REPORTING REQUIREMENT UNDER TAX AUDIT (CLAUSE 30 TO CLAUSE 44)

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INTRODUCTION

The reporting requirement under tax audit can be traced back to Finance Bill 1984, which is as old as more than 3 decades. The reporting requirement during its age has been amendment time and again with minimum reporting requirement of 13 Clauses in initial days to now at 44 Clauses in Form 3CD that to, with many sub - clauses there under, with a primary objective to facilitate the administration of tax laws by proper presentation of accounts before the tax authorities.

SCOPE

The scope of this article ranges from Clause 30 to Clause 44 of Form 3CD. The clauses are discussed in the following paragraphs, considering its importance and looking at the wide range of its applicability.

CLAUSE – 30 DETAILS OF AMOUNT BORROWED OR REPAID ON HUNDI AND INTEREST THEREON [SEC. 69D]

- This clause requires auditor to report on the amount borrowed or repaid on hundi loans otherwise than through account payee cheque. The auditor is also required to report the amount of interest thereon.
- The CBDT has issued Circular No. 208 dated 15.11.1976 and Circular No. 221 dated 06.06.1977 explaining provisions of Sec. 69D vide Appendix XVII.

CLAUSE - 30A SECONDARY ADJUSMENT TO TRANSFER PRISING

- This clause does not requires auditor to report secondary adjustment under Sec. 92CE if -

  (1) The amount of primary adjustment made in any previous year does not exceed Rs. 1Crore; or

  (2) The primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.

  Note: AY 2017-18 onwards, to ascertain applicability of these conditions, both the above conditions should be satisfied.

- In case there is secondary adjustment, the auditor is further required to report under which of the following clauses of Sec. 92CE(1) such adjustment relates to –

  (1) Primary adjustment to transfer price has been made suo motu by the assessee or

  (2) Primary adjustment to transfer price has been made by the Assessing Officer or

  (3) Primary adjustment to transfer price has been made due to Advance Pricing Agreement (APA) entered into by the assessee under Sec. 92CC (on or after the 1st day of April, 2017) or

(4) Primary adjustment to transfer price has been made as per Safe Harbour Rules framed under Sec. 92CB or

(5) Primary adjustment to transfer price has been made as a result of resolution of an assessment by way of the Mutual Agreement Procedure (MAP) under an agreement entered into under Sec. 90 or Sec. 90A for avoidance of double taxation.

However, it may be noted that the primary adjustments for earlier years prior to AY 2017-18, or primary adjustments totaling less than Rs. 1 Crore for a previous year, which do not warrant a secondary adjustment, should also be reported under clause 30A(a).

- The auditor is required to report the amount of primary adjustment made under any of the above referred clauses and whether the excess money available with the associated enterprise, if any, is repatriated to India as per Sec. 92CE (2) and within prescribe time of ninety days (Rule 10CB).

- It is pertinent to note that, if the said amount is not repatriated within the prescribed time, it shall be deemed as an advance to the associated enterprise and the auditor is also required to report the amount of interest as computed as per Rule 10CB.

CLAUSE- 30B DISALLOWNACE OF INTEREST OR OF SIMILAR NATURE EXCEEDING RS. 1 CRORE AS PER SEC. 94B

- The auditor is required to report, if the assessee has incurred any disallowance on account of any interest expenditure or similar expenditure over and above Rs. 1 Core, as provided under Sec. 94B.

- Expenditure of similar nature should be read in the context of 'debt' as defined in Sec. 94B(5)(ii).

- Further, interest and expenditure of similar nature which is deductible while computing income under the head 'Profits and Gains of Business or Profession' should be considered, and not interest deductible under any other head of income or interest which is otherwise not deductible.

- In such consideration, there are two views as to whether it is the aggregate of all interest paid or payable to all Non-Resident AEs which is to be considered for the limit of Rs. 1 crore, or whether interest paid or payable to each Non-Resident AE is to be examined vis-a-vis the limit of Rs. 1 crore. Based on the view taken by the assessee, appropriate disclosure should be made in Form No 3CD.

- The following details need to be reported under this clause –

(1) Amount of Interest expenditure or similar expenditure

(2) Amount of EDITDA (Earnings before interest, tax, depreciation and amortization)

(3) Amount of interest expenditure or similar expenditure in excess of 30% of EDITDA

(4) Details of interest expenditure or similar expenditure brought forwarded as per Sec. 94B(4)

(5) Details of interest expenditure or similar expenditure carried forwarded as per Sec. 94B(4) for eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.

