

Tax Audit Series - Version 4.0

Chapter 17 – Clauses 34 - 36A



CA. PRAMOD JAIN
B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP
www.capramodjain.com

Namaste

In Chapter 17 of this series, we would discuss the Particulars of Clauses 34 - 36A of Form 3CD.

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

- The Auditor need to report section-wise details of TDS/TCS deducted/collected and paid.
- The Auditor also has to report on following columns:
 1. TAN of the Assessee
 2. Section under which Assessee is covered.
 3. Nature of Payment.
 4. Total Amount of Payment/Receipt of the nature in Column (3) - Details may be drawn from the TDS/TCS statements furnished by the assessee to the IT Department along with the books of accounts and other relevant documents which include aggregate of payments on which tax is liable to be deducted as well as not liable to be deducted.
 5. Details of total amount on which the tax was required to be deducted or collected out of the amount mentioned in column (4) - There may be a difference in the amounts reported under column (4) and column (5). The reasons for difference could be threshold limits provided in specific sections or applicability of certificates issued u/ss 195/197 or difference of opinion with regard to applicability of a particular section, etc.
 6. TDS / TCS deducted / collected at less than specified rate - In case the payer deducts/recipient collects tax at source at a rate lower than the specified rate on the basis of certificate issued u/s 195 or 197, the lower rate or nil rate, as the case may be, should be considered as the specified rate for the purpose of reporting under this clause.
 7. Total amount of tax deducted/collected out of the amount furnished in column (6).
 8. Total amount out of the amount deductible or collectible as mentioned in column (5) at which the tax was deducted or collected at the rate less than the specified rate – For example section 194C requires deduction @ 2% in case payment is made to a person other than individual/HUF, but the deductor deducts only 1%. The same has to be reported under this clause.
 9. Total amount of tax deducted/collected out of the amount furnished in column (8)
 10. Amount of TDS/TCS not deposited to the credit of Central Government by the Assessee - Tax deducted but deposited late is not to be reported in this clause.
- The auditor should obtain a copy of the TDS/TCS statements filed by the assessee which shall form the basis of reporting under this clause, to the extent possible.

Tax Audit Series - Version 4.0

Chapter 17 – Clauses 34 - 36A



CA. PRAMOD JAIN

B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP

www.caprmodjain.com

- In case an assessee has voluminous nature of the transactions, the auditor may apply test checks and compliance tests on the transactions reported in the TDS statements by the assessee for verifying the information required to be provided under this clause. It may be mentioned in Form 3CA / 3CB, as applicable:

We have verified the compliance with the provisions of Chapter XVII-B / XVII-BB regarding deduction of tax at source / collection at source and regarding the payment thereof to the credit of the Central Government in accordance with the Auditing Standards generally accepted in India which includes test checks and the concept of materiality. Such audit procedures did not reveal any significant non-compliance with the provisions of Chapter XVII-B / XVII-BB.

- The auditor may have a difference of opinion with regard to the applicability of the provisions of TDS/TCS on a particular payment. In such a case, he should bring the difference of opinion appropriately as an observation in the clause (3) of Form No. 3CA or clause (5) of Form No.3CB as the case may be.
- Details under this clause should be reconciled with the disallowances reported u/s 40(a) /40(a)(ia) in clause 21(b) of Form 3CD, to the extent applicable. TDS / TCS required on capital payments / receipts and not complied would not be reported in clause 21(b) but is to be reported in this clause.
- *For Import of goods constituting Significant Economic Presence (SEP):*
 - In case, where the assessee has made imports of goods exceeding the limits specified in Rule 11UD for constituting Significant Economic Presence (SEP) as per section 9(1)(i) (Rs. 2 crores for goods) and is of the belief that import of physical goods constitutes SEP but avails the benefit of DTAA by obtaining Tax Residency Certificate and filing Form 10F, then tax is not deductible u/s 195.
 - In case, where the assessee has made imports of goods exceeding the limits specified in Rule 11UD for constituting Significant Economic Presence (SEP) as per section 9(1)(i) (Rs. 2 crores for goods) and is of the belief that import of physical goods do not constitute SEP due to OECD's BEPS Action Plan 1, read with Explanatory Memorandum to Finance Bill 2018 introducing SEP, an appropriate management representation letter (MRL) should be taken from the assessee and accordingly reported by auditor in Form 3CA / 3CB, which could be:
 - *MRL* – We have made imports of physical goods exceeding the limits specified in Rule 11UD read with section 9(1)(i) of the Income Tax Act, 1961. To cover digital transactions, OECD's BEPS Action Plan 1 suggested a new nexus rule based on 'significant economic presence' (SEP), which has been adopted by India through section 9(1)(i) read with Explanatory Memorandum to Finance Bill 2018 introducing SEP. The foreign entity from whom imports of the goods are made do not have a

Tax Audit Series - Version 4.0

Chapter 17 – Clauses 34 - 36A



CA. PRAMOD JAIN
B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP
www.capramodjain.com

business connection and permanent establishment in India. We are of firm view that such imports of physical goods do not constitute SEP requiring any withholding of taxes.

