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Audit under Fiscal Laws

15.1 Introduction

For ensuring compliance sometimes audit becomes a necessity. Therefore, various statutes, including legislations governing direct and indirect tax provisions have incorporated audit provisions in some or the other form. Under direct taxes, the Central Board of Direct taxes has posed onerous responsibility on the auditor via Income-tax Act, 1961 which has various provisions requiring compulsory audit. However, with the growing importance of the indirect taxes in the economy, the Government is realizing the need of audit by independent bodies especially equipped to do the same. Introduction of audit provisions in the newly introduced Value Added Tax (VAT) legislations is a step towards this direction. Various state Governments have incorporated compulsory audit provisions in their respective State VAT legislations. Various provisions relating tax audit are discussed in this Chapter.

15.2 Audit(s) under the Income-Tax Act, 1961

The Income-tax Act, 1961 (hereinafter referred to as the Act) contains several provisions for audit of accounts of public charitable trusts, non-corporate assesses and other assesses to meet the specific objectives of the Act. Under the Act, several sections such as 12A, 35D, 35E, 44AB, 80IA, 80-IAB, 80-IB, 80-IC, 80-ID, 80-IE, 142(2A), etc., require audit of accounts for tax purposes. We shall discuss the requirements of some of these provisions from the audit angle.

Who can audit the Accounts under the Income-tax Act - Normally, in all the sections referred to above, subject to the exceptions specifically provided, the audit is to be conducted by an ‘accountant’, as defined in the Explanation below Section 288(2) of the Act. For the purpose of meaning of ‘Accountant’ as explained under section 288(2), students may refer Para 15.3.1.

15.2.1 Audit of Public Trusts: Section 12A of the Act deals with the conditions as to registration of trust etc. According to this section, exemption from Income tax would be available under sections 11 and 12 of the Income tax Act in relation to the income of any trust or institution provided the following conditions are satisfied:

(A) Clause (a) of section 12A requires a charitable or religious trust or institution to make an application for registration within one year from the date of creation of the trust or establishment of the institution. The Commissioner is empowered to condone the delay in making the application for registration if he is satisfied that there were sufficient reasons for such delay. In such cases, the exemption provisions of section 11 and 12 would apply from the date of creation of the trust or establishment of the institution.
This requirement of filing an application for registration under section 12A within one year of creation of the religious or charitable trust or institution has been removed. The application can be filed at any time now. This has been provided by insertion of new clause (aa) in section 12A(1). Further, a proviso has been inserted in clause (a) to restrict the applicability of that clause to applications made prior to 1.6.2007.

Also, the power of the Commissioner to grant registration for past years, by condoning the delay in filing such application, has been removed.

Accordingly, in respect of applications filed on or after 1st June, 2007, the provisions of sections 11 and 12 shall apply from the assessment year relevant to the financial year in which the application is made i.e. the exemption would be available only with effect from the assessment year relevant to the previous year in which the application is filed. It would not be available in respect of any earlier assessment year.

(B) Where the total income of the trust or institution as computed under this Act, without giving effect to the provisions of Sections 11 and 12 exceeds the maximum amount which is not chargeable to income tax in any previous year i.e. ₹ 2,50,000 for the A.Y. 2016-17, the accounts of the trust or institution for that year have been audited by an accountant as defined in the explanation below sub-section (2) of Section 288 and the person in receipt of the income furnishes along with the return of Income for the relevant assessment year, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed. Rule 17B of the Income tax Rules, 1962 provides that the report of audit of accounts of a trust or institution which is required to be furnished under Clause (b) of Section 12A should be in Form No. 10B. The audit programme is outlined in the following paragraphs:

(a) Preliminary:

(i) Obtain a resolution from the trust specifying the appointment as also indicating the scope of audit. In particular, the resolution should specify the duties of the auditor in relation to the items specified in the annexure to the prescribed Form No. 10B.

(ii) Obtain a letter of appointment from the trust. Although the audit may have been conducted in the past by a person appointed as an auditor for the purpose of Section 12A, having regard to the spirit of the requirement contained in clause (8) of Part-I of Schedule I to the Chartered Accountants Act, 1949, it is suggested that the auditor appointed for the purpose of Section 12A, should, before accepting the audit, communicate with such previous auditor.

(iii) Obtain a certificate as to the opening balances of assets and liabilities and the fund.

(iv) Obtain a list of books of accounts which are maintained by the trust.

(v) Obtain a certificate from the trust as to the system of accounting and internal control.

(vi) Obtain from the trust a list of the institutions/activities run/carried out by the
trust.

(vii) Obtain from the trust a certified true copy of the Deed of Trust or any other scheme containing the objects and conditions of the trust as operative from time to time.

(b) Routine Checking:

(i) Check the books of account and other records having regard to the system of accounting and internal control.

(ii) Vouch the transactions of the trust to satisfy that:

(a) the transaction falls within the ambit of the trust;
(b) the transaction is properly authorised by the trustees or other delegated authority as may be permissible in law;
(c) all incomes due to the trust have been properly accounted for on the basis of the system of accounting followed by the trust;
(d) all expenses and outgoings appertaining to the trust have been recorded on the basis of the system of accounting followed by the trust; and
(e) amounts shown as applied towards the object of the trust are covered by the objects of the trust as specified in the document governing the trust.

(iii) Obtain a trial balance on the closing date certified by the trustees.

(iv) Obtain the Balance Sheet and Profit & Loss Account of the trust authenticated by the trustees and check the same with the trial balance with which they should agree.

(c) Accounting Principles: The auditor should follow, i.e., generally accepted accounting principles and ascertain the accuracy, truth and fairness of the Balance Sheet and Profit & Loss Account.

In particular, the auditor will scrutinise that:

(i) all assets of the trust are verified;
(ii) the assets of the trust have been properly valued and depreciation duly provided for;
(iii) all liabilities of the trust are properly accounted for;
(iv) the investments of the trust are properly classified and indicated and market values shown; and
(v) outstanding due to the trust are properly accounted for and their recoverability examined and provision made for irrecoverable.

(d) Annexure to the Audit Report:

(i) Obtain from the trustees, a certified list of persons covered by Section 13(3).
(ii) Obtain from the trustees, a statement enlisting the various items specified in
the Annexure to Form No. 10B and giving the information against each item together with explanatory or supporting schedules.

(iii) Verify the information supplied by the trustees in the statements specified above in the light of available material. Where a list of persons specified in Section 13(3) is not available, indicate against Sections II and III of the items specified in the annexure the appropriate qualifying remarks.

The audit report is required to be furnished to the relevant year. Failure to furnish the report will disentitle the trust or institution to the benefit of Sections 11 and 12. The Auditor can accept as correct the list of persons covered by Section 13(3) as given by the managing trustees.

15.2.2 Audit of accounts in connection with the claim for deduction under Sections 35D and 35E: The conditions under which certain specified preliminary expenditure incurred before the commencement of business and once the business is commenced on expanding an industrial undertaking or in connection with setting up a new industrial unit can be amortised are stated in Section 35D of the Act. The manner in which deductions are allowed in respect of expenditure on any prospecting operations relating to certain specified minerals listed in the Seventh Schedule to the Act are stated in Section 35E of the Act. In respect of assessee other than a company or a co-operative society, these deductions are admissible only if the accounts for, the year or years in which the above specified expenditure is incurred are audited by an “accountant” as defined in explanation below sub-section (2) of section 288 of the Income-tax Act, 1961 and the report of such audit is furnished by the assessee along with the return of income. Rule 6AB of the Income-tax Rules 1962 provides that the report of audit required to be furnished by the above-mentioned assessee under section 35D and 35E should be in Form No.3AE. While doing the audit, the auditor is expected to follow general principles of auditing as mentioned in Standards on Auditing.

15.3 Tax Audit under Section 44AB

Section 44AB provides for the compulsory audit of accounts of certain persons carrying on business or profession. Section 44AB reads as under:

“Audit of accounts of certain persons carrying on business or profession”.

Every person -

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year.

