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Disclosures and Reporting in Form 3CD

FAQs and Best Practices

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FAQ 1. How Should Disagreements Between a Tax Auditor and a Client Over the Applicability of TDS Provisions on a Specific Payment Be Reported in the Tax Audit Report?

If there is a disagreement between the tax auditor and the client concerning the applicability of TDS/TCS provisions to a particular transaction, this issue should be documented in either Clause (3) of Form 3CA or Clause (5) of Form 3CB, depending on the form used.

FAQ 2. What Precautions Should Be Taken When Reporting the Name of the Assessee?

The name of the assessee should be reported exactly as it appears on the PAN/Aadhaar card in Clause 1. If the assessee's trade name differs from the name on the PAN, it should be noted in Clause 3 of Form 3CA or Clause 5 of Form 3CB. In cases where there has been a name change, the name on the PAN as of the balance sheet date should be reported, with a note indicating the change in Clause 3 of Form 3CA or Clause 5 of Form 3CB.

Additionally, if the PAN has not been updated to reflect the name change, this should also be noted in the same clauses.

For the Specimen Notes/Disclaimers to Be Given in Clause 3 of Form 3CA/Clause 5 of Form 3CB, Refer to the Book Taxmann's Tax Audit by CA Srinivasan Anand G.

FAQ 3. What Precautions Should Be Taken When Filling Out the Address of the Assessee in Clause 2 of Form 3CD?

When reporting the address of the assessee in Clause 2 of Form 3CD, tax auditors should consider the following key points:

(a) **Current Address for Tax Purposes –** The address provided to the Income-tax Department for assessment purposes, as of the date when the report is signed, should be recorded in this clause.

(b) **Verification of Address –** According to Para 20.2 of the 2022 Guidance Note (GN), tax auditors must verify the address details from the income tax records available or the assessee's profile on the Income Tax portal. The 2023 GN revises this requirement; any discrepancies found should be noted as an observation in Para 3 of Form No. 3CA or Para 5 of Form No. 3CB

(c) **Consistency in Address Reporting –** The Institute of Chartered Accountants of India (ICAI) noted frequent errors where the address stated in Clause 2 differed from the one mentioned in the Annual Report or registered with the Ministry of Corporate Affairs.

For the Specimen Notes/Disclaimers to Be Given in Clause 3 of Form 3CA /Clause 5 of Form 3CB, Refer to the Book Taxmann's Tax Audit by CA Srinivasan Anand G.

FAQ 4. Is It Necessary for Tax Auditors to Report on Multiple PANs in Form 3CA/3CB/3CD?

In Clause 3 of Form 3CA/3CB/3CD, tax auditors are not required to disclose whether an assessee possesses multiple Permanent Account Numbers (PANs) or has surrendered any additional PANs. It is important to note that holding more than one PAN is prohibited.

FAQ 5. What Measures Should Be Taken When Verifying and Reporting PAN During a Tax Audit?

Tax auditors should adhere to the following precautions when reporting PAN in tax audits:

(a) Confirm the validity of the PAN through the e-filing portal before making any reports.

(b) Ensure that the PAN reported in Clause 4 of Form 3CD for PAN-based GST/Customs/ Excise registrations aligns with the PAN mentioned in this clause.

(c) Report any discrepancies between these PANs in Clause 3 of Form No. 3CA or Clause 5 of Form No. 3CB.

For the Specimen Notes/Disclaimers to Be Given in Clause 3 of Form 3CA/Clause 5 of Form 3CB, Refer to the Book Taxmann's Tax Audit by CA Srinivasan Anand G.

For More Details about PAN, Visit Taxmann.com/Practice

FAQ 6. What Are the Differences Between Reporting Requirements in Para 3(a) and Para 5 of Form 3CB?

Para 3(a) of Form No. 3CB focuses on reporting any observations, comments, discrepancies, or inconsistencies that affect the tax auditor's ability to state whether necessary information

and explanations were obtained during the audit, whether proper books of account have been maintained, and whether the financial statements present a true and fair view. Only those matters that are of a qualificatory nature should be reported in Para 3(a).

In contrast, Para 5 of Form No. 3CB addresses whether, in the auditor's opinion and based on the information and explanations provided, the particulars stated in Form No. 3CD are true and correct, subject to any observations or qualifications. This includes noting any differences of opinion regarding the particulars provided by the assessee and reporting any relevant observations, comments, adverse remarks, or disclaimers about the clauses of Form 3CD as necessary.

Thus, Para 3(a) relates specifically to qualifications concerning the true and fair view of the financial statements, whereas Para 5 deals with qualifications regarding the accuracy and correctness of the particulars reported in the various clauses of Form 3CD.

FAQ 7. What Is the Procedure for Reporting the Conversion of a Partnership into a Company in Tax Audits?

When a partnership firm is converted into a company, it undergoes a change in its legal identity. Consequently, the partners are required to surrender the partnership's Permanent Account Number (PAN) and obtain a new PAN for the newly formed company. This transformation requires the submission of two separate audit reports. The first report should cover the period of operation as a partnership up to the date of conversion. The second report should address the financial activities of the new company from the date of conversion through to 31st March. This ensures that both entities' operations are accurately and separately accounted for in compliance with legal and tax regulations.

For More Details about the Income-Tax & GST Implications on the Conversion of a Partnership Into the Company, Visit Taxmann.com/Practice

FAQ 8. How to Report the Status of the Assessee in Clause 5 of the e-Filing Utility?

When completing Clause 5 of the e-filing utility, tax auditors must select the appropriate status for the assessee from the provided drop-down options. The available statuses include:

(a) Artificial Juridical Person

(b) Association of Persons

(c) Body of Individuals

(d) Co-operative Society

(e) Co-operative Bank

(f) Company

(g) Firm

(h) Hindu Undivided Family

(i) Individual

(j) Limited Liability Partnership (LLP)

(k) Local Authority

(l) Trust

Key Points for Selection:

- **Firm –** Select this only if the assessee operates as a partnership firm under the Indian Partnership Act, 1932, with a partnership deed in place.
- **Association of Persons –** This should be selected for partnership firms lacking a formal partnership deed.
- **Limited Liability Partnership –** For LLPs registered under the Limited Liability Partnership Act, 2008, select this option. Do not choose "Firm," even though both are considered firms under Section 2(23) of the Act.
- **Company –** For LLPs registered outside India, select "Company" instead of "Limited Liability Partnership," as per the specifics in Section 2(23) of the Act.
- **Co-operative Society –** When auditing a Co-operative Society, select this specific status. Do not choose "Artificial Juridical Person," "Association of Persons," or "Body of Individuals."
- **Co-operative Bank –** Similarly, select "Co-operative Bank" for audits of Co-operative
- **Trust –** For trusts not registered under Section 12AB, whose income is not exempt under Section 11, choose "Trust" rather than "Association of Persons."

Importance of Accurate Reporting – Incorrect selection in Clause 5 can impact the assessee's eligibility for deductions under various sections of the Act. Additionally, many other clauses in the e-filing utility are dependent on the status entered in Clause 5. If you are unable to access certain sections in Form 3CD, it may be due to incorrect status reporting. Always ensure the status is appropriately selected to avoid such issues.

For More Details about the Taxability of AOP/BOI, Visit Taxmann.com/Practice

FAQ 9. Should the Auditor Report Unknown Shares of Members in an AOP in Clause 5 of Form 3CD?

No, if the shares of members in an Association of Persons (AOP) are unknown during the previous year, the auditor is not required to report this in Clause 5 of Form 3CD. Instead, this fact should be disclosed in Clause 9(a) of Form 3CD.

FAQ 10. How Should the Profit-Sharing Ratio of a Minor Admitted to the Benefits of a Partnership Firm Be Reported?

