

## ***CBDT amends Form 3CD - Inserts clauses relating to secondary adjustments, GAAR, specified financial transactions, CbCR***

July 27, 2018

### ***In brief***

The Central Board of Direct Tax (CBDT) issued a notification<sup>1</sup> amending Form 3CD with effect from 20 August, 2018.

The amended Form 3CD *inter alia* includes disclosures on secondary adjustments, interest deduction limitation, general anti-tax avoidance rules (GAAR), specified financial transactions (SFT), country by country reporting (CbCR), expense break-up related to entities registered or not registered under the goods and Service tax (GST), etc.

A few additional disclosures related to forfeiture of advance money for transfer of capital assets, income liable to tax under the head income from other sources, amount claimed as investment allowance, amount received as deemed dividend, dividend, cash payments/ receipts of INR 0.2 million or more, etc., have also been introduced in the modified Form 3CD.

### ***In detail***

- The key modifications made in Form 3CD are summarised here:

<b>Clause No. of revised Form 3CD</b>	<b>Revised/ New requirements as per revised Form 3CD</b>	<b>Our comments/ Observations</b>
4	GST registration number to be reported if the taxpayer is liable to pay GST	
19 and 24	Reporting relating to deduction claimed under section 32AD <sup>2</sup> of the Income-tax Act, 1961 (the Act):  (a) amount debited to profit and loss account;	Section 32AD of the Act provides for deduction for investment made in new plant or machinery in the notified backward areas in certain States <sup>3</sup> .  The clause seeks disclosure of deduction admissible under section 32AD of the Act.

<sup>1</sup> Notification No. 33/2018/F. No. 370142/ 9/ 2018-TPL, dated 23 July, 2018

<sup>2</sup> Deduction for investment in new plant and machinery in notified backward area

<sup>3</sup> State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal

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	(b) amount admissible; (c) amounts deemed to be profits and gains.	
26	Reporting on any sum payable to the Indian Railways for the use of railway assets.	Section 43B of the Act provides certain expenditure admissible only on actual payment.
29A	<p>Reporting of nature and amount of income chargeable under the head “income from other sources”:</p> <ul style="list-style-type: none"> <li>• Advance money forfeited relating to the transfer of capital asset - Section 56(2)(ix) of the Act;</li> <li>• Receipt of any sum of money, immovable property or movable property received without consideration/ inadequate consideration – Section 56(2)(x) of the Act.</li> </ul>	<p>The clause seeks disclosure on income which is chargeable under the head “income from other sources”.</p> <p>The modification with reference to section 56(2)(x) of the Act casts an additional responsibility on the taxpayers, as the taxpayers have to justify to the tax auditors regarding the commercial aspects of the transactions falling within the ambit.</p>
30A	<p>Disclosure regarding secondary adjustment (Section 92CE of the Act)</p> <ul style="list-style-type: none"> <li>• Whether primary adjustment has been made during the previous year? If yes, the clause as per section 92CE(1) of the Act under which it has been made and the amount.</li> <li>• If the money is required to be repatriated to India as per section 92CE(2) of the Act? If yes, whether it has been repatriated within the prescribed time?</li> <li>• If the amount is not repatriated within the prescribed time, the amount of imputed interest income on such excess money.</li> </ul>	<p>As per the proviso to section 92CE(1) of the Act, for secondary adjustment to be made, primary adjustment should be more than INR 10 million.</p> <p>However, the clause is not clear in asking the said details, only in case where the amount of primary adjustment exceeds INR 10 million. Reporting primary adjustments lesser than INR 10 million will have no practical utility for tax authorities.</p> <p>A similar value limitation has been provided in Clause 30B pertaining to section 94B of the Act (limitation on interest deduction in certain cases) and Clause 30C pertaining to section 96 of the Act (GAAR implications).</p> <p>For cases where the time period of 90 days, as mentioned in Rule 10CB of the Income-tax Rules 1962, has not elapsed as on 31 March of the relevant financial year, the clause is not clear on the cut-off date to be considered for the purpose of reporting if the repatriation is done within the prescribed time limit.</p> <p>Additionally, for such cases, the clause is silent on the cut-off date to be considered for the calculation of interest on excess money, if any.</p>
30B	<p>Disclosure regarding interest deduction limitation (Section 94B of the Act)</p> <ul style="list-style-type: none"> <li>• Whether the taxpayer has incurred expenditure during the previous year by way of interest or of similar nature exceeding INR 10 million as referred to in section 94B(1) of</li> </ul>	<p>The clause is silent on the exclusion of companies that are in the business of insurance or banking, from the purview of section 94B of the Act. Therefore, every taxpayer (including the banking and insurance companies) may be required to provide the said details. Ideally, the Form should have contained a “Not Applicable” option for such companies.</p>