CLAUSE-30C REPORTING OF GENERAL ANTI AVOIDANCE RULES (GAAR)

- The provisions of General Anti -Avoidance Rule (GAAR) are contained in Chapter X-A comprising of Sec. 95 to Sec. 102 and the procedural provisions relating to mechanism for invocation of GAAR and passing of the assessment order in consequence thereof are contained in Sec. 144BA. Rules 10U to 10UF have been prescribed by the Central Government in respect of GAAR. The Board has issued certain clarifications on queries about implementation of GAAR vide Circular No. 7 of 2017 dated 27.01.2017

- It may be noted that, the provisions are complex and before an arrangement can be considered to be an Impermissible Avoidance Agreement (IAA), one of the main purpose is to obtain 'tax benefit' as defined u/s.102 (as explained here below) AND the condition as specified u/s. 96 have to be satisfied, which are….

  - Arrangement creates rights/ obligations which are not ordinarily created between persons dealing at arm's length,

  - Arrangement results, directly or indirectly, in misuse or abuse of the provisions of the Act,
  - Arrangement lacks commercial substance or is deemed to lack commercial substance, by virtue of fiction created by Sec. 97, or
  - Arrangement entered into or is carried out, by means, or in a manner, which are not ordinarily employed for bonafide purposes.

  As per Sec. 102(10) 'tax benefit' includes, —

  - a reduction or avoidance or deferral of tax or other amount payable under this Act; or
  - an increase in a refund of tax or other amount under this Act; or
  - a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or
  - an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or
  - a reduction in total income; or
  - an increase in loss,

  in the relevant previous year or any other previous year;

- The auditor is required to report, if the assessee has entered into an Impermissible Avoidance Arrangement as per Sec. 96 and does not fall within the exclusions as stated in Rule 10U of Chapter X-A. However, in case the transaction is covered by exclusions provided in the Rule, the auditor may put a clarificatory note stating that the reporting requirement does not apply.

- If the assessee falls within the provisions of Sec. 96, the auditor is required to report the Nature of such arrangement along with the amount of tax benefit as per Sec. 102, arising in aggregate, to all the parties to the arrangement.

- It may be noted that the reporting under this clause is applicable when the tax benefit in aggregate to all parties to the agreement exceeds Rs. 3 Crore.

- In case, if any arrangement has been declared to be an IAA in any earlier previous year, the tax auditor should further examine if any transaction in connection with such declared IAA has taken place during the previous year under the audit. In such a case, the tax auditor is expected to report this fact and the tax benefit arising from such transaction to all the parties to the arrangement.

- If due to elaborate investigation process and due to lack of access to the books of account and other records of other parties to the arrangement, the Tax Auditor is unable to come to a conclusion which he can certify any arrangement to be 'True and Correct', he should make an appropriate disclaimer in respect of reporting under this clause in Form 3CA / 3CB.

CLAUSE - 31 REPORTING U/S. 269SS, 269ST AND 269T

Clause 31 requires to provide particular of each loan or deposit taken or accepted for an amount exceeding the limit specified u/s.269SS, repayment of loan or deposit exceeding the limit specified u/s.269T and also requires to provide particulars of each transaction of receipt or payment above the limit specified u/s 269ST, when such transaction is done otherwise than the specified mode of payment.

- This clause requires to include certain specified sum or specified advance related to transfer of an immovable property as specified u/s.269SS and u/s.269ST respectively, irrespective of whether or not the transfer takes place. The said amendment is introduced w.e.f. 19th July, 2017.

- This clause further requires to include each receipt or payment of an amount exceeding limit specified of the transactions as specified mentioned u/s.269ST (presently the said limit in aggregate is Rs. 2 lakhs). The said amendment is introduced w.e.f. 20th Aug, 2018.

- Section 269ST as it is there on statue is …..

  "No person shall receive an amount of two lakh rupees or more –

  (a) In aggregate from a person in a day; or

  (b) In respect of a single transaction; or

  (c) In respect of transactions relating to one event or occasion from a person,

  Otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed];"

  Further, proviso to section specifies certain exclusions, like receipt by Govt, any Banking company, Post Office savings bank or co-operative bank, etc.

  - Section 269ST, prohibits receipts of an amount in aggregate of Rs.2 lakhs or more, from a person otherwise then account payee cheque/ draft/ electronic clearing system, in a day, or in respect of single transaction, or transactions relating to one event or occasion.

  - Let us understand the terms used u/s.269ST and it's reporting.

    a. ***`In aggregate from a person in a day'*** – this will include the different transaction with same person totaling to Rs. 2 lakhs or more in a day, and payment thereof is not in the specified mode. Eg. Sales through different bills to a person totaling to Rs. 2 lakhs or more in a day will be covered, if the receipt of payment is not through specified mode as prescribed u/s.269ST.

'b. In respect of single transaction' – this will include a transaction of Rs. 2 lakhs or more even when the receipts of such transaction is in different days and may be less than Rs 2 lakhs on each such day,

c. `**In** *respect of transaction relating to one event or occasion from a person'* – this will cover when payment is received of Rs. 2 lakhs or more from same person in cash, (a) in respect of a single event or (b) for different type of product or services for the same occasion.

The above mentions transactions need to be reported under this clause.

