

# Guidance Note on under Section 44AB of the Income-tax Act, 1961-2014 Edition - *A glimpse of certain important additional guidance*

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Direct Taxes Committee of ICAI



*The month of July, 2014 witnessed notification of new formats of tax audit reports i.e. Form No. 3CA, 3CB and 3CD, thereby expanding the scope of tax audit tremendously. Since significant changes have been made in the format of tax audit reports for which members were to be guided, the Direct Taxes Committee of ICAI has released the seventh edition of the “Guidance note on tax Audit under Section 44AB of the Income tax Act, 1961”. This is an effort of ICAI to enable its members to effectively discharge their responsibilities with regard to the additional requirements. Additional guidance with regard to certain important as well as newly inserted/amended clauses is given in the following pages. Members are advised to refer to the publication “Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961” for complete guidance.*

## **Audit Procedures**

The ICAI had, pursuant to the issuance of the Revised SA 700, *Forming an Opinion and Reporting on Financial Statements*, prescribed a revised format of the auditor’s report on financial statements, which has been made effective in respect of audits of financial statements for periods beginning on or after 1<sup>st</sup> April, 2012. Since Form No. 3CA and Form No. 3CB are required to be filed online in a preset form and the same are not in line with the requirements of SA 700, there is no specifically allocated field for providing information relating to the respective responsibilities of the assessee and the tax auditor as required in terms of the principles laid out in SA 700. However, having regard to

the importance of these respective responsibility paragraphs from the perspective of the readers of the tax audit report, it is suggested that these respective responsibility paragraphs relating can be provided in the space provided for giving observations, etc., under Clause (3) of Form No. 3CA or Clause (5) of Form No. 3CB, as the case may be. The illustrative Assessee’s responsibility paragraph and Tax Auditor’s responsibility paragraphs in respect of Form No. 3CB are also provided in the detailed Guidance Note.

## **Guidance regarding some of the important additional clauses of Form No. 3CD**

**Clause 4:** Whether the assessee is liable to pay indirect tax like excise duty, service

**tax, sales tax, customs duty, etc. if yes, please furnish the registration number or any other identification number allotted for the same.**

Part A of Form No. 3CD generally requires the auditor to give the factual details of the assessee. Thus, the auditor is primarily required to furnish the details of registration numbers as provided to him by the assessee. The reporting is however, to be done in the manner or format specified by the e-filing utility in this context.

The term “Indirect taxes” is neither defined in the Income-tax Act, 1961 nor under any other law. The levy of different types of indirect taxes on various transactions may differ from State to State. Thus, it is recommended that the auditor should obtain from the assessee the list of indirect taxes applicable to him. Once the auditor obtains this management representation, he is required to obtain a copy of the registration certificate clearly mentioning the registration number under that relevant law. For example, Service tax registration number, Excise registration number, VAT registration number/Central Sales tax Registration number *etc.* The assessee may have multiple registrations for various manufacturing units, service units, godowns *etc.* under the same law. In such circumstances also, a copy of all registration certificates is to be obtained from the assessee for appropriate disclosure under this clause. Where the indirect tax law does not require any registration, appropriate identification number may be reported in this clause. For example, in Customs Act, 1962, since there is no registration number, a copy of Export Import Code (IEC) may be obtained and information be accordingly furnished. The information may be obtained and maintained in a particular format provided in detailed Guidance Note. The auditor has to keep in mind the provisions of SA 580 “Written Representation.” In case the auditor *prima facie* is of the opinion that any indirect taxes laws is applicable on the business or profession of the assessee but he is not registered under the said law, he should report the same appropriately.

**Clause 11(b): List of books of account maintained and the address at which the books of account are kept.**

From AY 2014-15, the address at which the books so maintained are kept is also required to be

mentioned under Clause (b). In case the books of accounts are kept at more than one location then the auditor is required to mention the details of address of each such location along with the detail of books of account maintained thereof. The auditor is advised to obtain from the assessee a list in the particular format (provided in detailed Guidance Note) and accordingly report the same in Clause 11(b). In case of a company assessee, auditor should also verify as to whether any forms are filed under the Companies Act for maintenance of books of accounts at a place other than the registered office. In case, where books of accounts are maintained and generated through computer system, the auditor should obtain from the assessee the details of address of the place where the server is located or the principal place of business/head office or registered office by whatever name called and mention the same accordingly in Clause 11(b).

