Tax Audit & Recent Changes

By **CA ANIKET S. TALATI**

M.COM., FCA.,
Regional Council Member- WIRC of ICAI

Talati & Talati Group
Business in Focus

Genesis

- Government of India constituted a high power committee of experts under the chairmanship of **Sri Justice K.N. Wanchoo**, retired Chief Justice of India, to examine and suggest legal and administrative measures for counteracting evasion and avoidance of direct taxes in the country
- The Finance Minister's speech presenting the Union Budget for 1984-85 explains the rationale as "intended to ensure that the books of account and other records are properly maintained and faithfully reflect the true income of the taxpayer." Hence the whole idea of audit u/s 44AB of the Income Tax Act, 1961 was to ensure that the books are correctly maintained and income is rightly computed as per the provisions of the law.

Introduction

Every trade with revenue more than a certain threshold undergoes the Income Tax Audit where Qualified Tax Auditors verify the particulars of the prescribed Form and submit the report by evaluating financial records of the enterprises to determine whether the taxpayer complies to the Income tax laws. Income tax Audit comes under the Central Board of Direct Taxes having a yearly report to be submitted to the Income-tax department by the Tax auditors after furnishing their information accordingly. Due date for the submission of Audit Report is on or before 30th September of the Assessment Year.

Provisions of Tax Audit for A.Y. 2018-19

Tax Audit requirements/thresholds as per Section 44AB of Income Tax Act,1961

- In case of Business – Turnover Exceeds Rs. 1 Crore *(Assessee opting for Presumptive Taxation Scheme u/s. 44AD of the Act, the Turnover limit is exceeding Rs 2 Crore)*
- In case of Profession- Receipts Exceeds Rs. 50 Lakhs.
- Business u/s 44AE /44BB /44BBB; income is less than deemed profits;
- Profession u/s 44ADA- Deemed profit is less than 50% & Total Income exceeds Amount Not Chargeable to Tax

Provisions of Tax Audit for A.Y. 2018-19

Compliance Requirements

- **Form 3CA** – Report in case of a Person who is required to get his accounts audited under any law.
- **Form 3CB-** Report in any other case.
- **Form 3CD-** Particulars as required under Form 3CA or Form 3CB.

- **PENALTY PROVISION: ½ % OF TURNOVER SUBJECT TO MAXIMUM RS. 1.50 LAKHS**

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Recent Changes in Form Tax Audit

CBDT has revised Tax Audit Form 3CD Revised vide Notification 33/2018 dated 20.07.2018 ***(effective from 20.08.2018) by which it has made 6 Amendments and 9 Insertions in*** *Tax Audit Report Form 3CD*

Highlights of Amendments

- Clause No. 4 – GSTIN to be mentioned.
- Clause No. 19 – Allowance under Section 32AD is to be reported.
- Clause No. 24 – Deemed gains under Section 32AD to be reported.
- Clause No. 26 – Clause (g) of Section 43B (sum payable to Indian Railways for use of assets) has to be reported.
- Clause No. 31 – Cash receipts more than INR 2,00,000 under Section 269ST is to be reported.
- Clause No. 34 – Details with respect to transactions not disclosed in TDS Return/ TCS Return is to be reported.

Summary of Insertions:

- **Clause 29A - Advance received on capital asset forfeited to be reported here {Section 56(2)(ix)}.**

- Clause 29B – Income of gifts exceeding INR 50,000 to be reported here {Section 56(2)(x)}.

- Clause **30A - Details about "Primary Adjustments" in transfer pricing to be reported here as per Section 92CE.**

- **Clause** 30B – Limitation of Interest deductions for borrowings from a AE upto 30% of EBITDA is to be furnished here.

- Clause 30C – Details of Impermissible Avoidance Agreement to be furnished as referred to in Section 96.

Summary of Insertions (Cont..)

- Clause **36A - Dividend received under Section 2(22)(e) is required to be reported here.**

- **Clause** 42 – Details w.r.t. Form 61 (details of no PAN Form 60 received), *Form No. 61A*(SFT) and *Form No. 61B* (SRA) is to be provided here.

- Clause **43 - Details w.r.t. CbC Reporting as referred to in Section 286 is required to be reported.**

- Clause **44 - BREAK UP of total expenditure in respect of GST Registered and Unregistered Entities is required to be given.**

Clause by Clause Analysis of Changes

Clause no. of TAR	Description	Background	Amendment made in TAR
Addition of new clause 29A	Reporting of receipt of forfeited advance for transfer of capital asset	Finance Act 2014 inserted provision for taxation of advance money received for transfer of capital asset, if such amount is forfeited and the transfer of capital asset is not successful. {Section 56(2)(ix)}.	Accountant to certify whether the taxpayer has received any such income and if yes, the nature & amount of such income.
Addition of new clause 29B	Reporting of gift received	Finance Act 2017 expanded scope of taxation on moneys / properties received by a taxpayer without consideration or for inadequate consideration	Accountant to certify whether the taxpayer has received any such income and if yes, the nature & amount of such income.

