

## FAQs on Tax Audit under Section 44AB for AY 2020-21

EDITORIAL TEAM

Section [44AB](#) of the Income-tax Act requires an audit of the books of account and furnishing a report thereof by the certain assessee before the specified date. The tax audit can be conducted by a Chartered Accountant who is in practice. The purpose of a tax audit is to ensure that the taxpayer has maintained proper books of account and complied with the provisions of the Income-tax Act. The report of audit under Section 44AB shall be furnished electronically at the e-filing portal in Form No. 3CA/3CB-3CD.

In this article, we have answered some of the Frequently Asked Questions (FAQs) about the tax audit.

### 1. What is a tax audit?

A tax audit is a process to verify whether the books of accounts prepared by a taxpayer comply with the generally accepted accounting principles and the provisions of the Income-tax Act. It is intended to ensure that the books of account and other records are properly maintained and correctly compute the true income of the taxpayer. Tax audit does not give the assessee any immunity from scrutiny assessment or disallowance of expenses<sup>1</sup>. A tax audit can be conducted only by a Chartered Accountant in practice.

### 2. In which form the tax audit report has to be obtained?

The tax audit report has to be furnished in the forms as prescribed below:

<i>Category of Taxpayer</i>	<i>Form for Audit Report</i>	<i>Annexure to Audit Report</i>
If the books of account of the assessee are required to be audited under any other law	Form 3CA	Form 3CD
In any other case	Form 3CB	Form 3CD

Form No. 3CA/3CB is a format of audit report whereas Form 3CD is Statement of particulars required to be furnished under Section 44AB of the Income-tax Act.

If the assessee is required to get his books of accounts audited under any other law, it is sufficient for him to get his accounts audited under that law and furnish a report of such audit and a report in form 3CA and 3CD by a Chartered Accountant by the prescribed due date.

### 3. Who is required to get books of accounts audited?

Section 44AB provides for the audit of books of accounts of an assessee engaged in business or profession. The table below enumerates the requirement to get the books of accounts audited by different taxpayers:

<i>Nature of Business or Profession</i>	<i>Category of Taxpayer</i>	<i>When audit is mandatory?</i>
Any professions (specified or non-specified)	Any	If gross receipts from profession during the relevant previous year exceeds Rs. 50 lakhs
Business	Both payment and receipt in cash does not exceed 5% of the total receipts and payment respectively	If total sales, turnover or gross receipt from business during the previous year exceeds Rs. 5 crore
	Either payment or receipt in cash exceeds 5% of the total receipts and payment respectively	If total sales, turnover or gross receipt from business during the previous year exceeds Rs. 1 crore
Business eligible for presumptive tax scheme under Section 44AD	Resident Individual or HUF	If income of assessee exceeds the maximum exemption limit and he has opted for the scheme in any of the last 5 previous years but does not opt for the same in current year.
Business eligible for presumptive tax scheme under Section 44AD	Resident Partnership Firm	Taxpayer has opted for the scheme in any of the last 5 previous years but does not opt for the same in current year.

Profession eligible for presumptive tax scheme under Section 44ADA	Resident Assessee	Taxpayer claims that his profits from profession are lower than the profits computed under Section 44ADA and total income exceeds the maximum exemption limit
Business eligible for presumptive tax scheme under Section 44AE	Any Assessee engaged in plying, hiring or leasing of goods carriage	Taxpayer claims that his profits from business are lower than the profit computed under Section 44AE
Business eligible for presumptive tax scheme under Section 44BB	Non-resident assessee engaged in exploration of mineral oil	Taxpayer claims that his profits from business are lower than the profit computed under Section 44BB
Business eligible for presumptive tax scheme under Section 44BBB	Foreign Co. engaged in civil construction	Taxpayer claims that his profits from business are lower than the profit computed under Section 44BBB

The provisions for tax audit under Section 44AB is not applicable in case of an assessee who comes within the purview of Section 44B or Section 44BBA.

#### **4. How to calculate the gross receipt or sales turnover for a tax audit?**

Applicability of tax audit under section 44AB depends upon gross receipts, sales or turnover of an assessee, so the first and foremost thing is their calculations.

##### *(a) Sales turnover*

As per 'Guidance Note on Terms Used in Financial Statement' published by the ICAI, the meaning of term 'sale turnover' shall be aggregate of amount for which sales are affected by an enterprise. The terms gross turnover and net turnover are sometimes used to differentiate the turnover before and after deduction of returns and discounts.

An invoice may involve various extra and ancillary charges. Some of these charges may form part of the sale turnover whereas some may be excluded while determining the value of sales turnover. The treatment thereof is explained in the below table.

<i>Particular</i>	<i>Treatment</i>
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Trade discount or turnover discount	To be excluded from sales turnover if discounts are allowed in the sales invoice
Cash discount	Not to be excluded from sales turnover
Rebates	To be excluded from sales turnover
Commission on sales	Not to be excluded from sales turnover
Sales return	To be excluded from sales turnover
Sale proceeds from the transfer of fixed assets	To be excluded from sales turnover
Sale proceeds from the transfer of securities held as stock-in-trade	Not to be excluded from sales turnover
Scrap	To be excluded from sales turnover unless assessee is engaged in the business of dealing in scrap.

***(b) Gross receipt***

The term 'Gross Receipts' is not defined in the Income-tax Act. The 'Guidance Note on Tax Audit' issued by ICAI provides that in the case of professionals 'Gross receipts' includes all receipts arising from carrying on a profession. However, there are certain receipts which may or may not be included in the gross receipts, which are as follows.

Following receipts shall be included in the gross receipts:

- (a) Out of pocket expenses, recovered by way of consolidated fees, would form part of gross receipts.
- (b) Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of Government.
- (c) Any duty drawback payable to any person against exports under specified schemes.
- (d) Aggregate of gross interest income received by a money lender.
- (e) Commission, brokerage, service and other incidental charges received in the business of chit funds.

- (f) Reimbursement of expenses incurred (i.e., packing, forwarding, freight, insurance, travelling, etc.). However, if the same is credited to a separate account in books, only net surplus on this account should be added to gross receipt or turnover.
- (g) Hire charges of cold storage.
- (h) Liquidated damages.
- (i) Insurance claims except those which are linked with the fixed assets.
- (j) Sale proceeds of scrap, wastage etc. unless treated as part of sale turnover, whether or not credited to a miscellaneous income account.
- (k) Lease rent in the business of operating lease.
- (l) Finance income to reimburse and reward the lessor for his investment and services.
- (m) Hire charges and instalments received in the course of hire purchase.
- (n) Advance received and forfeited from customers.
- (o) The value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of a profession.

**Following receipts shall be excluded from the gross receipts:**

- (a) Out of pocket expenses recovered separately from the client shall not form part of gross receipts.
- (b) Where a professional received an advance for services which are yet to be rendered, it will not form part of the gross receipts till the services are rendered.
- (c) Sale proceeds of fixed assets including advance forfeited, if any.
- (d) Sale proceeds of assets held as investments.
- (e) Rental income unless the same is assessable as business income.
- (f) Dividends on shares except in the case of an assessee dealing in shares.
- (g) Income by way of interest unless assessable as business income.
- (h) Reimbursement of customs duty and other charges collected by a clearing agent.
- (i) The amount received by travel agents from clients for payment to airlines, railways etc. are excluded if received by way of reimbursement of expenses incurred on behalf of the client. If, however, the travel agent is conducting a package tour

and charges a consolidated sum for transportation, boarding and lodging and other facilities, then the amount received from the members of group tour should form part of gross receipts.