According to section 2(23) of the Act, a minor admitted to the benefits of a partnership is considered a "partner." The minor's name and profit-sharing ratio must be reported in Clause 9(a). While a minor is entitled to a share of the profits, they cannot be debited for losses. Losses are borne by the full partners, whose loss-sharing ratio may differ from their profit-sharing ratio. Only the profit-sharing ratio needs to be reported in percentage form. Any deviation in the loss-sharing ratio should be noted by the tax auditor in Clause (5) of Form 3CB for partnership firms/AOPs.

FAQ 11. If the Karta of a HUF Is a Partner in a Representative Capacity, Whose Name Should Be Listed in Clause 9(a)?

In cases where the Karta of a Hindu Undivided Family (HUF) acts as a partner in a representative capacity, it is the Karta's name that should be mentioned in Clause 9(a). Since an HUF is not recognised as a "person" under common law and cannot be a partner under the Partnership Act or the LLP Act, Karta represents the HUF. This representation should be noted in Clause (5) of Form 3CB or Clause (3) of Form 3CA, in the case of an LLP undergoing a statutory audit under the LLP Act.

For the Specimen Notes/Disclaimers to Be Given in Clause 3 of Form 3CA/Clause 5 of Form 3CB, Refer to the Book Taxmann's Tax Audit by CA Srinivasan Anand G.

For More Details about Taxability of HUF, Visit Taxmann.com/Practice

FAQ 12. Is It Mandatory to Disclose the Nature of All the Businesses Carried Out by the Assessee and Any Changes Therein?

According to Paras 22.1 and 22.2 of the Guidance Note, the tax auditor must adhere to the following guidelines when reporting the nature of business or profession in clause 10(a):

- The principal line of each business or profession conducted by the assessee during the year must be identified and reported in this clause (e.g., Construction, Computer and Related Services, Financial Intermediation Services, Hospitality Services, Manufacturing, Mining and Quarrying, Real Estate and Renting Services, Transport and Logistic Services, etc.).
- The auditor should then "select" and report the relevant sub-sector of the chosen sector.
- Information should be provided regarding each business or profession operated by the assessee during the previous year.

The interpretation of clause 10(b) by ICAI includes:

- Only significant changes in the business or profession should be reported in clause 10(b).
- 'Change' refers to a modification occurring during the previous year under audit. Changes after the balance sheet date should not be considered.
- Any new additions or permanent discontinuances of a specific line of business indicate a change in the nature of the business.
- However, a temporary suspension of business is not considered a change in the nature of the business.
- No reporting is necessary if the line of activity remains similar during business reorganisation/reconstruction.
- Reporting is required under clause 10(b) if a new line of activity emerges after a business reorganisation/reconstruction.
- Separating any restructuring activity denotes a change in the nature of the business or profession.

FAQ 13. How Should Changes in the Nature of Business or Profession Be Reported in Clause 10(b)?

If there is an addition or discontinuation of a business or profession, this constitutes a change in the nature of the business or profession. In such cases, the tax auditor should select the option "yes" in Clause 10(b) and provide details of the business line added or discontinued during the year.

Examples of changes that do not require reporting in clause 10(b) include:

(a) Temporary suspension of a business.

(b) Amalgamation or demerger when the line of activity remains the same and no new line emerges as a result.

(c) A chartered accountant previously offering services related to direct taxes begins to provide services related to indirect taxes as well

For Precautions to Be Taken in Reporting in Clause 10, A Detailed Illustration of How This Clause Is to Be Filled In and Model Remarks to Be Made in Clause (3) of Form 3CA/Clause (5) of Form 3CB, Refer to the Book Taxmann's Tax Audit by CA Srinivasan Anand G.

FAQ 14. Which Address Should Be Reported in Clause 11 if the Books of Accounts Are Maintained in a Computerised System?

Clause 11(b) stipulates that the address at which the books of account are maintained must be reported. As per the "Guidance Note on Tax Audit" issued by the Institute of Chartered Accountants of India (ICAI), when the books of account are maintained and generated through a computer system, the auditor must obtain the details of the address where the server is located, or the principal place of business, head office, or registered office, by whatever name it is called, and mention this address accordingly in clause 11(b). If the books of account are stored on the cloud or online, the unique IP address of the location where these are stored may be reported. The auditor should also specify which books of account have been maintained in the computer system and which records are maintained in hard copy form. The guidance note does not provide any direction on reporting in Clause 11 if the IP Address is not unique but a dynamic IP address. In such cases, the name of the cloud service provider should be mentioned.

FAQ 15. Mr. A Has Opted for the Presumptive Scheme Under Section 44AD for One of His Businesses. Is the Auditor Required to Mention Details of Such Business in the Audit Report?

Yes, the auditor is required to report the nature of the business under the presumptive scheme correctly in Clause 10(a) of Form No. 3CD. In the event that the profit and loss account of the assessee includes any profit declared under the presumptive taxation schemes (Section 44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB), it is mandatory to mention the amount of such profit and the specific section under which it has been declared in Clause No. 12 of Form 3CD. The tax auditor is not required to assess whether the amount of presumptive income has been correctly computed under the relevant section of presumptive taxation. The reporting requirement is satisfied by simply reporting the amount as it appears in the profit and loss account.

For More Details about Presumptive Tax Schemes, Visit Taxmann.com/Practice

FAQ 16. How To Ensure That the Profit Has Been Computed Correctly If the Profit & Loss Account Also Includes the Profit Computed On A Presumptive Basis?

If the profit and loss account of the assessee includes presumptive income, it is necessary to apportion the common business expenditure to arrive at the correct amount of profit credited to the profit and loss account and assessable on a presumptive basis. The tax auditor should derive a fair and reasonable estimate of such expenditure based on the evidence possessed by the assessee or by requesting the assessee to prepare such an estimate for verification. Additionally, the basis of apportionment of common expenditure must be explicitly stated. If the tax auditor is not satisfied with the reasonableness of such apportionment, he should indicate this fact in Clause (3) of Form 3CA or Clause (5) of Form 3CB by way of a note.

FAQ 17. What Precautions Should the Tax Auditor Take While Reporting in Clause 14 of Form No. 3CD?

The Institute of Chartered Accountants of India (ICAI) has identified several common errors concerning reporting in Clause 14 of Form No. 3CD:

(a) Clause 14(a) mandates the reporting of the valuation method of closing stock employed in the previous year. The report should reflect the valuation method adopted in the accounts in accordance with Revised AS-2 (or Ind AS-2, wherever applicable) and not as per the Income Computation and Disclosure Standards (ICDS).

(b) It is required that the method of valuation be reported for each category of inventories separately, including raw materials, work-in-progress, maintenance supplies, consumables, and loose tools, as specified by the Guidance Note.

(c) In cases where valuation was conducted as per AS 2 or Ind AS 2, an exclusive method was often followed. In all such instances, it is necessary to report the details of deviations between the exclusive method of valuation and the inclusive method of valuation as prescribed under section 145A of the Income-tax Act, along with the effects of including duties and taxes, as suggested by the Guidance Note in Clause 14(b)

For More Details about AS-2, Visit Taxmann.com/Practice

FAQ 18. Is Reporting Required in Clause 15 for Stock-in-Trade Converted into Capital Assets?

The conversion by the owner of a capital asset into or treatment of such asset as stock-in-trade of a business carried on by him is treated as a 'transfer' within the meaning of Section 2(47). Under Section 45(2), such conversion of capital asset into stock-in-trade will be deemed a transfer of the previous year in which the asset is so converted or treated as stock-in-trade.

However, the capital gains arising from such a transfer will be taxable in the previous year when such converted asset is sold or otherwise transferred. The excess of the sale price over the fair market value as of the date of conversion would be treated as business income and taxed under the head' profits and gains of business or profession'.

