

# Practical Challenges on Accountants Report (Form 3CEB) Going Online



The Central Board of Direct Taxes (CBDT) recently notified that the Accountants Report in Form 3CEB which is certified by the Chartered Accountants (CA) should be filed electronically from Assessment Year 2013-14 onwards. While it's a welcome move by the CBDT, it poses a lot of practical challenges before the CA's and the Assessee's. This article makes an effort in analysing the practical challenges while filing the Form online. It is in the interest of the Assessee and the consultants that the CBDT shall take cognisance of such challenges and address the same at the earliest.



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## Background

In the era of globalisation and rapid shift to paperless world, the Indian tax authorities are the front runners on the subject, keeping pace with the best practises globally. While the tax payers and consultants still carry huge chunk of documents to the tax office in the form of submissions, returns, certificates etc., the tax authorities are promoting e-filing in various forms. It started the e-filing revolution with the Return of Income (ROI) for corporate Assessees to be mandatorily filed electronically from Assessment Year 2006-07. It was followed by the return of income of individual

assessee (having taxable income of more than ₹10 lakh per annum) to be mandatorily filed online from Assessment Year 2012-13.

The latest form/report to join the e-filing league is Accountants Report in Form 3CEB [refer section 92E of the Income-tax Act, 1961 (the Act)] and Tax audit report (refer section 44 AB / Section 115JB of the Act respectively) which are to be mandatorily filed electronically from Assessment Year 2013-14 as notified by CBDT vide Notification No. 34 /2013/F.No.142/5/2013-TPL dated 1<sup>st</sup> May, 2013.

A comparative analysis of key amendments made in Income-tax (3rd Amendment) Rules, 2013 *vide* the above notification are as follows:

<b>Form</b>	<b>Existing position ( upto Assessment Year 2012-13 )</b>	<b>New Position ( from Assessment Year 2013-14 )</b>
<b>Mandatory e-filing of certain reports</b>		
Audit Report / Form 3CEB	No such requirement	E-filing of following audit reports shall be mandatory in following cases: (a) Audit report under Section 44AB in respect of books of account; (b) Audit report under Section 92E in respect of international transaction; or (c) Audit report under Section 115JB in respect of MAT computation.
<b>Mandatory e-filing of return of income or assessee claims tax relief</b>		
Mandatory e-filing of return	It is mandatory for an individual or an HUF to e-file the return of income if its total income exceeds ₹10,00,000	(a) It is mandatory for every person (not being a company or a person filing return in ITR 7) to e-file the return of income if its total income exceeds ₹5,00,000 (b) Every person claiming tax relief under Section 90, 90A or 91 shall file return in electronic mode.

As part of Annual compliance requirement under the Indian Transfer Pricing Regulations, apart from maintaining robust Transfer Pricing Documentation under Section 92D of the Act read with Rule 10 D of the Income-tax Rules, 1962 (the Rules) Indian TP Regulations also mandate tax payers to obtain an accountant's report in Form 3CEB certified by a CA under Section 92E of the Act read with Rule 10E of the Rules and file the same with the tax authorities.

The documentation report is to be prepared and maintained by the due date of filing of return of Income for the relevant Assessment Year and is generally filed with the Transfer Pricing Officer (TPO) during the Transfer Pricing Assessment proceedings. However, the Form 3CEB (being an annexure to the return of income) is to be filed by the due date of filing ROI for the respective Assessment Year. Until Assessment Year 2012-13, the return of income was filed electronically and the Form 3CEB was certified by a CA and filed in hard copy with the relevant Assessing Officer.

### Challenges

Since the introduction of the Transfer Pricing Regulations in India from 2001, the subject has always invited attention of various stakeholders, especially the multinational corporations on account of protracted litigation consequently resulting in huge adjustments. While mandating taxpayers to file Form 3CEB online is a welcome move by the CBDT, there are practical challenges which the CA and Tax payers may face in filing the Form 3CEB electronically. Some of the challenges are as follows:

**Poor Interface:** The existing Form 3CEB which can be downloaded from the website ([www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in)) is not a simple to use excel, where one can populate or import the details from the previous year forms. It is a form wherein one would be required to key-in the information for each line item afresh. Hence, additional efforts would be required for keying-in the Form 3CEB details and generating the XML (as done for the ROI) and the same needs to be uploaded on Income Tax website

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by using the tax payers log in details. For certain Assesseees, the entries would run into 1000's of line items. Hence, if the form is equipped with import facility (a feature which is already available in ITR forms for Assessment Year 2012-13), it could reduce considerable amount of burden on the Assessee and consultants as most of the data relating to the Associated Enterprise like relationship, address etc would not change significantly over the years and can be carried forward with minimal efforts.