- Now, let us understand the reporting requirement under following different typical situations.

a) Whether the transaction by 'journal entries' are covered for reporting under section 269ST?

In my view, auditor needs to give suitable note on such transaction of journal entries and need not necessarily to be reported, as such journal entries are neither receipt nor payment u/s.269ST.

b) Cash brought in by a partner as capital contribution of an amount of Rs.2 lakhs or more to be reported u/s.269ST?

In my view, going by literal interpretation of the section 269ST, the said transaction will have to be reported, as the section requires to include every receipt irrespective of its nature or relationship between the parties.

c) Whether 269ST applies to revenue transaction or capital transaction?

In my view, in the absence of any clarification both of above type of transaction,whether revenue or capital, needs to be reported under this clause.

- Circular No. 22 dated 3rd July, 2017 gives relaxation to NBFCs and Housing Finance Companies, whereby it is clarified by CBDT that the receipt of each installment by such companies be considered as separate transaction instead of aggregating the same for the year for the purpose of calculating the limit specified u/s.269ST.

CLAUSE–32 DETAILS OF BROUGHT FORWARD LOSS OR DEPRECIATION ALLOWANCE

- Format of Reporting is as follows:

Sr. No.	Assess-ment year	Nature of loss/ allowance (in rupees)	Amount as returned* (in rupees)	All losses/ allowances not allowed under section 115BAA/ 115BAC/ 115BAD	Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAC/x115BAD^	Amount as assessed (give reference to relevant order)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

- Points to remember…..

  - ❖ As per Finance Act, 2021 by amendment u/s. 32(1)(ii), depreciation on goodwill is not allowable w.e.f. 01-04-2021 and therefore auditor needs to verify that no provision for depreciation on goodwill is made for F.Y. 2020-21 onwards.

  - ❖ A question arises as to which loss is to be taken while reporting under this clause? Whether the loss as per books of accounts or assessed, and when there is no appeal pending?

    - ➢ It is needless to say that loss as per books of accounts will be reported till it is been assessed, with suitable remark by an auditor. However, once it is assessed, then to follow the loss as assessed. Also, in case when there is appeal pending against assessed loss, a suitable note in the remark column should be given by the auditor and in case when loss is disallowed and no appeal is pending, the said loss will not be carried forward.

  - ❖ As per Sec. 80 for the purpose of carry forward and set off of losses specified u/s. 139(3), those loss returns necessarily be filed within the time prescribed u/s. 139(1).

  - ❖ It may be noted that Section 78 prescribes certain restrictions regarding carry forward and set off of losses in case of change in constitution of firm or on succession.

- This clause further requires reporting of brought forward losses or depreciation allowance vis-a-vis change in shareholding of the company and impact on carry forward and set off of losses w.r.to Sec.79.

- The provision of Sec.79 was introduced to check misuse of covering of losses in a company to reduce the incoming shareholders tax liability. Companies affected by Sec. 79(1) are not allowed to carry forward past years losses to future years.

  However, it is important to note that expression not less than 51% of voting power used in section 79 indicates that in order to invoke provisions of said section, only voting power is relevant and not shareholding pattern. Therefore, change of shareholding between the existing shareholders inter-se does not attract Section 79. [CIT vs. Amco Power Systems Ltd (62 Taxman.com 350)(Kar)].

- It may further be noted that as per proviso to sec. 79(1), in case of eligible start-ups as refer to in Section 80-IAC. The above condition of 51% of voting power is relaxed for first 7 years from the date of incorporation of the company. Also, Sec. 79(2) provides for certain exclusions to the condition of 51% of voting power, as provided u/s. 79(1).

  (Sec. 79(2)(e) and (f) are brought in w.e.f. FY 2021-22).

- As per Finance Act 2022, effective from AY-2022-23 (FY-2021-22), Sec.79A is newly inserted which state's that in case of Search u/s.132 or a requisition u/s.132A or a survey u/s.133A, not being u/s. 133A(2A), when there is any undisclosed income in previous year of any assessee due to such search or survey, then no set off of losses would be allowed of any brought forward of losses or any unabsorbed depreciation while computing its total income of such previous year.

- Question may arise, whether in case of carry forward of losses which includes unabsorbed depreciation, the said unabsorbed depreciation will also not be allowed to be carried forward, if there is a change in voting power of shareholders of the company, as stated u/s. 79?

  - Here, it may be noted that the unabsorbed depreciation carried forward by such company is governed by sec. 32(2) and not by sec. 72 as business loss.

    Section 79 of the I. T. Act reads as……

    Notwithstanding anything contained in this Chapter……."

- Further, this clause requires reporting of speculation business loss to be done as per Section.73.

  It may be noted that speculation losses will be allowed to be set off only against speculation income.

- Now, let us understand the reporting requirement under following different typical situations.

  a) Whether single transaction of speculation nature will constitute of a "Business" to say it is "Speculative business"?