(b) carrying on profession shall, if his gross receipts, in profession exceed fifty lakhs rupees in any previous year,

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year,
(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA, and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, or

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

[Note: Sub-section (4) of section 44AD of the Income Tax Act, 1961 states that where an eligible assessee declares profit for any Previous Year in accordance with the provisions of this section 44AD and he declares profit for any of the 5 Assessment Years relevant to the Previous Year succeeding such Previous Year not in accordance with the provisions of sub-section (1) of section 44AD, he shall not be eligible to claim the benefit of the provisions of this section for 5 Assessment Years subsequent to the Assessment Year relevant to the Previous Year in which the profit has not been declared in accordance with the provisions of sub-section (1) of section 44AD.]

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

Provided that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later.

Provided further that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

Explanation: For the purposes of this section,

(i) "accountant" shall have the same meaning as in the explanation below sub-section (2) of Section 288;

(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the due date for furnishing the return of income under sub-section (1) of section 139.

The above section stipulates that every person carrying on business is required to get his accounts audited before the "specified date" by a chartered accountant, if the total sales turnover or gross receipts in the business in any previous year exceed ₹ 1 crore. A person carrying on a profession will also have to get his accounts audited before the "specified date" by a chartered accountant if his gross receipts in profession in any previous year exceed ₹ 50 lakhs w.e.f. A.Y. 2017-18.

Clause (c) of Section 44AB, provides that in the case of an assessee carrying on a business of
the nature specified in sections 44AE, 44BB or 44BBB, tax audit will be required if he claims his income to be lower than the presumptive income deemed under those sections. Therefore, such assessees will be required to have a tax audit even if their sales, turnover or gross receipts do not exceed ₹ 100 lakhs (one crore rupees).

If a person is carrying on business(es), coming within the scope of sections 44AE, 44BB or 44BBB but he exercises his option given under these sections to get his accounts audited under Section 44AB, tax audit requirements would apply, in respect of such business(es) even if the turnover of such business(es) does not exceed ₹ 100 lakhs (one crore rupees).

In the case of a person carrying on businesses covered by sections 44AE, 44BB or 44BBB and opting for presumptive taxation, tax audit requirement would not apply in respect of such business(es), if such person is carrying on other business(es) not covered by presumptive taxation, tax audit requirements would apply in respect thereof if the turnover of such business(es), other than the business covered by presumptive taxation thereof, exceed ₹ 100 lakhs (one crore rupees).

The first proviso to section 44AB stipulates that the provisions of that section will not be applicable to a person who derives income of the nature referred to in sections 44B, or 44BBA. Where the assessee is carrying on any one or more of the businesses specified in section 44B or 44BBA referred to in the first proviso to section 44AB, the sales/turnover/gross receipts from such businesses shall not be included in the total sales/turnover/gross receipts for determining the applicability of section 44AB.

The report of such audit, duly signed and verified by the chartered accountant is required to be given in such form and setting forth such particulars as prescribed by the Board. Rule 6G provides that such audit report and particulars should be given in Form No. 3CA/3CB as may be applicable and the statement of particulars should be given in Form No.3CD.

A question may arise in the case of an assessee who is eligible to claim deductions under sections 80-IA, 80-IB, 80-IC etc., as to whether, it will be necessary for him to get separate audit reports/certificates under these sections in addition to an audit report under Section 44AB. The requirement of section 44AB is a general requirement covering the overall position of the accounts of the assessee. This applies to the consolidated accounts of the assessee for the relevant previous year covering the results of all the units owned by the assessee whether situated at one place or at different places. If turnover of all the units put together exceeds prescribed limits, the assessee would be required to get a separate audit report/certificate under above said sections he wants to avail deduction under the respective sections. Therefore it will be necessary for an assessee to get separate audit reports/certificates under above said sections in addition to an audit report, if any, required under section 44AB.

15.3.1 Tax Auditor: The term "accountant" has been defined in sub-clause (i) of Explanation to Section 44AB as under:

"accountant" shall have the same meaning as in the Explanation below sub-section (2) of Section 288".

1. The above-mentioned explanation read as under-
"Accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]—

(a) in case of an assessee, being a company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 of the Companies Act, 2013 (18 of 2013); or

(b) in any other case,—

(i) the assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association or the family;

(ii) in case of the assessee, being a trust or institution, any person referred to in clauses (a), (b), (c) and (cc) of sub-section (3) of section 13;

(iii) in case of any person other than persons referred to in sub-clauses (i) and (ii), the person who is competent to verify the return under section 139 in accordance with the provisions of section 140;

(iv) any relative of any of the persons referred to in sub-clauses (i), (ii) and (iii);

(v) an officer or employee of the assessee;

(vi) an individual who is a partner, or who is in the employment, of an officer or employee of the assessee;

(vii) an individual who, or his relative or partner—

(I) is holding any security of, or interest in, the assessee:

Provided that the relative may hold security or interest in the assessee of the face value not exceeding one hundred thousand rupees;

(II) is indebted to the assessee:

Provided that the relative may be indebted to the assessee for an amount not exceeding one hundred thousand rupees;

(III) has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee:

Provided that the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding one hundred thousand rupees;

(viii) a person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed;

(ix) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.

2. The proviso to section 44AB lays down that where the accounts of an assessee are required to be audited by or under any other law, it shall be sufficient compliance with the provisions of this section, if such person gets the accounts of such business or
profession audited under such other law before the specified date and furnishes by that date the report by an ‘accountant’ as required under section 44AB. It may be noted that after amendment by the Finance Act, 2001, tax audit can be carried out by an accountant only. Accordingly, in case of any assessee like a co-operative society where the accounts under the relevant law have been audited by a person other than a chartered accountant, the tax audit will have to be conducted by the ‘accountant’ as defined under section 44AB.

3. Though the section refers to the accounts being audited by an accountant, which means a chartered accountant as defined above, the audit can also be done by a firm of chartered accountants. This has been a recognised practice under the Act. In such a case, it would be necessary to state the name of the partner who has signed the audit report on behalf of the firm. The member signing the report as a partner of a firm or in his individual capacity should give his membership number while registering himself in the e-filing portal.

4. Section 44AB stipulates that only Chartered Accountants should perform the tax audit. This section does not stipulate that only the statutory auditor appointed under the Companies Act or other similar Statute should perform the tax audit. As such the tax audit can be conducted either by the statutory auditor or by any other chartered accountant in full time practice.

5. Tax audit under section 44AB being a recurring audit assignment, for expressing professional opinion on the financial statements and the particulars, the member accepting the assignment should communicate with the member who had done tax audit in the earlier year as provided in the Chartered Accountants Act. When making the enquiry from the retiring auditor, the member accepting the assignment should find out whether there are any professional or other reasons why he should not accept the appointment. The professional reasons for not accepting the appointment include:
   ♦ Non-compliance of the provisions of sections 224 and 225 of the Companies Act as mentioned in Code of Ethics issued by ICAI under Clause (9) of Part I of First Schedule to Chartered Accountants Act, 1949. Sections 224 and 225 have been replaced with section 139/142 and section 140 respectively in Companies Act, 2013.
   ♦ Non-payment of undisputed audit fees by auditees other than in case of sick units for carrying out the statutory audit under the Companies Act or various other statutes.
   ♦ Issuance of qualified report.

6. The tax auditor should obtain from the assessee a letter of appointment for conducting the audit as mentioned in section 44AB. It is advisable that such an appointment letter should be signed by the person competent to sign the return of income in terms of the provisions of section 140. It would also be useful if the letter affirms that no other auditor was appointed to conduct the tax audit for the year for which the appointment is being made. The letter may also give the name and address of the tax auditor for the previous year, wherever relevant. This would give the necessary information to the incoming tax
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 auditor to enable him to communicate with the previous auditor. The letter of appointment should also specify the remuneration of the tax auditor. SA 210 – “Agreeing the Terms of Audit Engagement” issued by the ICAI requires that the auditor to agree with the terms of audit engagement with management or those charged with governance as appropriate. The agreed terms would need to be recorded in an audit engagement letter or other suitable form of written agreement.