Clause by Clause Analysis of Changes

Clause no. of TAR	Description	Background	Amendment made in TAR
Addition of new clause 30A	Secondary Adjustment under Transfer Pricing	Finance Act 2017 introduced Secondary Adjustment provisions which trigger in a case there is a primary transfer Pricing Adjustment under the prescribed scenarios. In a case where due to a primary adjustment in the hands of the taxpayer, there results an excess cash with taxpayer's associated enterprise (AE) outside India, such excess cash is required to be repatriated to India within the prescribed time limits. In case where the excess money is not repatriated to India within the prescribed time, such amount is deemed to be an advance made by the taxpayer to its AE and interest is levied on the deemed advance in a prescribed manner until repatriation of the money to India.	Following disclosures to be made ✓ Whether there has been a primary adjustment during the year, category & amount of primary adjustment made ✓ Whether the excess money available is required to be repatriated to India and if yes, whether the excess money has been repatriated to India within the prescribed time limit. ✓ If the excess money is not repatriated to India within the prescribed time, amount of imputed interest on such deemed advance

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Clause by Clause Analysis of Changes

Clause no. of TAR	Description	Background	Amendment made in TAR
Addition of new clause 30B	Disallowance of interest deduction under new limitation rule as per BEPS Action 4	Pursuant to BEPS Action 4 recommended by OECD, Finance Act 2017 inserted a new provision which limits interest deduction or similar payments made by Indian company / permanent establishment of foreign company for debt borrowed from or guaranteed by non-resident AE. The provision applies if interest or similar payments exceeds INR 10 million in which case, interest deduction is limited to lower of actual expenditure in favour of AE or 30% of Earnings before interest depreciation, tax and amortization (EBIDTA)	Accountant to certify details of expenditure incurred by way of interest or similar nature, EBIDTA of the relevant year, quantum of interest expenditure or similar nature which exceeds 30%of EBDITA, & unclaimed interest expenditure eligible for carry forward to subsequent year.

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Clause by Clause Analysis of Changes

Clause no. of TAR	Description	Background	Amendment made in TAR
Addition of new clause 30C	General Anti Avoidance Rule (GAAR) impacted transactions	GAAR provisions were introduced from 1 April 2017 onwards to deal with aggressive tax planning.	TAR to report whether the taxpayer has entered into an impermissible avoidance arrangement. If yes, nature of such impermissible avoidance arrangement & the amount of aggregate tax benefit arising to all the parties concerned.
Addition of new clause 31(ba)/(bb) / (bc)/bd)	Receipt of cash in excess of INR 2 lakh	Finance Act 2017 inserted provision to prohibit taxpayers from receiving cash in excess of INR 2 lakh, except in certain situations. This was done towards moving to a more digitized economy.	TAR to disclose transactions not complying with said requirement.

Clause by Clause Analysis of Changes

Clause no. of TAR	Description	Background	Amendment made in TAR
Addition of new clause 34(b)	Enhanced reporting of TDS / TCS statement	Earlier, TAR did not require disclosure of unreported transactions in TDS statements if they were furnished within due date. The disclosure of unreported transactions was required only if TDS statements were not furnished within due date.	TAR to now disclose details/transactions not reported even in TDS statements which are furnished within due date

Clause by Clause Analysis of Changes

Clause no. of TAR	Description	Background	Amendment made in TAR
Addition of new clause 36A	Deemed Dividend	Any loan / advance given by a closely held company to its substantial shareholder or a concern where such shareholder holds substantial interest or any payment made by such company for benefit of such shareholder is deemed to be "dividend" to the extent of accumulated profits possessed by payer company. Such payment triggered taxation in the hands of the recipient shareholder	Amended TAR requires the recipient of such dividend to report the quantum of dividend received and date of such receipt. New reporting requirement applies to the recipient of the dividend who is liable to tax audit and not to the company paying dividend.

Clause by Clause Analysis of Changes

Clause no. of TAR	Description	Background	Amendment made in TAR
Addition of new clause 42	Specified Financial Transactions (SFT) Foreign Account Tax Compliance Act (FATCA)	Forms 61 & 61A - Taxpayers to furnish details of SFTs and the parties with whom such transactions were entered. The reporting entity is required to submit details in Form 61A. Similar reporting requirement exists in Form 61 for a separate list of PAN reportable transactions where counter party to the taxpayer does not possess PAN. Form 61B - Indian tax law requires prescribed financial institutions to furnish a statement in Form No. 61B of 'reportable accounts' maintained by them. This was done to collect required information to enable India to meet its obligation of automatic exchange of information under FATCA.	Accountant to report whether the taxpayer is required to furnish Form No. 61 / 61A / 61B and if yes, the relevant details such as Taxpayer's identification number, due date of furnishing respective forms, date of furnishing the said form. Amended TAR also requires the Accountant to report whether submitted forms contains all details or transactions which were required to be reported and if not, list of details / transactions which are not reported.