**CA and Assessee to Sign the Form 3CEB?** Form 3CEB is a certification by a CA that reports the details relating to the International Transactions between the Assessee and the Associated Enterprises are true and correct based on the information and records provided by the Assessee. Hence, until Assessment Year 2012-13 the form used to be certified by the CA and the Assessee. As of now, the form as provided in the income tax website, clearly mentions that the XML should be uploaded using digital signature of the CA. However, there is no provision or clarity whether the same needs to be digitally signed by the Assessee as well. Alternatively, one can also assume that since the XML would be uploaded using the PAN of the Assessee, it is accepted and certified by the Assessee too.

#### **Form 3CEB to be filed with ROI or Separately?**

As mentioned earlier, until Assessment Year 2012-13 the ROI was filed online and the Form 3CEB was filed in hard copy with the tax authorities. In substance, the Form 3CEB is an annexure to ROI. However, as of now, there is still no clarity whether the Form 3CEB would be filed separately or would be filed along with the ROI as the drop down option for filing forms/returns does not show Form 3CEB separately. If one thinks logically, since the Form 3CEB is an annexure to the ROI, it makes practical sense to be filed along with the ROI. However, it would be practically challenging for the Assessee's and the consultants to file the Form 3CEB and ROI together.

**Provision for Notes – Missing:** The Form 3CEB does not provide for any space or provision for

providing 'Notes' for the transaction being reported. Further, the fields for reporting the transactions are pre-defined. Hence, any general information or disclosure which the taxpayer proposes to disclose would not be possible. This would pose practical challenges on disclosing the *caveats* or reasons for justifying the methods adopted or disclosing transactions beyond the 13 clauses. Further, it would be difficult to disclose receivables, payables, working capital adjustments, share capital details in the Form 3CEB as both Assessee's and taxpayers have diplomat views that they are or not transactions and mere disclosures. With the Finance Act, 2012 introducing penalty of 2% of the transaction value for non-disclosure of any International transactions in the Form 3CEB, it would be challenging to see how the taxpayers, the consultants and the tax authorities would treat the same. Also in cases where the Assessee exercises the benefit of the tolerance band (3% or 1% as the case may be) there is no provision to disclose the same. Furthermore, in cases the Assessee undertakes a voluntary adjustment; there is no specific provision to disclose the basis of such voluntary adjustment undertaken by the Assessee. An alternative could be to capture such detailed notes as part of the documentation report. Also with respect to transactions like share capital, receivables payables etc which are mere disclosures, such information may be disclosed under clause 13 of the Form 3CEB.

**Qualifying a Form 3CEB – Difficult:** The auditor's report generally captures the qualifications (if any) pertaining to the tax payers' business. Such qualifications (if relevant) and having an impact for Transfer Pricing purposes, then the Form 3CEB is also qualified accordingly. For instance, if the Audit report qualifies the valuation of stocks, physical verification of stock etc. the Form 3CEB is accordingly qualified. Such qualifications were made in the Form 3CEB itself.



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**The Finance Act 2013 was a huge disappointment to the taxpayers and consultants from a transfer pricing perspective as much of the expected clarifications required by the TP community on the domestic transfer pricing were not addressed.**

An illustration of a qualification in Form 3CEB by placing reliance on the audited financial statements of the Assessee may be reported as follows:

"On the basis of the Audit Report of M/s ABC, Chartered Accountants that the books of account kept by the assessee give a true and fair view in conformity with the accounting principles generally accepted in India:

(a) *in case of the balance sheet, of the state of affairs of the assessee as at March 31, 2012 ; and*  
 (b) *in the case of profit and loss account, of the profit for the year ended on that date, which report is subject to the effect of the matter stated in paragraph 3 and 4 of the said Audit report and paragraphs 1(b), 2(b), 2(c), 4, 7, and 8 of the Annexure to the said report which is not ascertainable, in our opinion, proper information and documents as are prescribed have been kept by the assessee in respect of the international transactions entered into so far as appears from our examinations of the records of the assessee.*

*The particulars required to be furnished under section 92E are given in the Annexures to this Form subject to paragraph above, in our opinion and to the best of our information and according to the explanations given to us, the particulars given in the Annexures, as read with the notes attached thereto, are true and correct."*



However, from Assessment Year 2013-14 onwards, it would be difficult to qualify the Form 3CEB, as the Form is not editable and does not have specific space or provision to do so.

