



# The Chamber of Tax Consultants

Mumbai | Delhi

Registered Office

3, Rewa Chambers, Gr. Floor, 31, New Marine Lines, Mumbai – 400 020.

Tel.: +91-22-2200 1787, 2209 0423, 2200 2455 | E-mail: office@ctconline.org | Website: www.ctconline.org

WhatsApp: 9004945579 | FB Page: <https://www.facebook.com/ctcconnect/>



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10th Aug, 2018

To,  
**Shri Sushil Chandra**  
**The Chairman,**  
**Central Board of Direct Taxes**  
**North Block,**  
**Delhi 110001.**

Respected Sir,

## **Re: Representation for amendments made in Form 3CD (Tax Audit Report)**

The Chamber of Tax Consultants (CTC), Mumbai was established in 1926. CTC is one of the oldest (92 years) voluntary non-profit making organizations in Mumbai formed with the object of educating and updating its members on Tax and other Laws. It has a robust membership strength of about 4000 professionals, comprising Advocates, Chartered Accountants and Tax Practitioners.

The Government has by Notification No. 33/2018, dated 20th July, 2018 amended the form 3CD (herein after referred to as the form) to amend few clauses and to insert new reporting clauses. The said notification is applicable from 20<sup>th</sup> August 2018.

Tax returns for cases where a Tax Audit is required u/s 44AB and where form 3CD is to be filed are due before 30<sup>th</sup> September 2018.

**We hereby represent that the said amendment must be kept in abeyance, and particularly for the Assessment year 2018-19 for the reasons mentioned hereafter.**

1. The said form has been introduced after a period of more than three months after the end of the accounting period on 31<sup>st</sup> March 2018. We draw your attention to the *judgment of the Honourable Delhi High Court* in the case of Avinash Gupta v. Union of India ([2015] 378 ITR 137 (Delhi)) wherein the Hon'ble Court has directed the CBDT/Government to make the Forms for audit report and ITR available by 1st April of the Assessment Year. Release of substantial amendments to the form 3 months after the Assessment year commenced is not in line with the directions of the High Court. The relevant extract of the said judgement is reproduced below:

*“22.... There is sufficient time available to the Government, after the Finance Act of the financial year, to finalise the forms and if no change is intended therein, to notify of the same immediately. There appears to be no justification for delay beyond the assessment year in prescribing the said forms. Accordingly, though not granting any relief to the petitioner for the current assessment year, the respondents are directed to, with effect from the next assessment year, at least ensure that the forms etc. which are to be prescribed for the Audit Report and for filing the are available as on 1st April of the assessment year unless there is a valid reason therefor and which should be recorded*

*in writing by the respondents themselves, without waiting for any representations to be made. The respondents, while doing so, to also take a decision whether owing thereto any extension of the due date is required to be prescribed and accordingly notify the public.”* [Emphasis provided].

2. We would like to bring your notice that two years back, in a writ petition filed by The Chamber of Tax Consultants before the Hon’ble Bombay High Court for extension of due date u/s 139(1), ***the Government had committed before the High Court that the forms and facility for filing Returns of Income will be made available before the start of relevant Assessment Year.***
3. The said Amendment was introduced on 20<sup>th</sup> July 2018 and the due date for filing returns is 30<sup>th</sup> September 2018. In its wisdom, the law has carved out a period of 6 months for filing of returns in cases where a tax audit is required. With this amendment, the effective time available to understand the form and compile the details is less than 3 months. This reduction of time available with an assessee to get accounts audited is unfair and hence this amendment must be introduced only from Assessment Year 2019-20 if at all so required. It is relevant to note that subsequent to the amendments, the tax audit shcema needs to be changed. A lot of tax audit data is compiled through use of third party software providers who would need to update the software and make it available – all of which has not even happened till the date of this representation.
4. The amendments to the form cast an onerous duty on the Chartered Accountant to report on various issues and the same is dealt with separately in this representation. Some of the areas where reporting is sought are areas that are beyond what an Accountant can express an opinion on. There are certain areas where there is a clear duplication between reporting that is to be done under other forms such as a form 3CEB which may be done by a separate Accountant. There are also areas of reporting which have nothing to do with the computation of Total Income and hence ought not to be a part of a tax audit reporting.
5. The draft form has not been put forward for public comments from stake holders – which we represent is unfair as the form needs to be compiled for by businesses through their Accountants and it would in the fitness of transparent governance to invite stakeholders views prior to release of such forms.
6. The Institute of Chartered Accountants normally release a Guidance Note to its members on reporting of the new clauses of form 3CD and till such time that Accountants get the said guidance from the ICAI it would be very difficult for a Chartered Accountant to compile the Form. The amendment having been made so late, this Guidance note will be issued even later resulting in inadequate time for filing of the form.
7. Certain clauses call for detailed data mining by an assessee. If an assessee is aware of the same at the beginning of the financial year, the data can be suitably captured by accounting systems and be provided for an audit. If the same is required after the year is over, recompiling of data and building of the data is an unfair task and requires a marathon exercise.