- (j) The amount of advertising charges recovered by an advertising agent from his clients by way of reimbursement shall be excluded. However, if he books the advertisement space in bulk and recovers the charges from different clients, the amount recovered by him will form part of his gross receipts.
- (k) Share of profit of a partner in the total income of the firm shall be excluded from the total income of the partner.
- (l) Write back of amounts payable to creditors or provisions for expenses or taxes no longer required.

In case of sale by a commission agent or by a person on a consignment basis, if the property in goods or all significant risks and rewards of ownership of goods continue to belong to the principal the relevant sale price shall not be part of the turnover of commission agent. In this case, the turnover shall be the amount of commission earned by the agent. However, if the property in the goods, significant risk and reward of ownership belongs to the commission agent, the sale price received/receivable shall form part of his turnover.

### **5. How to calculate the sales turnover of the commission agent?**

Turnover of a commission agent or a person selling goods on a consignment basis is determined with reference to the transfer of significant risk or reward of ownership. If the property in goods or all significant risks and rewards of ownership of goods continue to belong to the principal, the relevant sale price shall not form part of turnover of commission agent. In this case, the turnover shall be the amount of commission earned by the agent. However, if the property in the goods, significant risk and reward of ownership belongs to the commission agent, the sale price received/receivable shall form part of his turnover.

ICDS-IV (Revenue Recognition) also provides that in case of an agency relationship, the revenue of an agent shall be the amount of commission and not the gross inflow of cash, receivables or other consideration. The CBDT<sup>2</sup> has also clarified that while determining the turnover in case of Kachha Arahtias, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered. However, in the case of Pucca Arahtias, the total sales/turnover of the business should be taken into consideration.

### **6. How to calculate the sales turnover of share broker?**

When a share broker purchases securities on behalf of his customers, he does not get them transferred in his name but they are delivered in the name of the customer. The same is true in the case of sales also. The share broker holds the delivery merely on

behalf of his customer. The property in securities does not get transferred to the share-brokers. Only brokerage, which is being accounted for in the books of account of share brokers, should be taken into account for calculating the value of turnover. However, in case of transactions entered into by share broker on his personal account, the sale value should be taken into account while calculating the sales turnover. The case of a sub-broker is not different from that of a share broker.

### 7. How to calculate sales turnover in case of a speculative transaction?

A 'speculative transaction' means a transaction in which a contract for purchase or sale of any commodity or securities, is periodically or ultimately settled otherwise than by the actual delivery or transfer of commodity or scrips. Thus, in speculative transactions, there can be both positive and negative differences arising from the settlement of contracts. Each transaction, whether resulting in a positive or negative difference, is an independent transaction. In such transactions, though the contract notes are issued for the full value of the purchased or sold asset, the entries in the books of account are made only for the differences. Accordingly, the aggregate of both positive and negative differences is to be considered as the turnover.

*Example*, Mr. X is an assessee engaged in speculative business. He derives following profits or losses while dealing in securities:

<i>Securities</i>	<i>Amount of gain or (loss)</i>
A	15,000
B	(24,000)
C	(14,200)
D	16,000
<b>Total</b>	<b>69,200</b>

While computing the turnover of Mr. X, all the difference whether positive or negative shall be aggregated.

### 8. How to calculate sales turnover in case of derivatives?

The gains or losses arising from trading in F&O are always taxable under the head 'Profits and Gains from Business or Profession'. The derivative transactions are completed without delivery of shares or securities and they are squared up by the payment of differences. A derivatives transaction has all feature which a speculative transaction has.

The Income-tax Act does not contain any provision or guidance for computation of turnover in F&O trading. However, the Guidance Note on Tax Audit issued by the ICAI prescribes the method of determining turnover which shall be as under:

- (a) The total of favorable and unfavorable differences is taken as turnover.
- (b) Premium received on sale of options is also to be included in turnover.
- (c) In respect of any reverse trades, the difference thereon should also form part of the turnover.

All the differences, whether favorable or unfavorable, are aggregated to calculate the turnover.

### **9. How to calculate sales turnover in case of multiple businesses?**

Where an assessee is carrying on more than one business, sale turnover or gross receipts from all businesses shall be clubbed together. However, if the assessee is opting for the presumptive taxation scheme, the turnover of such businesses shall be excluded while determining his total sales turnover or gross receipts.

### **10. Whether GST shall be included while calculating the gross turnover or receipt?**

Section 145A provides for the inclusion of taxes, cess, etc. in the value of sale, purchase and inventory. However, the purpose of this provision is limited to the calculation of income taxable under the head 'Profits and Gains from Business or Profession'. Whether this provision can be applied for calculation of 'sales turnover' for Section 44AA, Section 44AB, Section 44AD and Section 44ADA has always been a matter of disagreement between the revenue and taxpayer.

Where an assessee has opted for Composition Scheme under the GST Act, the tax is not recovered from the customer and it is debited to the Statement of profit & loss as an indirect expense. Thus, the amount of GST paid by an assessee does not form part of his gross turnover. In case of other assesseees, as GST is charged from the customer and it is recognized separately in the books of accounts, it is not clear whether the amount of GST shall be included in the turnover for calculation of taxable income only (as provided by Section 145A) or for every other provision which has a reference to 'turnover'. Unless the CBDT clarifies its stand on this matter, it would be appropriate to ignore the amount of GST while calculating the gross turnover or gross receipts because of the following reasons:

- (a) Section 145A begins with 'for the purpose of determining the income chargeable under the head Profits and gains of business or profession' which makes this provision inapplicable for other purposes.
- (b) If GST recovered from the customer is credited to Current Liability Accounts (Output CGST or Output IGST or Output SGST) and payments to the authority are also debited to the said separate account, these should not form part of turnover shown in profit and loss account. ICAI's Guidance Note on Tax Audit also confirms that if tax recovered is credited to a separate account, they would not be included in the turnover.
- (c) Inclusion of GST in the turnover would have the cascading effect, as presumptive income would be computed on the component of GST which is never treated as income of the assessee.

*(For detailed analysis and illustrations on the valuation of sale, purchase and inventory refer 'Treatment of GST as per Inclusive Approach' in Income-tax Return [2018]' 97 taxmann.com 42)*

### **11. How to avail the benefit of the enhanced limit of Rs. 5 Crores for the tax audit?**

Up to the assessment year 2019-2020, every person, carrying on business, was required to get its books of account audited from a Chartered Accountant if its total sales, turnover or gross receipt from the business exceeds Rs. 1 crore during the previous year.

To reduce the compliance burden on the small and medium enterprises, the Finance Act, 2020 has increased the threshold limit under section 44AB for the mandatory audit. With effect from the assessment year 2020-21, the threshold limit for the mandatory audit, for a person carrying on business, is increased from Rs. 1 crore to Rs. 5 crores. However, the increased threshold limit of Rs. 5 crores shall be applicable only if cash receipts and cash payments during the year does not exceed 5% of total receipt or payment, as the case may be. In other words, more than 95% of the business transactions should be done through banking channels.