The particulars in Clause 15 should be furnished with respect to the previous year in which the asset has been converted into stock-in-trade. The Clause does not require details regarding a vice-versa situation where the stock-in-trade is converted into capital assets. However, if the conversion of stock-in-trade into a capital asset is not recognised in the profit and loss statement, it shall be disclosed in Clause 16(a) of Form 3CD.

For More Details about Capital Gains on the Conversion of Capital Assets into Stock-in-Trade, Visit Taxmann.com/Practice

FAQ 19. What Should Be Reported in Item (d) of Clause 16, "Any Other Item of Income" Not Credited to the Profit and Loss Account?

Clause 16 of the tax audit report requires the reporting of amounts not credited to the profit and loss account. The disclosure in item (d) of clause 16, titled "any other item of income," raises the question of whether certain incomes taxable under other heads should be reported in this column. One perspective is that income from house property, or other sources (like bank interest, dividends, etc.) should not be reported in clause 16(d), thereby avoiding any addition or adjustment by the CPC while processing the return under Section 143(1). However, another view supports reporting such incomes, arguing that Section 44AB mandates every person carrying on business or profession to have their accounts audited, implying that the tax audit encompasses the entire tax profile of the taxpayer, not just business or professional income. Thus, income chargeable under the heads of house property, capital gains, and other sources should also be disclosed in clause 16(d). Following this interpretation may lead to a tax demand, as the amount disclosed in 16(d) could be added to business/professional income without considering that these incomes are taxable under other heads. Such disclosure provides comprehensive information about the taxpayer to the tax department. Yet, when this information appears in the 'Other Information Schedule' of ITR, the CPC may compare it with incomes offered under other heads. If they are equivalent to or exceed the amount disclosed in clause 16 of Form 3CD, no adjustment may be made under Section 143(1). However, clarity from the department on this matter is needed.

FAQ 20. An Assessee Has Applied for a Refund of Special Additional Duty (SAD), But the Same Was Not Credited to the Profit & Loss Account. Is Disclosure Required in Form 3CD?

If a claim for a refund of Special Additional Duty (SAD) has been admitted as due and accepted during the relevant financial year, it must be reported under Clause 16(b) of Form 3CD. However, if the claim was lodged during the previous year but only admitted as due after the relevant financial year, it need not be reported. Where such amounts have not been credited in the profit and loss account but offset against the relevant expenditure/income heads, this fact should be highlighted.

FAQ 21. Is Reporting Required Under Clause 17 in Case of Transfer of Property Outside India?

Section 50C applies when the consideration received or accruing is less than the stamp duty value of property fixed by the State Government. However, no state government in India has established a stamp duty value or circle rate for properties situated outside India. Consequently, Sections

43CA and 50C, and therefore Clause 17, do not apply to the transfer of land or buildings located abroad. It is advisable for the tax auditor to include a note in Clause (5) of Form 3CB stating:

> *"As the provisions of Sections 43CA and 50C apply only to transfers of land or building or both where the stamp duty value is fixed by the State Government, these provisions do not apply to transfers of land or building located outside India. Therefore, such transfers are not reported under Clause 17."*

For an elaborate discussion on various issues Related to Clause 17, Section 50C, and Section 43CA, refer to the Book Taxmann's Tax Audit by CA Srinivasan Anand G.

FAQ 22. Is It Necessary to Report Under Clause 17 Cases Where an Agreement to Sell Has Been Entered Into During the Year and Advance Received, But the Sale Deed and Possession Still Need to Be Executed?

If an advance has been received along with an agreement to sell during the year, but neither possession has been handed over nor the sale deed executed, the transaction is not reportable under Clause 17. Instead, the advance should be reported in Clause 31(b), along with the mode of receipt of payment. Reporting under Clause 17 is triggered only when the transfer is completed during the year, either through the execution of a sale deed or under the provisions of Section 53A of the Transfer of Property Act, where possession is given in part performance of the contract.

FAQ 23. What Precautions Should Be Taken by the Tax Auditor While Reporting Details in Clause 18 of Form No. 3CD Regarding Admissible Depreciation?

While reviewing various tax audit reports, the Institute of Chartered Accountants of India (ICAI) has observed several common errors with respect to reporting under Clause 18 of Form No. 3CD. These are as follows:

(a) The details of additions and deletions reported in Clause 18(d) of Form No. 3CD did not always match the figures disclosed in the audited financial statements. It is essential that the figures reported in Form 3CD accurately reflect the audited financial statements.

(b) A separate column is provided in the e-filing utility for reporting the 'amount of adjustment on account of Exchange Fluctuation (due to changes in the rate of exchange, if any)' under the 'Additions' column. However, in some cases, the amount was not shown in the e-filing utility but was instead reported in the annexure attached to the tax audit report. This is not correct, as the amount must be reported directly in the e-filing utility rather than in the annexure.

(c) In some reports, the 'date of purchase' and 'date of put to use' for additions to the block of assets were reported as the same for each item under each block of assets. This is not practical in all cases, as assets are often purchased and put to use on different dates. Care must be taken to report the correct dates for each item.

(d) Regarding 'deductions' from the block of assets, in some instances, the 'date of sale' was reported as the same for each item under each block of assets sold. Again, this is not practically possible in all cases, as assets may be sold on different dates. The actual date of sale for each item must be reported accurately.

(e) In some cases, instead of reporting the actual date of addition of each asset within the block, a single consolidated amount was disclosed at the end of each half of the financial year as the date of addition. This is incorrect, as each asset's actual date of addition should be reported separately.

Tax auditors should be cautious and ensure that these common errors are avoided while preparing and reporting the details under Clause 18 of Form No. 3CD. It is important to maintain accuracy and ensure that all data is properly disclosed in the tax audit report.

For More Details about Depreciation, Visit Taxmann.com/Practice

FAQ 24. What If the Due Date of the Deposit of Employees' PF Contribution Fell on a Sunday and the Assessee Paid It on the Next Working Day?

In the case of *Pr. CIT v. Pepsico India Holding (P.) Ltd.* [2023] 156 taxmann.com 25, the Delhi High Court held that the assessee could claim a deduction under Section 36(1)(VA) concerning the employee's contribution to the Provident Fund deposited on 16-8-2018, when the due date fell on a National Holiday, i.e., 15-8-2018. The Court's decision was based on Section 10(1) of the General Clauses Act, 1897.

Section 10(1) of the General Clauses Act provides:

> *"Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open."*

Therefore, if the due date for depositing the contribution to ESIC or EPF falls on a Sunday or a gazetted holiday, the delay of one day should be condoned under Section 10 of the General Clauses Act. Furthermore, it has been observed that if the assessee deposits the contribution the very next day after the holiday, it demonstrates their bona fide intention to comply with the timelines for the deposit of ESIC and EPF contributions [*G.D. Foods and Manufacturing (India) (P.) Ltd. v. ADIT* [2023] 152 taxmann.com 323 (Delhi - Trib.)].

In light of the above judicial rulings, the tax auditor may report the next working day as the due date and include a note in Clause (3) of Form 3CA or Clause (5) of Form 3CB, with the following explanation under the "Others" section:

"As the due date for the deposit of employee's contributions to the Provident Fund fell on a Sunday <date>, the due date in Clause 20(b) for the month of <month> has been taken as the next working day <date> in view of Section 10(1) of the General Clauses Act, 1897, as per the law laid down by the Delhi High Court in Pr. CIT v. Pepsico India Holding (P.) Ltd. [2023] 156 taxmann.com 25 and Aero Club v. ACIT [2023] 156 taxmann.com 74 (Delhi)."

It is important to note that Section 10(1) of the General Clauses Act does not apply to payments made to MSE suppliers. These are contractual payments, though made within a statutorily mandated time limit, and do not involve any act or proceeding to be done or taken in any Court or office

FAQ 25. Can the Buyer Avoid Disallowance Under Section 43B(h) by Paying the MSE Supplier's Dues with Interest Under Section 16 for Late Payment?