7. The tax auditor should get the statement of particulars, as required in the annexure to the audit report, authenticated by the assessee before he does the same.

8. A chartered accountant who is responsible for writing or the maintenance of the books of account of the assessee should not audit such accounts. This principle will apply to the partner of such a member as well as to the firm in which he is a partner. In view of this, a chartered accountant who is responsible for writing or the maintenance of the books of account or his partner or the firm in which he is a partner should not accept tax audit assignment under section 44AB in the case of such an assessee.

9. The audit of accounts of a professional firm of chartered accountants, under section 44AB cannot be conducted by any partner or employee of such firm.

10. A chartered accountant/firm of chartered accountants, who is appointed as tax consultant of the assessee, can conduct tax audit under section 44AB. But an internal auditor of the assessee cannot conduct tax audit if he is an employee of the assessee. The Council of ICAI has decided that an internal auditor of an assessee, whether working with the organisation or independently practicing chartered accountant or a firm of chartered accountants, cannot be appointed as his tax auditor.

11. A question may arise whether an assessee can remove a tax auditor appointed under section 44AB. The answer depends upon the facts and circumstances of the case. It is, however, possible for the management to remove a tax auditor where there are valid grounds for such removal. This may arise where the tax auditor has delayed the submission of audit report under section 44AB for an unreasonable period and if it is found that there is no possibility of getting the audit report uploaded before the specified date. In such cases, the management may be justified in removing the tax auditor. However, the tax auditor cannot be removed on the ground that he has given an adverse audit report or the assessee has an apprehension that the tax auditor is likely to give an adverse audit report. If there is any unjustified removal of tax auditors, the Ethical Standards Board constituted by the Institute can intervene in such cases. No other chartered accountant should accept the audit assignment if the removal of his predecessor is not on valid grounds.

12. Before accepting a tax audit, the chartered accountant should take into consideration the ceiling on tax audit assignments fixed under the Notification dated 13th January, 1989, issued by the ICAI. In view of the said Notification, a member of the Institute in practice, shall be deemed to be guilty of professional misconduct if he accepts in a financial year more than 60-tax audit assignments or such other limit as may be prescribed by ICAI from time to time under section 44AB, whether in respect of a person whose accounts have been audited under any other law or a person who carries on business or
profession but who is not required by or under any other law to get his accounts audited. Further, as per a Council decision, audits of accounts of persons carrying on business covered by sections 44AE, 44BB or 44BBB is not included in the aforesaid limit.

13. The audit of head office and branch offices of the assessee shall be regarded as one tax audit assignment.

14. The Council has issued a Guideline which states that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts the appointment as statutory auditor of Public Sector Undertaking/Government Company/Listed Company and other Public Company having turnover of ₹ 50 crores or more in a year and accepts any other work or assignment or service in regard to the same undertaking/company on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same undertaking/company.

15. The tax auditor is required to upload the tax audit report directly in the e-filing portal.

16. A question may arise in the case of a public sector company or any other company where the statutory auditor has not been appointed by the authorities concerned as to whether the tax auditor appointed under section 44AB can complete his audit without waiting for statutory audit report on the accounts audited by the statutory auditors. It may be noted that Form No. 3CA requires the tax auditor to enclose a copy of the audit report conducted by the statutory auditor or the auditor of the financial statements as the case may be. Where a statutory auditor has not been appointed by the authorities concerned or where the report of the statutory auditor is not available for whatever reasons, it will be possible for the tax auditor to give his report in Form No. 3CB and to certify the relevant particulars in Form No.3CD. This is particularly important in those cases where the assessee concerned has suffered losses in the relevant accounting year. It may, however, be noted that the tax auditor in such cases will have to conduct the financial audit as well in order to enable him to certify whether or not the accounts reported upon by him give a true and fair view of the state of affairs of the assessee whose accounts are audited by him under section 44AB.

17. The appointment of the auditor for tax audit in the case of a company need not be made at the general meeting of the members. It can be made by the Board of Directors or even by any officer, if so authorised by the Board in this behalf. The appointment in the case of a firm or a proprietary concern can be made by a partner or the proprietor or a person authorised by the assessee. It is possible for the assessee to appoint two or more chartered accountants as joint auditors for carrying out the tax audit, in which case, the audit report will have to be signed by all the chartered accountants. In case of disagreement, they can give their reports separately.

18. The chartered accountants should charge reasonable fees depending upon the responsibility involved under the revised forms and taking into consideration the work involved in tax audit assignment which has increased considerably consequent to the revision of the forms. It is necessary that members of the profession should also maintain reasonable standards of professional fees.
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Specified date and tax audit: As per the recent developments, the tax audit report is required to be uploaded using digital signature of the tax auditor. A question may arise whether a tax auditor appointed under section 44AB can be held responsible if he does not complete the audit and if the tax audit report is not uploaded before the specified date. Answer to this question will depend on the facts and circumstances of the case. Normally, it is the professional duty of the chartered accountant to ensure that the audit accepted by him is completed before the due date. If there is any unreasonable delay on his part, he is answerable to the Institute if a complaint is made by the client. However, if the delay in the completion of audit is attributable to his client, the tax auditor cannot be held responsible. It is, therefore, necessary that no chartered accountant should accept audit assignments which he cannot complete within the above time frame.


**Under section 145(1), income chargeable under the heads “Profits and gains of business or profession” or “Income from other sources” shall be computed in accordance with either the cash or mercantile system of accounting regularly employed by the assessee.**

**Section 145(2) empowers the Central Government to notify in the Official Gazette from time to time, income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income.**

Accordingly, the Central Government has, in exercise of the powers conferred under section 145(2), notified ten income computation and disclosure standards (ICDSs) to be followed by all assessees (other than an individual or a HUF who is not required to get his accounts of one previous year audited in accordance with the provisions of section 44(AB)), following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head “Profit and gains of business or profession” or “Income from other sources”. from the A.Y. 2017-18.

All the notified ICDSs are applicable for computation of income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and not for the purpose of maintenance of books of accounts. In the case of conflict between the provisions of the Income-tax Act, 1961 and the notified ICDSs, the provisions of the Act shall prevail to that extent.

The Central Government has prescribed 10 Income Computation and Disclosure Standards (ICDSs) as under:

- **A. ICDS I relating to Accounting Policies.**
- **B. ICDS II relating to Valuation of Inventories.**
- **C. ICDS III relating to Construction Contracts.**
- **D. ICDS IV relating to Revenue Recognition.**
- **E. ICDS V relating to Tangible Fixed Assets.**
F. ICDS VI relating to the Effects of Changes in Foreign Exchange Rates.

G. ICDS VII relating to Government Grants.

H. ICDS VIII relating to Securities.

I. ICDS IX relating to Borrowing Costs.

J. ICDS X relating to Provisions, Contingent Liabilities and Contingent Assets.

The above ICDSs are to be followed by all assesses (other than an individual or a HUF who is not required to get his accounts of one previous year audited in accordance with the provisions of section 44(AB)) following mercantile system of accounting. Therefore, it is clear that those assesses who are following cash system of accounting need not follow the ICDSs notified above.

15.3.3 Audit procedures

1. In the case of an audit, the tax auditor is required to express his opinion as to whether the financial statements give a true and fair view of the state of affairs of the assessee in the case of the balance sheet and in the case of the profit and loss account/ income and expenditure account, of the profit/loss or income/expenditure. As regards the statement of particulars to be annexed to the audit report, he is required to give his opinion as to whether the particulars are true and correct. In giving his report the tax auditor will have to use his professional skill and expertise and apply such audit tests as the circumstances of the case may require, considering the contents of the audit report. He will have to conduct the audit by applying the generally accepted auditing procedures which are applicable for any other audit. He can apply the technique of test audit depending on the type of internal control procedures followed by the assessee. The tax auditor will also have to keep in mind the concept of materiality depending upon the circumstances of each case. He would be well advised to refer to the Standards on Auditing (SAs) issued by ICAI, as well as the "Guidance Note on Audit Reports and Certificates for Special Purposes". If the statutory auditor of a person is also appointed to undertake tax audit, it is advisable to carry out both the audits concurrently.