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	<p>the Act? If yes, the amount of expenditure by way of interest or of similar nature incurred.</p> <ul style="list-style-type: none"> <li>Earnings before interest, tax, depreciation and amortisation (EBITDA) during the previous year.</li> <li>Amount of interest expenditure which exceeds 30% of EBITDA and details of interest expenditure brought forward as well as carried forward, as per section 94B(4) of the Act.</li> </ul>	
30C	Reporting of “Impermissible Avoidance Arrangement” under GAAR provisions along with the nature and amount of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement.	<p>The clause seeks disclosure of all transactions which are impermissible avoidance arrangement under the provisions of Chapter X-A of the Act.</p> <p>As per Rule 10U of the Income-tax Rules, 1962, the GAAR provisions do not apply where the overall tax benefit does not exceed INR 30 million. However, based on the modifications made in Form 3CD, it is not clear whether reporting is required even where the aforesaid threshold limit is not exceeded.</p>
31	Reporting seeking particulars of receipts or payments made in cash or cheque or bank draft (not being account payee cheque or account payee bank draft) exceeding the limit specified <sup>4</sup> in section 269ST of the Act.	The clause seeks extensive disclosure on particulars of receipts or payments made in cash or cheque or bank draft (not being account payee cheque or account payee bank draft).
34	Reporting requirement in respect of furnishing of statement of withholding tax or tax collected at source (TCS).	This substituted clause applies to all taxpayers who have furnished the statement of withholding tax or TCS. The details of all transactions which are reportable but not reported in the statement of withholding tax or TCS have to be reported under this clause.
36A	Reporting amounts received as deemed dividend under section 2(22)(e) of the Act.	
42	Reporting requirement in respect of Form No. 61 (Statement containing particulars of declaration received in Form No. 60); Form No. 61A (SFT by specified reporting persons) and Form No. 61B (Statement of Reportable Account by prescribed reporting financial institution, as per section 285BA of the Act).	<p>The clause applies to all taxpayers to whom these forms are applicable.</p> <p>The details of all transactions which are not reported in these forms have to be reported under this clause.</p>
43	Reporting details relating to furnishing of CbCR by the taxpayer or its parent entity or alternate reporting entity:	In case the report is furnished by the Indian entity under section 286(4) of the Act, the date of furnishing of report should be mentioned as the

<sup>4</sup> The present threshold is INR 0.2 million or more

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	<p>Whether the taxpayer or its parent entity or an alternate reporting entity is liable to furnish the report as referred to in section 286(2) of the Act? If yes,</p> <ul style="list-style-type: none"> <li>• Whether report has been furnished by the taxpayer or its parent entity or an alternate reporting entity.</li> <li>• Name of parent entity.</li> <li>• Name of alternate reporting entity (if applicable).</li> <li>• Date of furnishing of report.</li> </ul>	<p>date on which the Indian entity has filed the CbCR.</p>
44	<p>Reporting of information relating to break-up of total expenditure incurred during the year relating to entities registered (including composition scheme or covered under exemption list) and not registered under the GST.</p>	

***The takeaways***

The notification has aimed to expand the scope of Form 3CD and to provide certain additional disclosures. Such

disclosures would certainly help tax authorities to obtain a first level review of information already reported in other forms (related to direct tax and transfer pricing).

***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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