The answer is no. Assuming the buyer follows the accrual basis of accounting, the principal amount will be disallowed under Section 43B(h) for Assessment Year (AY) 2024-25. However, it will be allowed on an actual payment basis in AY 2025-26. The interest amount will need to be provided for in the accounts for the Financial Year (FY) 2023-24 and will be disallowed for AY 2024-25 under Section 23 of the MSMED Act. The disallowance under Section 23 of the MSMED Act is irreversible and will not be allowed, even for FY 2024-25 (AY 2025-26), when the interest payment is actually made.

For More Details about Section 43B(h), Visit Taxmann.com/Practice

FAQ 26. How Does the Auditor Need to Report the Interest Inadmissible Under Section 23 of the MSMED Act, 2006?

Clause 22 of Form 3CD requires the disclosure of the amount of interest inadmissible under Section 23 of the Micro, Small, and Medium Enterprises Development (MSMED) Act, 2006. The tax auditor is required to report the amount of interest inadmissible under Section 23 of the MSMED Act, irrespective of whether the amount of such interest has been debited to the profit and loss account or not.

The auditor should ensure that the client has disclosed the necessary information as required under Section 22 of the MSMED Act, 2006, in the financial statements. If there is no such disclosure in the financial statements, the tax auditor should appropriately qualify his report in Form No. 3CB and also report the fact of non-disclosure in Clause 22 of Form No. 3CD.

FAQ 27. Should an Auditor Quantify Whether the Payment to a Related Person Is Unreasonable or Excessive Under Clause 23?

No, the auditor is not required to quantify whether the payment is unreasonable or excessive. Only the Assessing Officer can make the disallowance if, in his opinion, the expenditure is unreasonable.

FAQ 28. In Case of Purchase from a Related Party, Which of the Following Amounts Is Required to Be Reported in Clause 23?

(a) **Purchase Debited to P&L (Gross Purchase, i.e., Before Deducting the Purchase Return)**

(b) **Purchase Debited to P&L (Net Purchase, i.e., After Deducting the Purchase Return)**

(c) **Actual Amount Paid to Creditors During the Current Year**

Section 40(A)(2) provides that any expenditure for which payment has been or is to be made to certain specified persons listed in the section may be disallowed if, in the opinion of the Assessing Officer, such expenditure is excessive or unreasonable. The section grants the Assessing Officer the power to determine the quantum of disallowance.

It is advisable for the tax auditor to clarify that what has been reported are the actual payments made to specified persons during the previous year. These may not necessarily be the amounts claimed in or debited to the profit and loss account. The tax auditor is only required to provide particulars of payments made to persons specified under Section 40A(2)(b) under this clause. The auditor is not required to express an opinion on the unreasonableness or excessiveness of the payments, as that is the prerogative of the Assessing Officer.

FAQ 29. Does Reporting Under Clause 23 Apply to Capital Expenditure Incurred by the Assessee?

Yes, as Clause 23 requires the auditor to report all payments made to specified persons, payments made for capital purchases should also be considered for reporting under this clause.

FAQ 30. Is the Tax Auditor Required to Report a Liability That Is Barred by Limitation but Not Recorded in the Profit and Loss Account?

Clause 25 of Form 3CD requires the tax auditor to report any amount of profit chargeable to tax under Section 41 and provide the related computation.

New Paragraph 45(1)(iv)(b) of the 2023 Guidance Note highlights the Supreme Court's ruling in *CIT v. Sugauli Sugar Works (P.) Ltd.* [1999] 102 Taxman 713 (SC), which clarified that the expiration of the limitation period does not extinguish a debt. The only consequence is that the creditor is barred from pursuing legal remedies for enforcing the debt. Therefore, the expiration of the limitation period does not equate to the cessation of liability under Section 41(1).

Further, Paragraph 45.9 of the 2023 Guidance Note instructs that if any amount related to Section 41 is not accounted for in the Profit and Loss account or the Income and Expenditure account, the tax auditor should mention this fact in the observation paragraph [Para 3 of Form No. 3CA/Para 5 of Form No. 3CB] of the audit report

FAQ 31. How Should the Tax Auditor Report Payments Under Section 43B That Are Unpaid as of the Date of the Tax Audit Report but Paid Before the Due Date for Filing the Return of Income?

Clause 26 of Form 3CD requires details of liabilities incurred under clauses (a), (b), (c), (d), (e), or (f) of Section 43B during the previous year and whether they were paid on or before the due date for furnishing the return of income.

Since the tax audit report must be filed one month before the due date for the return of income, it is often impractical for the auditor to report payments made after the submission of the tax audit report but before the return filing deadline.

To resolve this issue, the CBDT introduced sub-rule (3) in Rule 6G. This provision allows the tax audit report to be revised by obtaining a revised audit report from an accountant. The revised report, duly signed and verified, must be furnished before the end of the relevant assessment year if any payments made after the submission of the original report result in a recalculation of disallowances under Section 40 or Section 43B.

FAQ 32. What Constitutes "Actual Payment" for the Purposes of Section 43B and Clause 26?

The 2023 Guidance Note (GN) introduced new Paragraphs 46.8 to 46.11 and 46.13 to clarify what qualifies as "actual payment" under Section 43B and Clause 26:

(a) **Deferment of GST under incentive schemes may qualify as actual payment**

Paragraphs 46.8 to 46.10 clarify that under certain incentive schemes, deferred GST may be considered "paid" if so provided by legislation or schemes notified under the relevant laws. The 2023 GN advises that tax auditors when faced with such situations, should assess the treatment of GST dues based on principles from the following Circulars and judicial rulings from the Sales Tax Regime:

- **CBDT Circular No. 496 (25-09-87)** – If sales tax is deferred under applicable legislation and is treated as paid, the statutory liability will be considered discharged under Section 43B.
- **CIT v. Gujarat Polycrete Pvt Ltd (2000) 246 ITR 463 (SC)** – The Supreme Court ruled that a State Government can amend its Sales Tax Act to treat deferred sales tax under an incentive scheme as actually paid for the purposes of Section 43B.
- **CBDT Circular No. 674 (29-12-93) –** Some states allow deferred sales tax to be converted into a loan deemed to have been paid and collected. This loan conversion can be treated as payment and deducted in the year of conversion.
- **CIT v. Goodluck Silicate Industries (P) Ltd [2004] 134 Taxman 715 (Guj HC) –** The Gujarat High Court ruled that converting sales tax into a loan repayable in instalments amounts to actual payment of sales tax.

(b) **Furnishing a bank guarantee does not constitute "actual payment"**

Paragraph 46.11 clarifies that providing a bank guarantee for a sum payable by an assessee does not equate to actual payment under Section 43B, as upheld by the Supreme Court in CIT v. McDowell & Co Ltd (2009) 180 Taxman 514 (SC).

(c) **Advance deposit of duty qualifies as actual payment for Section 43B deductions**

In Modipon Ltd (2017) 87 taxmann.com 275 (SC), the Supreme Court held that an advance deposit of duty qualifies as actual payment under Section 43B, making it eligible for deduction. Similarly, the Delhi High Court in CIT v. Maruti Suzuki India Ltd (2013) 212 Taxman 603 (Del HC) ruled that advance deposits in the Excise Personal Ledger Account cannot be disallowed under Section 43B.