**It is therefore prayed that the said form should be kept in abeyance and should be introduced only from Assessment Year 2019-20 after considering views of stakeholders on some of the reporting requirements, a representation for which is detailed hereafter.**

In respect of the reporting requirements inserted / amended by the amendment, we represent as under and seek suitable amendments as prayed:

The clause to clause suggestions on the amendments are as under

**7.1 Insertion of clause 29A –Section 56(2)(ix)**

The said clause requires the auditor to give details about amounts received in advance and which have been forfeited due to the agreement about a property owned by the assessee failing to go through. The said clause requires the auditor to certify the amount received as income under section 56(2)(ix).

The said sums may not have been received during the year and tracing of the same as a part of a regular audit process may not be possible. The auditor is auditing the books for 2017-18 and it would not be possible to identify the forfeiture of amounts received by the assessee in the earlier year with the normal auditing procedures carried out by the auditor. The auditor would require special investigation to be carried out which will require more time.

The fact of forfeiture are also difficult to identify as in majority of such cases the cancellation deed for the agreement is not prepared due to non-cooperation of the other party.

**We recommend that the clause 29A be made applicable from A Y 2019-20.**

**7.2 Insertion of clause 29B –Section 56(2)(x)**

The clause requires the auditor to report any receipt in the nature provided under section 56(2)(x).

In case of where assessee is an individual or HUF, auditor reports for his business concern/transactions. His personal bank accounts and details are not verified and reported on. Before reporting on this clause, the auditor will have to go through the personal (non-Business) accounts and bank transactions of individual/huf, identify the transactions and then consider whether any reporting is required under this clause or not after analysing the provisions of section 56(2) (x) read with rule 11UA.

**We recommend that clause 29B may be deleted and made applicable to other than Individual and HUF from A Y 2019-20**

**7.3 Insertion of Clause 30C: GAAR**

This clause requires details of impermissible avoidance arrangement as referred to in section 96 entered in to by the assessee. The said clause requires an tax auditor to enter the shoes of the revenue officer and decide whether a transaction entered in to by the assessee is an impermissible avoidance arrangement.

The conditions specified under section 96(1) are not specific and would be a matter of debate whether a particular arrangement is covered under the provisions of sec. 96(1)

or not? It will require a higher level of interpretation and deliberation and therefore would not be possible for a tax auditor to simply opine whether a transaction is an

impermissible avoidance arrangement or not. This is not a clause which requires a disclosure of certain facts, it's a matter of interpretation.

Generally in a scheme of arrangement multiple steps and multiple parties are involved and to ascertain whether the arrangement triggers GAAR the auditor will have to study the entire arrangement and it likely that the particular assessee may not be privy to all the information/document in relation to the arrangement and only other parties to the arrangement are privy to such information/document.

Further, the way GAAR provisions are worded, it is only the Revenue Officer who has the power to declare an arrangement impermissible tax avoidance arrangement, the assessee doesn't even have the power to declare an arrangement impermissible tax avoidance arrangement.