2. Section 143 of the Companies Act 2013 gives certain powers to the auditors to call for the books of account, information, documents, explanations, etc. and to have access to all books and records. No such powers are given to the tax auditor appointed under section 44AB. Attention is invited to SA 210, Agreeing the Terms of Audit Engagements. The Standard requires an auditor to establish whether the pre-conditions for an audit are present so as to accept or continue an audit engagement. As per para 6(b) (iii) the auditor is required to obtain agreement of management that it acknowledges and understands its responsibilities to provide the auditor with (a) access to all information of which the management is aware that is relevant to the preparation of the financial statements such as records, documentation and other matters, (b) additional information that the auditor may request the management for the purpose of the audit and (c) unrestricted access to persons within the entity from whom the auditor determines it necessary to obtain audit evidence. Moreover, since the appointment of the tax auditor is made by assessee, it will be in the interest of the assessee to furnish all the information and explanations and produce books of account and records required by the tax auditor. If, however, after agreeing to the terms of the engagement, the assessee
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subsequently refuses to produce any particular record or to give any specific information or explanation in relation to the reporting requirement under section 44AB, the tax auditor should see the impact thereof from the perspective of “management integrity” vis-a-vis overall assessment of risk of misstatements in accordance with under SA 315, *Identifying and Assessing the risks of material misstatement through understanding the entity and its environment* and consequently on his/her opinion for reporting in Clause (3) of Form No. 3CA or Clause (5) of Form No. 3CB as the case may be.

3. The audit report given under section 44AB is to assist the income-tax department to assess the correct income of the assessee. In order that the tax auditor may be in a position to explain any question which may arise later on, it is necessary that he should keep necessary working papers about the evidence on which he has relied upon while conducting the audit and also maintain all his necessary working papers. Such working papers should include his notes on the following, amongst other matters:

(a) work done while conducting the audit and by whom;
(b) explanations and information given to him during the course of the audit and by whom;
(c) decision on the various points taken;
(d) the judicial pronouncements relied upon by him while making the audit report; and
(e) certificates issued by the client/management letters.

The requirements of documentation are applicable in respect of tax audit conducted by chartered accountants. For this purpose attention is also invited to SA 230, *Audit Documentation*, which provides that the tax auditor should prepare documentation that provides a sufficient and appropriate record of the basis for the auditor’s report and evidence that the audit was planned and performed in accordance with SA’s and applicable legal and regulatory requirements.

4. If the accounts of the business or profession of a person have been audited under any other law by the statutory auditor(s), it is not necessary for the tax auditor appointed under section 44AB to conduct the audit once again in the matter of expression of “true and fair view” of the state of affairs of the entity and of its profit/loss for the period covered by the audit. However, the said section envisages the certification of the particulars in the prescribed form on which the tax auditor has to express his opinion as to whether these are ‘true and correct’. In other words, where an audit has already been conducted and the opinion of the auditor has been expressed on the accounts, it would not be necessary to repeat the entire exercise to express similar opinion all over again. The tax auditor has only to annex a copy of the audited accounts and the auditor’s report and other documents forming part of these accounts to his report and verify the particulars in the prescribed form for expressing his opinion as to whether these are true and correct.

5. Just in case of the conduct of a statutory audit for the purpose of expression of the auditor's opinion as to whether the financial statements depict a ‘true and fair’ view, the statutory auditor applies audit sampling, in case of tax audits also the tax auditor may apply audit sampling techniques as prescribed in SA 530, *Audit Sampling* on the information provided by the assessee to obtain sufficient appropriate audit evidence to be able to draw
reasonable conclusions on which to base the audit opinion. The extent of check undertaken would have to be indicated by the tax auditor in his working papers and audit notes. The tax auditor would be well advised to so design his tax audit programme as would reveal the extent of checking and to ensure adequate documentation in support of the information being certified.

6. Where the assessee has been subjected to an internal audit and the tax auditor decides to use the work of the internal auditor for the purpose of the tax audit under section 44AB, the latter’s procedures would be guided by the principles laid down in Standard on Auditing (SA) 610, Using the Work of Internal Auditors.

7. Audit procedures applicable to a person whose accounts of the business or profession have been audited under any other law will apply as well to a person who carries on business or profession but who is not required by or under any other law to get his accounts audited. In order to express his opinion on the accounts of a person belonging to the latter category the tax auditor should apply the same tests and checks as he would have applied in the conduct of audit of the former category. These may include disclosure regarding method of accounting and practices consistently and regularly followed, and whether a change in such matters or practice has been made during the year, notwithstanding the fact that such disclosures are required to be made in Form No. 3CD.

8. 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 1st 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.

While test checks may suffice in the conduct of a statutory audit for the expression of the auditor’s opinion as to whether the accounts depict a ‘true and fair’ view, the tax auditor may be required to apply reasonable tests on the total information to be prepared by the assessee in respect of certain items in the prescribed form, e.g., in verification of payments for purchases/expenses exceeding ₹ 20,000/- in cash. While the entity may have to prepare the details for the entire year, the tax auditor may have to ensure that no items have been omitted in the information furnished and a reasonable test check would reveal whether or not the information furnished is correct. The extent of check undertaken would have to be indicated by the tax auditor in his working papers and audit notes. The tax auditor would be well advised to so design his tax audit programme as would reveal the extent of checking and to ensure adequate documentation in support of the information being certified.

15.3.4 Audit report: Section 44AB requires the tax auditor to submit the audit report in the prescribed form and setting forth the prescribed particulars. Sub-rule 1 of rule 6G provides that
the report of audit of accounts of a person required to be furnished under Section 44AB shall -

(a) in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form No. 3CA;

(b) in the case of a person who carries on business or profession, but not being a person referred to in clause (a), be in Form No. 3CB.

Sub-rule (2) of Rule 6G further provides that the particulars which are required to be furnished under Section 44AB shall be in Form No. 3CD.

It may be noted that the audit report in Form No.3CB is in two parts. The first part requires the tax auditor to give his opinion as to whether or not the accounts audited by him give a true and fair view:

(i) in the case of the balance sheet, of the state of affairs as at the last date of the accounting year.

(ii) in the case of the profit and loss account, of the profit or loss of the assessee for the relevant accounting year.

The second part of the report states that the statement of particulars required to be furnished under section 44AB is annexed to the audit report in Form No. 3CD. The tax auditor is required to give his opinion whether the prescribed particulars furnished by the assessee are true and correct subject to observations and qualifications, if any.

In paragraph 3 of Form No. 3CB the auditor has to report that the financial statements audited by him give a "true" and fair view. The requirement in paragraph 3 of Form No. 3CA and paragraph 5 of Form No. 3CB relating to particulars in Form No. 3CD is that the auditor should report that these particulars in Form No. 3CD are "true and correct". The terminology "true and fair" is widely understood though not defined even under the Companies Act, 2013. On the other hand, the words "true and correct" lay emphasis on factual accuracy of the information. In this context reference is invited to AS-1 and AS(IT)-I relating to disclosure of accounting policies. These standards recognise that the major considerations governing the selection and application of accounting policies are (i) prudence, (ii) substance over form and (iii) materiality. Therefore, while giving particulars in Form No.3 CD these aspects should be kept in view. In particular, considering the nature of particulars to be given in Form No. 3CD, the aspect of materiality should be considered. In other words, particulars should be given in the respect of material items and the auditors should ensure factual accuracy relating to these particulars. In the case of a person whose accounts of the business or profession have been audited under any other law, it is not required for the tax auditor appointed under section 44AB to give his opinion, as to whether or not the accounts give a true and fair view as indicated herein above. It would only be necessary for him to annex a copy of the audited accounts as well as a copy of the audit report given by the statutory auditor with his report in Form No. 3CA along with Form No. 3CD.

In the case of a person who carries on business and also renders professional services but who is not required by or under any other law to get his accounts audited, report should be given in Form No. 3CB. The statement of particulars should be given in Form No. 3CD.
In the case of “person” having their accounting year which is different from the financial year, accounts of the financial year are required to be prepared and audited. The audit report shall be in Form 3CB.