**Clause 17: Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in Section 43CA or 50C, please furnish:**

Details of property	Consideration received or accrued	Value adopted or assessed or assessable

In the column requiring the details of property, the auditor has to furnish the details about the nature of property *i.e.*, whether the property transferred by him is land or a building along with the address of such property. If the assessee has transferred more than one property, the detail of all such properties is required to be mentioned. The auditor should obtain a list of all properties transferred by the assessee during the previous year. He may also verify the same from the statement of profit and loss or balance sheet, as the case may be. Attention is invited to the meaning of the term “transfer” as defined in Section 2(47) of the Act.

Under the heading “consideration received or accrued,” the auditor has to furnish the amount of consideration received or accrued, during the relevant previous year of audit, in respect of land/

building transferred during the year as disclosed in the books of account of the assessee.

For reporting the value adopted or assessed or assessable, the auditor should obtain from the assessee a copy of the registered sale deed in case, the property is registered. In case the property is not registered, the auditor may verify relevant documents from relevant authorities or obtain third party expert like lawyer, solicitor representation to satisfy the compliance of Section 43CA/Section 50C of the Act. In exceptional cases where the auditor is not able to obtain relevant documents, he may state the same through an observation in his Report 3CA/3CB. Auditor would have to apply professional judgment as to what constitutes land or building, for *e.g.*, whether leasehold right/development rights/TDR/FSI *etc.*, would fall under this provision or not, would require to be evaluated based on facts and circumstances of transactions.

**Clause 21(d): Disallowance/deemed income under Section 40A(3):**

- (A) **On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under Section 40A(3) read with Rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details:**

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number of the payee, if available

- (B) **On the basis of the examination of books of account and other relevant documents/evidence, whether the payment referred to in Section 40A(3A) read with Rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details of amount deemed to be the profits and gains of business or profession under Section 40A(3A);**

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number of the payee, if available

The tax auditor has to take into account the technological advancements in the field of banking and information technology where payments have been taken other than through an account payee cheque or bank draft. Rule 6DD specifically exempts the cases where the payment is made by any letter of credit arrangements through a bank; a mail or telegraphic transfer through a bank; a book adjustment from any account in a bank to any other account in that or any other bank; a bill of exchange made payable only to a bank; the use of electronic clearing system through a bank account; a credit card; a debit card.

Practically, it may not be possible to verify each payment, reflected in the bank statement, as to whether the payment has been made through account payee cheque, demand draft, pay order or not, it is thus desirable that the tax auditor should obtain suitable certificate from the assessee to the effect that the payments for expenditure referred to in Section 40A(3) and Section 40A(3A) were made by account payee cheque drawn on a bank or account payee bank draft, as the case may be. Where the reporting has been done on the basis of the certificate of the assessee, the fact shall be reported as an observation in Clause (3) of Form No. 3CA and Clause (5) of Form No. 3CB, as the case may be.

**Clause 28 : Whether during the previous year the assessee has received any property, being share of a company not being a company in which the public are substantially interested, without consideration or for inadequate consideration as referred to in Section 56(2)(viia), if yes, please furnish the details of the same.**

Since Section 56(2)(viia) is applicable to firms and companies in which public is not substantially interested, reporting under this clause is required only for them and not for other assessees. The auditor should obtain from the auditee, a list containing

the details of shares received, if any, by him from any other company and verify the same from the books of accounts and other relevant documents. Such shares, if received will be reflected in the books of accounts either as investments or as stock in trade. In case such shares are received without consideration, the same may not be reflected in the books of accounts. Such shares may be verified from the relevant documents such as share certificates issued, if any, demat account statement etc. In either case, the same have to be reported under this clause. Attention is invited to the provisions of section 2(18) which defines the company in which public are substantially interested.

