

Tax Audit & Section 194 R



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Shared at

Ludhiana Branch of NIRC of ICAI

13th July 2022

SECTION 194 R

TDS – S. 194R

- ✖ Inserted from 1.4.2022 for providing to a **resident**, any **benefit or perquisite**, whether convertible into money or not, arising from carrying out of **business or profession by such resident**:
 - + **before providing such benefit or perquisite** – TDS @ 10%
 - + If value or aggregate of value exceeds Rs. 20000/- per person in FY.
 - + If in kind, payer to **ensure tax is paid** before releasing benefit

APPLICABILITY

- **Effective from 1.4.2022. TDS from 1.7.2022.**
- **Exceeding Rs. 20000/- in aggregate in a AY**
- **To resident arising from carrying out of business or profession.**
- **Benefit / perquisite if in kind may be capital / revenue, but the benefit would be income**
- **Person providing benefit/perquisite to deduct TDS @ 10% before providing such benefit or perquisite.**
- **Deposit:**
 - **If TDS – 7th of next month**
 - **If deposit by beneficiary – before receiving benefit**

CIRCULAR

- **Circular No. 12 of 2022 dated 16th June 2022**
- **Benefit or perquisite provided may not be taxable u/s 28(iv) in the hands of the receiver, it could be covered u/s 41(1) too**
- **Benefit can be in cash or in kind??**
- **Benefit could be a capital asset in hands of the receiver**
- **Cash discounts, sales discounts, rebates excluded**

SPECIFICALLY INCLUDED

- **Free samples**
- **Incentives (other than discount, rebate) in form of cash or kind such as Car, TV, Computers, Gold coin, Mobile phones, etc.**
- **Sponsorship of trip for recipient and his/her relative upon achieving certain targets.**
- **Free ticket for an event.**
- **Medicine samples free to medical practitioners.**
- **What if free display sample??**

INDIRECT COVERAGE

- **Benefits/perquisites may be used by owner / director/employee of recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession . However, TDS required in name of recipient entity .**
- **Example - Free medicine sample provided by company to doctor who is employee of a hospital. TDS u/s 194R in hands of hospital as benefit is provided to doctor being employee of hospital. Hospital can treat it as a perquisite given to employee u/s 17 and TDS u/s 192.**

INDIRECT COVERAGE

- **Free medicine sample provided by a company to a doctor who is consultant in a hospital. TDS u/s 194R in hands of hospital and then hospital may again deduct tax u/s 194R as benefit to the consultant. To remove difficulty, as an alternative, the original benefit/perquisite may directly deduct tax in the case of consultant as a recipient.**
- **S. 194R shall not apply if benefit / perquisite is being provided to Government entity, like Government Hospital, not carrying on business or profession.**

BENEFIT DURING PROMOTION

- **Social media influencer is given a product - to use and make audio/video to promote.**
 - **When Benefit/perquisite like car, mobile, outfit, etc. is returned to manufacturer after using it for purpose of rendering service –
No s. 194R**
 - **When Benefit receiver has retained it -
194R**
 - **What if item consumed??**

VALUATION OF BENEFIT/PERQUISITE

- **FMV of the benefit or perquisite except:**
 - **When purchased - Purchase Price of benefit.**
 - **When manufactured - Price that it charges to its customers**
- **GST not be included for purpose of valuation of benefit for TDS u/s 194R.**
- **Date of benefit? Date of valuation???**

RE-IMBURSEMENTS

- **Expenditure which is liability of person carrying out business/profession, if met by other person - benefit/perquisite.**
- **Consultant X renders service to Co. Y. X travels & incur exp. for rendering service to Y:**
 - **(1) - X pays for expense which is part of his business expenditure – No benefit.**
 - **(2) - If travel expense is met by company Y:**
 - **(a)– Invoice of expenses obtained in name of Y and paid by X, is reimbursed by Y to X–No s 194R**
 - **(b)– If invoice is not in name of Y & payment made by Y directly or reimbursed – Y - 194R ??**