Additional clarifications regarding statutory dues under Section 43B are provided in new Paras 46.11, 46.12, 46.14, and 46.15:

- **CIT v. McDowell & Co Ltd (2009) 180 Taxman 514 (SC) –** The Supreme Court held that bottling fees, determined under the Excise Act and Rules, are a consideration for the right to bottle liquor and do not fall within the scope of Section 43B.
- **Mineral Area Development Authority & Others v. Steel Authority of India & Others (2011) 4 SCC 450 (SC) –** The Supreme Court ruled that royalty qualifies as a tax. Therefore, royalty payments outstanding as of the balance sheet date are relevant under Section 43B.
- **Berger Paints India Ltd v. CIT (2004) 135 Taxman 586 (SC) –** The Supreme Court held that the entire excise duty/customs duty paid in an accounting year is deductible, regardless of the amount included in the valuation of closing stock.
- **CIT v. Mohanlal Mishrilal & Sons (1996) 87 Taxman 194 (MP HC) & CIT v. Mohansingh & Sons (1995) 216 ITR 432 (MP HC) –** The Madhya Pradesh High Court ruled that mandi tax is not considered a tax under Section 43B as it is paid in exchange for services rendered by the mandi and does not serve the same purpose as other taxes.

FAQ 33. Is the Disallowance Under Section 43B for Interest Expense Converted into a Loan Permanent?

As per Circular No. 7/2006, dated 17th July 2006, the interest that has been converted into a loan or any other form of borrowing remains eligible for deduction under Section 43B when it is actually paid to the bank or financial institution. The conversion of interest into a loan does not change its nature as revenue expenditure, and the deduction can be claimed in the year the payment is made. The circular emphasises that the renaming of the converted interest does not alter its status, as the payment represents interest and not the repayment of principal. However, the Assessing Officer may require a certificate from the lender bank or financial institution as proof of the actual payment of interest to allow the deduction under Section 43B.

FAQ 34. Is the Payment Made to Indian Railways for Advertising at Railway Stations Disallowed Under Section 43B?

If an advertising agency pays Indian Railways for the use of space to display hoardings or panels on railway premises, the payment is considered a rental expense for the use of railway assets. Such payments are allowable under Section 43B on a payment basis. However, if the payment is made by an advertiser to Indian Railways for advertising services, such as displaying advertisements on the railway's hoardings, it is regarded as a service payment and is allowable based on the method of accounting regularly employed by the assessee. Therefore, sums paid for the use of railway assets are deductible upon actual payment, while payments for advertising services follow the normal accounting treatment.

FAQ 35. If the Statutory Auditor Does Not Consider an Item a Prior Period Expense, but the Tax Auditor Does, Should It Be Disclosed Under Clause 27(b) of Form 3CD?

There is a distinction between expenses from previous years that are debited to the profit and loss account and expenses that relate to a previous year but crystallise in the current year. Expenses that relate to earlier periods but have been determined during the current year would not be treated as prior period expenses.

In cases where the expense relates to a previous year but is recognised in the current year because the liability materialised or crystallised during this period, it should not be reported as a prior period expense under Clause 27(b). In the event of a disagreement between the statutory auditor and the tax auditor regarding whether an expense should be classified as a prior period item, the tax auditor's opinion takes precedence and must be reported in Form 3CD.

For More Details about the Accounting Treatment of Prior Period Items, Visit Taxmann.com/Practice

FAQ 36. Mr. A, a Sole Proprietor, Agreed to Transfer His Personal Property to Mr. X and Received Some Non-Refundable Advance Against Such a Deal. The Sale Could Not Materialise as Mr. X Could Not Pay the Whole Amount, and the Advance Money Was Forfeited by Mr. A. What Are the Disclosure Requirements?

Section 56(2)(ix) of the Income-tax Act provides for taxability of any sum received as an advance in the course of negotiations for the transfer of a capital asset, and such sum was forfeited due to non-transfer of such capital asset. A new Clause 29A to Form 3CD has been inserted to report any advance received from the buyer but forfeited due to the non-materialisation of a deal to the sale of the capital asset.

The auditor is not required to report any such forfeited amount with respect to a personal capital asset or stock-in-trade. 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 the profit & loss account.

The requirement of reporting arises only on forfeiture of advance. If an advance has been received and has been outstanding for a considerable time, there is no requirement to report such amount unless and until it is forfeited by an act of the assessee.

FAQ 37. Should Any Consideration Exceeding the Fair Market Value of Shares Issued by a Start-Up Be Reported in Clause 29?

Section 56(2)(viib) has been abolished by the Finance (No. 2) Act, 2024, effective from Assessment Year 2025-26. For shares issued on or before 31st March 2024, reporting under Clause 29 of Form 3CD for the Assessment Year 2024-25 should follow the guidelines outlined below.

Reporting under Clause 29 is triggered when a closely held company issues unquoted shares at a premium. In such cases, any premium received in excess of the fair market value of the shares is taxable as income from other sources in the hands of the company.

However, start-ups recognised by the Department for Promotion of Industry and Internal Trade (DPIIT) are exempt from the provisions of Section 56(2)(viib), provided they satisfy the conditions specified under DPIIT notifications. Therefore, Clause 29 reporting applies only to closely held companies, excluding DPIIT-recognized start-ups that qualify for the exemption. If the company in question is a DPIIT-recognized start-up and is eligible for the exemption under Section 56(2)

(viib), the tax auditor must verify the email received from the CBDT confirming the exemption and include remarks about the applicability of the exemption and the non-applicability of Clause 29.

Both Section 56(2)(viib) and the DPIIT notification specify various conditions for start-ups to claim this exemption. Failure to meet these conditions results in the excess consideration received over the fair market value of shares being treated as taxable income for the year in which the non-compliance occurs. If the exemption is withdrawn, the company is deemed to have underreported its income due to misreporting. As a result, a penalty of 200% of the tax payable on the underreported income will be imposed, as per Section 270A

For More Details about Fair Market Value, Visit Taxmann.com/Practice

FAQ 38. How Should the Tax Auditor Report an Impermissible Avoidance Arrangement (IAA) Entered Into by the Assessee?

Clause 30C of Form 3CD requires the tax auditor to report any Impermissible Avoidance Arrangements (IAA) that the assessee has engaged in during the previous year. The auditor must also quantify the tax benefit arising from such arrangements for all parties involved during the year.

To do this, the tax auditor should first verify whether any Principal Commissioner, Commissioner, or Approving Panel has declared any arrangement as an IAA in any prior year. If an arrangement has been previously classified as an IAA, the auditor should then determine if any transactions related to that arrangement occurred during the year under review. If such transactions are identified, the auditor must report them in the audit report and quantify the tax benefits for all parties involved during the previous year. If the auditor is unable to determine the aggregate tax benefits, this fact should be noted in Form 3CA or Form 3CB, as applicable.

Additionally, if any references have been made in prior years to declare an arrangement as an IAA, the tax auditor must also report this in the relevant form (Form 3CA or Form 3CB).

FAQ 39. Is Treaty Shopping Automatically Considered an Impermissible Avoidance Arrangement (IAA) and Reportable Under Clause 30C?

Treaty shopping is not automatically considered an IAA. It must be reported under Clause 30C only if it meets the definition of an Impermissible Avoidance Arrangement (IAA) and is deemed abusive. The Supreme Court of Canada, in Her Majesty The Queen v. Alta Energy Luxembourg S.A.R.L [2022] 144 taxmann.com 23 (SCC), ruled that GAAR (General Anti-Avoidance Rules) can only be invoked against treaty shopping if it distorts the intended treaty bargain between the two contracting states. Therefore, treaty shopping is not inherently abusive tax avoidance under

Indian GAAR unless it undermines the purpose of the treaty. Only in such cases where treaty shopping perverts the treaty bargain would it attract GAAR and be reportable as an IAA.

FAQ 40. ABC Ltd. Has Rendered Services to Its Associated Enterprise, Resulting in a Net Profit of 15% on Cost. The Transfer Pricing Officer (TPO) Calculated the Arm's Length Price (ALP) at 20% of the Cost and Made an Adjustment Accordingly. Is This Required to Be Reported in Form 3CD?

Yes, as per Clause 30A of Form 3CD, if a primary adjustment to the transfer price has been made under Section 92CE(1), it must be reported. The following details should be provided in Clause 30A:

(a) The specific clause of Section 92CE(1) under which the primary adjustment has been made.