**Clause 29: Whether during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in Section 56(2)(viib), if yes, please furnish the details of the same.**

Since Section 56(2)(viib) is applicable to companies in which public is not substantially interested, reporting under this clause is to be done only for corporate assesseees. The auditor should obtain from the auditee, a list containing the details of shares issued, if any, by him to any person being a resident and verify the same from the books of accounts and other relevant documents. Attention is invited to the provisions of Section 2(18) which defines the company in which public are substantially interested.

**Clause 31(c): Whether the taking or accepting loan or deposit, or repayment of the same were made by account payee cheque drawn on a bank or account payee bank draft based on the examination of books of account and other relevant documents.**

Practically, it may not be possible to verify each payment, reflected in the bank statement, as to whether the payment/acceptance of deposits or loans has been made through account payee cheque, demand draft, pay order or not, it is thus desirable that the tax auditor should obtain suitable certificate from the assessee to the effect that the payments/receipts referred to in Section 269SS and 269T were made by account payee cheque drawn on a bank or account payee bank draft as the case may be. Where the reporting has been done on the basis of the

certificate of the assessee, the same shall be reported as an observation in Clause (3) of Form No. 3CA and Clause (5) of Form No. 3CB, as the case may be.

**Clause 32(c): Whether the assessee has incurred any speculation loss referred to in Section 73 during the previous year, If yes, please furnish the details of the same.**

Having regard to the definition of “speculative Business,” the tax auditor has to verify from the books of account and other relevant documents as to whether the assessee is carrying on any speculation business. On verification if the auditor is of the opinion that the auditee is carrying on speculation business, under this clause, the tax auditor has to furnish the details regarding speculation loss referred to in Section 73, if any incurred by the assessee during the previous year.

**Clause 32(d): Whether the assessee has incurred any loss referred to in Section 73A in respect of any specified business during the previous year, if yes, please furnish details of the same.**

Under Clause 32(d), the tax auditor has to verify from the books of accounts and other relevant documents as to whether the assessee is carrying on specified business as referred to under Section 35AD. In case the auditor is of the opinion that the assessee is carrying on such specified business, he has to furnish the details of the loss incurred, if any, in respect of any specified business during the previous year. In case the assessee carries on more than one specified businesses and loss has been incurred in both the businesses, the details of the loss incurred with respect of each business is to be specified separately.

**Clause 32(e): In case of a company, please state that whether the company is deemed to be carrying on a speculation business as referred in explanation to Section 73, if yes, please furnish the details of speculation loss if any incurred during the previous year.**

Under this clause, the tax auditor has to furnish the details regarding the speculation losses incurred, if any, as referred in explanation to Section 73. The auditor may obtain information in a particular format (refer to complete text of the Guidance Note)

from the assessee and verify the same from the books of account, income tax returns of earlier years and other relevant documents.

**Clause 34(a): Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:**

XVII-B and/ or Chapter XVII-BB, he is required to furnish further details in Clause 34(a). The auditor should obtain a copy of the TDS/TCS returns filed by the assessee which shall form the basis of reporting under this clause, to the extent possible. Further, in view of the voluminous nature of the transactions, the tax auditor can apply test checks and compliance tests on the transactions reported in the TDS return by the assessee for

Tax deduction and collection Account Number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)*	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of **(6) and **(8)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

\* Should be read as (5) for proper reporting/ \*\* Should be read as (7) for proper reporting/ \*\*\* Should be read as (9) for proper reporting

While reporting under this clause the tax auditor may exercise his judgement in the light of the applicable laws and report accordingly about the applicability of the provisions of Chapter XVII-B or XVII-BB with regard to the auditee. The tax auditor may rely upon the judicial pronouncements while taking any particular view. While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. Where it is not possible to say yes/no,

verifying the information required to be provided under this clause. For detailed guidance regarding reporting under each column, the members are advised to refer to the complete text of the Guidance Note.