     It is really a challenge for the tax auditor to report such a single transaction, considering it as business or not? In my view, it will not constitute a `speculative business' and therefore, one may take a view, not to report the same.

  b) There are certain exclusions to 'speculative transaction' as defined under proviso to Sec. 43(5). For example, hedging transaction, etc.

     These transactions do not constitute speculative business and therefore, those are excluded from speculative transactions and should not be reported under this clause.

  c) Whether same speculation business is must to be continued to set off its loss of earlier years against profit of same speculation business?

     It is not necessary to continue same speculation business (where loss was incurred) for setting off of brought forward of speculation business loss.

CLAUSE - 33 SECTION-WISE DETAILS OF DEDUCTIONS, IF ANY, ADMISSIBLE UNDER CHAPTER VIA OR CHAPTER III (SECTION 10A AND SECTION 10AA)

- Under this clause, section-wise deduction under chapter VIA and exemption u/s.10A & u/s. 10AA under chapter III is required to be reported.

- The tax audit is to be conducted of business or profession, therefore, deduction or exemption to be reported will be based on books of accounts audited of business or profession (i-e, Qua-business). In case of audit of any branch/ unit the deduction or exemption is to be reported from books of branch/ unit with suitable note thereto, and in case when auditor is to issue report regarding tax audit of head office, then the auditor will have to consolidate all the branches or units reports, as well as to include books of head office while reporting the deduction or exemption.

- In case when deduction or exemption is based on judicial pronouncement, than the said facts should be reported appropriately by the auditor.

- The tax auditor should consider the audit report or certificate issued by self or by any other auditor, u/s. 80-IA, 80-IB, 80-IC, 80-JJA, etc. while reporting under this clause.

- It is important to verify clause 8(a) of Form 3CD to check whether taxpayer is claiming benefit u/s.115BA/ 115BAA/ 115BAB/ 115BAC/ 115BAD. In case the benefit is claimed, than it may be noted that taxpayer will not be entitled to claim any deduction under chapter VIA and under chapter III (Sec. 10A & 10AA) except deduction u/s.80M and/or u/s.80JJAA.

CLAUSE-34 REPORTING OF TAX DEDUCTED AT SOURCE AND TAX COLLECTED AT SOURCE (TDS AND TCS)

- Format of Reporting is as follows:

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)

- Primary responsibility to provide details in form 3CD is of the taxpayer, an auditor has to verify the same and give their opinion on the same. In case of voluminous transactions the Auditor can apply test checks with appropriate remark.

- While reporting under this clause, auditor has to verify not only the expenses debited to P&L account and TDS/ TCS returns filed by the taxpayer, but also advance payment made in certain circumstances (as TDS/ TCS liability arises on accrual or payment basis, whichever is earlier) and therefore auditor is to verify advances given by the taxpayer, while reporting under this clause.

- In case of non-resident, as per Sec. 2(37A), rate of tax deduction will have to be read with DTAA (Double Taxation Avoidance Agreement).

- Auditor will have to take into account Lower TDS Certificate issued U/s. 197 while reporting as this will be useful to report the specified rate of tax deduction applicable.

- In case lesser deduction the same is to be reported under column 8 of the table and TDS deducted but not paid is to be reported in Column 10 of the table, as given in this clause. However, TDS deducted but deposited late to the Government, will not be reported under this clause.

- It may be noted that U/s. 194Q the transactions of purchase of goods requires deduction of tax at source w.e.f. 01.07.2021. One may refer CBDT Circular No. 13/2021 dated 30/06/2021, giving guidelines on this subject. At the same time, U/s. 206C (1H) every seller has to collect TCS on receipt of amount as consideration for sale of any goods unless TDS U/s. 194Q is done by the buyer.

- The tax auditor should also consider applicability of higher rate of TDS / TCS under certain circumstances like non furnishing of PAN, non-filers of return as provided in Section 206AA/ 206AB/ 206CC/ 206CCA.

- The details given under this clause should be reconciled with the disallowance reported U/s. 40(a) in Clause 21(b), to the extent possible, to cross match the reporting.

- It may be noted that after the amendment of clause 34(b), now the tax auditor is required to furnish a list of transactions which are not reported in the statement of TDS/ TCS filed, after taking into consideration provisions of the law, notifications, circulars and various judicial pronouncements on the subject. In case of huge volume, reporting may be done of significant deficiencies with appropriate remarks in Form 3CA/ 3CB.

- In case of difference of opinion between taxpayer and auditor, a suitable note in the form of observation is to be given in Form 3CA/ 3CB along with both the views.

- Under clause 34(c), the tax auditor is to report about liability of the assessee to pay interest U/s. 201(1A) or 206C (7).

- Under mercantile system of accounting, if interest is not paid till 31st March or no provision is made in this regard and when amount is material, the impact on the `true and fair view' should be considered.