- *Reporting by Auditor in Para 3 of Form 3CA / Para 5 of Form 3CB* – The assessee in clause 34 of Form 3CD has not reported any tax deductible on import of goods exceeding the limits specified in Rule 11UD read with section 9(1)(i) of the Act and they have represented to us that such imports of physical goods do not constitute ‘significant economic presence’ (SEP) and the suppliers of the goods do not have a business connection and permanent establishment in India.

Clause 34(b) - Whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details

- The auditor has to ascertain as to whether the assessee is required to furnish the TDS / TCS Statement. Earlier the requirement was to report under this clause only when the statements were filed late.
- An assessee is required to furnish the TDS / TCS Statement after he has deducted the tax / collected the tax and deposited the same to the Central Government. He can also file a correction / rectification statement.
- Disclosures is required of:
 - a) TAN of the Assessee.
 - b) Type of Form – All Forms have to be reported in this clause i.e., Form 24, 24G, 24Q, 26, 26A, 26B, 26Q etc,
 - c) Due Date for furnishing.
 - d) Actual Date of furnishing the return (if furnished) – Date of original return being furnished should be stated, even if the statement is revised / corrected later.
 - e) Whether the statement of tax deducted or collected contains information about all transactions that are required to be reported. If not, please furnish list of details/transactions which are not reported
 - a. The requirement of list of details/transactions which are not reported has been added w.e.f. 20th August 2018.
 - b. For the required information, the auditor should peruse the TDS / TCS statement and the matters as stated in Rule 31A(4) (for TDS) and Rule 31AA(4) (for TCS).
 - c. Transactions like that of transporters [whose tax is not to be deducted, if he gives a declaration u/s 194(6)], TDS not deducted due to furnishing of Form 15G / 15H, NIL TDS liability due to certificate u/s

Tax Audit Series - Version 4.0

Chapter 17 – Clauses 34 - 36A



CA. PRAMOD JAIN
B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP
www.capramodjain.com

- 197, etc. could be the cases, which were required to be reported, but not reported by the assessee.
- d. In case assessee has deducted/collected and deposited the tax but has not reported the same in the TDS/TCS statement, the same should also be reported. There could be various reasons for same including non-availability of PAN. The auditor may after proper audit procedures and verifications also obtain suitable management representation regarding the same which could be as under:
- i. We have reported all transactions that were required to be reported in the TDS/TCS statement and no transactions which were reportable but were not reported in the said statements.
- e. In case an assessee revises / corrects his TDS statement, details from the corrected statement should be verified.
- f. It could be difficult for the auditor to verify each and every transaction in this regard in certain cases. Therefore, while verifying such transactions, he can apply the concepts of materiality and audit sampling.

Clause 34(c) - Whether the assessee is liable to pay interest u/s 201(1A) or section 206C(7)

- Auditors will have to report the details regarding the interest payable/ paid u/s 201(1A)/ or 206C(7).
- Section 201(1A) provides for payment of interest at a specified rate in case the tax has not been deducted wholly or partly or after deducting has not been paid to the credit of Central Government.
- Similarly, section 206C(7) provides for payment of interest at a specified rate in case the tax is not collected wholly or partly or if collected not paid to the credit of the Central Government.
- 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 the statement generated by the IT Department in Form No. 26AS.
- The reporting as to whether the assessee is liable to pay such interest, should also be in consonance with the reporting under clause 34(a), to the extent applicable where the details of non-deduction are required to be reported by him.

Tax Audit Series - Version 4.0

Chapter 17 – Clauses 34 - 36A



CA. PRAMOD JAIN
B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP
www.caprmodjain.com

Clause 35: Quantitative details of raw material in case of trader and manufacturer

The details are required only in case of assessee being trader or manufacturer. This clause is not applicable to service providers.

