

Tax Audit Series 14 – S. Nos. 30 to 30C

Complied by
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Namaste

In series - 14 we would discuss the Particulars of Form 3CD – Part B – S. Nos. 30 to 30C. Clauses 30A to 30C have been inserted w.e.f. 20th August 2018. However, clause 30C has been deferred till 31st March 2019 vide Circular No. 6/2018 dated 17th August 2018.

S. No. 30: Details of any amount borrowed on hundi or any amount due thereon (including interest on the amount borrowed) repaid, otherwise than through an account payee cheque. [Section 69D]

This clause is applicable to all assesseees who have borrowings on Hundi or repayment thereof, otherwise than an account payee cheque. Further requires the Tax auditor to report the compliance with the provisions of **section 69D** of the Act dealing with borrowing on Hundi and repayment thereof.

Provisions of Section 69D:

- The term ‘Hundis’ has not been defined under the Act. However, the CBDT Circular NO. 208, dated 15 November 1976 explains the scope and characteristics of the said term to be Promissory Note drawn in a vernacular language.
- Amount borrowed on Hundi or Repayment of the same (including interest) has to be made by account payee cheque.
- If not through account payee cheque, the amount borrowed or repaid will be considered as Income in the year of borrowing or repayment.
- If borrowing is taxed then repayment will not be taxed again in the year of repayment
- Account payee draft should also be treated as account payee cheque and the provisions of section 69D are not contravened if the transaction is through account payee draft.

The auditors should:

- Obtain a complete list of borrowings and repayments of hundi loans otherwise than by account payee cheques and verify the same with the books of account.
- There will be practical difficulties in verifying the loan taken or repaid on hundi by account payee cheque. In such cases, the tax auditor should verify the borrowing/repayments with reference to such evidence which may be available and in the absence of conclusive or satisfactory evidence or the auditor may obtain suitable certificate/ management representation in this regard.

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- It also includes reporting of the name of the parties involved, date, the amount, and other particulars may be given. The e-filing portal gives the format in which the details are to be given.
- Check the bank book and bank statements.

S. No. 30A: Details about “Primary Adjustments” in transfer pricing to be reported as per Section 92CE

This clause has been added to Form 3CD w.e.f. 20th August 2018. If any primary adjustment to the transfer price has been made as per section 92CE(1) of the Act, then the following details need to be given in this clause.

- Under which clause of section 92CE(1) primary adjustment is made?
 - Suo motu by the assessee in his ITR;
 - By the Assessing Officer and has been accepted by the assessee;
 - Determined by an advance pricing agreement entered into by the assessee u/s 92CC;
 - As per the safe harbour rules framed u/s 92CB; or
 - Arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into u/s 90 or s. 90A for avoidance of double taxation,
- Amount of primary adjustment.
- Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of section 92CE(2)?
- If yes, whether the excess money has been repatriated within the prescribed time. The due date is 90 days from due date of filing of ITR. For AY 2018-19 due date would be 31st December 2018, hence for AY 2018-19, this detail would not be feasible.
- If no, the amount of imputed interest income on such excess money which has not been repatriated within the prescribed time.

This new clause will increase the responsibility of the auditor substantially. This clause has been necessitated on account of the new section 92CE which was inserted into the Statute w.e.f. AY 2018-19.

S. No. 30B: Limitation of interest deductions for borrowings from an Associated Enterprise up to 30% of EBITDA is to be furnished

This clause has been added to Form 3CD w.e.f. 20th August 2018. As per Section 94B(1) of the Act, if an Indian Company or a Permanent establishment of a foreign company in India incurs any expenditure by way of interest or of similar nature

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exceeding Rs. 1 Crore which is deductible in computing income chargeable under the head 'Profits and Gains of Business or Profession' in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it exceeds 30% of EBITDA. The Form gives an additional clause to disclose the following:

- Amount of expenditure by way of interest or of similar nature incurred.
- Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year.
- Amount of expenditure by way of interest or of similar nature which exceeds 30% of EBITDA.
- Details of interest expenditure brought forward as per section 94B (4). Under this clause details would not be feasible for AY 2018-19 as S. 94B has been inserted w.e.f. AY 2018-19
- Details of interest expenditure carried forward as per section 94B (4).

This clause too has been necessitated on account of the new section 94B which was inserted into the Statute w.e.f. AY 2018-19.

S. No. 30C: Details of Impermissible Avoidance Arrangement to be furnished as referred to in Section 96

This clause has been added to Form 3CD w.e.f. 20th August 2018. If an assessee has entered into an Impermissible Avoidance Arrangement as defined in section 96 of the Act, then the following details needs to be furnished in clause 30C of the Form:

- Nature of the impermissible avoidance arrangement.
- Amount of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement.

Reporting under this clause has been deferred till 31st March 2019 vide Circular No. 6/2018 dated 17th August 2018, hence nothing is to be reported under this clause.

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

Best Regards

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