CLAUSE-35 QUANTITATIVE DETAILS OF STOCK

- This clause requires reporting on quantitative details of 'principal items', in case of the traders, goods traded and in case of manufacturers, the reporting should include details of raw materials, finished products and by-products. Normally, the items having 10% of aggregate value constitutes principal items.

- While reporting under this clause, auditor should take into consideration clause 10 of the report, to identify the nature and type of business taxpayer is engaged into.

- The information about 'Yield' 'Percentage of Yield' and 'Shortage / Excess' is also required to be reported. Further, details of 'By-product' should be reported and if marketable by itself or by converting into sellable product, the auditor needs to identify and verify the same as to how those are accounted in the books of accounts.

CLAUSE-36 DETAILS OF TAX ON DISTRIBUTED PROFITS U/S 115-O OF A DOMESTIC COMPANY

- This clause is omitted w.e.f. 01.04.2021.

CLAUSE-37 AND 38COST AUDIT / AUDIT UNDER CENTRAL EXCISE ACT, 1944 AND REPORTING ON DISQUALIFICATION OR DISAGREEMENT ON ANY MATTER/ ITEM/ VALUE/ QUANTITY

- The Tax Auditor should ascertain from the management whether Cost Audit / Audit under Central Excise Act, 1944 was carried out and if yes, a copy of the same should be obtained from the assessee, there is no need to make detailed study of the report and not required to express any opinion on the same.
- The tax auditor is to report disqualification or disagreement on any matter/ item/ value/ quantity as may be reported/ identified by the Cost Auditor / Auditor under Central Excise Act, 1944.
- In cases where Cost Audit / Audit under Central Excise Act, 1944 have been ordered and not completed till the date of issuance of Tax Audit Report, the tax auditor has to report as to audit report `not available' with the assessee.

CLAUSE-39 AUDIT UNDER SERVICE TAX AND REPORTING ON DISQUALIFICATION OR DISAGREEMENT ON ANY MATTER/ITEM/VALUE/QUANTITY

- Since service tax is not applicable for AY 2022-23 (i-e, FY 2021-22), so no reporting is to be done under this clause.

CLAUSE-40DETAILS REGARDING TURNOVER, GROSS PROFIT, ETC., FOR THE PREVIOUS YEAR AND PRECEDING PREVIOUS YEAR

- Format of Reporting is as follows:

Sr. No.	Particulars	Previous year	Preceding previous year
1.	Total turnover of the assessee		
2.	Gross profit / turnover		
3.	Net profit / turnover		
4.	Stock-in-trade / turnover		
5.	Material consumed / finished goods		

(The details required to be furnished for principal items of goods traded or manufactured or services rendered)

- While calculating these ratios, the tax auditor should assign a meaning to the terms used in the above ratios having due regard to the generally accepted accounting principles (GAAP).
- There should be consistency between the numerator and the denominator while calculating the ratios.
- The term "stock-in-trade" would include only finished goods and would not include the stock of raw material and work-in-progress since the objective here is to compute the stock- turnover ratio.
- In case of Manufacturers, material consumed would, apart from raw material consumed, include stores, spare parts, loose tools, etc.

- In case the preceding previous year is not subject to audit, nothing should be mentioned in the in the previous year column.

CLAUSE-41 DETAILS OF DEMAND RAISED OR REFUND ISSUED DURING THE PREVIOUS YEAR UNDER ANY TAX LAWS OTHER THAN I. T. ACT AND W. T. ACT WITH DETAILS OF RELEVANT PROCEEDINGS

- Format of Reporting is as follows:

Sr. No.	Financial Year to which the Demand/ refund relates	Name of the applicable Act	Demand/ Refund Order No., if any	Date of Demand raised/ refund issued	Amount of demand raised/refund issued	Remarks
1	2	3	4	5	6	7

- The auditor should obtain a copy of all the demand/ refund orders issued by the governmental authorities during the previous year and received by the assessee up to the date of audit, also to cross verify the from online portal of the respective department and to report any adjustment of refund against any demand.
- It may be noted that the cess or duty like Marketing Cess, Cess on Royalty, Octroi Duty, Entry Tax etc. would not be covered under other tax laws.
- The auditor may check the said details with the disclosures of contingent liabilities in the audited financials, disclosures in Statutory Auditor's Report pursuant to CARO, if applicable.
- The tax auditor also requires details of relevant proceedings. This information should be furnished in remarks column by stating the authority before which the matter is pending.
- The tax auditor should ensure that penalties reported under clause 21 reconciles with the amount stated in this clause.

CLAUSE-42 REQUIREMENT FOR FURNISHING OF STATEMENT IN FORM NO.61/61A/61B

- Format of Reporting is as follows:

Sr. No.	Income-tax Department Reporting Entity Identification Number	Type of Form	Due date for furnishing	Date of furnishing	Whether the Form contains information about all details/transactions which are required to be reported.	If not, please furnish list of the details/transactions which are not reported.