(b) The amount of the primary adjustment.

(c) Whether the excess money is required to be repatriated to India as per Section 92CE(2).

(d) If repatriation is required, whether the excess money has been repatriated within the prescribed time.

(e) If the excess money has not been repatriated within the prescribed time, the amount of imputed interest income on such unrepatriated excess money.

This information ensures proper reporting of transfer pricing adjustments and compliance with Section 92CE requirements.

FAQ 41. How Is the Interest on Excess Money to Be Repatriated After a Primary Adjustment Calculated?

As per Rule 10CB, the interest on excess money or part thereof that is not repatriated within the prescribed time limit must be calculated based on specific interest rates, depending on the currency of the transaction:

- For international transactions denominated in Indian rupees, the interest rate is the one-year marginal cost of fund lending rate (MCLR) of the State Bank of India as of 1st April of the relevant previous year, plus 325 basis points (i.e., +3.25%).

- For international transactions denominated in foreign currency, the interest rate is the six-month London Interbank Offered Rate (LIBOR) as of 30th September of the relevant previous year, plus 300 basis points (i.e., +3%).

The imputed interest income on the excess money not repatriated to India may span multiple years. In line with Rule 10CB, the interest liability continues until the repatriation date. Therefore, for the year under audit, the liability related to imputed interest may pertain not only to the primary adjustment made during the current year but also to primary adjustments made in previous years.

FAQ 42. My Client Has Borrowed Money From Its Foreign Holding Company, and the Interest Paid on Such a Loan Was Rs. 1.05 Crore During the Previous Year. Is This Transaction Reportable in Form 3CD?

Yes, this transaction is reportable in Form 3CD under Clause 30B, as it falls under the provisions of Section 94B of the Income-tax Act. According to Section 94B, if an Indian company or a permanent establishment (PE) of a foreign company pays interest exceeding Rs. 1 crore to an associated enterprise (AE), the deduction for interest will be limited to the lower of the following:

- The total interest paid or payable in excess of 30% of the borrower's earnings before interest, taxes, depreciation, and amortisation (EBITDA) in the previous year; or
- The interest paid or payable to the AE during the previous year.

Any excess interest disallowed under this provision can be carried forward for up to 8 assessment years following the disallowance. This excess interest may be claimed as a deduction in subsequent years, but only to the extent of the maximum allowable interest expenditure under this provision.

Clause 30B of Form 3CD requires the following disclosures:

- The amount of expenditure by way of interest or similar nature incurred during the previous year.
- The EBITDA of the borrower during the previous year.
- The amount of interest expenditure that exceeds 30% of the EBITDA.
- Details of disallowed interest expenditure brought forward from previous years under Section 94B(4).
- Details of interest expenditure carried forward to subsequent years under Section 94B(4).

This clause does not apply to companies engaged in the business of banking or insurance.

FAQ 43. Should the EBITDA Figure Be as per the Books of Account or Based on Income Tax Provisions?

For the purpose of computing EBITDA, the figures from the company's final audited stand-alone financial statements should be used. These figures should not be adjusted for income tax purposes, such as allowances or disallowances made during the tax computation process.

FAQ 44. How Will the Details of Loans Accepted and Repayment Thereof Be Reported in Clause 31 of Form 3CD?

Nature of Transaction During the Year	Mode	To be Reported in
Loan or Deposit Accepted	A/c Payee cheque	Clause 31(a)
Loan or Deposit Accepted	Others	Clause 31(a)
Receipt of advance for transfer of Immovable Property	A/c Payee cheque	Clause 31(b)
Receipt of advance for transfer of Immovable Property	Others	Clause 31(b)
Other Receipt of Rs. 2 lakhs or more	Cheque or draft (not being A/c Payee)	Clause 31(ba)
Other Receipt of Rs. 2 lakhs or more	Other Mode (not being Cheque or Draft)	Clause 31(bb)
Payment in excess of Rs. 2 lakhs	Cheque or draft (not being A/c Payee)	Clause 31(bd)
Payment in excess of Rs. 2 lakhs	Other Mode (not being Cheque or Draft)	Clause 31(bc)
Repayment of Loan or Deposit or advance for transfer of Immovable Property	A/c Payee cheque	Clause 31(c)
Repayment of Loan or Deposit or advance for transfer of Immovable Property	Others	Clause 31(c)

For More Details about the Mode of Receipt or Payment, Visit Taxmann.com/Practice

FAQ 45. Should Advances Received from a Person for the Sale of Goods Be Disclosed Under Clause 31?

Advances received for the sale of goods do not need to be disclosed under **Clause 31**. Typically, loans or deposits are settled by repayment to the lender, whereas advances for the sale of goods are settled by delivering the goods or services as per the agreement. Therefore, an advance received against a sales agreement cannot be classified as a loan or deposit.

Moreover, the ICAI's guidance note clarifies that advances received in connection with the sale of goods do not constitute loans or deposits, and accordingly, such details should not be reported under Clause 31.

FAQ 46. Should an Interest-Free Loan Be Disclosed in Clause 31?

Yes, an interest-free loan should be disclosed in Clause 31. There is no legal requirement that a loan must bear interest, as established in Chandrakant H. Shah v. ITO [2009] 28 SOT 315 (Mum. - Trib.). Therefore, even if the loan is interest-free, it must still be reported in Clause 31, as the law does not differentiate between loans with or without interest for reporting purposes.

FAQ 47. How Can the Tax Auditor Verify Whether Loans or Advances Have Been Accepted or Repaid Through an Account Payee Cheque?

In practice, it may not be feasible to verify every receipt or repayment in the bank statement to confirm whether loans, deposits, or specified advances were accepted or repaid through an account payee cheque or account payee bank draft. To address this, the tax auditor should obtain a certificate from the assessee stating that all receipts or repayments referred to in Clause 31 were made via account payee cheque or account payee bank draft.

If the tax auditor relies on this certificate for reporting, it should be disclosed as an observation in Clause 3 of Form No. 3CA or Clause 5 of Form No. 3CB, as applicable. The auditor should also include a note in their report indicating that the information has been reported based on the assessee's certification.

The ICAI Guidance Note on tax audit suggests the following comments in such case:

> *"It is not possible for me/us to verify whether loans or deposits or specified advance repaid have been taken or accepted otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, as the necessary evidence is not in the possession of the assessee".*

FAQ 48. Should Loans or Advances Facilitated Through Transfer Entries Be Disclosed in Clause 31?

According to the ICAI guidance note, loans or deposits recorded through transfer entries in the books of account are considered as acceptance of loans or deposits other than by account payee cheques or drafts. As a result, such transfer entries must be reported under Clause 31. However, transfer entries related to transactions with suppliers or customers for the purchase or sale of goods or services are not treated as loans or deposits and, therefore, do not need to be reported under this clause.

FAQ 49. Under Clause 34(c), Should the Amount of Interest Payable as of 31st March and Paid During the Current Year Be Reported, or Should All Interest, Even if Paid in the Previous Year, Be Reported?

Under this clause, the tax auditor is required to report details if the assessee is liable to pay interest under Section 201(1A) or Section 206C(7) of the Income-tax Act. The reporting in Clause 34(c) should align with the reporting under Clause 34(a), which details cases of non-deduction of tax.

The tax auditor must verify the interest liability from the assessee's books of account as of 31st March of the relevant previous year, as well as from PART G of Form 26AS generated by the Department. If the assessee disputes the levy or calculation of interest as shown in TRACES or Form 26AS, the tax auditor should re-calculate the interest under Section 201(1A) or Section 206C(7) up to the date of the audit report. The auditor should also mention these recalculations or disputes in the observations section of Form 3CA or Form 3CB, as applicable.