Clause 35(a): Quantitative details in case of trading concern

- This clause is to be filled when the assessee is engaged in trading of goods.
- In this clause quantitative details of principal items of goods traded is required to be disclosed, which are as follows:
 1. Opening Stock
 2. Purchases during the previous year
 3. Sales during the previous year
 4. Closing stock
 5. Shortage/ Excess, if any.
- Auditor should verify the stock details and also obtain certificates from the assessee in respect of the principal items of goods traded, the balance of opening stock, purchases, sales and closing stock and the extent of shortage/excess/damage and the reasons for the same.
- Principal items here would mean the items which constitute more than 10% of the aggregate value of purchases or sales.

Clause 35(b): Quantitative details in case of manufacturing concern

- This clause is to be filled when the assessee is engaged in manufacturing of goods.
- In this clause the auditor is required to verify the quantitative details of the principal items of raw materials, finished products and by-products, which are as follows:
 - A. Raw Materials
 - 1) Opening stock
 - 2) Purchases during the previous year
 - 3) Consumption during the previous year
 - 4) Sales during the previous year
 - 5) Closing stock
 - 6) Yield of finished products
 - 7) Percentage of yield
 - 8) Shortage/excess, if any.

Tax Audit Series - Version 4.0

Chapter 17 – Clauses 34 - 36A



CA. PRAMOD JAIN

B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP

www.capramodjain.com

B. Finished products/By-products

- 1) Opening stock
- 2) Purchases during the previous year
- 3) Quantity manufactured during the previous year
- 4) Sales during the previous year
- 5) Closing Stock
- 6) Shortage/excess, if any.

- Auditor should check the details of purchase, consumption and production of principal items of raw materials and finished goods their yield including by-products.
- Information should be given only in respect of those items where it is practicable to do so, having regard to the records maintained by the Assessee.
- In case adequate records are not maintained / provided by the assessee, the auditor should report the same in Para 3 of Form 3CA or Para 5 of Form 3CB as the case may be. It could be as under:
 - The assessee has not provided / maintained adequate records for our verification regarding the principal items of raw materials, finished products and by-products as required to be reported under clause 35(b) of Form 3CD.
 - OR
 - As explained by the assessee, keeping in view the nature, volume of the business and due to numerous items, it is not practically possible for the assessee to maintain any stock book to record quantities of each and every inward and outward of such goods on day-to-day basis, hence information under this clause is not feasible.
- Principal items here would mean the items which constitute more than 10% of the aggregate value of purchases, consumption or sales.
- The auditor should obtain the following certified documents for principal items of raw materials, finished products and by-products:
 - Certificate from the assessee certifying the quantity and value of the opening stock, purchases, sales and closing stock.
 - Certificate to the extent of shortage/excess/damage and the reasons for the same.

Clause 36: Details of tax on distributed profits u/s 115-O

This Clause has been Omitted w.e.f. 01.04.2021.

Tax Audit Series - Version 4.0

Chapter 17 – Clauses 34 - 36A



CA. PRAMOD JAIN
B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP
www.capramodjain.com

Clause 36A: Whether the assessee has received any amount in the nature of dividend u/ (22)(e)? If yes, give details.

Various aspects of section 2(22)(e) should be understood to report under this clause, which includes:

- Payment should be made by closely held company i.e., a company in which public are not substantially interested (including unlisted public company).
- Payment should be by way of advance or loan or the payment should be on behalf, or for the individual benefit, of the shareholder.
- Shareholder must be a person who is the registered / beneficial owner of shares holding not less than 10% of the voting power or to a concern (Company / Firm / HUF / etc.) in which such shareholder is having substantial interest i.e., 20% or more. For this purposes shareholder as an individual is to be considered and not along with his / her relatives.
- Dividend is deemed to the extent to which the company possesses accumulated profits on the date of giving loan / advance.
- The dividend taxable u/s 2(22)(e) is restricted to accumulated profits on the date of payment. Thus, the accumulated profits have to be determined as on the date of the payment. Further, if at any time earlier any amount has been taxed under any of the clauses of section 2(22) including clause (e), the accumulated profits will have to be reduced by the amount so taxed.
- Where the loan or advance is made by the closely held company to a concern, it is chargeable to tax in the hands of the shareholder and not in the hands of the concern till AY 2018-19. However, the position has been reverted back to be taxable in hands of the shareholder due to non-applicability of section 115-O from 1.4.2020.
- S. 2(22)(e) does not include any advance or loan made to a shareholder or the concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company. Some of the decisions have held that 'substantial part' would indicate 20% i.e., where 20% or more funds have been deployed in the business of lending money the test of substantial part will be satisfied.
- Various courts have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e). The CBDT has issued Circular No. 19/2017 (F.No.279IMisc.1140/2015IITJ) dated 12 June 2017 accepting this position. The circular gives various illustrations and citation of judicial decisions. Such cases need not be reported as dividend under this clause.
- Few cases have also held that inter-corporate deposits are not loans.
- There are various cases in favour of assessee taking loan due to commercial expediency, etc. which the auditor should be aware of.