CONFERENCES

- **Expenditure pertaining to dealer/business conference – no benefit/perquisite if for any of following aspects :**
 - **New product launch.**
 - **Discussion on how the product is better than others.**
 - **Obtaining orders from dealers/customers.**
 - **Teaching them sales techniques.**
 - **Addressing their queries.**
 - **Reconciliation of Accounts with theirs.**

CONFERENCES

- **Covered - if not be in nature of incentives / benefits to select dealers / customers who have achieved particular targets, such as:**
 - **Attributable to leisure trip or leisure component, even if it is incidental to dealer / business conference ??**
 - **Incurred for family members accompanying the person attending conference.**
 - **On participants of such conference for days which are on account of prior stay or over stay beyond the dates of such conference ???**

DEPOSIT OF TAX WHEN IN KIND

- Requirement is – person is required to ensure that tax required to be deducted has been paid by the recipient.
- Recipient would pay tax in form of Advance Tax.
- Deductor may rely on declaration along with a copy of advance tax challan provided by recipient confirming that such tax is deposited.
- Report in TDS Return along with Challan No.
- Form 26Q contains provision for same.
- Alternatively, benefit provider may deduct tax u/s 194R and pay to govt.



- **Employees training and excursions?**
 - **No**
- **Scheme for dealers?**
 - **Yes**
- **Car on purchasing residential immovable property by Mr. X?**
 - **No**
- **Diwali gift to customers and suppliers?**
 - **Yes**
- **Diwali gift to employees?**
 - **No**

???

- **Donation to Charitable Trust?**
 - No
- **Selling immovable property at less than FMV?**
 - No
- **Trip with family to Non-resident suppliers?**
 - No
- **Company incurs expense of Boarding & Lodging for its customers to visit their office?**
 - No
- **Free medical samples to Hospitals registered u/s 12A / 10(23C)?**
 - ???



- **Will the recipient have to record the benefit?**
 - **Yes**
- **Would depreciation be allowed if any capital asset like mobile received?**
 - **Yes**
- **Diwali gift of Rs. 1000/- each to 30 employees in purchase department of the customer?**
 - **Yes**
- **Free insurance on sale of car?**
 - **No**
- **Interest free loans?**
 - **???**

???

- **Schemes from Company to Distributor to Dealer**
 - **Yes**
- **Bad Debts w/o?**
 - **???**
 - **S. 194 R-provided; s.41(1)-obtained**

S. 28 / 41

- ✖ **S. 28(iv) – value of any benefit or perquisite, whether convertible into money or not Arising from carrying out of business or profession**
- ✖ **S. 41(1) (a) - has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him**

S. 194R

- × Any person**
- × Responsible for providing**
- × To a resident**
- × Any benefit or perquisite, whether convertible into money or not**
- × Arising from carrying out of business or profession by such resident**

TAX AUDIT

LEGISLATION FOR AY 2022-23

S. 44AB

- Business – exceeds Rs. 1 Crore / 10 Crores
- Profession – exceeds Rs. 50 L
- Business u/s 44AE /44BB /44BBB; income < deemed profits;
- Profession u/s 44ADA; deemed profit < 50% & TI > MANCT
- Business u/s 44AD (4) & TI > MANCT

Rule 6G

- Prescribing the Forms for Report u/s 44AB

Form 3CA

- Report in case of a person who is required to get his A/cs audited under any law