- Clause 42(a) requires tax auditor to state whether the assessee is required to furnish Form No. 61, Form No. 61A or Form No. 61B

  ➢ The reporting in above forms can be understood from following Table

Form No.	Section & Rule	Conditions
61	Section 139A(5)(c),	Form No. 61 is to be filed by certain persons who have received any declaration in Form No. 60. Persons who have to file Form No. 61 are persons referred to in: (i) Rule 114C(1)(a) to (k), and (ii) Following persons who are required to get their accounts audited under section 44AB of the Act: - persons raising bill in respect of payment made in cash for amount exceeding Rs. 50,000 to a hotel or restaurant, - persons raising bill in connection with foreign travel or purchase of foreign currency payment for which payment is made in cash for an amount exceeding Rs. 50,000, and - person raising bill in respect of transactions of sale or purchase of goods or services other than those specified at serial numbers 1 to 17 of the Table in Rule 114B where value of the transaction exceeds Rs. 2 lakhs per transaction.
61A	Section 285BA, Rule 114E	Rule 114E(2) provides the nature and value of transaction in respect of which the statement is required to be filed and persons who are required to file the statement
61B	Rule 114F, 114G and 114H	Rule 114F defines various terms, Rule 114G prescribes the information to be maintained and reported and Rule 114H prescribes the due diligence requirements.

➢ Due dates for furnishing the form/s are as under:

Form No.	Particulars	Due Date
61	(a) Where declarations in Form No. 60 have been received by 30th September;	31st October of that year.
	(b) Where declarations in Form No. 60 have been received by 31st March.	30th April of the Financial Year immediately following FY in which the form is received.
61A	Annual Information Return or Statement of Financial Transactions U/s 285BA(1) of I. T. Act, 1961.	31stMayof the Financial Year immediately following FY in which the form is received.
61B	Statement of Reportable Account U/s 285BA(1) of I. T. Act, 1961.	31stMay of the Financial Year immediately following FY in which the form is received.

- Every reporting financial institution has to communicate to the Principal Director General of Income-tax (Systems) the name, designation and communication details of the Designated Director and the Principal Officer and obtain a registration number. This registration number is to be quoted in the Form 61B. Once registered, I T dept. will issue ITDREIN (Income-tax Department Reporting Entity Identification Number) and the same is required to be mentioned in Form 61B.
- Form No. 61, 61A and 61B uploaded on the income tax portal should be examined by the tax auditor for purpose of reporting.

CLAUSE-43 DETAILS W.R.T. COUNTRY–BY-COUNTRY REPORTING BY INTERNATIONAL GROUP AS REQUIRED U/S.286

- The reporting under this clause is to be done based on accounting year, where the total consolidated group revenue reflected in the consolidated financial statement for the accounting year preceding such accounting year exceeds Rs.6,400 crores (Rule 10DB).
- Every constituent entity resident in India if it is a constituent of an international group and the parent entity of which is not resident in India, has to notify the prescribed income tax authority in Form No. 3CEAC whether it is the alternate reporting entity of the international group; or the details of the parent entity or the alternate reporting entity, if any, of the international group, and the country or territory of which the said entities are resident.

  Term 'international group' to mean 'which carries on any business through a permanent establishment in other countries or territories'.
- Clause 43(a) requires the auditor to state whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report referred to in section 286(2). In case liable to report, following information has to be furnished:

(i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity.

(ii) Name of parent entity

(iii) Name of alternate reporting entity (if applicable)

(iv) Date of furnishing of report

➢ If the assessee has filed a report, the tax auditor should verify acknowledgement for furnishing the same.

CLAUSE-44 BREAK-UP OF TOTAL EXPENDITURE AS RD & URD IN GST

- Format of Reporting is as follows:

Sr. No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure relating to entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	# Total payment to registered entities	
(1)	(2)	(3)	(4)	(5)	(6)	(7)

 # Here total payment to registered entities should be read as Total of the Expenditure.

- **IS THERE ANY REQUIREMENT TO MAINTAIN BOOKS OF ACCOUNTS UNDERGST, AND BY WHOM?**

➢ There is requirement to maintain Books of Accounts, by entity registered under GST Law. The books of accounts to be maintained is specified under section 35 read with rule 56 of the CGST Act. This will help the Auditor to get the details to be reported under this clause.