Tax Audit Series - Version 4.0

Chapter 17 – Clauses 34 - 36A



CA. PRAMOD JAIN
B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP
www.capramodjain.com

The auditor should:

- Obtain list of all loans / advances received during the year by the assessee to test it for applicability of s. 2(22)(e). In case the assessee has not received any such amount during the year, no reporting may be required under this clause.
- Where the assessee has received any loan or advance from any company, the auditor should obtain its list of shareholders to test 10% / 20% test as discussed above.
- He should also obtain the financial statements of that company to ascertain its accumulated profits.
- The auditor may not be able to determine the accumulated profits of the closely held company making the payment for various reasons. He may not have access to the records of such closely held company, etc. In such a case the auditor should include appropriate remarks in clause (3) of Form No. 3CA or clause (5) of Form 3CB, as the case may be, about the methodology adopted by him, which could be as under:
 - The assessee could not provide appropriate information / details to determine accumulated profits to enable us to report that the loan / advance received by the assessee is deemed dividend or not u/s 2(22)(e).
- He should also obtain from the assessee a certificate containing list of closely held companies in which he is beneficial owner of shares carrying not less than 10% of the voting power and list of concerns in which he has substantial interest.
- He should also obtain a certificate from the assessee giving particulars of any loans or advances received by any concern in which he has substantial interest from any closely held company in which he is beneficial owner of shares carrying not less than 10% voting power.
- If reliance has been placed on any judicial decision, a reference of the same may be given by the auditor as observations in clause (3) of Form No. 3CA or clause (5) of Form 3CB, as the case may be.

I hope this document is of use to you. I thank *CA. Shreya Jain* in assisting me to compile this part of the series. Your suggestions and comments would be highly appreciated

Best Regards

CA. PRAMOD JAIN
pramodjain@lunawat.com
www.capramodjain.com
9811073867
7th September 2024

Tax Audit Series - Version 4.0

Chapter 17 – Clauses 34 - 36A



CA. PRAMOD JAIN

B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP

www.capramodjain.com

EARLIER CHAPTERS

<i>Chapter No.</i>	<i>Title</i>	<i>Link</i>
1	Applicability	http://lunawat.com/Uploaded_Files/Attachments/F_20303.pdf
2	Turnover	http://lunawat.com/Uploaded_Files/Attachments/F_20304.pdf
3	Audit Report Format	http://lunawat.com/Uploaded_Files/Attachments/F_20305.pdf
4	Clauses 1 to 8A	http://lunawat.com/Uploaded_Files/Attachments/F_20307.pdf
5	Clauses 9 to 12	http://lunawat.com/Uploaded_Files/Attachments/F_20309.pdf
6	Clause 13	http://lunawat.com/Uploaded_Files/Attachments/F_21321.pdf
7	Clauses 14 to 15	http://lunawat.com/Uploaded_Files/Attachments/F_21322.pdf
8	Clauses 16 to 17	http://lunawat.com/Uploaded_Files/Attachments/F_21325.pdf
9	Clauses 18 to 20	http://lunawat.com/Uploaded_Files/Attachments/F_21327.pdf
10	Clause 21	http://lunawat.com/Uploaded_Files/Attachments/F_21329.pdf
11	Clauses 22-23	http://lunawat.com/Uploaded_Files/Attachments/F_21330.pdf
12	Clauses 24-26	http://lunawat.com/Uploaded_Files/Attachments/F_21331.pdf
13	Clauses 27-29B	http://lunawat.com/Uploaded_Files/Attachments/F_21332.pdf
14	Clauses 30-30C	http://lunawat.com/Uploaded_Files/Attachments/F_21334.pdf
15	Clauses 31(a)-31(e)	http://lunawat.com/Uploaded_Files/Attachments/F_21335.pdf
16	Clauses 32-33	http://lunawat.com/Uploaded_Files/Attachments/F_22309.pdf

(Disclaimer: Though full efforts have been made to state the interpretations correctly, yet the author is not responsible / liable for any loss or damage caused to anyone due to any mistake / error / omission)

ABOUT CA. PRAMOD JAIN

He is a commerce graduate [B. Com (H)] from Shri Ram College of Commerce (SRCC). He is a fellow member of the Institute of Chartered Accountants of India (FCA). He is a fellow member of the Institute of Companies Secretaries of India (FCS). He is a fellow member of the Institute of Cost Accountants of India (FCMA). He is a Bachelor of Law (LL. B). He is qualified as an Information System Auditor [DISA (ICAI)]. He is also a member of All India Management Association (MIMA). He is also an Insolvency Professional (IP). He has also passed the Certificate Course on CSR of ICAI. He has also passed the Proficiency Self-Assessment Test for Independent Director's Databank. He has passed certification course NCFM of National Stock Exchange of India (NSE). He has also done certification course CAAT and post qualification certificate course on Valuation of ICAI.