Form 3CB

- Report in any other case

Form 3CD

- Particulars as required in Form 3CA or Form 3CB

S. 271B

- Penalty $\frac{1}{2}\%$ maximum Rs. 1.50 L

APPLICABILITY OF 44AD(44ADA) / 44AB

**Mr. A started Mfg – 1st Yr - Turnover (all cash)
– 150L; NP – 8 L; TI - 8.50 L**

- AD - No
- AB - Yes

**Ms. B - Trading - Turnover (all cash) – 90L; NP -
10L; Doctor– Fee – 45 L; NP- 25 L; TI -32L**

- AD – No
- ADA - Yes
- AB - No

**Ms. C – Trading Turnover (all cash)– 80L
NP – 4 L; TI- 3 L**

- AD – No
- AB - No

**Mr. D - Trading; Turnover (all cash) - 95L;
Commission – 6 L; NP- 15L; TI - 14L**

- AD - No
- AB - Yes

SECTION 44AD ESSENTIALS

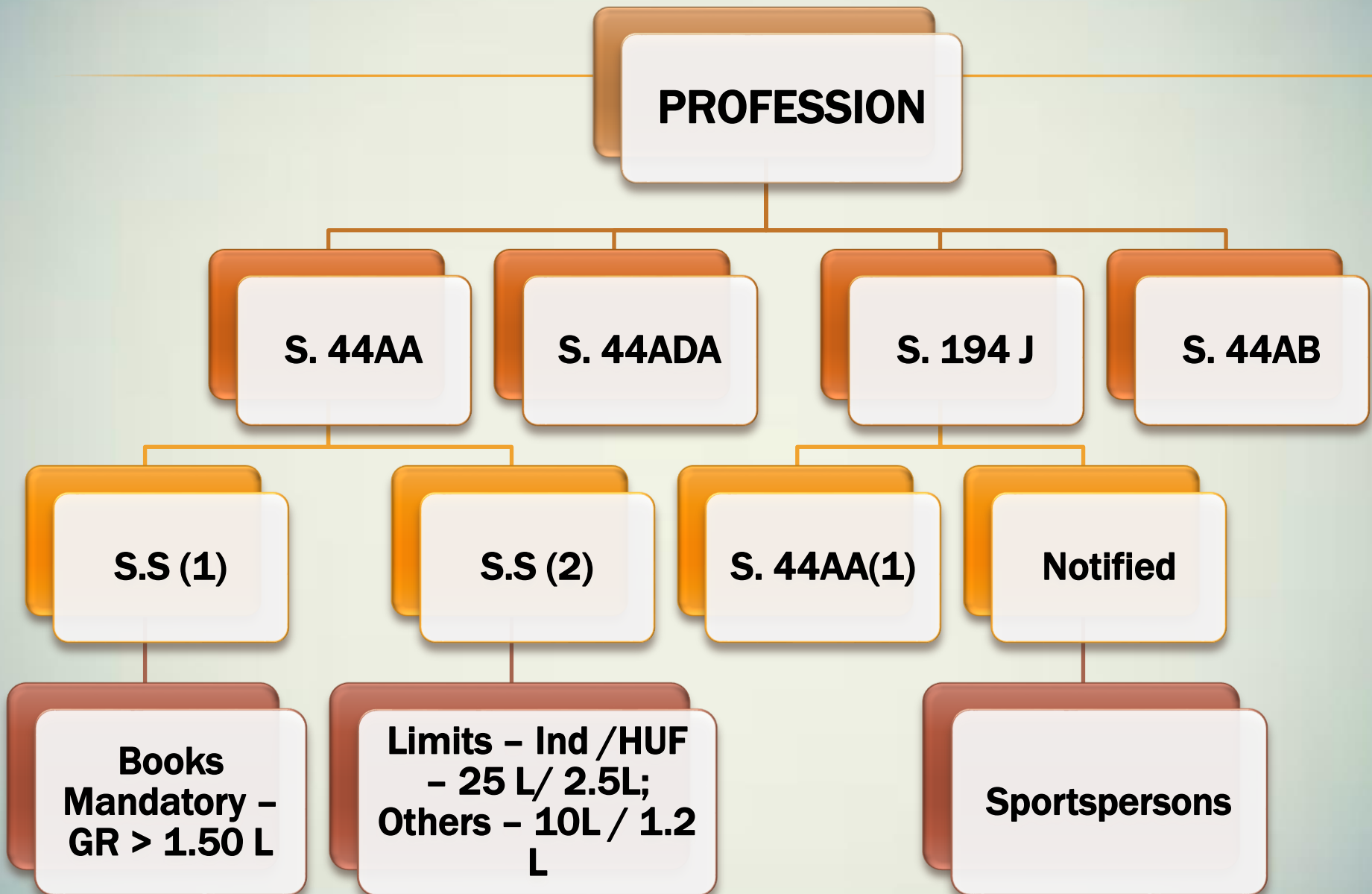
- **Should be eligible assessee**
 - **Ind., HUF, Firm (except LLP); and**
 - **No s. 10A, 10AA, 10B, 10BA & Chp VIA Part C**
- **Should be doing eligible business**
 - **Any except 44AE; and**
 - **Turnover < 2 Crs**
- **Section not applicable to a person carrying:**
 - **Profession u/s 44AA(1)**
 - **Commission or brokerage**
 - **Agency business**
- **Deemed profit 8% / 6% or more**
- **Commensurate with fund flow!!!**