- **LET US UNDERSTAND, WHAT CONSTITUTES 'EXPENDITURE'? WHETHER REVENUE EXPENDITURE OR CAPITAL EXPENDITURE?**

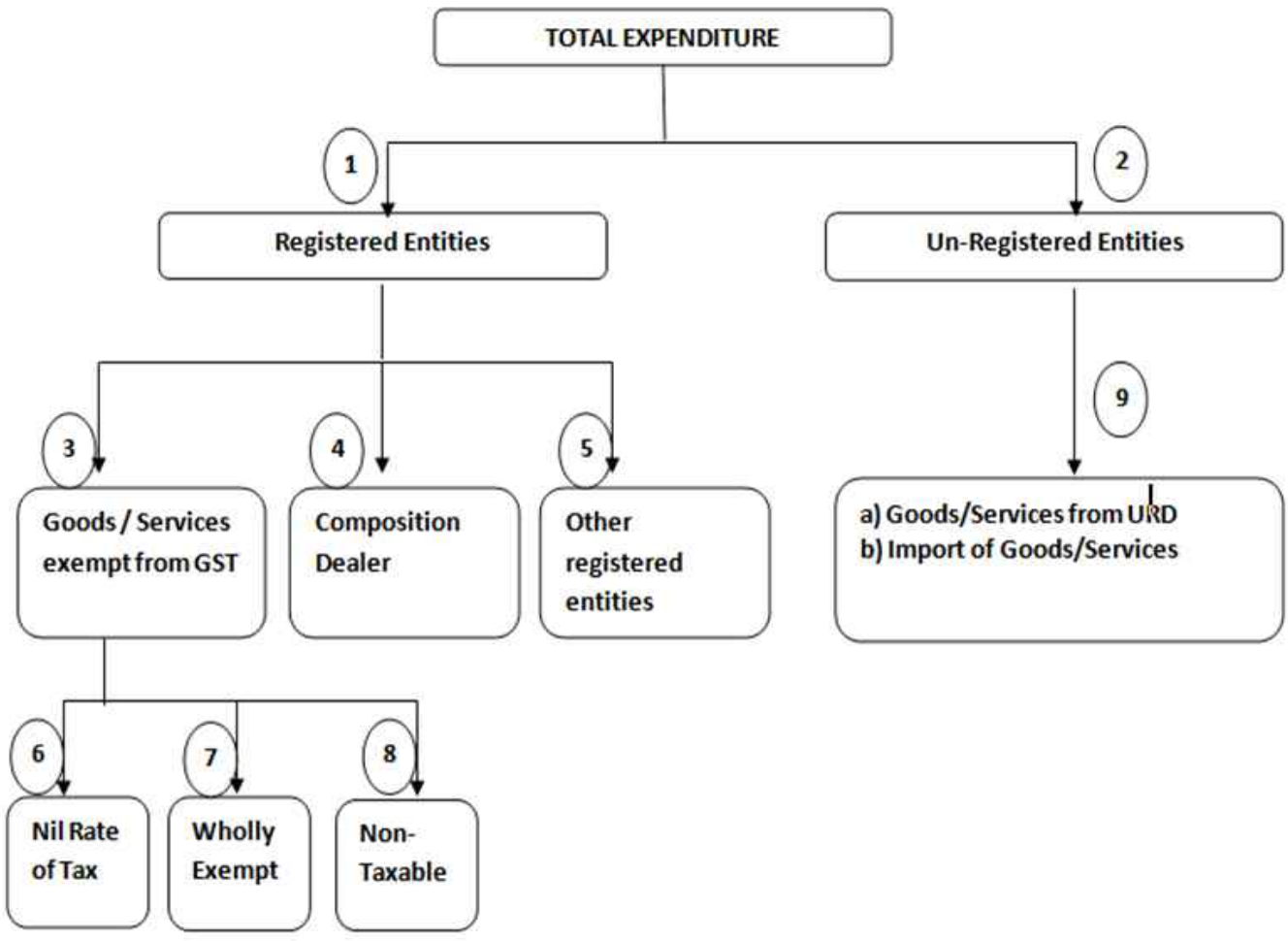
➢ Following states what constitutes expenditure to be included for the purpose of reporting, which includes Revenue expenditure and Capital expenditure.

EXPENDITURE TYPE	INCLUDE / EXCLUDE
Purchases	Include (as Revenue Expenditure)
Expenses (of Revenue Nature)	Include (as Revenue Expenditure)
Asset Purchase (Capital Expenditure)	Include (as Capital Expenditure)
Provisions	Exclude
Depreciation/ Bad Debts etc.	Exclude (as Not a Supply)

- **TOTAL EXPENDITURE V/S. HEAD WISE EXPENDITURE - WHAT IS TO BE INCLUDED IN THE REPORT?**

  - As per Guidance Note of ICAI, it is clarified that **TOTAL** of all the heads of expenditure is to be provided under clause 44 of Form 3CD and it is not expected to report head wise expenditure.