Tax Audit Series - Version 4.0

Chapter 17 – Clauses 34 - 36A



CA. PRAMOD JAIN
B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP
www.capramodjain.com

He is elected as Central Council Member of ICAI for 2 consecutive terms from 2019 to 2025. Apart from being member in more than 25 committees / groups / directorates of ICAI, and other Bodies he is / was:

- Chairman of Accounting Standards Board (ASB) of ICAI for 3 years from 2022 to 2025
- Deputy Convenor of Centre for Audit Quality Directorate (CAQD) for 2024-25
- Convenor - Members & Students (Grievances Handling & e-Sahayata) Directorate for 2023-24
- Chairman of Accounting & Finance Services Sectional Committee SSD-12 under the Services Sector Division Council (SSDC) of Bureau of Indian Standards (BIS) for 2023-24
- Chairman of Expert Advisory Committee (EAC) of ICAI for Year 2022-23
- Co-Chairman of Corporate Affairs Committee of PHDCCI for the year 2022-23
- Chairman of Committee on International Taxation (CITAX) of ICAI for 2021-22
- Chairman of Taxation Audit Quality Review Board (TAQRB) of ICAI for 2021-22.
- Member of Quality Review Board (QRB) for 2 terms from 2020 to 2026.
- Member of the SME Implementation Group (SMEIG) of IFRS Foundation, UK for 3 years from 2023 to 2026.
- Chairman of Valuation Standards Board (VSB) of ICAI for the year 2020-21.
- Chairman of CSR Committee of ICAI for year 2020-21.
- Vice-Chairman of Committee on MSME & Start-up of ICAI for the year 2021-22.
- Vice-Chairman of Women Members Empowerment Committee (WMEC) of ICAI for 2021-22.
- Vice-Chairman of Direct Tax Committee (DTC) of ICAI for 2 years from 2019 to 2021.
- Vice-Chairman of Committee on International Taxation (CITAX) of ICAI for 2019-20.
- Member of ICAI Disciplinary Committee for the year 2020-21.

He is the conceptualizer of the portal www.expertspanel.in which is a one stop solution for all professional queries which has given more than 36500 answers since its launch in mid of year 2018.

He has delivered more than 1800 lectures and articles on various topics of Income Tax, Corporate Laws, LLP, Audits, Peer Review, Quality Review, etc. at more than 200 forums throughout the country. Most of his presentations and articles since 2013 are available for free download from www.lunawat.com and from 2018 at www.expertspanel.in also.

He is Senior Partner of **M/s LUNAWAT & CO.**, Chartered Accountants. He is president, founder convenor and member of various Boards, Directorate, Committees, Study Circles, etc. of ICAI, ICSI and other prestigious bodies and associations. He has been a Technical

Tax Audit Series - Version 4.0

Chapter 17 – Clauses 34 - 36A



CA. PRAMOD JAIN

B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP

www.capramodjain.com

Reviewer with Financial Reporting Review Board (FRRB) and Quality Review Board (QRB) and Peer Reviewer with Peer Review Board (PRB).

He has authored books on “*Chartered Accountant’s Documentation and Compliance for Audits and Reviews*”, *Limited liability Partnership – A Complete Resource Book*”, “*Chartered Accountant’s Documentation and Compliance for Audits and Reviews*”, “*Importance of LLP after Companies Act, 2013*”, “*Chartered Accountant’s Documentation and compliance under Companies Act 2013, Peer Review and Quality Review*”, “*Limited Liability Partnership – Law, Procedures and Taxation*”, “*Documentation for Chartered Accountants*”, “*Limited Liability Partnership – Law and Procedures with Ready Reckoner*”, “*Fringe Benefit Tax & Banking Cash Transaction Tax*”, “*Documentation for Audits*” and “*Accounting Standards and CARO*”.

He has written various articles on taxation, company law and audit in various journals. He has vast practical experience in income tax, audit, corporate laws and LLP.