Form No. 3CA

1. This form is to be used in a case where the accounts of the business or profession of a person have been audited under any other law. The first part of the report refers to the fact that the statutory audit of the assessee was conducted by a chartered accountant or any other auditor in pursuance of the provisions of the relevant Act, and the copy of the audit report along with the audited profit and loss account and balance sheet and the documents declared by the relevant Act to be part of or annexed to the profit and loss account and balance sheet, are annexed to the report in Form No. 3CA. In a case where the tax auditor carrying out the audit under section 44AB is different from the statutory auditor, a reference should be made to the name of such statutory auditor. In case the statutory auditor is carrying out the audit under section 44AB, the fact that he has carried out the statutory audit under the relevant Act should be stated. Attention of the members in this context is invited to SA 600 “Using the work of Another Auditor”.

2. Statement of particulars required to be furnished under section 44AB is annexed with the particulars in Form No. 3CD. The tax auditor has to further state that, in his opinion and to the best of his information and according to examination of books of account including other relevant documents and explanations given to him, the particulars given in the said Form No. 3CD and the annexure thereto are true and correct subject to the observations/qualifications, if any.

3. The auditor is required to examine not only the books of accounts but also other relevant documents directly related to transactions reflected in the books of accounts like original purchase invoice, copy of bank statements, bills, vouchers, various agreements/contracts or any other document on the basis of which preliminary entries are passed in the books of accounts.

4. Attention is also drawn to the definition of ‘document’ as per section 2(22AA) of the Act which is as under:

   "document" includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Section 2(1)(t) of the Information Technology Act, 2000 as referred above is reproduced below:

   "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

The definition of term “document” is an inclusive definition and includes within its ambit documents other than those considered as electronic record as per section 2(1)(t) of the Information Technology Act, 2000. The above definition will also be considered while reporting under clause 11(c) of Form No. 3CD discussed later.

5. Where any of the requirements in this form is answered in negative or with qualification, the report shall state the reasons thereof. The tax auditor should state this qualification in the audit report so that the same becomes a comprehensive report and the user of the audited statement of particulars can realize the impact of such qualifications.
6. It is possible that in the case of a person whose accounts of the business or profession have been audited under any other law, which has branches at various places, the branch accounts might have been audited by branch auditors under the statute. If the audit under section 44AB is also carried out by the same branch auditors or other chartered accountants, they should submit the report in Form No. 3CA to the management or the principal tax auditor appointed for the head office under Section 44AB. Attention in this regard is drawn to SA 600, “Using the Work of Another Auditor” which discusses the procedures in this regard as well as the principal tax auditor's responsibility in relation to his use of the work of the branch auditor. The principal tax auditor should submit his consolidated report on the registered office/head office and branch accounts and report in his tax audit report as his observation in paragraph 3 of Form No. 3CA as under:

“I/We have taken into consideration the audit report and the audited statements of accounts, and particulars received from the auditors, duly appointed under the relevant law, of the branches not audited by me/us”.

7. Item No. 4 of the notes to Form No. 3CA requires that the person, who signs this audit report, shall indicate reference of his membership No./certificate of practice number/authority under which he is entitled to sign this report. No separate certificate of practice number is allotted by ICAI. As such, where a chartered accountant acts as a tax auditor he should give his membership number with ICAI while registering himself in the e-filing portal. In case, the e-filing utility of Form No. 3CA requires the mention of the Firm Registration number and the name of the firm on whose behalf the member has conducted audit, the same should invariably be provided by the tax auditor.

8. An assessee may have one or more branches outside India. The accounts of such branches are normally audited by the professional accountants overseas. The results of such branches are also incorporated in the consolidated accounts prepared in this country. In the case of foreign branches, the relevant information in respect of such branches as is required by Form No. 3CD, may be obtained by the tax auditor in India from the assessee who should obtain the same from the overseas auditor who had audited the accounts of such foreign branches. The tax auditor in India while certifying the information in Form No. 3CD may rely upon the information obtained by him from the overseas auditor and while submitting his consolidated report in Form No. 3CD, he should specifically point out the following in his audit report in paragraph 3 of Form No. 3CA as his observation:-

“I/We have taken into consideration the audit report and the audited statements of accounts, and particulars received from the auditors, appointed under the relevant law, of the overseas branches not audited by me/us”.

If the assessee is unable to obtain relevant information in respect of the overseas branches duly certified by the overseas auditor, the relevant facts should be suitably disclosed and reported upon.

9. Where the tax auditor is unable to obtain the required information in respect of branches situated in India or outside India then the fact should be suitably disclosed along with its impact on the Auditor’s opinion on the particulars furnished in Form No. 3CD, as an observation in clause (3) of Form No. 3CA. Reference is drawn to SA 705 “Modifications to the
opinion in the Independent Auditor’s report”.

Form No. 3CB

1. In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, the audit report has to be given in Form No. 3CB. Form No. 3CB consists of five paragraphs.

2. The tax auditor has to state whether he has examined the balance sheet as on a particular relevant date and the profit and loss account/income and expenditure account for that period. Further, such a balance sheet and the profit and loss account must be attached with the audit report.

3. The tax auditor has to certify that the balance sheet and the profit and loss account/income and expenditure account are in agreement with the books of account maintained at the head office and branches. Also, he has to mention the total number of branches.

4. He has to report his observations, comments, discrepancies or inconsistencies, if any. Subject to the above observations, comments, discrepancies, inconsistencies he has to state whether:

   (a) he has obtained all the information and explanations which, to the best of his knowledge and belief, were necessary for the purposes of the audit;

   (b) in his opinion proper books of account have been kept by the head office and branches of the assessee so far as appears from his examination of the books;

   (c) in his opinion and to the best of his information and according to the explanations given to him the said accounts, read with notes thereon, if any, give a true and fair view;

      (i) in the case of the balance sheet of the state of the affairs of the assessee as at 31st March, ______ and

      (ii) in the case of the profit and loss account/income and expenditure account of the profit/loss or surplus/deficit of the assessee for the year ended on that date.

5. Under clause (a) of paragraph 3 of Form No. 3CB, the tax auditor has to report his “observations /comments/ discrepancies/ inconsistencies,” if any. The expression “Subject to above” appearing in clause (b) makes it clear that such observations /comments/ discrepancies/ inconsistencies which are of qualificatory nature relate to necessary information and explanations for the purposes of the audit or the keeping of proper books of accounts or the true and fair view of the financial statements, respectively to be reported on in paragraphs (A), (B) and (C) under clause (b) of paragraph 3. While reporting on clause (a) of paragraph 3 of Form No. 3CB the tax auditor should report only such of those observations/comments/ discrepancies/ inconsistencies which are of qualificatory nature which affect his reporting about obtaining all the information and explanations which were necessary for the purposes of the audit, about the keeping of proper books of account by the head office and branches of the assessee and about the true and fair view of the financial statements. Further, only such observations/comments/ discrepancies/inconsistencies which are of a
qualificatory nature should be mentioned under clause (a). Any other observations/ comments/ discrepancies/ inconsistencies, which do not affect the reporting on the matters specified above may form part of the notes to accounts forming part of the accounts. In case the tax auditor has no observations/ comments/ discrepancies/ inconsistencies to report which are of qualificatory nature, “NIL” should be reported in this part of paragraph 3. The tax auditor may then give his report as required by sub-paragraphs (A), (B), and (C) of paragraph 3 and paragraph 4.

6. Paragraph 4 of Form No. 3CB provides that the prescribed particulars are furnished in Form No. 3CD annexed to the report. Paragraph 5 of Form No. 3CB requires the auditor to report whether in his opinion and to the best of his information and according to the explanations given to him, the particulars given in Form No. 3CD are true and correct subject to observations/qualifications, if any. The auditor may have a difference of opinion with regard to the particulars furnished by the assessee and he has to bring these differences under various clauses in Form No. 3CD. The auditor should make a specific reference to those clauses in Form No. 3CD in which he has expressed his reservations, difference of opinion, disclaimer etc. in this paragraph.