The focus is on reporting the interest payable as of the relevant financial year-end, not interest already paid in prior years.

FAQ 50. Should Quantitative Details of Each and Every Stock Be Mentioned in Clause 35?

Clause 35 requires quantitative details of 'principal items' of raw materials and finished goods. Therefore, information about petty items need not be given. Normally, items that constitute more than 10% of the aggregate value of purchases, consumption, or turnover may be classified as principal items.

FAQ 51. In the Case of a Manufacturing Concern, the Auditor Failed to Ascertain the Yield of Finished Goods Because of Different Measurement Units of Raw Material and the Finished Product. How to Report This in Form 3CD?

If the assessee is engaged in the manufacture of goods, the yield and shortage cannot be ascertained if the input of raw materials and the output of finished goods are recorded in different units of measurement.

If the end product is a standard item and can be converted back and related to the input of the raw material in the same unit of measurement, it should be done to ascertain the shortage, yield, etc. If it is not possible, the tax auditor should state the facts under this clause.

FAQ 52. My Client Has Furnished the Statement of Tax Deducted or Tax Collected Within the Prescribed Time Limit. Do I Have to Report the Details of Such Returns in Form 3CD?

Up to Assessment Year 2017-18, an assessee is required to report details regarding furnishing a statement of tax deducted or tax collected under clause 34(b) if such statements weren't submitted within the prescribed time limits. However, w.e.f. the assessment year 2018-19, Form 3CD requires such details even if the assessee has submitted the statements within prescribed time limits.

Further, if the assessee failed to report all transactions in statements of TDS/TCS, then unreported transactions have to be disclosed in clause 34(b) of Form 3CD.

Further, para 68.12 of GN 2023 provides that the tax auditor may take the status of the demand payable as per the TDS CPC (popularly known as TRACES) for the purpose of reporting in clause 34.

For More Details about the Due Dates Under TDS & TCS, Visit Taxmann.com/Practice

FAQ 53. Should Capital Expenditure Be Reduced From the Actual Cost of a Capital Asset If Tax Was Not Deducted From Such Expenditure?

According to Section 40(a)(ia), if tax is not deducted or is not paid to the government after deduction, 30% of the expense is disallowed. The applicability of this provision to either revenue or capital expenditures has been contentious between taxpayers and the revenue authorities. The latter typically insists on reducing the actual cost of a fixed asset if the tax on a capitalised expense, as specified under Section 43(1), is not deducted, however, in the judicial precedents of CIT v. Plasmac Machine Mfg. Co. Ltd. [1993] 201 ITR 650 (Bombay) and Sumilon Industries Ltd. v. ITO [2010] 3 taxmann.com 187 (Ahmedabad-ITAT), it was concluded that disallowances under this section should only be made for expenses claimed in the Profit and Loss Account. Since capital expenditures are not claimed as deductions in the P/L account, they should not face disallowance under Section 40(a)(ia) for such payments.

For More Details about the Disallowance for TDS Default, Visit Taxmann.com/Practice

FAQ 54. How to Furnish the Ratios in Clause 40 of Form 3CD?

Clause 40 requires disclosure of ratios for both the previous year and the year before that; they are as follows:

S. No.	Particulars	Previous Year	Preceding Previous Year
(a)	Total turnover of the assessee		
(b)	Gross profit/turnover		
(c)	Net profit/turnover		
(d)	Stock-in-trade/turnover		
(e)	Material consumed/finished goods produced		

These ratios should reflect the business overall, not on a product-by-product basis. Figures from the last audited financial statements should be used to calculate ratios of the relevant previous year. If the previous year was not audited, the respective column should remain blank. The tax auditor's role is not to evaluate the fairness of the ratios for tax assessment but to ensure compliance with Clause 40 by accurately calculating and reporting these ratios.

FAQ 55. Reporting of Brought Forward Loss or Depreciation Allowance Under Clause 32(a) of Form No. 3CD

Paragraphs 63.7 and 63.8 from the 2022 General Notes (GN), which pertained to Clause 32(a), were incorrectly printed under Clause 32(b). The 2023 GN corrects this by removing Paragraphs 63.7 and 63.8 from under Clause 32(b) and reintroducing them under Clause 32(a) as new Paragraphs 62.4 to 62.6. These new paragraphs stipulate the following requirements:

(a) If any undisclosed income is determined for an assessee during proceedings such as a search, requisition, or survey, no adjustment or set-off against this undisclosed income will be allowed.

(b) Set-offs will not be available for both brought-forward losses and unabsorbed depreciation.

(c) The Tax Auditor must confirm and verify, based on the assessee's assessment records, whether any search or survey has occurred or is ongoing and whether any undisclosed income has been determined for the assessee.

(d) The eligibility to offset brought forward losses and unabsorbed depreciation against undisclosed income, as computed by the assessee, must be verified. Based on this verification, necessary adjustments to the losses to be carried forward should be made.

(e) Appropriate disclosures should be made in the "Remarks" column of the annexure for Clause 32(a) of Form 3CD. If the Form 3CD utility lacks a specific column for such reporting, the tax auditor may, if deemed appropriate, include a note or qualification in Paragraph 3 of Form 3CA or Paragraph 5 of Form 3CB.

(f) Any ongoing assessment, rectification, revision, or appeal proceedings at the time of the tax audit should be disclosed in the remarks column as information. If consequential orders from any revision or appellate proceedings are pending, these should also be disclosed, along with their material impact. If an order from an appeal or revision has been issued, it must be considered for reporting.

For More Details about the Set-Off and Carry Forward of Losses, Visit Taxmann.com/Practice

FAQ 56. Whether a Change in Shareholding of a Start-Up Company Is to Be Reported in Clause 32(b) of Form 3CD?

Clause 32(b) is applicable only to closely held companies, defined as those where the public does not substantially participate. It requires information on changes in shareholding during the previous year that could affect the carry forward of losses under section 79 of the Act. According to Section 79, a closely held company cannot carry forward losses to offset against the income of the previous year unless at least 51% of the voting power was beneficially held by the same persons on two key dates:

(a) The last day of the year in which the loss was incurred;

(b) The last day of the year when the loss is to be set off.

For eligible start-ups, losses can be carried forward and offset against income of the previous year if one of the following conditions is met:

- **Condition 1: Continued 51% Shareholding –** At least 51% of the voting power must be beneficially held by the same persons who held it on the last day of the year when the loss was incurred.
- **Condition 2: Continued 100% Shareholders with the Same Voting Rights –** All shareholders from the last day of the year when the loss was incurred must still hold the same shares on the last day of the year when the loss is to be set off. Moreover, these losses should have been incurred within the first ten years of the company's incorporation.

The tax auditor must verify whether any change in shareholding, as specified by Section 79, has occurred. This involves comparing the composition of shareholding on the last day of the current previous year with that on the last day of each previous year in which a loss was incurred, referencing the Register of Members to determine the eligibility for loss carry-forward, evaluated year by year.

FAQ 57. Should the Net Profit Disclosed in Clause 40 Be Considered Pre-Tax or Post-Tax?

Net profit is the surplus of revenue over expenses for a specific accounting period, with a negative result termed as a net loss. Notably, the net profit required in Clause 40 refers to the amount before tax. Consistency must be maintained between the numerator and the denominator when calculating ratios. Any significant discrepancies should be highlighted in Para 3 of Form 3CA or Para 5 of Form 3CB.

FAQ 58. What Is the Relevant Date for Reporting Under Clause 41 in Case of a Refund?

Clause 41 requires details of demands raised or refunds issued during the previous year under any tax laws other than the Income-tax Act, 1961, and the Wealth-tax Act, 1957, along with relevant proceedings details. According to Paragraph 79.1 of the ICAI's Guidance Note on tax audit, the tax auditor should obtain copies of all demand/refund orders issued by government authorities during the previous year and received by the assessee up to the audit date under tax laws excluding the Income Tax Act and Wealth Tax Act.