SECTION 44ADA ESSENTIALS

- **Applicable to Individual, HUF, Firm (excluding LLP)**
- **Should be engaged in profession – section 44AA(1) read with rule 6F**
- **Gross receipt < 50 Lakhs**
- **Deemed profit 50% or more**
- **Commensurate with fund flow!!!**

PROFESSION – S. 44ADA

- **Section 44AA (1) read with Rule 6F**
 - **Legal**
 - **Medical**
 - **Engineering**
 - **Architectural**
 - **Accountancy**
 - **Technical Consultancy**
 - **Interior Decoration**
 - **Authorised Representative**
 - **Company Secretary**
 - **Film Artist, actors, cameramen, editor.....**
 - **Information Technology**



44AB(a)

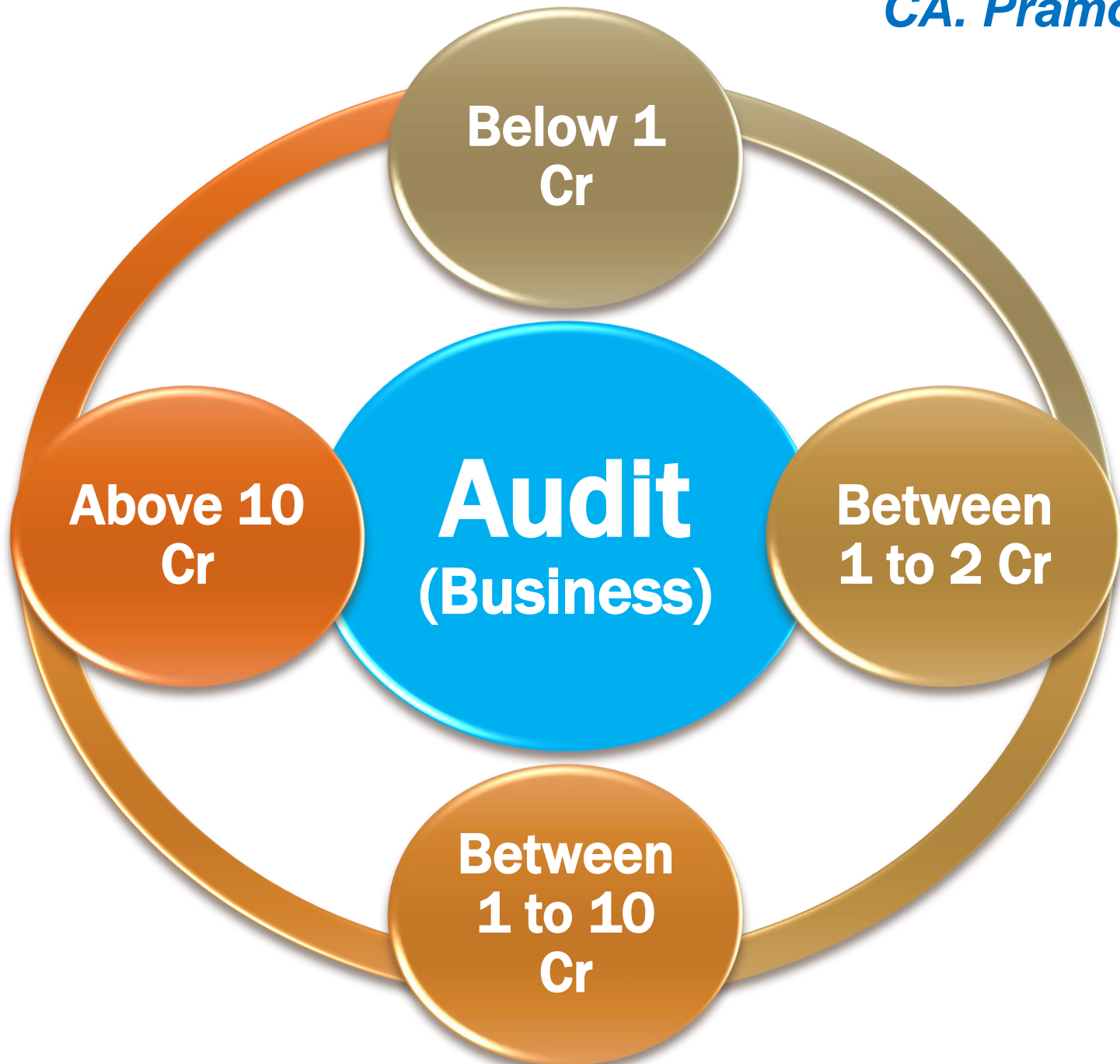
- ✖ **Limit 1 Cr /10 Cr !!**
- ✖ **Limit of 10 Cr Only if:**
 - + **Aggregate of all amounts received in cash do not exceed 5% of said amt.**
 - + **AND**
 - + **Aggregate of all Payments made in cash do not exceed 5% of said payment**