7. If a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, has branches and separate accounts are maintained at the branches, the assessee can request the tax auditor appointed under section 44AB to audit the head office and branch accounts. In the alternative, the assessee can appoint separate tax auditors for branches. The branch tax auditor in such a case will have to give an audit report in Form No. 3CB to the management or the tax auditor appointed for the audit of head office accounts. The tax auditor appointed for the audit of head office can rely on the report of branch tax auditors subject to such checks and verifications as he may choose to make and shall submit his consolidated report on the head office and branch accounts. He should make suitable reference to the audit conducted by separate branch tax auditors in the same manner as stated in point 6 above.

8. If the tax auditor is called upon to give his report only in respect of one or more businesses carried on by the assessee and the books of accounts of the other businesses are not produced as the same are not required to be audited under the Act, the tax auditor should mention the fact that audit has not been conducted of those businesses whose books of account had not been produced. However, if the financial statements include, inter alia, the results of such business for which books of account have not been produced, the auditor should qualify his report in Form No. 3CB.

Form No. 3CD

1. The statement of particulars given in Form No. 3CD as annexure to the audit report contains forty one clauses. The tax auditor has to report whether the particulars are true and correct. This Form is a statement of particulars required to be furnished under section 44AB. The same is to be annexed to the reports in Forms No. 3CA and 3CB in respect of a person who carries on business or profession and whose accounts have been audited under any other law and in respect of person who carries on business or profession but who is not
required by or under any other law to get his accounts audited respectively.

2. As stated earlier, the tax auditor should obtain from the assessee, the statement of particulars in Form No. 3CD duly authenticated by him. It would be advisable for the assessee to take into consideration the following general principles while preparing the statement of particulars:

(a) He can rely upon the judicial pronouncements while taking any particular view about inclusion or exclusion of any items in the particulars to be furnished under any of the clauses specified in Form No. 3CD.

(b) If there is a conflict of judicial opinion on any particular issue, he may refer to the view which has been followed while giving the particulars under any specified clause.

(c) The AS, Guidance Notes, SA issued by the Institute from time to time should be followed.

3. While furnishing the particulars in Form No. 3CD it would be advisable for the tax auditor to consider the following:

(a) If a particular item of income/expenditure is covered in more than one of the specified clauses in the statement of particulars, care should be taken to make a suitable cross reference to such items at the appropriate places.

(b) If there is any difference in the opinion of the tax auditor and that of the assessee in respect of any information furnished in Form No. 3CD, the tax auditor should state both the viewpoints and also the relevant information in order to enable the tax authority to take a decision in the matter.

(c) If any particular clause in Form No. 3CD is not applicable, he should state that the same is not applicable.

(d) In computing the allowance or disallowance, he should keep in view the law applicable in the relevant year, even though the form of audit report may not have been amended to bring it in conformity with the amended law.

(e) In case the prescribed particulars are given in part or piecemeal to the tax auditor or relevant form is incomplete and the assessee does not give the information against all or any of the clauses, the auditor should not withhold the entire audit report. In such a case, he can qualify his report on matters in respect of which information is not furnished to him. In the absence of relevant information, the tax auditor would have no option but to state in his report that the relevant information has not been furnished by the assessee.

(f) The information in Form No. 3CD should be based on the books of accounts, records, documents, information and explanations made available to the tax auditor for his examination.

(g) In case the auditor relies on a judicial pronouncement, he may mention the fact as his observations in clause (3) of Form No. 3CA or clause (5) provided in Form No. 3CB, as the case may be.
Particulars to be furnished in Form No. 3CD

PART – A

1. Name of the assessee
2. Address
3. Permanent Account Number
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
5. Status
6. Previous year from _______ to _______
7. Assessment year
8. Indicate the relevant clause of section 44AB under which the audit has been Conducted

The requirements of clauses 1 to 8 of Part-A are discussed as follows:

- **Under clause (1),** the name of the assessee whose accounts are being audited under section 44AB should be given. However, if the tax audit is in respect of a branch, name of such branch should be mentioned along with the name of the assessee.

- **The address to be mentioned under clause (2) should be the same as has been communicated by the assessee to the Income-tax Department for assessment purposes as on the date of signing of the audit report.** If the tax audit is in respect of a branch or a unit, the address of the branch or the unit should be given. In the case of a company, the address of the registered office should also be stated. In the case of a new assessee, the address should be that of the principal place of business.

- **Under clause (3),** the permanent account number (PAN) allotted to the assessee should be indicated. It may be noted that in the e-filing format PAN is a mandatory field.

- **Under clause (4),** the auditor is required to mention the registration number or any other identification number, if any, allotted, in case the assessee is liable to pay indirect taxes like excise duty, service tax, sales tax, customs duty, etc. 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 information may be obtained and maintained in the following format:-
The auditor has to keep in mind the provisions of Standard on Auditing 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 the assessee is not registered under the said law, he should report the same appropriately.

- **Under clause (5),** the status of the assessee is to be mentioned. Obviously this refers to the different classes of assessees included in the definition of “person” in section 2 (31) of the Act, namely, individual, Hindu undivided family, company, firm, an association of persons or a body of individuals whether incorporated or not, a local authority or artificial juridical person.

- **Under clause (6),** the period of the previous year has to be stated. Since the previous year under the Act now uniformly begins on 1st April and ends on 31st March, the relevant previous year should be mentioned. In case of amalgamations, demergers, reconstitution, new business, closure of existing business etc. the date of beginning/ending of the previous year may be different, the auditor may accordingly, mention the relevant date of beginning and ending of the previous year in this clause. Hence, the tax auditor has to apply his professional judgement depending on the facts and circumstances of the same.

- **Under clause (7),** the assessment year relevant to the previous year for which the accounts are being audited should be mentioned.

- **Under clause (8),** the auditor is required to mention the relevant clause of section 44AB under which the audit has been conducted. In case the assessee is carrying on business and his total sales, turnover or gross receipts as the case may be, exceeds one crore in the relevant previous year, the auditor is required to mention clause (a) under this head. If the assessee is carrying on profession and his gross receipts exceed fifty lakh rupees in the relevant previous year, the auditor is required to mention clause (b) under this head. Likewise, if the audit under section 44AB is being conducted by virtue of provisions of section 44AE, 44BB and 44BBB, the auditor is required to mention clause (c). For audit being conducted by virtue of provisions of section 44AD, clause (d) is to be mentioned under this head. For audit being conducted by virtue of provisions of section 44AD, clause (e) is to be mentioned under this head.

Clause 9(a): If firm or Association of Persons, indicate names of partners/members and their profit sharing ratios.

Clause 9(b): If there is any change in the partners or members or in their profit sharing ratio since the last date of the preceding year, the particulars of such change.

Explanation for Clauses 9(a) and 9(b): Where the assessee is a firm or association of persons (AOP) or body of individuals, the names of partners of the firm or members of the
association of persons or body of individuals and their profit sharing ratios (%) have to be stated. In case where the partner of a firm or the member of AOP/ BOI acts in a representative capacity, the name of the beneficial partner/member should be stated. Thus, the details of partners or members during the entire previous year will have to be furnished. The term “profit sharing ratios” would include loss-sharing ratio also since loss is nothing but negative profits. This would not cover any specific ratio or understanding in relation to payment of remuneration or interest to partners or members.

If there is any change in the partners of the firm or members of the association of persons/ body of individuals or their profit or loss sharing ratio since the last date of the preceding year, the particulars of such change must be stated. All the changes occurring during the entire previous year must be stated.

The particulars in this clause should be verified from the instrument or agreement or any other document evidencing partnership or association of persons including any supplementary documents or other documents effecting such changes. For this purpose, the tax auditor may also verify:

(i) in case of registered firms (including Indian LLPs), whether the relevant documents have been filed with the concerned authorities,

(ii) whether notice of changes, if required, has been given to the registrar of firms, and

(iii) any minutes or any other understanding recording any changes in the partners/members or their profit sharing ratios.

The tax auditor should obtain certified copies of the deeds, documents, understanding, notice of changes etc. including certified copies of the acknowledgment, if any, evidencing filing of documents with the concerned authorities, if registered.