It may be noted that conditions in respect of 'amounts received' and 'payments made' should be fulfilled separately. It means, if one of the conditions is not satisfied, then *proviso* would not apply. Threshold limit of 5% is prescribed separately for receipts/payments and ought to be applied accordingly.

The onus would be on the assessee to prove that he is eligible for increased threshold limit for not getting his accounts audited. He needs to ensure that his aggregate cash receipts and payments are within the limit of 5%. If he fails to do so, consequences would be a penalty under section 271B for failure to get accounts audited. However, if there is reasonable cause, then in terms of section 273B, such penalty may not be imposed.

*Example*, Mr. A, engaged in the business of trading of readymade garments, has turnover of less than Rs. 5 crores during the financial year 2019-20. He made the following transactions during the relevant year:

<i>Particulars</i>	<i>Mode of transaction</i>	
	<i>Cash (Rs. in lakhs)</i>	<i>Bank (Rs. in lakhs)</i>
<b>Receipts</b>		
- Sales	20	480
- Advance from customers	10	20
- Unsecured loan	10	100
<b>Total receipts</b>	<b>40</b>	<b>600</b>
<b>Payments</b>		
- Purchase	15	400
- Rent	<i>Nil</i>	50
- Loan repayment	5	50
<b>Total Payments</b>	<b>20</b>	<b>500</b>

The turnover of Mr. A during the financial year 2019-20 is up to Rs. 5 crores. He shall not be liable for tax audit if his cash receipt and payment during the year does not exceed 5% of total receipt or payment, as the case may be.

Computation of percentage of cash receipts & payments:

<i>Particulars</i>	<i>Total (A)</i>	<i>Cash (B)</i>	<i>% in cash (B/A*100)</i>
Receipts	640	40	6.25%

Payments	520	20	3.85%
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Though the payment made in cash during the year does not exceed 5% of total payments, the percentage of cash receipts exceeds the limit of 5%. Thus, Mr. A isn't entitled to the benefit of the increased threshold limit of Rs. 5 crores for the tax audit.

### **12. Can the professionals avail the benefit of the enhanced turnover limit of Rs. 5 Crore for the tax audit?**

Clause (a) of Section 44AB talks about a person carrying on business whereas clause (b) talks about a person carrying on a profession. The new *proviso* to section 44AB providing the enhanced turnover limit of Rs. 5 crores for the tax audit is inserted below clause (a) to section 44AB. Thus, the persons engaged in the profession aren't entitled to claim enhanced turnover limit of Rs. 5 crore for the tax audit.

### **13. Whether a person opting for presumptive taxation scheme under section 44AD is required to get his accounts audited?**

Section 44AB of the Income-tax Act prescribes the conditions under which an assessee is required to get his accounts audited. It excludes a person from getting books of account audited if he opts for presumptive taxation scheme under Section 44AD provided turnover of business does not exceed Rs. 2 crores.

Clause (e) of Section 44AB states that a person, who has opted for the presumptive taxation scheme under Section 44AD in any of the last 5 previous years but does not opt for the same in the current previous year, shall be liable to get his accounts audited if his total income exceeds the maximum amount not chargeable to tax.

Clause (a) of Section 44AB provides for an audit of books of account if a person is engaged in a business and the turnover of such business exceeds Rs. 1 crore. The Finance Act, 2020 has extended the threshold of turnover to Rs. 5 crores if cash receipt and cash payment does not exceed 5% of total receipt and payment respectively.

If an assessee is covered under both the clauses, *that is*, Clause (a) and Clause (e) of Section 44AB, whether he will be liable to get the books of account audited? *Example*, if the turnover of an assessee is more than Rs. 1 crore and his cash payment and receipt is less than 5%, whether he is liable to tax audit?

Let's understand this with the help of the table below:

<i>Situation*</i>	<i>Turnover</i>	<i>Whether liable for a tax audit?</i>
The assessee has opted for Section 44AD in any of the last 5 years but not opting for same in the current year	Up to Rs. 1 crore	Yes, if income is more than the maximum amount not chargeable to tax [Section 44AB(e)]
	Up to Rs. 2 crore	
	More than Rs. 2 Crore but up to Rs. 5 crore	No [ <i>Proviso</i> to Section 44AB(a)]
	More than Rs. 5 crore	Yes
The assessee has not opted for Section 44AD in any of the last 5 years and not opting for same during the current year as well.	Up to Rs. 5 crore	No [ <i>Proviso</i> to Section 44AB(a)]
	More than Rs. 5 crore	Yes

\* Assuming cash receipt or payments does not exceed 5% of the aggregate amount received or paid during the year.

It should be noted that Clause 8 of the Form 3CD requires the auditor to provide the relevant clause under which the tax audit has been conducted.

#### **14. What are the due dates for filing of tax audit report?**

For the Assessment Year 2020-21, the due date for furnishing of tax audit report would be as under:

<i>Type of Assessee</i>	<i>Assessment year</i>	<i>Due date of tax audit report</i> <sup>3</sup>	<i>Due date for furnishing of ITR</i> <sup>4</sup>
Company	2020-21	31-10-2020	30-11-2020
Any other person who is obliged to furnish the tax audit report	2020-21	31-10-2020	30-11-2020
Any person who is subject to the transfer pricing provisions	2020-21	31-10-2020	30-11-2020

#### **15. How to furnish the tax audit report to Income-tax Dept.?**

The audit report shall be filed electronically by the Chartered Accountant to the Income-tax Dept. The report shall be uploaded directly by the tax auditor at [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in). However, to furnish the report, the assessee has to authorize and appoint the Chartered Accountant from his e-filing account.

The date of approval of the report by the taxpayer is considered as the date of filing of the Audit Report. If the assessee does not accept/approve, the tax audit report will be considered as pending as if it has not been filed.

### **16. How many tax audit reports a Chartered accountant can Sign?**

A Chartered Accountant in practice can conduct 60 tax audits relating to an assessment year.

The ICAI had clarified that audit prescribed under any statute which requires the assessee to furnish an audit report in the form as prescribed under section 44AB of the Income-tax Act, shall not be considered for reckoning the specified number of tax audit assignments if the turnover of the auditee is below the turnover limit specified in section 44AB of the Income-tax Act. The ICAI has modified the guidelines on August 23, 2018 to provide that the audits conducted under Sections 44AD, 44ADA and 44AE of the Income-tax Act (Presumptive Taxation Schemes) shall not be considered for reckoning the 'specified number of tax audit assignments'.

### **17. Whether a tax audit report can be revised?**

'Guidance Note on Tax Audit under Section 44AB' issued by the ICAI provides that the audit report under section 44AB should not normally be revised. However, sometimes a member may be required to revise his tax audit report on grounds such as:

- (a) Revision of accounts of a company after its adoption in annual general meeting.
- (b) Change of law e.g., retrospective amendment.
- (c) Change in interpretation, e.g., CBDT Circular, Judgments, etc.

Thus, a tax audit report once filed can be revised on the above-mentioned grounds.

### **18. Is there any penalty on late filing of Audit report?**

As per Section 271B, if any person fails to get his accounts audited or fails to furnish the report of the audit the Assessing Officer may direct such person to pay a penalty of a sum equal to lower of following:

- (a) 0.5% of the total sale, turnover or gross receipts; or
- (b) Rs. 1,50,000

However, no penalty shall be imposed if such failure is due to a reasonable cause.