44AB(a) ???

- ✗ **Payments all by banking channels**
- ✗ **Receipts:**
 - + **6 Crs sales out of which 20 Lacs in Cash**
 - + **Proprietor introduces capital – 25 Lacs in cash**
 - + **Loans received– 50 Lacs by NEFT**
 - + **Is tax audit u/s 44AB required?**
 - + **Yes, as total receipts - 675 L ; cash – 45L**
- ✗ **Is it mandatory or optional??**
 - + **Mandatory - Part I (1) of 2nd schedule**
- ✗ **Non -A/c Payee Cheque/ Draft - Cash**

PRESUMPTIVE INCOMES

S. No.	Section	Nature of Activity	Less than Deemed Profits	Provisions for Audit	Audit Provision
1	44AD	Business	If availed 44AD & not availed in any of next 5 years, then for next 5 years - Audit	44AD(4)/(5)	44AB(e)
2	44ADA	Profession	Audit	44ADA(4)	44AB(d)
3	44AE	Goods Carriage	Audit	44AE(7)	44AB(c)
4	44B	Shipping of NR	Not Allowed	Nil	Nil
5	44BB	Exploration of Mineral Oils by NR	Audit	44BB(3)	44AB(c)
6	44BBA	Operation of Aircraft by NR	Not Allowed	Nil	Nil
7	44BBB	Turnkey Power Projects by FC	Audit	44BBB(2)	44AB(c)



FORMATS OF FINANCIAL STATEMENTS FOR NON-CORPORATE ENTITIES

BALANCE SHEET

NAME OF THE NON-CORPORATE ENTITY.....
BALANCE SHEET AS AT

	Particulars	Note No	Figures as at the end of (Current reporting period) (in Rs.) _____ (DD/MM/YYYY)	Figures as at the end of (Previous reporting period) (in Rs.) _____ (DD/MM/YYYY)
	1	2	3	4
I.	EQUITY AND LIABILITIES			
	(1) Owners' Fund			
	(a) Owners Capital Account			
	(b) Reserves and surplus			
(2)	Non-current liabilities			
	(a) Long-term borrowings			
	(b) Deferred tax liabilities (Net)			

	Particulars	Note No	Figures as at the end of (Current reporting period) (in Rs.) _____ (DD/MM/YYYY)	Figures as at the end of (Previous reporting period) (in Rs.) _____ (DD/MM/YYYY)
	(c) Other Long Term Liabilities			
	Long-term provisions			
(3)	Current liabilities			
	(a) Short-term borrowings			
	(b) Trade payables:- (A) total outstanding dues of MSME and (B) total outstanding dues of creditors other than micro, small and medium enterprises .			
	(c)Other current liabilities			
	(d)Short-term provisions			
	TOTAL			
II.	ASSETS			
(1)	Non-Current Assets			
	(a) Property, Plant and Equipment & Intangible assets			
	(i) Property, Plant and Equipment			
	(ii) Intangible assets			