**Reliance on Audited Financials – Difficult:** Apart from the information provided by the Assessee, the Form 3CEB certified by a CA generally place reliance on the audited financial statements of the Assessee to demonstrate completeness of coverage of International transactions of the Assessee with its Associated Enterprise. However, the present Form 3CEB does not provide the flexibility to use such wordings as the Form is not editable.

An alternative could be to capture the reliance placed on the Audited Financial statements of the Assessee as part of Management Representation Letters issued by the Assessee to the CA.

**Specified Domestic Transactions (SDT):** Finance Act, 2012 brought domestic transactions with related parties under Transfer Pricing ambit. If the aggregate value of such domestic transactions exceeds INR 50 million in any Financial Year with any or all of the following related parties, such transactions would be considered as SDT:

- Undertakings to which profit linked deductions are provided, covering :
  - a. inter-unit transfer of goods and services;
  - b. transactions between entities having close connection.
- Expenditure incurred between domestic related parties, being payments interalia to :
  - a company (say Company A) having 20% or more voting power in the taxpayer;
  - any company of which a director has 20% or more voting power in the taxpayer;
  - a company in which the taxpayer has 20% or more voting power;
  - any company in which a director of the taxpayer has 20% or more voting power;
  - any other company in which Company A has 20% or more voting power;
  - any director of the taxpayer or of Company A, or to any relative of such director;

**CBDT and the APA office have been actively issuing clarifications, circulars, notifications on various transfer pricing matters like Contract R&D, Profit Split Method, tolerance band for Assessment Year 2013-14, Guidance and FAQ on APA etc.**

- any individual having 20% or more voting power in the taxpayer or any relative of such individual.

The Form is still not amended to cover and report the SDT as required by the Finance Act, 2012. The relationships as defined under Section 40a(2) is not covered under the user defined Form 3CEB. In such a scenario, it would be difficult for the Assessee to report SDT in the Form 3CEB.

An alternative could be to report such transaction in Clause 13 of the Form 3CEB, as under this clause there is no specific requirement to disclose the relationship of the Assessee with the transacting entity.

**Deemed Associated Enterprise and Deemed International Transactions:** Section 92B(2) of the Act states as follows:

*'A transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of subsection (1), be deemed to be a transaction entered into between two associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise.'*

In other words, any transaction with a third party which is controlled or influenced by a Associated Enterprise falls under the above definition and would be deemed to be International transaction and the same needs to be reported in Form 3CEB. However, the Form does not provide the flexibility to classify such a transaction.

Again, an alternative could be to report such transaction in Clause 13 of the Form 3CEB, as under this clause there is no specific requirement to disclose the relationship of the Assessee with the transacting entity.

#### **Way Forward:**

The challenges mentioned above are initial observations which the tax payers and consultants may face. As one proceeds to prepare the Form 3CEB, further challenges may be encountered. The due date for filing the Form 3CEB for Assessment Year 2013-14 is 30<sup>th</sup> November, 2013. This leaves enough time for tax authorities to take cognisance of the above challenges and come out with relevant clarifications at the earliest. The Finance Act 2013 was a huge disappointment to the taxpayers and consultants from a transfer pricing perspective as much of the expected clarifications required by the TP community on the domestic transfer pricing were not addressed. However, the CBDT and the APA office have been actively issuing clarifications, circulars, notifications on various transfer pricing matters like Contract R&D, Profit Split Method, tolerance band for Assessment Year 2013-14, Guidance and FAQ on APA etc. Hence, the tax payers and consultants are positive and confident that CBDT would come out with the necessary clarifications at the earliest. One has to only wait and watch whether the move of e-filing of Form 3CEB facilitates reduced burden of compliance or increases the compliance hardships on the Assessee and consultants.■