### **19. Whether the provisions of tax audit applicable to business under section 11(4A)?**

There is nothing in the statute to suggest that Tax Audit under section 44AB shall apply to business under section 11(4A). Sections 11 to 13 are independent of the five heads of income. As long as the registration under section 12AA/12AB is intact the income cannot be computed under the five heads of income. Tax Audit is a specific requirement of the assessee having income under the head "Business and Profession".

### **20. Whether the reporting in Form 3CD shall be made as per books of Account or after adjustment as per the Income Computation & Disclosure Standards (ICDS)?**

The preamble of the ICDS provides that the ICDSs are applicable for computation of income chargeable under the head 'Profit and gains of business or profession' or 'Income from other sources' and not for maintenance of books of accounts.

Further, the CBDT *vide* Circular No. 10/2017, dated 23-03-2017, has clarified that the books of account are to be maintained in accordance with the accounting policies applicable to the assessee. Thus, it can be concluded that the reporting in Form 3CD shall be in accordance with the books of account maintained by the assessee. Any adjustment made to profit or loss under the ICDS shall be reported in Clause 13 of Form 3CD.

### **21. Who has to follow ICDS?**

In exercise of the powers conferred by Section 145(2) of the Income-tax Act, 1961, the Central Government has notified<sup>5</sup> the Income Computation and Disclosure Standards (also referred to as ICDS). ICDSs have been issued to bring uniformity in the accounting policies governing computation of income for taxability under the Income-tax Act and to reduce the litigations.

Every assessee earning income taxable under the head 'Profit and gains from business or profession' or 'Income from other sources' or both is required to compute taxable income in accordance with notified ICDS. However, the ICDS shall be followed only if the assessee is maintaining accounts as per the 'Mercantile system' of accounting.

There is no threshold limit on the amount of turnover or taxable income for the applicability of ICDS. Thus, every assessee earning business income or residuary income shall be required to follow ICDS for computation of income. The applicability of ICDS shall be subject to certain exceptions.

The CBDT has clarified<sup>2</sup> that the general provisions of ICDS shall apply to all persons including banks, NBFCs, insurance companies, etc. unless there are sector-specific provisions contained in the ICDS or the Act. *Example*, ICDS-VIII (Securities) contains specific provisions for banks and certain financial institutions and Schedule I of the Act contains specific provisions for the Insurance business.

*Exception 1: Exemption to Individual or HUF not liable for tax audit*

An Individual or HUF, who is not required to get his books of account audited for the previous year under section 44AB, shall not be required to comply with the requirements of ICDS.

A person opting for presumptive taxation scheme is not required to maintain the books of account and get them audited. In this regard, the CBDT has clarified<sup>6</sup> that the relevant provisions of ICDS shall apply to the persons (other than Individual or HUF) opting for presumptive taxation scheme. *For instance*, for computing the presumptive income of a partnership firm under section 44AD of the Act, the provisions of ICDS on construction contract or revenue recognition shall apply for determining the receipts or turnover, as the case may be.

*Exception 2: Exemption for MAT Computation*

The CBDT has clarified<sup>8</sup> that the provisions of ICDS are applicable for computation of income under the regular provisions of the Act. As MAT is computed on 'book profit' that is net profit as shown in the Profit and Loss Account prepared under the Companies Act subject to certain specified adjustments, the provisions of ICDS shall not apply for computation of MAT. However, where the assessee is liable to pay AMT under the provisions of Section 115JC, the provisions of ICDS shall be applicable for computation of AMT as AMT is computed on adjusted total income which is derived by making specified adjustments to total income computed as per the regular provisions of the Act.

**22. Who is required to maintain books of accounts as per Section 44AA?**

Section 44AA provides for maintenance of books of account by an assessee under the Income-tax Act. The table below demonstrates the requirement for maintaining books of accounts by different taxpayers:

<i>Nature of Business or Profession</i>	<i>Category of Taxpayer</i>	<i>Threshold Limits for Income</i>	<i>Threshold Limits for Gross Turnover or Receipts</i>
Specified Professions*	Any	-	Mandatory in every case except when presumptive taxation scheme under Sec. 44ADA is opted by the assessee
Non-Specified Professions	Individual or HUF	Rs. 2,50,000	Rs. 25 lakhs in any of the 3 years immediately preceding the previous year
Non-Specified Professions	Others	Rs. 1,20,000	Rs. 10 lakhs in any of the 3 years immediately preceding the previous year
Business	Individual or HUF	Rs. 2,50,000	Rs. 25 lakhs in any of the 3 years immediately preceding the previous year
Business	Others	Rs. 1,20,000	Rs. 10 lakhs in any of the 3 years immediately preceding the previous year
Presumptive Tax Scheme under Sec. 44AD	Resident Individual or HUF	Rs. 2,50,000	Taxpayer opted for scheme in any of last 5 previous years but does not opt for in current year.
Presumptive Tax Scheme under Sec. 44AD	Resident Partnership Firm	-	Taxpayer opted for scheme in any of last 5 previous years but does not opt for in current year.
Presumptive tax scheme under Section 44ADA	Resident Assessee	-	Taxpayer claims that his profits from profession are lower than the profits computed under Section 44ADA and total income exceeds the maximum exemption limit.
Presumptive Tax Scheme under Sec. 44AE	Any Assessee engaged in plying, hiring or leasing goods carriage	-	Taxpayer claims that his profits are lower than the deemed profits.

Presumptive Scheme under 44BB	Tax Sec.	Non-resident assessee engaged in exploration of mineral oil	-	Taxpayer claims that his profits are lower than the deemed profits.
Presumptive Scheme under 44BBB	Tax Sec.	Foreign Co. engaged in civil construction	-	Taxpayer claims that his profits are lower than the deemed profits.

**\* Meaning of Specified Profession:**

- (a) Legal
- (b) Medical
- (c) Engineering
- (d) Architectural
- (e) Technical Consultancy
- (f) Interior decoration
- (g) Film artist<sup>7</sup>
- (h) Authorized Representative<sup>8</sup>
- (i) Accountancy Profession
- (j) Company secretary<sup>9</sup>
- (k) Information Technology<sup>10</sup>

**\*\*** Where business or profession has been set-up during the previous year, the threshold limit of income or gross receipts of the current year shall be checked. In other words, in case of new business or profession, if income or turnover or receipt of the current year, as the case may be, are not likely to exceed the threshold limit, the assessee shall not be required to maintain the books of account.