	Particulars	Note No	Figures as at the end of (Current reporting period) (in Rs.) _____ (DD/MM/YYYY)	Figures as at the end of (Previous reporting period) (in Rs.) _____ (DD/MM/YYYY)
	(iii) Capital work-in-progress			
	(iv) Intangible assets under development			
	(b) Non-current investment			
	(c) Deferred tax assets (net)			
	(d) Long-term loans and advances			
	(e) Other non-current assets			
(2)	Current assets			
	(a) Current investments			
	(b) Inventories			
	(c) Trade receivables			
	(d) Cash and bank balances			
	(e) Short-term loans and advances			
	(f) Other current assets			
	TOTAL			

STATEMENT OF PROFIT AND LOSS

Name of the Non-Corporate Entity.....

Statement of Profit and loss for the year ended

(Rupees in.....)

	Particulars	Note	Figures for the current reporting period (in rs.) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)	Figures for the previous reporting period (in Rs.) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)
	1	2	3	4
I.	Revenue from operations		xxx	Xxx
II.	Other income		xxx	Xxx
III.	Total Income (I + II)		xxx	Xxx
IV.	Expenses			
(a)	Cost of Goods Sold			
(b)	Employee benefits expense		xxx	Xxx
(c)	Depreciation and amortization expense		xxx	Xxx
(d)	Finance Cost		xxx	Xxx
(e)	Other expenses		xxx	xxx

	Particulars	Note	Figures for the current reporting period (in Rs.) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)	Figures for the previous reporting period (in rs.) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)
	Total expenses		xxx	xxx
V	Profit before exceptional and extraordinary items & tax (III-IV)		xxx	xxx
VI	Exceptional items		xxx	xxx
VII	Profit before extraordinary items and tax (V - VI)		xxx	xxx
VIII	Extraordinary Items		xxx	xxx
IX	Profit before tax (VII- VIII)		xxx	xxx
X	Tax expense:			
(i)	Current tax		xxx	xxx
(ii)	Deferred tax		xxx	xxx
XI	Profit (Loss) for the period from continuing operations (VII-VIII)		xxx	xxx
XII	Profit/(loss) from discontinuing operations		xxx	xxx
XIII	Tax expense of discontinuing operations		xxx	xxx
XIV	Profit/(loss) from Discontinuing operations (after tax) (XII-XIII)		xxx	xxx
XV	Profit/ (Loss) (XI + XIV)		xxx	xxx

MATTERS FOR FS OF NON-CORPORATES

- ✖ List of Trade Receivables / Payables**
- ✖ List of unsecured Loans**
- ✖ Notes to the Accounts**
- ✖ Significant accounting policies**
- ✖ MSMED Act 2006**

AS APPLICABILITY

- ✖ **Are Accounting Standards applicable to Non-corporates?**
- ✖ **What if there is non-compliance?**
- ✖ **Where to Report such non-compliance?**
- ✖ **Are Notes to the accounts prepared for Non-Corporates**

