the Act. The same has been laid down by CBDT circular No. 19/2017 dated 12 June 2017. Further the following judicial precedents have also held the same:
 - ✓ CIT vs. Creative Dyeing & Printing Pvt. Ltd. – Delhi HC
 - ✓ CIT vs. Amrik Singh – Punjab and Haryana HC
 - ✓ CIT vs. Atul Engineering Udyog – Allahabad HC
- The CBDT circular is enclosed below -



Trade Advances

Section 56(2)(ix) of the Act



Section 56(2)(ix) of the Act

Section 56(2)(ix) of the Act taxes any sum of advance money forfeited in course of transfer of capital asset. Extract of the section is as follows:

(ix) any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if,—

(a) such sum is forfeited; and

(b) the negotiations do not result in transfer of such capital asset.

Points to be noted

- The auditor is not required to report forfeited amount if it is in respect of a personal capital asset
- Forfeiture towards stock is taxable under section 28(i) of the Act
- A mere notice of forfeiture by the taxpayer, which is contested by the other party, may not amount to a forfeiture – No reporting required if the amount is not written back
- If the contract contains a right to forfeit on some conditions and such conditions have occurred – the auditor should verify whether the amount has been forfeited

Section 56(2)(ix) of the Act – Points to be noted

Amount not to be reduced from cost of asset under section 51 of the Act.

- If the taxpayer contends that the amount has not been forfeited, the tax auditor may look at totality of developments and may obtain a management representation
- Obtain a certificate from the taxpayer for such forfeited amount
- A write back without an act of forfeiture is generally unlikely – however, if the taxpayer contends that he has written the advance back but that, it is not a case of forfeiture, the tax auditor should exercise professional judgment and report accordingly
- Whether an amount is forfeited or not cannot be detected with ordinary auditing techniques
- The only indication of a forfeiture can be a long-standing credit not being paid. However, the indication is available not in the year of forfeiture
- Detection of forfeiture in the very year of forfeiture is a subject matter of investigation that one who is empowered to summon other documents and enforce attendance of parties can do

Section 56(2)(ix) of the Act – Reporting requirements and Issues

Reporting requirements

Clause - 29A.

(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)

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

(i) Nature of income:

(ii) Amount thereof:

Issues

- What capital assets are covered under this section?
- Whether a non-resident would be eligible to treaty benefits, if any?
- Any deduction available under other heads of income?

Section 32AD of the Act



Section 32AD of the Act

Available to	All assesses
Condition of setting up new undertaking of enterprise	Assessee should set up an undertaking or enterprise for manufacture or production of any article or thing on or after 1-4-2015.
Location	Undertaking or enterprise should be set up in any notified backward area in the State of Andhra Pradesh, Bihar, Telangana or West Bengal. (Refer Notification No. SO 2478(E)[No. 61/2016 (F.NO.142/13/2015- TPL)] dated 20-7-2016 for list of such specified areas)
Assessment years in which deduction is available	Assessment Year 2016-17 to Assessment Year 2020-21.
Actual cost of assets for which deduction is available	Actual cost of new asset may be of any amount. (However any Input Tax credit in respect of GST, VAT or Cenvat if claimed needs to be excluded from such cost)
Condition for deduction	Deduction is available in the year in which the new asset is installed. If asset is acquired in an earlier year and installed in a subsequent year, then deduction would be available in the subsequent year. The new asset should be acquired and installed during the period 1 st April 2015 to 31 st March 2020. Both acquisition and installation have to be within this period, though they may be in different years within the period.

Points to be noted

- The tax auditor should verify the list of such plant and machinery. Such plant and machinery should not fall within the exclusions (as mentioned under section 32AD(4) of the Act)
- Compute the amount of eligible deduction under section 32AD of the Act
- Disclosure is with respect to plant and machinery treated as asset in the Balance Sheet
- The tax auditor should verify whether any assets in the backward districts have been sold. If sold, the details of the asset sold, date of installation, original cost and the quantum of deduction allowed which is now taxable as profits and gains from business or profession is required to be reported.

Section 269ST of the Act



Section 269ST of the Act

Extract of the section –



Reporting of transactions **of receipts** and payments in excess of the specified limit made otherwise than by the modes specified in Section 269ST of the Act is to be made under clause 31 of the Form 3CD.

Points to be noted

- Neither Section 269ST of the Act, nor the relevant notifications exclude a Government company from the application of section 269ST of the Act. However, in view of the note given in amended Form 3CD, particulars need not be given in case of a Government company. *(It is to be noted that the section specifically excludes the government and not a government company)*
- Once the receipt or the payment exceeds the limit specified irrespective of the nature of receipt, the particulars of such transactions will have to be reported
- The tax auditor will have to exercise judgment in deciding whether receipts / payments though pertaining to more than one transaction, pertain to a single event or occasion
- Practically difficult to verify whether the relevant receipt or payment is by account payee cheque or draft. The tax auditor may make a suggested comment in the report

Section 269ST of the Act – Penalty and Issues

Penalty

- If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt.
- Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.

Issues

- Impact of GAAR on the transaction?

Section 94B of the Act



Changes in Tax Audit Report (Form 3CD) Clause 30B

a) Whether the Assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? (Yes/No)

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

- (i) Amount (in Rs.) of expenditure by way of interest or of similar nature incurred:
 - (ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.):
 - (iii) Amount (in Rs.) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above:
 - (iv) Details of interest expenditure brought forward as per sub-section (4) of section 94B:
 - (v) Details of interest expenditure carried forward as per sub-section (4) of section 94B:
- *In computation of the limit of 1 Crore, only interest and expenditure in similar nature to deductible under PGBP should be considered*
 - *With respect to (i) above, a specific question has been asked with respect to 94B(1) and hence to disclose interest paid only to non-resident AES might be a better view*
 - *Whether aggregate of all interest paid to all non resident AEs are to be considered or payable to each non-resident AE to be examined for the limit of 1 Crore?*

Points to be noted

Clause 30B(a):

Since the clause refers to sub-section (1) of 94B, the answer shall be yes only in case the Assessee has an AE borrowing or borrowings guaranteed by AEs and where such interest exceeds INR 1 crore. The limit should be considered only for interest deductible under PGBP and not any disallowed interest.