**23. What documents should be maintained by the taxpayers to comply with the requirement of maintenance of books of accounts as per Section 44AA?**

The following documents should be maintained by the taxpayers to comply with the requirement of maintenance of books of accounts:

<i>Nature of Business or Profession</i>	<i>Threshold Limits</i>	<i>Books of Accounts to be maintained</i>												
Specified Professions other than company secretary and Information technology	Gross receipt exceeds Rs. 1,50,000 in any of 3 years immediately preceding the previous year	<table border="1"> <tr> <td data-bbox="1117 401 1224 456">1.</td> <td data-bbox="1224 401 2070 456">Cash-book</td> </tr> <tr> <td data-bbox="1117 456 1224 548">2.</td> <td data-bbox="1224 456 2070 548">Journal, if books of accounts are maintained according to mercantile system of accounting</td> </tr> <tr> <td data-bbox="1117 548 1224 604">3.</td> <td data-bbox="1224 548 2070 604">Ledgers</td> </tr> <tr> <td data-bbox="1117 604 1224 732">4.</td> <td data-bbox="1224 604 2070 732">Carbon copies of bills and carbon copies or counterfoil of receipts issued by the assessee of value exceeding Rs. 25 (must be machine numbered or serially numbered)</td> </tr> <tr> <td data-bbox="1117 732 1224 824">5.</td> <td data-bbox="1224 732 2070 824">Original bills issued to the assessee and receipts in respect of the expenditures incurred by him</td> </tr> <tr> <td data-bbox="1117 824 1224 1003">6.</td> <td data-bbox="1224 824 2070 1003">Signed vouchers, if bills and receipts are not issued and amount of expenditure does not exceed Rs. 50, if cash book does not contain adequate particulars in respect of these expenditures</td> </tr> </table>	1.	Cash-book	2.	Journal, if books of accounts are maintained according to mercantile system of accounting	3.	Ledgers	4.	Carbon copies of bills and carbon copies or counterfoil of receipts issued by the assessee of value exceeding Rs. 25 (must be machine numbered or serially numbered)	5.	Original bills issued to the assessee and receipts in respect of the expenditures incurred by him	6.	Signed vouchers, if bills and receipts are not issued and amount of expenditure does not exceed Rs. 50, if cash book does not contain adequate particulars in respect of these expenditures
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Medical Professions	Gross receipt exceeds Rs. 1,50,000 in any of 3 years immediately preceding the previous year	<table border="1"> <tr> <td data-bbox="1117 1013 1224 1068">1.</td> <td data-bbox="1224 1013 2070 1068">As specified above for specified professions</td> </tr> <tr> <td data-bbox="1117 1068 1224 1123">2.</td> <td data-bbox="1224 1068 2070 1123">Daily case register in Form 3C</td> </tr> <tr> <td data-bbox="1117 1123 1224 1263">3.</td> <td data-bbox="1224 1123 2070 1263">Inventory under broad heads of stock of drugs, medicines and other consumable accessories used for the purpose of profession, as on the first and last day of previous year.</td> </tr> </table>	1.	As specified above for specified professions	2.	Daily case register in Form 3C	3.	Inventory under broad heads of stock of drugs, medicines and other consumable accessories used for the purpose of profession, as on the first and last day of previous year.						
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Specified Professions	In every case irrespective of gross receipts and Income	Such books of accounts which may enable the Assessing Officer to compute the taxable income.												

Non-Specified Professions	Income and turnover does not exceed the threshold limit as specified above	Not required to maintain books of accounts
Business	Income and turnover does not exceed the threshold limit as specified above	Not required to maintain books of accounts
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**24. Mr. A is maintaining books of accounts at more than one location. Whether the address of all the locations is to be mentioned in the audit report?**

Clause 11 of Form 3CD requires a list of books maintained and address at which such books of accounts are kept. If such books of accounts are kept at multiples locations then the auditor is required to mention the address of all the locations along with the details of books of accounts maintained at each location. In case of a company assessee, the auditor should verify as to whether Form AOC-5 has been filed with Registrar of Companies under the Companies Act for maintenance of books of accounts at a place other than the registered office.

The auditor's duties regarding 'books of account maintained' is not limited to merely giving a list of books of account against clause 11(b). He is required to examine the books of account maintained. Based on such examination, he is required to state in Form No. 3CB whether books of account kept are 'proper books of account'.

**25. An assessee has changed the method of accounting from mercantile to cash basis. What disclosure is required in Form 3CD?**

Clause 13 of Form 3CD requires every assessee to report the method of accounting employed in the previous year. Further, if there was a change in the method of accounting employed in the immediately preceding previous year then same is to be reported. The assessee is also required to disclose the effect of a change in method of accounting on the profit and loss. If it is not possible to quantify the effect of a change in method of accounting, appropriate disclosure should be made under this clause.

A change in accounting policy will not amount to a change in the method of accounting and hence any change in the accounting policies need not be mentioned under clause 13(b).

**26. Whether adoption of Ind AS for the first time could be considered as 'Change in Method of Accounting' for disclosure in Form 3CD?**

Method of Accounting refers to the basic rules and guidelines under which businesses keep their financial records and prepare their financial statements. There are two main accounting methods used for record-keeping - the Cash Basis and the Accrual Basis. Whereas the Accounting Standards or Ind AS pre-requisite the accrual basis of accounting. Accounting standards are authoritative standards for financial reporting and are the primary source of generally accepted accounting principles (GAAP).

Method of Accounting should not be confused with GAAP. Method of Accounting can be either a cash basis or accrual basis. The GAAP provides the principles and procedures for calculation and recognition of a financial transaction within the framework of Accrual basis of accounting. When an entity switches from Accounting Standards to Ind AS, it does not change its method of accounting. Thus, the transition to Ind AS should not be treated as a change in method of accounting.

**27. Whether GST registration no. of the assessee has to be furnished in Form 3CD if the assessee is liable to pay tax under reverse charge?**

The ICAI, *vide* Implementation Guide dated August 22, 2018, has clarified that even if liability to pay GST is only under the reverse charge mechanism, the fact of being liable to GST needs to be answered in the affirmative, with the clarification that such liability is only under the reverse charge mechanism.

**28. If an assessee has multiple GSTIN, which registration no. needs to be furnished in Form 3CD?**

In case the assessee has multiple GSTIN numbers (registered in different states), all the GSTIN numbers allotted to him shall be mentioned in Form 3CD.

**29. If shares of members of AOP are unknown during the previous year, whether it is required to be reported in Form 3CD?**

If shares of members are unknown during the previous year, the auditor needs to disclose this fact in Clause 9(a) of Form 3CD.

**30. Whether it is mandatory to disclose the nature of all the businesses carried on by the assessee and any change therein?**

Clause 10 of Form 3CD mandates disclosure of nature of every business or profession carried on by an assessee during the previous year.

Any material change in the nature of business should be precisely disclosed. The change will include a change from manufacturer to the trader as well as a change in the principal line of business. Any addition to or permanent discontinuance of, a particular line of business may also amount to change requiring reporting. However, temporary suspension of the business may not amount to change and therefore need not be reported.

**31. Mr. A has opted for the presumptive scheme under Section 44AD in respect of one of his business. Whether auditor is required to mention details of such business in the audit report?**

In case profit and loss account of the assessee includes any profit declared under the presumptive scheme (Section 44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB) then it is mandatory to mention the amount of such profit and the section under which the same is declared in Clause No. 12 of Form 3CD. The tax auditor is not required to indicate as to whether the amount of presumptive income has been correctly computed under the relevant section relating to presumptive taxation. The reporting requirement gets satisfied if the amount as per profit and loss account is reported.

**32. 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 profit and loss account of the assessee also includes the presumptive income, the common business expenditure has to be apportioned to arrive at the correct amount of profit credited to profit and loss account and assessable on a presumptive basis. The tax auditor, in such situation, should arrive at a fair and reasonable estimate of such expenditure on basis of evidence in possession of the assessee or by asking the assessee to prepare such estimate which should be checked by him.