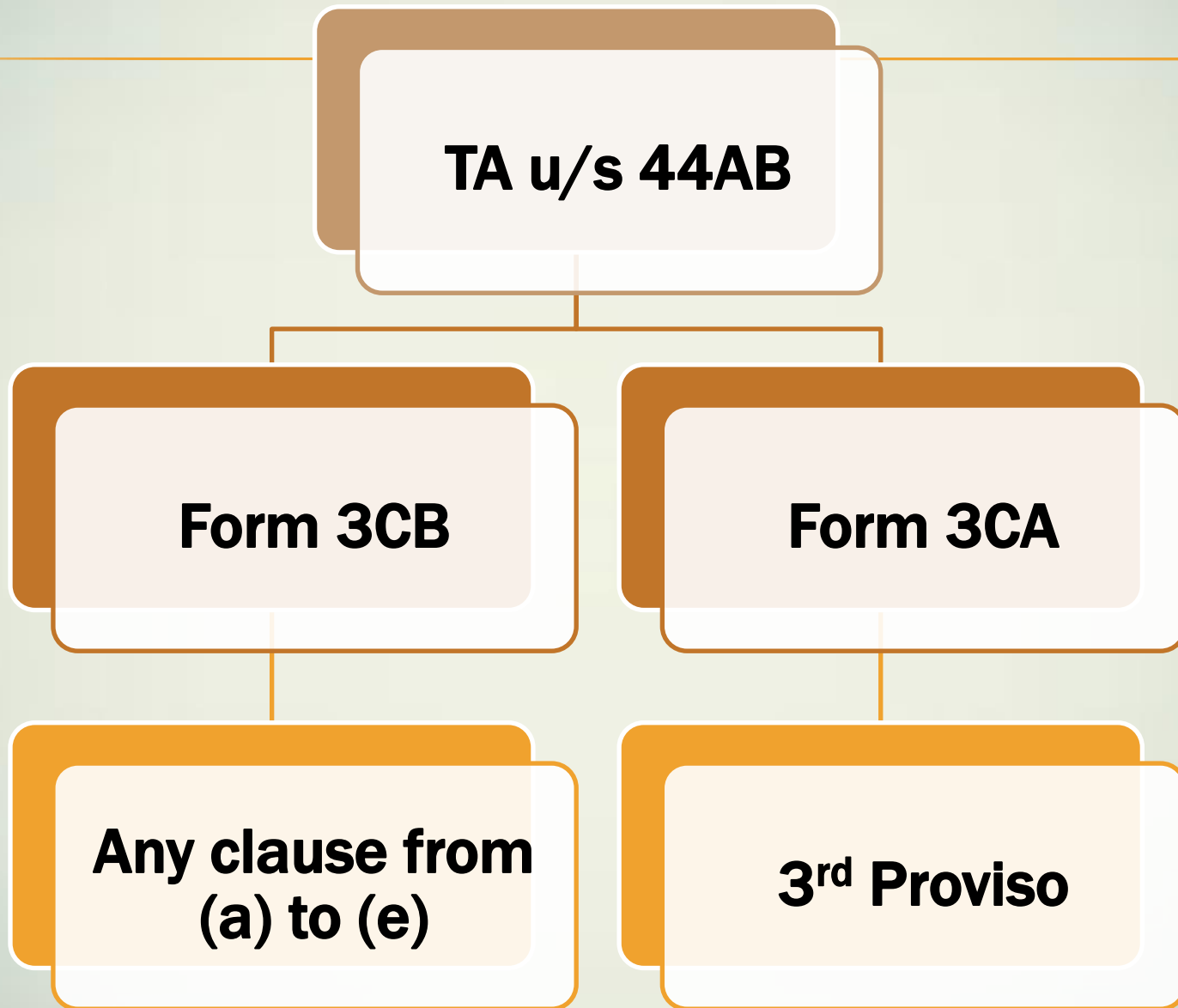
AS APPLICABILITY FOR NON-COMPANIES

- ✖ Effective for Accounting Periods from 1.4.2020
- ✖ Instead of 3 levels.. Now 4 levels

Level	Turnover			Borrowing	
	Existing	Revised		Existing	Revised
I (Large)	> 50 Cr	> 250 Cr		> 10 Cr	> 50 Cr
II (Medium)	1-50Cr	50-250 Cr		1-10 Cr	10-50 Cr
III (Small)	< 1 Cr	10-50 Cr		< 1 Cr	2-10 Cr
IV (Micro)		< 10 Cr			< 2 Cr

MSME DISCLOSURE - NON CORPORATE

- ✘ **“The Entity is a Micro Small and Medium Sized Enterprise (MSME) as per the announcement made by ICAI and has complied with the Accounting Standards insofar as they are applicable to entities falling in Level II or Level III or Level IV, as the case may be.”**
- ✘ **Two year wait period if change from Level I to II or II to III or III to IV**



CLAUSES

36A

- Receipt u/s 2(22)(e)

42

- Form 61 / 61A / 61B

44

- Break-up of total expenditure of entities registered / un registered in GST
 - Goods / services exempt
 - Composition
 - Other
 - Total payment

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