Clause 10(a): Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession).

Clause 10(b): If there is any change in the nature of business or profession, the particulars of such change.

Explanation for Clauses 10(a) and 10(b): In regard to the nature of business, the principal line of each business is to be determined and stated in this clause, i.e. the sector in which the business or profession falls such as manufacturing, trading, commission agent, builder, contractor, professionals, service sector, financial service sector or entertainment industry. In case of a person belongs to service sector the nature of each type of service should be broadly stated. Thereafter, the auditor is required to mention the sub-sector pertaining to the sector selected.

Information has to be furnished in respect of each business. The code to be mentioned against the nature of business pertains to the main area of business activity.

Any material change in the nature of business should be precisely set out. The change will include change from manufacturer to trader as well as change in the principal line of business.

A review of business report or the minutes of meetings would enable the tax auditor to note...
the changes, if any. Based thereon, he may make necessary enquiries and seek information and determine whether any change has occurred or not. If need be, the tax auditor should get a declaration from the assessee regarding change in the nature of business, if any.

In the case of restructuring, if any line of activity is being hived off, the same may also be reported.

The auditor should keep in mind the above guidance while furnishing information under this clause in the format provided for in the e-filing utility.

Clause 11(a): Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.

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

(In case books of account are maintained in a computer system, mention the books of account generated by such computer system. If the books of accounts are not kept at one location, please furnish the addresses of locations along with the details of books of accounts maintained at each location.)

Clause 11(c): List of books of account and nature of relevant documents examined.

Explanation for Clauses 11(a), 11(b), and 11(c): The CBDT under Rule 6F has prescribed the books of account and other documents to be kept and maintained by a person carrying on certain professions specified in sub-section (1) of section 44AA. As such, every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorised representative or film artist and whose total gross receipts exceed one lakh fifty thousand rupees in all the three years immediately preceding the previous year, or where the profession has been newly set up in the previous year, his total gross receipts in the profession for that year are likely to exceed the said amount, is required to maintain the following books of account:

2. Journal, if the accounts are maintained according to the mercantile system of accounting.
3. Ledger.

In the case of a person for whom the books of account have been prescribed under rule 6F, the list of books so prescribed have to be stated under clause 11(a). It may be noted that the daily case register and the inventory under broad heads do not constitute books of account and hence the same need not be mentioned under clause 11(a). Sometimes an assessee may carry on multiple activities. Books of account might have been prescribed for one of the activities. In that case, mention may be made of the activity for which books have been prescribed.

The tax auditor should obtain from the assessee a complete list of books of account and other documents maintained by him (both financial and non-financial records) and make appropriate marks of identification to ensure the identification of the books and records produced before him for audit. The list of books of account maintained by the assessee should be given under clause 11(b).
Section 44AA(2) provides that persons carrying on business or profession, other than those specified in sub-section (1), shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Income-tax Act, if his income from business or profession exceeds the monetary limits prescribed under section 44AA(2) or his total sales, turnover or gross receipts in business or profession exceed the monetary limits prescribed under section 44AA(2) in any one of the three years immediately preceding the previous year. The tax auditor will, therefore, have to verify that the assessee has maintained such books of accounts and documents as may enable the Assessing Officer to compute the total income of the assessee in accordance with the provisions of the Act. It may be noted that though the Central Board of Direct Taxes has been empowered under sub-section (3) of section 44AA to prescribe books of account to be maintained under sub-section (2), so far no books of accounts have been prescribed.

For a person whose accounts of the business or profession have been audited under any other law, the requirement for maintenance of books of account is contained in the relevant statutes. In the case of other assessees, normal books of account to be maintained will be cash book/bank book, sales/purchase journal or register and ledger. Assessee engaged in trading/manufacturing activities should also maintain quantitative details of principal items of stores, raw materials and finished goods. While giving his report in Form No. 3CB about maintenance of proper books of account, the tax auditor should ensure that they are maintained in accordance with the above requirements. In case where stock records are not properly maintained by the assessee due to the nature, level, volume and variety of items/transactions, the tax auditor will have to consider the concept of materiality and practicality while giving particulars in Form No. 3CD.

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 12: Whether the profit and loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant sections (44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB Chapter XII-G, First Schedule or any other relevant section).

Where the profits and gains of the business are assessable to tax under presumptive basis under any of the sections mentioned below, the amount of such profits and gains credited/debited to the profit and loss account should be indicated under this clause:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Section</th>
<th>Business covered</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>44AD</td>
<td>Eligible business</td>
</tr>
<tr>
<td>2</td>
<td>44AE</td>
<td>Transport business</td>
</tr>
<tr>
<td>3</td>
<td>44B</td>
<td>Shipping business of a non-resident</td>
</tr>
<tr>
<td>4</td>
<td>44BB</td>
<td>Providing service or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the</td>
</tr>
</tbody>
</table>
If the profit and loss account does not include profit assessable on presumptive basis, then, there is no requirement to furnish the particulars under this clause.

The amount to be mentioned under this clause means the amount included in the profit and loss account. The tax auditor is not required to indicate as to whether such amount corresponds to the amount assessable under the relevant section relating to presumptive taxation. As such, the reporting requirement gets satisfied if the amount as per profit and loss account is reported.

The auditor should keep in mind the prescribed guidance while furnishing information under this clause in the format provided in the e-filing utility.

Clause 13 (a) Method of accounting employed in the previous year.

Clause 13 (b) Whether there had been any change in the method of accounting employed vis-a-vis the method employed in the immediately preceding previous year.

Clause 13 (c) If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss.

<table>
<thead>
<tr>
<th>Serial number</th>
<th>Particulars</th>
<th>Increase in profit (₹)</th>
<th>Decrease in profit (₹)</th>
</tr>
</thead>
</table>

Clause 13 (d) Whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards notified under section 145(2).

Clause 13 (e) If answer to (d) above is in the affirmative, give details of such adjustments:

<table>
<thead>
<tr>
<th>ICDS I</th>
<th>Accounting Policies</th>
<th>Increase in profit (₹)</th>
<th>Decrease in profit (₹)</th>
<th>Net effect (₹)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICDS II</td>
<td>Valuation of Inventories</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Clause 13(f) Disclosure as per ICDS:

(i) ICDS I - Accounting Policies
(ii) ICDS II - Valuation of Inventories
(iii) ICDS III - Construction Contracts
(iv) ICDS IV - Revenue Recognition
(v) ICDS V - Tangible Fixed Assets
(vi) ICDS VII - Governments Grants
(vii) ICDS IX - Borrowing Costs
(viii) ICDS X - Provisions, Contingent Liabilities and Contingent Assets

Explanation for Clauses 13(a), 13(b), 13(c) and 13(d): The Finance Act, 1995 amended section 145 with effect from assessment year 1997-98 to provide that the income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” must be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

Under sub-clause (b), whether there has been any change in the method of accounting employed vis-à-vis the method employed in the immediately preceding previous year is to be stated. As already noted, an assessee can follow either cash or mercantile system of accounting.

Under sub-clause (c), if there is any change, the effect thereof i.e. increase or decrease in profits has to be stated under this clause. So far as the question of effect of such change on the profit or loss is concerned, the concept of materiality is the basic governing factor. If it is not possible to quantify the effect of the change in the method of accounting, appropriate disclosure should be made under this clause.

Under Clause (d), tax auditor has to report on whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards notified under section 145(2).
The Finance (No. 2) Act, 2014 has amended section 145 w.e.f AY 2015-16 to the effect that the words ‘accounting standards’ be replaced with the words ‘income computation and disclosure standards’. As per the memorandum, such an amendment has been made in order to clarify that the standards notified under section 145(2) are only meant for computation of income and disclosure of information and the assessee need not maintain books of account on the basis of AS notified under the Income-tax Act, 1961. The Accounting Standards issued by ICAI/Companies Accounting Standard Rule, 2006 would still be required to be followed by the assessee, for preparation of financial statements.