It is also necessary to mention the basis of apportionment of common expenditure. However, if the tax auditor is not satisfied with the reasonableness of such apportionment, he should indicate such fact under this clause by a suitable note.

**33. How to compute the amount of increase or decrease in profit due to compliance with ICDS-IV?**

In Clause 13(e) of Form 3CD, the disclosure shall be made about the profits increased or decreased after applying ICDS. The revised profits after taking into consideration the ICDS IV shall be calculated in the following manner. The net result of the table shall be reported in the said clause:

***Accounting Standards (AS) – Reconciliation***

<i>Particulars</i>	<i>Amount</i>
Profit before tax as per AS financials	xxx
<i>Add: Income taxable (if not credit to P&amp;L account)</i>	
1. Dividend income (As per Section 115BBDA)	xxx
2. Amount of revenue not recognized in current year as assessee followed service completion method for his books of account	xxx
3. Interest on income-tax refund accrued in earlier year but received in current year*	xxx
4. Interest on compensation or enhanced compensation taxable in accordance with Section 145A(1)*	xxx
<i>Less: Income not taxable (if already credited to P&amp;L account)</i>	
1. Dividend Income	(xxx)
2. Excess revenue recognized in current year as assessee followed service completion method for his books of account	(xxx)
3. Interest on income-tax refund accrued in current year but received in subsequent year*	(xxx)
4. Interest on compensation or enhanced compensation included in taxable income on accrual basis*	(xxx)
<b>Net profit/ loss before tax as per ICDS</b>	<b>xxx</b>

***Indian Accounting Standards (Ind AS) – Reconciliation***

<i>Particulars</i>	<i>Amount</i>
Profit before tax as per Ind AS financials	xxx
<i>Add: Income taxable (if not credit to P&amp;L account)</i>	

1. Dividend income (As per Section 115BBDA)	xxx
2. Amount of revenue not recognized in current year as assessee followed revenue recognition principles as per Ind AS 115	xxx
3. Interest on income-tax refund accrued in previous year but received in current year*	xxx
4. Difference in ICDS and Ind AS revenue due to time value of money	xxx
5. Interest income as per this ICDS	xxx
6. Discount on debt securities as per this ICDS	xxx
7. Interest on compensation or enhanced compensation taxable in accordance with Section 145A(1)*	xxx
<i>Less: Income not taxable (if already credited to P&amp;L account)</i>	
1. Dividend Income	(xxx)
2. Excess revenue recognized in current year as assessee followed revenue recognition principles as per Ind AS 115	(xxx)
3. Interest on income-tax refund accrued in current year but received in subsequent year*	(xxx)
4. Interest amount when the payment is deferred for significant period of time (generally 1 year or more), if any	(xxx)
5. Interest income recognised on the basis of effective interest rate method	(xxx)
6. Interest on compensation or enhanced compensation included in taxable income on accrual basis*	(xxx)
<b>Net profit/ loss before tax as per ICDS</b>	xxx

For reconciliation statement in other ICDS, please refer Taxman 'Illustrated Guide to

Income Computation & Disclosure Standards (ICDS)' <http://bit.ly/2ky96si>

**34. Sub-clause (d) of Clause 13 requires the details in respect of the adjustment required for complying with the provisions of ICDS. Whether such adjustments are required to be entered separately for income taxable under the head "PGBP" and Income taxable under the head "Other Sources"?**

The tax auditor needs to enter a consolidated amount by which the profit has been increased or decreased. Such increase or decrease is not required to be bifurcated between the different heads of income.

**35. An assessee has applied for a refund of Special Additional Duty (SAD) but same wasn't credited in profit & loss account. Whether the disclosure is required in Form 3CD?**

If a claim for refund of SAD has been admitted as due and accepted during the relevant financial year, it shall be reported under Clause 16. If the claim has been lodged during the previous year but it has been admitted as due after the relevant previous year, it need not be reported here. Where such amounts have not been credited in the profit and loss account but netted against the relevant expenditure/income heads, such fact should be brought out.

**36. Whether employees' contribution to provident fund, Superannuation fund etc. after the due dates are deductible?**

This matter has witnessed substantial litigation and the Courts have given conflicting rulings - some in favour of the employers stating that employees' share even if paid before the due date of filing of return of income can be claimed a deduction, while some rulings have held that deposit of employee's share of contribution beyond the dates prescribed under the respective legislation would not be allowed as a deduction.

The Supreme Court of India in the case of *Rajasthan State Beverages Corporation* [\[2017\] 84 taxmann.com 185 \(SC\)](#) decided the underlying case in favour of the employers by dismissing the SLP filed against the order of Rajasthan High Court by the Department. However, the Kerala High Court in the case of *M/s Popular Vehicles and Services Private Limited* [\[2018\] 96 taxmann.com 13 \(Kerala\)](#) have rejected the employer's claim for the deduction, if paid beyond the due date on the ground that the intent of introduction of section 36(1)(va) was to ensure that employers should not sit on the contributions collected from the employees' salary and deprive the workmen of the rightful benefits under the social welfare legislation, by delaying payment of contributions to the welfare funds.

**37. Whether Auditor has to quantify whether the payment to a related person is unreasonable or excessive under Clause 23?**

No, 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.

**38. As Section 43B specifically disallows the interest expense which is converted into a loan, whether such disallowance shall be of permanent in nature?**

The Circular No.7/2006 dated July 17, 2006 clarifies that the unpaid interest, whenever actually paid to the bank or financial institution, will be in the nature of revenue expenditure deserving deduction in the computation of income. Therefore, the converted interest, by whatever name called, in the wake of its conversion into a loan or borrowing or advance, will be eligible for deduction in the computation of income of the previous year in which the converted interest is 'actually paid'.

In other words, the nomenclature of the sum of converted interest will make no difference as the payment of converted interest will not represent the repayment of the principal. The circular clarifies that the fundamental principle remains that once an amount has been determined as interest payable to the banks or financial institutions, any subsequent change of nomenclature of interest will not affect its allowability and deduction in terms of section 43B will have to be allowed on its actual payment. The Assessing Officer, however, can ask for a certificate from the assessee to be obtained from the lender bank or financial institution etc. as evidence of 'actual payment' of interest to banks or financial institutions.

**39. Whether sum payable to Indian Railways for advertisement at railway stations would be disallowed under Section 43B?**

If the payment is being made by an advertising agency to the railways for putting up hoardings or display panels on railway premises, such payment would amount to the payment for use of railway assets, as the payment is for the use of space on the premises. However, where an advertiser is making payment to the railways for the display of advertisements on hoardings or displays in railway premises, such a payment is in the nature of payment for the services of advertisement, and not for the use of railway assets.

Any sum payable to Indian Railways for use of railways assets shall be allowed on payment basis. Any sum payable to Indian Railways for its services shall be allowed as per the method of accounting regularly employed by the assessee.

**40. If the statutory auditor does not consider an item as a prior period expense, whereas tax auditor feels that such item should be considered as a prior period, should that expense be disclosed in Clause 27(b) of Form 3CD?**

It may be noted that there is a difference between the expenditure of any earlier year debited to the profit and loss account and the expenditure relating to an earlier year, which has crystallized during the relevant year. An expense, though related to previous periods, which has been determined in the current period, would not be considered as prior period items.