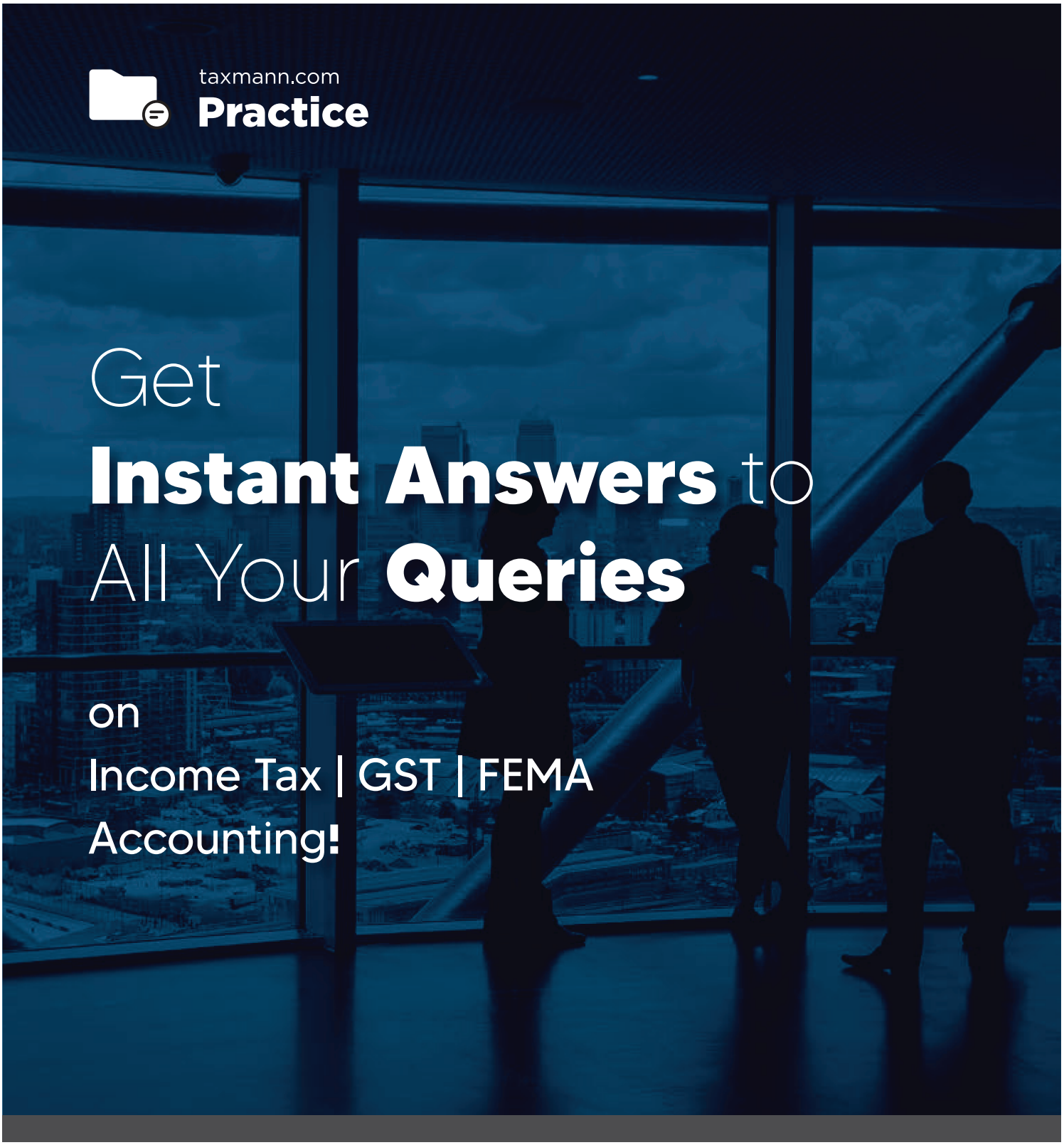
It is important to note that reports are required even if the demand/refund order issued during the previous year pertains to a different period. Additionally, any adjustments of refunds against demands should also be reported.

Furthermore, the 2023 Guidance Note omits the statement that was included in the 2022 Guidance Note's Paragraph 79.1, which excluded cesses or duties like Marketing Cess, Cess on Royalty, Octroi Duty, Entry Tax, etc., from being considered as other tax laws. It now appears that any demands or refunds related to these items must be reported under Clause 41.

For More Details about the Refunds, Visit Taxmann.com/Practice

FAQ 59. A Demand Was Raised with Respect to Customs Duties on My Client, and the Same Was Adjusted Against the Refund Due in His Name. So, No Amount Was Paid by Him to the Department. As an Auditor, Do I Need to Disclose the Same in Form 3CD?

Yes, an auditor must report any demands raised or refunds issued to the assessee during the previous year, regardless of whether they were adjusted against any outstanding demands or refunds. These details should be included under Clause 41 of Form 3CD.



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What is Taxmann's Practice?

Taxmann's Practice is a virtual legal assistant for practitioners and professionals to:

- Understand complex legal concepts;
- Give instant and best-in-class advice;
- Write extraordinary submissions for assessments and appeals;
- Answer all challenging queries of clients and management; and
- Learn the process of compliances required under various laws.

What does Taxmann's Practice do?

This platform delivers complete, updated, accurate, and authentic content in a simple language that is easy to understand and use. You can search any concept using keywords, Sections, etc. It provides you with in-depth coverage on every concept from all applicable laws. One of the unique features of tax practice is inter-linking between different laws. For example, you wish to know about the implications of selling immovable property. This platform provides guidance from the Income-tax Act, GST, Company law, Accounting Standard and FEMA relating to the sale of immovable property.

Why should I subscribe to Taxmann's Practice?

Practitioners and professionals working in the industry often struggle to get the updated, accurate and comprehensive guidance on any transaction or concept. They have no choice but to refer to free blogs and spurious information on social sites or discussion forums. Though many websites provide a summary of the provisions, but these are not updated regularly. Thus, it is distressing for any professional to guide the client or the management relying on such information, which might be outdated, incomplete, or inaccurate. Furthermore, Indian laws are both dynamic and extensive. An Act is not sufficient to understand a concept unless it is read in conjunction with relevant Rules, Circulars, and Notifications prescribed in relation to that. Sometimes it is also essential to know the jurisprudence to conclude a complex problem. The process of researching and understanding takes a considerable amount of time and effort.

Taxmann's Practice gives you access to everything you need to know about a concept or a transaction in simple language from a single window. It gives you updated, comprehensive, authentic, and accurate guidance on every aspect of various laws. A team of professionals has compiled and vetted each document uploaded on the platform. These documents are constantly amended on a real-time basis to ensure that the information you rely on is accurate and tenable before the authorities. It will save your considerable time and effort in legal research and understanding the concepts.

How is it different from Taxmann's Research?

Taxmann launched a research platform for tax professionals working in litigations, advisory, or assessment. This platform has a database of case laws, statutes, articles, commentaries, and much more. In the last 20+ years, Taxmann's Research has become the first choice for revenue officers and professionals to access authentic statutory material, case laws, and other research material. It is meant for those who are interested in research, litigation, assessment, advisory work, etc.

In contrast, Practice is for the professionals to understand the implications of law, to get the readymade material for day-to-day work and to do the compliances.

What do I get in Taxmann's Practice?

On every concept, Practice gives you access to:

- Read to understand the concept;
- FAQs on that concept;
- Tutorials explaining the Compliances Required;
- Formats of Standard Replies;
- Deeds, or Applications;
- Summary of Landmark Rulings;
- Circulars & Notifications; and
- Recent Updates

All these documents are amended frequently on a real-time basis so that the information you are relying upon remains valid and tenable before the authorities.