**Clause 34(b): Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time. If not, please furnish the details:**

Tax deduction and collection Account Number (TAN)	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported
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the answer to the question may have to be qualified depending upon the facts and circumstances of each case. Having verified the applicability of the provisions of Chapter XVII-B and Chapter XVII-BB, the tax auditor should answer the question as "Yes" and thereafter provide further details. Where the tax auditor is of the opinion that provisions of Chapter XVII-B and Chapter XVII-BB are not applicable he should answer the question as "No."

Once the tax auditor gives his affirmation with regard to applicability of the provisions of Chapter

Under Clause 34(b), the tax auditor has to ascertain and report as to whether the assessee has furnished the statement of tax deducted or tax collected at source within the prescribed time. If all the TDS/TCS statement(s) relating to the previous year have been filed within the prescribed time, the auditor has to mention "yes." In case the assessee has not filed any of the quarterly TDS/TCS statement(s) within the prescribed time, the auditor has to mention "no" in this clause. In such a case, the auditor shall provide further details in Clause 34(b)

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only with regard to the statement not filed within the prescribed time. Clause 34(b) requires the auditor to report the transactions with regard to each TAN for which tax has been deducted but the return has either not been filed or has been filed after the expiry of the prescribed time. With regard to each TAN, the auditor is required to mention the "Type of form" that was applicable like Form 24, 24G, 24Q, 26, 26A, 26B, 26Q *etc.*, due date of furnishing such statement and the actual date of furnishing, if the statement(s) has been furnished. Lastly, the auditor is required to state as to whether the statement of tax deducted or collected, which has been furnished beyond prescribed time contains information about all the transactions which are required to be reported. As stated earlier, it is extremely difficult for the tax auditor to verify each and every transaction in this regard. Therefore, while verifying such transactions, the tax auditor can apply the concepts of materiality and audit sampling. The reporting requirement in Clause (b) arises only where the assessee has either not furnished or furnished the statement of tax deducted or tax collected after the expiry of prescribed time.

**Clause 34(c): Whether the assessee is liable to pay interest under Section 201(1A) or Section 206C(7). If yes, please furnish:**

Tax deduction and collection Account Number (TAN)	Amount of interest under Section 201(1A)/206C(7) is payable	Amount paid out of column (2) along with date of payment.

Where the assessee is liable to pay interest u/s. 201(1A) or 206C(7), the auditor should verify such amount from the books of account as on 31st March of the relevant previous year and also from PART G of the statement generated by the Department in Form No.26AS. In case the assessee had disputed the levy or calculation of interest under TRACES, in Form No. 26AS, the auditor may re-calculate the

amount of interest under section 201(1A) or Section 206C(7) up to the date of audit report for reporting under this clause and also mention the fact in his observations paragraph provided in Form No. 3CA or Form No. 3CB, as the case may be.

**Clause 39: Whether any audit was conducted under Section 72A of the Finance Act, 1994 in relation to valuation of taxable services, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.**

The tax auditor should ascertain from the management whether any audit was conducted under Section 72A of the Finance Act, 1994 and if such audit was carried out, obtain a copy of the report. Even though the tax auditor is not required to make any detailed study of such report, he has to take note of the details of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor. The tax auditor need not express any opinion in a case where such audit has been ordered but the same has not been carried out. In cases where service tax audit, which might have been ordered is not completed by the time the tax auditor gives his report, he has to report appropriately in this report stating that since service tax audit is not completed and the service tax audit report is not available with the assessee.

The tax auditor should examine the time period for which the service tax audit, if any, has been required to be carried out. Information is required to be given only in respect of such service tax audit report the time period of which falls within the relevant previous year. In effect the information is required to be given in respect of that service tax audit report which is received upto the date of tax audit report.

Since changes have been made in Clauses 37(cost audit) and 38 (excise audit), members may note that the guidance provided in these clauses are in line with guidance provided in Clause 39 above. ■

**Note:** It is not possible to cover each and every change made in the text of the "Guidance Note on tax audit under section 44AB of the Income-tax Act, 1961," and therefore, guidance relating to only important new/amended clauses has been touched upon in the above matter. Members are requested to refer to the complete text of the Guidance Note, which has been hosted on the ICAI's website at the link below:

<http://220.227.161.86/34728gn-taxaudit-dtcicai.pdf>