In such cases, though the expenditure may relate to the earlier year, it can be considered as arising during the year on the basis that the liability materialized or crystallized during the year and such cases will not be reported under this clause.

In case of any conflict in the opinion of the statutory auditor and tax auditor, the opinion of tax auditor shall prevail and the information thereof shall be reported in Form 3CD.

**41. There is a difference in opinion between the tax auditor and the client with respect to the applicability of a TDS provision on a particular payment. How to report such difference in the tax audit report?**

If the tax auditor and client have a difference of opinion with respect to the applicability of TDS/TCS provision, such concern shall be reported in Clause (3) of Form 3CA or Clause (5) of Form 3CB, as the case may be.

**42. Mr. A, a sole proprietor, agreed to transfer his personal property to Mr. X and received some non-refundable advance against such deal. The sale could not materialize 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 course of negotiations for the transfer of 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 non-materialization of a deal to sale of the capital asset.

The auditor is not required to report any such forfeited amount if it is in respect of 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 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.

**43. Whether advance received from a person for sale of goods shall also be disclosed under Clause 31?**

Loans or deposits are generally squared off by repayment of the sum to the lender. While as in the case of advance for the sale of goods, the party's ledger is squared off by the delivery of goods or services. Thus, advance received against the agreement of sale

of goods could not be deemed as loan or deposit. Accordingly, details of advances shall not be reported in Clause 31. Further, the ICAI, in the guidance note, has clarified that Advance received against the agreement of sale of goods is not a loan or deposit.

**44. ABC Ltd. has rendered services to its Associated Enterprise resulting in a net profit of 15% on cost. Transfer Pricing Officer (TPO) calculated ALP of this transaction at 20% of the cost and accordingly made adjustment. Is it required to be reported in Form 3CD?**

As per Clause 30A of Form 3CD, if any primary adjustment to the transfer price has been made as per Section 92CE (1), then the following details need to be given in Clause 30A of the Form.

- (a) Clause of section 92CE(1) in which primary adjustment is made
- (b) Amount of primary adjustment
- (c) Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of section 92CE (2)?
- (d) If yes, whether the excess money has been repatriated within the prescribed time.
- (e) If no, the amount of imputed interest income on such excess money which has not been repatriated within the prescribed time.

**45. How to calculate the interest on excess money that need to be repatriated after a primary adjustment?**

Rule 10CB provides the rate of interest at which interest has to be calculated on excess money or part thereof which is not repatriated within the time limit. Where the international transaction is denominated in Indian rupees, the rate of interest will be the one-year marginal cost of fund lending rate of State Bank of India as on 1st April of the relevant previous year, plus 325 basis points (plus 3.25%). Where the international transaction is denominated in foreign currency, the rate of interest shall be the six-month London Interbank Offered Rate (LIBOR) as on 30th September of the relevant previous year plus 300 basis points (plus 3%).

It is possible that the amount of imputed interest income on the excess money not repatriated to India may relate to more than one year. Having regard to Rule 10CB, the interest liability extends till the date of repatriation. Accordingly, for the relevant year under audit, such liability in respect of imputed interest may extend not only to the primary adjustment but may also relate to the primary adjustment made in the earlier years.

**46. My client has borrowed money from its foreign holding company and interest paid on such loan was Rs. 1.05 crore during the previous year. Whether this transaction is reportable in Form 3CD?**

The Finance Act, 2017 has inserted a new section 94B to the Income-tax Act, 1961 which provides that if an Indian company or PE of a foreign company pays interest in excess of Rs. 1 crore to the associated enterprise, the deduction for interest shall be restricted to lower of following:

- (a) Total interest paid or payable in excess of 30% of earnings before interest, taxes, depreciation and amortization ('EBITDA') of the borrower in the previous year; or
- (b) Interest paid or payable to AEs for that previous year.

The excess interest, which is disallowed, can be carried forward for a period of 8 assessment years following the year of disallowance, to be allowed as a deduction against profits and gains of any business in the subsequent years, to the extent of maximum allowable interest expenditure under this provision.

A new Clause 30B has been inserted in Form 3CD which requires details of such interest payment with the following disclosures:

- (a) Amount of expenditure by way of interest or of similar nature incurred.
- (b) EBITDA during the previous year.
- (c) Amount of expenditure by way of interest or of similar nature as per (a) above which exceeds 30% of EBITDA as per (b) above.
- (d) Details of interest expenditure brought forward as per Section 94B (4).
- (e) Details of interest expenditure carried forward as per Section 94B(4)

This clause shall not be applicable in case of a company which is engaged in the business of banking or insurance.

While computing the EBITDA, the figures as per the final audited stand-alone accounts of the company should be considered, and not the figures as adjusted for the income tax computation after various allowances and disallowances.

**47. How the details of loans accepted and repayment thereof shall be reported in Clause 31 of Form 3CD?**

<i>Nature of Transaction during the year</i>	<i>Mode</i>	<i>To be reported in</i>
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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)
Repayment of loan or deposit or advance for transfer of Immovable Property (originally accepted other than through cheque)	Any	Clause 31(d)
Repayment of loan or deposit or advance for transfer of Immovable Property (originally accepted through cheque or draft not being A/c payee cheque/draft)	Any	Clause 31(e)

**48. 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 of 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. Assessment Year 2018-19, the Form 3CD ask such details even if the assessee has submitted the statements within prescribed time limits.

Further, if 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.

**49. Whether capital expenditure shall be reduced from the actual cost of a capital asset if tax was not deducted from such expenditure?**

As per section 40(a) (ia), 30% of an expense is disallowed if tax is not deducted or after deduction not paid to the government. Whether this provision shall be applicable only in case of revenue expenditure or in respect of capital expenditure as well has been a matter of dispute between taxpayer and revenue. The revenue always argues to reduce the actual cost of a fixed asset if the tax has not been deducted for an expense which is capitalized as per provisions of section 43(1). In the cases of *CIT v. Plasmac Machine Mfg. Co. Ltd.* [1993] 201 ITR 650 (Bom.) And *Sumilon Industries Ltd. v. ITO* [2010] 3 taxmann.com 187 (Ahmedabad-ITAT), it was held that disallowance under this section can be made only from an expense which is claimed in Profit and Loss Account. Since in the case of capital expenditure no deduction is claimed under the P/L account, there should not be any disallowance under section 40(a) (ia) in respect of such payment.

**50. Whether quantitative details of each and every stock is to 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 which constitute more than 10% of the aggregate value of purchases, consumption or turnover may be classified as principal items.

**51. In case of a manufacturing concern, the auditor had failed to ascertain yield of finished goods because of different measurement unit of raw material and that of 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 fact under this clause.

**52. How to furnish the ratios in Clause 40 of Form 3CD?**

Clause 40 seeks the following details ratios for the previous year and preceding previous year.

<i>S.No.</i>	<i>Particulars</i>	<i>Previous Year</i>	<i>Preceding Previous Year</i>
1	Total turnover of the assessee		
2	Gross profit/turnover		
3	Net profit/turnover		
4	Stock-in-trade/turnover		
5	Material consumed/finished goods produced		

The Ratios have to be given for the business as a whole. Ratios are not required to be given product-wise. The relevant previous year figures are to be taken from the last previous year audit report. In case the preceding previous year is not subject to audit, nothing should be mentioned in the relevant column.