**Thus the clause 30C is impossible to comply with and we therefore recommend that the same should be deleted.**

#### 7.4 **Insertion of Sub clause (bc) and (bd) of clause 31: Particulars of payment made in an amount exceeding the limit specified in section 269ST**

Provisions of section 269ST are applicable to person receiving an amount of Rs. 2 Lakh or more and not for payment. We have sufficient provisions under the law and different clauses to report on payments in Form No. 3CD. Why this additional clause of reporting is required? Secondly, it does not have any impact on the computation of Total Income. Similar argument is applicable for clause 31(d) & 31(e) which are inserted from 19.07.2017.

**Therefore, we recommend that clause no.31(bc) and 31(bd) needs to be deleted.**

#### 7.5 **Substitution of Clause 34(b) : Regarding TDS**

In the above clause the auditor was earlier required to provide details of statement of TDS filed by assessee and other details. The new clause now puts on the auditor the onerous duty of certifying whether the statement covers all the entries and if not the details of such entries which are not included. This would require a very detailed analysis of all transactions/records and the same would be very difficult in the short period provided. This is equivalent of a TDS audit.

It would be practically impossible to certify the entire payments made by assessee and identify each and every case where TDS was deductible and not deducted, especially when the number of transactions are huge. There would also be cases where there would be difference of opinion as to whether TDS is deductible and if yes at what rate.

**We recommend that the old clause should be reinstated and Insertion of New Clause 34(b) - may be deleted.**

#### 7.6 Insertion of Clause 36A: Deemed Dividend

The new clause requires that the auditor to give his opinion about the fact that the amount received by the assessee is deemed to be a dividend under section 2(22)(e).

The assessee himself is likely to contest the classification as dividend. The classification of an amount as deemed dividend under section 2(22)(e) requires that there should be surplus in the company which has given advances or loan. This information would be available only if the auditor is also auditing the payer company. The said issue is debatable and highly litigated and there is more than one view about the classification as deemed dividend of any amount.

**Due to the lack of information and in view of debatable issue we recommend that clause 36A may please be deleted.**

#### 7.7 Insertion of clause 42 – Furnishing of statement in Form 61/61A/61B

The new clause requires that the auditor needs to report the filling of forms with appropriate authorities and provide details like (i) Income tax Department Reporting Entity Identification Number, (ii) Type of Form, (iii) Due date for furnishing the statement, (iv) date of furnishing the same and (v) whether the Form contains the information about all details/transactions which are required to be reported. If this is not done, a list of the details/transactions which are not reported.

First of all, reporting under this clause does not have any effect on computation of total income of an assessee. Secondly, the said details would require to study the provisions and check whether all transactions are covered and reported. The said exercise would require a detailed study and create a lot of hardship to complete the audit within the deadline.

**We recommend that the implementation of the clause 42 be dropped or at least postponed to the next assessment year.**

#### 7.8 Insertion of New Clause 44 – GST details.

The New clause 44 requires break-up of total expenditure of entities registered or not registered under the GST Act. The clause requires bifurcation of expenditure into categories in respect of entities registered under GST. The details sort are to be complied by the assessee separately. The assessee is already troubled by the rigours of frequent changes in GST law, this would add insult to injury. The said details are already available with the GST system and thus the repetition of the details over hear would serve no purpose and greatly trouble the assessee. And moreover, reporting under this clause does not have any effect on computation of total income of an assessee.

The tax auditor conducting audit as per the income tax provisions is considering the auditing and taxation aspects whereas reporting on the aspects of GST law requires specialisation on that law which itself is in developing stage. We plead that the said clause will burden the assessee with additional compliance burden which is likely to cause harassment.

**We recommend that the implementation of clause 44 be dropped.**

We request your goodself to kindly consider the above issue on priority basis and **the said amendment must be kept in abeyance, and particularly for the Assessment year 2018-19.** Please issue necessary directions well in time to postpone.

We look forward to your kind and thoughtful intervention and taking up our request for kind consideration

Thanking you,

Sincerely,

**For The Chamber of Tax Consultants**

Sd/-	Sd/-	Sd/-
Hinesh R. Doshi	Mahendra Sanghvi	Apurva R. Shah
President	Chairman	Co-Chairman
	Law & Representation Committee	

CC: The Finance Secretary, Ministry of Finance.