Clause 30B(b)(i):

Issue: Whether entire interest to be disclosed or AE interest? - Entire interest is considered only for the excess interest computation. For Clause 30B(b)(i), only AE interest to be disclosed, since it flows from 94B(1). **(Refer next slide)**

Clause 30B(b)(ii):

Disclose EBITDA as per the books of accounts and not tax returns

Clause 30B(b)(iii):

Excess interest (Difference between 30% of EBITDA and total interest as per clause (i) to be disclosed. (Refer next slide)

Clause 30B(b)(iv):

Amount brought forward year wise to be disclosed. For AY 2018-19, the amount would be nil.

Clause 30B(b)(v):

Amount to be carried forward to be disclosed. Tax auditor to verify and obtain management certification for interest computation, EBITDA computation

Amount to be disclosed

Let us assume that 30% of the EBITDA is INR 100 and take the following situations:

Interest to	Scenario 1	Scenario 2	Scenario 3	Scenario 4
AE	90	30	10	110
Non-AE	30	90	110	10

As per clause 30B(b)(i) guidelines, amount to be reported shall be INR 90, INR 30, INR 10 and INR 110 respectively. As per clause 30B(b)(iii) guidelines, amount to be disallowed shall be difference between clause (i) and 30% of EBITDA mentioned in clause (ii), which would be as follows:

Particulars	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Clause (iii)	=90-100	=30-100	=10-100	=110-100
Amount to be disallowed	Nil	Nil	Nil	10

Secondary adjustments – Section 92CE of the Act



Changes in Tax Audit Report (Form 3CD) Clause 30A

a) Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year? (Yes/No)

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

- I. Under which clause of sub-section (1) of section 92CE primary adjustment is made?
- II. Amount (in Rs.) of primary adjustment:
- III. Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)
- IV. If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)
- V. no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time

Points to be noted

Clause 30A(a):

- The tax auditor is required to verify whether any primary adjustments is actually 'made' in terms of Section 92CE(1) during the previous year under consideration. Separate disclosures for each type of adjustment.
- Disclosure to be made in respect of each and every type of primary adjustment irrespective of the previous year it pertains to
- The tax auditor should obtain a certificate from the assessee as to what TP adjustments have been made in the return(s) of income filed during the previous year. Tax auditor should verify tax records to validate the same
- Primary adjustments for earlier years prior to FY 2017-18 or totaling less than 1 Crore for a previous year, which do not warrant a secondary adjustment should also be reported under clause 30A(a).

Clause 30B(b)(i):

- The clause under which the relevant adjustment falls into shall also be reported along with the amount of adjustment

Clause 30B(b)(ii):

- Amount of primary adjustment to be disclosed. Management representation that the information is true and accurate.

Clause 30B(b)(iii):

- If the adjustment relates to previous years or is less than 1 Crore, the answer to the question shall be "No"
- In the adjustment pertains to AY 2017-08 or later and exceeds INR 1 crore,, answer should be 'Yes'.

Clause 30B(b)(iv):

- If the amount has been repatriated within 90 days from the date specified, the answer should be “Yes”. If not, the answer should be “No”.

Clause 30B(b)(v)

Tax auditor should obtain certificates for relevant interest rates and computation. Tax auditor should also verify the correctness of the interest amputation.

Interest to be restricted to 31 March, considering the reporting period.

The liability in respect of imputed interest may extend to primary adjustment made in the previous years as well, if the interest is not repatriated for more than a year (from FY 2018-19 onwards). While the clause reads ‘For the previous year’, it is advisable to include the other years interest as well.

Other Aspects



General Anti-Avoidance Rules (GAAR)

Anti – Avoidance Rules

- Anti-avoidance rules are divided largely into Two main categories — “General Anti Avoidance Rules (GAAR)” and “Specific Anti Avoidance Rules (SAAR)”.
- SAAR in a legislation targets to plug particular mischief by laying down certain tests – often, objective – which need compliance if the stated tax benefit is to be availed. For example, section 64 or section 94B may be considered as examples of SAAR.

GAAR

- GAAR is a concept within law that provides tax authority a power to deny tax benefits when an arrangement is undertaken without any commercial substance or commercial purpose.
- The consequences that arise on invocation of GAAR provisions include denial of a tax benefit, disregarding, combining or re-characterizing the arrangement, treating the arrangement as if it had not been entered into, disregarding any accommodating party , etc.
- Thus, in summary it nullifies / reverses the ‘tax benefit’ that arises as a result of the transaction / arrangement.

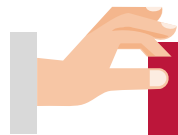
GAAR and GST reporting in the Form 3CD

CBDT amended the Tax Audit Report (Form 3CD) and substantially enhanced the reporting requirements of the tax auditor -Circular No. 33/2018, dated 20 July 2018

The Central Board of Direct Taxes (CBDT) vide its circular 9/2019 dated May 14, 2019 has kept the reporting on GAAR and GST under abeyance till March 31, 2020

Recently, the Direct Taxes Committee of ICAI released the 'Implementation Guide'

Since the reporting requirements with respect to GST and GAAR kept in abeyance till 31 March 2020, the same have not been considered in the Implementation Guide



Reporting requirements with respect to GST and GAAR should not form part of Form 3CD