The tax auditor is not to sit in judgment over whether ratios calculated under clause 40 are fair for tax assessment purposes. He should simply comply with clause 40 calculate and report the ratios with calculations.

**53. In the case of first Ind AS financial statements, whether the details regarding turnover, gross profit, ratios, etc., for the previous year and preceding previous year shall be as per Ind AS financial statements.**

As per Ind AS 101 – First Time Adoption of Indian Accounting Standards, in case of transition from AS to Ind AS, the opening balances, as well as comparative figures, have to be calculated and presented as per Ind AS.

The Income-tax Act does not provide any mechanism for calculation of gross profit, turnover or ratios for disclosure in Form 3CD. Thus, such disclosures have to be made as per the financial statements prepared in accordance with AS or Ind AS. As the entity has to present the comparative figures in Ind AS financial statements, the same information can be used to disclose the desired information in Form 3CD.

**54. In case of Ind AS financial statements, if liability increases due to change in actuarial assumptions taken to calculate the provision of gratuity, which is debited to OCI, whether the entity can claim the deduction for such additional liability?**

The courts have held that if provision for gratuity is computed on a scientific basis (i.e., actuarial valuation), the deduction thereof shall not be denied. If any liability increases due to change in the actuarial assumptions, the resultant expense is recognized in OCI by virtue of Ind AS 19 – Employee Benefits. Thus, if provision for gratuity increases due to change in the assumptions, such as, discount rate, mortality rate, etc. the additional expenses recognized in OCI should be allowed as deduction while computing the taxable business income. If an increase in provision for gratuity is attributable to such change in actuarial assumption, it shall not be disclosed as disallowable under Clause 21(e).

**55. How the deduction of interest charged to Statement of Profit & Loss due to "effective interest rate method" of Ind AS should be allowed under the Income-tax Act?**

In view of Ind AS, the processing fees paid to the banks or financial institution in respect of borrowings have to be amortized over the tenure of the loan. In other words, the amount of borrowing cost recognized during the year shall be the sum of actual interest paid or payable to the bank and the amortized amount of processing fees.

The deduction for such borrowing cost under the Income-tax Act shall be subject to Section 43B. The deduction for interest and processing fees shall be allowed on payment basis. Thus, if the processing fee has been paid to the bank, the deduction for the entire fees shall be allowed in the year of payment itself. Irrespective of the amount of borrowing cost recognized in the books of account, the Income-tax Act shall allow a deduction for the entire amount of interest or process fees paid to the bank during the year. The disclosure shall be made in Clause 26.

**56. A demand was raised with respect to Custom 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 is required to report the details of demand raised or refund issued to the assessee during the previous year irrespective of the fact that it was adjusted against any pending demand or refund. Details are to be shown under Clause 41 of Form 3CD.

**57. Whether any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib) received by a start-up to be reported in clause 29?**

Reporting obligation under Clause 29 is triggered if unquoted shares are issued at a premium by a closely held company. In such case, the excess of the premium over the fair market value of the shares shall be taxable as income from other sources in the hands of the company.

The DPIIT recognised start-ups are exempted from applicability of Section 56(2) (viib) subject to satisfaction of various conditions prescribed under the notification issued by the DPIIT<sup>11</sup>. Therefore, Clause 29 shall apply only to closely held companies except DPIIT recognised start-ups which satisfy the condition for exemption. If the private limited company in question is DPIIT-recognised start-up eligible for exemption under section 56(2)(viib), the e-mail received from CBDT regarding eligibility for exemption must be verified by tax auditor and suitable remarks should be made regarding the applicability of the exemption and the non-applicability of Clause 29.

Section 56(2) (viib) and Notification issued by the DPIIT<sup>16</sup> prescribe various conditions for a start-up to claim exemption from payment of tax under this provision. In case of failure to comply with these conditions, the consideration received from the issue of shares, as exceeding the fair market value of such shares, shall be deemed to be the income of the company chargeable to tax for the previous year in which such failure takes place. When the exemption is withdrawn, it shall be deemed that the company has underreported the income in consequence of the misreporting and, consequently, a penalty of an amount equal to 200% of tax payable on the underreported income shall be levied as per Section 270A<sup>12</sup>.

*[To know more, read the article titled 'FAQs on Start-up [2019] 110 taxmann.com 206 (Article)]*

### **58. Whether a change in shareholding of a start-up company is to be reported in Clause 32(b) of Form 3CD?**

Clause 32(b) applies only to closely-held companies (companies in which the public are not substantially interested). It seeks the information of change in shareholding of the company in the previous year due to which the losses incurred before the previous year cannot be allowed to be carried forward in terms of section 79.

Section 79 provides that the losses incurred by a closely held company in any year before the previous year shall not be carried forward and set-off against the income of the previous year, unless the shares of the company carrying at least 51% of the voting power are beneficially held by the same persons on the following two dates:

- (a) On the last day of the previous year in which loss was incurred;
- (b) On the last day of the previous year in which such brought forward loss has to be set-off.

The losses incurred by an eligible start-up shall be allowed to be carried forward and set off against the income of the previous year on the satisfaction of any of the two conditions specified below:

*Condition 1: Continued 51% shareholding*

In the year of set-off of losses, at least 51% of voting power is beneficially held by the same persons who held them as on the last day of the year in which loss was incurred; or

*Condition 2: Continued 100% shareholders with the same voting rights*

100% of shareholders, on the last day of the previous year in which loss was incurred, should continue to hold the same shares on the last day of the previous year in which loss is to be set-off. Further, such losses should have been incurred during the period of 7 years beginning from the year of incorporation of the company.

Hence, the tax auditor should check whether a change in shareholding as envisaged by section 79 of the Act has taken place, the composition of shareholding as at the last day of the current previous year should be compared with the composition of shareholding as at the last day of each previous year in which loss was incurred. The comparison should be done by reference to the Register of Members. The carry-forward of loss incurred in respect of different previous years should be determined previous year-wise.

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1. *Goodyear India Ltd. v. CIT* [2009] 112 Taxman 419 (Delhi)

2. Circular No. 452 dated March 17, 1986

3. The Finance Act, 2020 has changed the due date for furnishing of the tax audit report one month before the due date for furnishing of return of income.

4. Due date for furnishing of return of income for all categories of taxpayer has been extended to 30-11-2020 *vide* the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 read with Notification No.35 /2020, dated 24-06-2020.

5. Notification No. 87/2016, dated 29-9-2016

6. Circular No. 10/2017, dated 23-03-2017

7. Notification: No. SO 17(E), dated 12-1-1977

Film artist includes actor, cameraman, director, music director, art director, dance director, editor, singer, lyricist, story writer, screen play writer, dialogue writer, and dress designer.

8. Notification: No. SO 17(E), dated 12-1-1977

'Authorised Representative' means a person, who represents any other person, in lieu of fee or remuneration, before any Tribunal or statutory authority, but does not include an employee of the person so represented or a person carrying on legal profession or a person carrying on the profession of accountancy.

9. Notification: No. SO 2675, dated 25-9-1992

10. Notification: No. SO 385(E), dated 4-5-2001

11. Notification No. GSR 127(E), Dated 19-2-2019

12. Inserted by the Finance (No. 2) Act, 2019 with effect from Assessment Year 2020-21.