Clause by Clause Analysis of Changes

Clause no. of TAR	Description	Background	Amendment made in TAR
Addition of new clause 43(a)	Country By Country (CByC) Reporting Provisions	CbyC reporting provisions requires Multi National Entities (MNEs) to report the amount of revenue (related and unrelated party), profits, income tax paid and taxes accrued, employees, stated capital and retained earnings, and tangible assets annually for each tax jurisdiction in which they do business. In addition, MNEs are also required to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity conducts. This information is to be made available to the tax authorities in all jurisdictions in which the MNE operates. The documentation requirement follows a 3-tier approach: CByC Report, Master File, Local File.	Accountant to report whether the taxpayer or its parent entity or alternate reporting entity is liable to furnish the CbyC report and if yes, particulars relating to furnishing of such report.

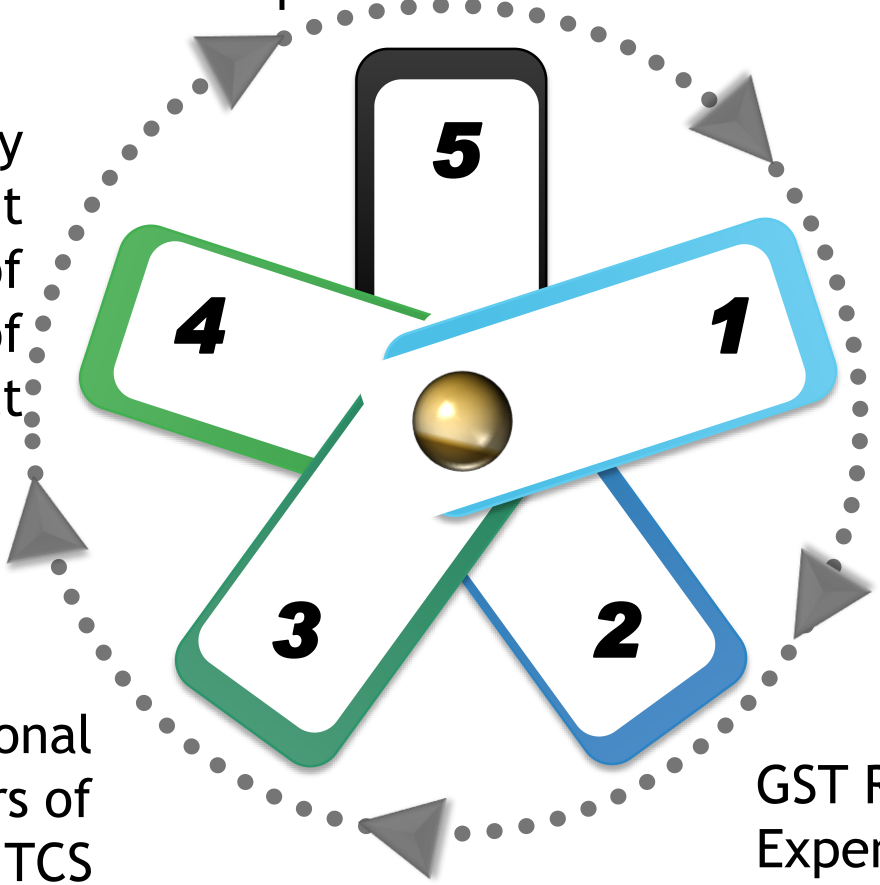
Clause by Clause Analysis of Changes

Clause no. of TAR	Description	Background	Amendment made in TAR
Addition of new clause 44	GST	Introduced from 1 April 2017, GST is one indirect tax for whole of India on supply of goods and services, right from the manufacturer / service provider to the ultimate consumer. GST is a comprehensive levy and allows tax collection on both goods and services based on the principle of value added tax.	Amended TAR requires reporting of details of GST i.e, break-up of total expenditure with GST registered and unregistered entities. In relation to expenditure with GST registered entities, it further requires the break-up of expenditure relating to exempt supply covered under the composition scheme and other registered entities.

Challenges for Chartered Accountants due to changes in Form 3CD

Challenges for CA

Additional Burden of studying requirements of Form 61,61A or 61B Compliance in case of assessee



Investigation by Auditor about applicability of Section 2(22)(e) of the Act

Report the Impermissible Avoidance Arrangements as referred to in Section 96 of Act.

Additional Particulars of TDS/TCS

GST Reco. Of Total Expenditure

Biggest Challenge

- More Liabilities are now imposed upon Auditors.

- To Train the Staff and equip them with necessary skill sets for gearing up completion of Audit Targets-**IN TIME.**

Million Dollar Question  ??????

- Changes in Form 3CD imposed additional burden which will demand extra time from CA Professionals – But whether it will yield extra Remuneration from clients ?


Thank you