- **LET US UNDERSTAND WHAT CONSTITUES 'TOTAL EXPENDITURE'**



➢ **The terms specified in the above chart are explained herein below:-**

SR.	PARTICULARS	EXPLANATION
1	Registered Entities	Any Person or entity having GST Number can be termed as Registered Entity.
2	Un-Registered Entities	Any other person or entity not falling under registered entities can be termed as Un-Registered Entities
3	Goods / Services exempt from GST	Section 2(47) of CGST Act, defines 'Exempt Supply'
4	Composition Dealer	➢ A composition dealer cannot charge GST in the invoices and not issue a tax invoice but to issue 'bill of supply'. ➢ A composition dealer cannot make inter-State supply ➢ The composition dealer should have mentioned "Composition taxable person, not eligible to collect tax on supplies" at the top of the 'bill of supply' issued by them. <u>Who cannot opt for composition scheme?</u> ➢ Manufacturers of ice cream, pan masala, or tobacco ➢ Person engaged in the supply of non-taxable goods under the GST law (Petrol, Diesel, Natural Gas, Alcohol)
5	Other registered entities	Any Registered entity not under Composition Dealer and Supplier of Exempt products will be considered as other registered entity (Not covered under (3) and (4) above)
6	Nil Rate of Tax	As per Section 11(1) of CGST Act and Section 6(1) of IGST Act, certain goods or services are notified as Nil rated.
7	Wholly Exempt	As per Section 11(1) of CGST Act and Section 6(1) of IGST Act, certain goods or services are notified as Wholly Exempt from tax.
8	Non-Taxable	Section 2(78) of the CGST Act, 2017 defines 'Non-Taxable Supply'.

SR.	PARTICULARS	EXPLANATION
9	Unregistered (URD) Expense	➢ The value of inward supply of goods and/or services received from unregistered persons should be reported. ➢ Import of Goods and/or Services, which are leviable to GST, should also be included here ➢ Schedule III Transactions (These transactions are not included in any of the above categories, hence considered as URD supplies) ➢ Sale of Land ➢ Sale of completed building ➢ Salary to employees ➢ High Seas Purchase ➢ Purchase of Goods within Customs Warehouse ➢ Actionable claims other than lottery, betting and gambling ➢ Money or Securities [U/s. 2(52)]

Thus, the total of amounts in Column 3, Column 4 and Column 5 should match with total of amounts in Column 6 of the report.

- **PRACTICAL DILEMMA AS TO EXPENDITURE TO BE CLASSIFIED IN REGISTERED OR NOT REGISTERED COLUMN?**

➢ There is a practical difficulty when Small and Medium Size Dealer does not mention the GSTIN in their accounting software or books of accounts maintained. Therefore, it becomes difficult to identify each supplier under specified category namely registered dealer, composition dealer, unregistered dealer etc.

➢ In above circumstances, expenditure which may be treated as from unregistered person, but in fact those may be from registered persons., one will have to find out and identify the category of the suppliers as mentioned in the following chart, and then to decide whether to include under registered or not registered column:

SECTION	NATURE OF EXPENDITURE	POSSIBLE SOLUTION
17(5)	Block Credit – ITC not allowed and GST booked with expenses	Verify:GSTR-2A reconciliation & GSTR-3B item at Table 4D(1)
9(3)	Supplies under RCM -	For Registered : Verify GSTR-2A. For Unregistered : Verify RCM Invoice / Purchase Invoice - Sec 31(3)(f)
10/11	Composition Supplier Exempt Supplies from Registered Dealer	Verify GSTR-3B item at Table 5
GSTIN of Auditee not mentioned	ITC not claimed and tax booked with expense / expense incurred in cash	Only possible to verify from supplier master (in case properly maintained by the auditee) or vouching.

It may thus be noted that the total of amounts in Column 6 and Column 7 should match with total of amounts in Column 2 of the report.

- **REPORTING REQUIREMENT**

  - An appropriate disclosure should be made by the Tax auditor in Form 3CA/3CB, as the case may be, for the view taken by the assessee in relation to the…..

    1. Meaning of "Total expenditure" and
    2. The method of filling up the appropriate columns.

  - If the assessee is not in a position to give the details as required in clause 44, an appropriate disclosure/disclaimer may be made by the auditor in Form 3CA/3CB.

- **DISCLOSURE / DICLAIMER SPECIMENS:**

  - **Non-maintenance of information required by this clause:**

    We have been informed by the assessee that the information required under this clause has not been maintained by them, in absence of any information available, we are unable to report the same under this clause.

  - **Inadequate or insufficient maintenance of information required by this clause:**

    - It is not possible for us to determine the breakup of total expenditure of entities registered or not under the GST, as necessary information is not maintained by the assessee in its books of accounts, or

- The standard accounting software used by the assessee is not configured to generate any report in respect of required data in this clause, or
- We are unable to verify and report the desired information in this clause, or
- In absence of the proper system of assessee, we are unable to comment and give the details as required in Clause 44.

Presently, due to technological reforms, the data with various departments is readily available and can be easily inter-linked and co-related. Therefore, the amounts reported under Clause 44 should thus be reconcilable with the amounts specified in Table 6 of GST Annual Return [Form GSTR-9] as well as Table 12 & Table 14 of GST Audit Report [Form GSTR-9C].

It is strongly recommended that, each of these GST reporting requirements may be prepared simultaneously and reconciled, before reporting under this clause, to avoid future difficulties and discrepancies.