**Clause 14 (a) Method of valuation of closing stock employed in the previous year.**

**Clause 14 (b) Details of deviation, if any, from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss, please furnish:**

<table>
<thead>
<tr>
<th>Serial number</th>
<th>Particulars</th>
<th>Increase in profit (₹)</th>
<th>Decrease in profit (₹)</th>
</tr>
</thead>
</table>

**Explanation for Clauses 14(a) and (b):** The method of valuation of closing stock is to be stated under this clause. AS-2 “Valuation of Inventories” issued by ICAI requires disclosure of significant accounting policies. Accordingly, a reference may be invited to the same or the method of valuation may be again described in Form No.3CD.

In sub-clause (a) of clause 14 of Form No.3CD, the reference is made to "closing stock". The expression "stock-in-trade" means finished goods and raw materials. Since sub-clause (b) refers to section 145A where the term "inventories" is used, the term "closing stock" will include all items of inventories. AS-2 defines the term "inventories" to include finished goods, raw materials, work-in-progress, materials, maintenance supplies, consumables and loose tools. Therefore, method of valuation of items of inventories will have to be given under sub-clause (a).

The tax auditor should study the procedure followed by the assessee in taking the inventory of closing stock at the end of the year and the valuation thereof. He should obtain the inventory of closing stock, indicating the basis of valuation thereof, for reporting on the method of valuation of closing stock under this clause.

The method of stock valuation must be consistently followed from year to year and the method followed must be brought out clearly. The tax auditor should examine the basis adopted for ascertaining the cost and this basis should be consistently followed. It is necessary to ensure that the method followed for valuation of stock results in disclosure of correct profit and gains. The Supreme Court in case of CIT v. British Paints Ltd. [1991] 188 ITR 44 (SC) has held that the method of valuation of stock at actual cost of raw materials and not taking into account overhead charges was not the correct method of valuation even though the said method has been consistently followed.

The details of deviation, if any, from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss have to be stated under clause 14(b).
Clause 15: Give the following particulars of the capital asset converted into stock-in-trade:-

(a) Description of capital asset;
(b) Date of acquisition;
(c) Cost of acquisition;
(d) Amount at which the asset is converted into stock-in-trade.

For furnishing the particulars required by clause 15, the provisions of section 2(47), 45(2), 47(iv), (v) and 47A have to be kept in mind.

The particulars to be stated under new clause 15 should be furnished with respect to the previous year in which the asset has been converted into stock-in-trade. The clause does not require details regarding the taxability of capital gains or business income arising from such deemed transfer.

Under clause (a) description of the capital asset is required to be mentioned for example shares, security, land, building, plant, machinery etc.

Under Clause (b) the date of acquisition is to be reported. For ascertaining the correct date the tax auditor will have to refer the accounts of the financial year in which such capital asset is acquired. The date assumes importance for the purpose of determining whether the asset is long-term or short-term in nature.

Under clause (c) the cost of acquisition is required to be reported. Here the cost of acquisition as per the books of account is to be mentioned. In case of depreciable assets, the carrying cost appearing in the books will be the written down value. But the value to be reported will be the original cost of acquisition. Even in case of an asset acquired prior to the 1st day of April, 1981 the value to be reported will be the original cost of acquisition. The assessee may exercise the option of considering the fair market value of the asset as on 1st April, 1981 for assets acquired prior to that date for the purpose of computation of capital gains as provided under section 55(2)(b)(i).

Under clause (d) the amount recorded in the books of account at which the asset is converted into stock-in-trade should be stated. Such an amount may not be the fair market value as on the date of conversion or treatment as stock-in-trade. If a value other than carrying cost is recorded then the auditor has to examine the basis of arriving at such a value. The valuation of stock-in-trade is to be examined with reference to AS-2 – Valuation of Inventories. Non-compliance with AS-2 is to be suitably qualified in the main audit report.

It is desirable that necessary accounting entry is passed in the books of account at the time of conversion of the asset into or treatment of the same as stock-in-trade.

Clause 16: Amounts not credited to the profit and loss account, being,-

(a) the items falling within the scope of section 28;
(b) the proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax, where such credits, drawbacks or refunds are admitted as due by the authorities concerned;
(c) escalation claims accepted during the previous year;
(d) any other item of income;
(e) capital receipt, if any.

Under this clause various amounts falling within the scope of section 28 which are not credited to the profit and loss account are to be stated. The information under sub-clauses (a), (d) and (e) of clause (16) is to be given with reference to the entries in the books of account and records made available to the tax auditor for the purpose of tax audit under section 44AB. Sub-clauses 16 (b), (c) & (d) require information in respect of items which may also be covered under section 28 and as such will also fall in clause 16 (a). However, those items which are reported in clauses 16(b), (c) and (d) need not be reported in clause 16 (a). The tax auditor may obtain a management representation in writing from the assessee in respect of all items falling under this clause.

The details of the following claims, if admitted as due by the concerned authorities but not credited to the profit and loss account, are to be stated under sub-clause (b).

(i) Pro forma credits
(ii) Drawback
(iii) Refund of duty of customs
(iv) Refund of excise duty
(v) Refund of service tax
(vi) Refund of sales tax or value added tax

In respect of items falling under sub-clause (b) the tax auditor should examine all relevant correspondence, records and evidence in order to determine whether any particular refund/claim has been admitted as due and accepted during the relevant financial year.

There may be practical difficulties in verifying the information in regard to such refunds and credits. It may, therefore, be necessary for the tax auditor to scrutinise the relevant files or subsequent records relating to such refunds while verifying the particulars and also obtain an appropriate management representation.

Under sub-clause (c), the escalation claims accepted during the previous year but not credited to the profit and loss account are to be stated. The escalation claims accepted during the year would normally mean "accepted during the relevant previous year". If such amount has not been credited to the profit and loss account the fact should be brought out. The system of accounting followed in respect of this particular item may also be brought out in appropriate cases. If the assessee is following cash basis of accounting with reference to this item, it should be clearly brought out since acceptance of claims during the relevant previous year without actual receipt has no significance in cases where cash method of accounting is followed.

Sub-clause (d) covers any other items which the tax auditor considers as an income of the assessee based on his verification of records and other documents and information gathered,
but which has not been credited to the profit and loss account. In giving the details under sub-
clauses (c) and (d), due regard should be given to AS-9 - Revenue Recognition.

The tax auditor should scrutinise all the items including casual and nonrecurring items
appearing in the books of account, particularly the credit items, and ensure himself whether
any such credit which is in the nature of income has been credited to the profit and loss
account or not.

Under sub-clause (e), capital receipt, if any, which has not been credited to the profit and loss
account has to be stated. The tax auditor should use his professional expertise and judgement
in determining whether the receipt is capital or revenue. The tax auditor may record various
judicial pronouncements on which he has relied in his working papers.

The following is an illustrative list of capital receipts which, if not credited to the profit and loss
account, are to be stated under this sub-clause.

(a) Capital subsidy received in the form of Government grants which are in the nature of
promoters' contribution i.e., they are given with reference to the total investment of the
undertaking or by way of contribution to its total capital outlay. For e.g. Capital
Investment Subsidy Scheme.

(b) Government grant in relation to a specific fixed asset where such grant is shown as a
deduction from the gross value of the asset by the concern in arriving at its book value.

(c) Compensation for surrendering certain rights.

(d) Profit on sale of fixed assets/investments to the extent not credited to the profit and loss
account.

If during the course of audit auditor finds that certain income (e.g. income referred to in
section 41(1)) are not credited to profit and loss account, the particulars of the same along
with the amount is required to be reported under this clause.

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:

<table>
<thead>
<tr>
<th>Details of property</th>
<th>Consideration received or accrued</th>
<th>Value adopted or assessed or assessable</th>
</tr>
</thead>
</table>

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, the auditor is required to furnish the following details:

(a) Details of property

(b) Consideration received or accrued

(c) 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.

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/CB.

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
provisions or not, would require to be evaluated based on facts & circumstances of
transactions.

Clause 18: Particulars of depreciation allowable as per the Income-tax Act, 1961 in
respect of each asset or block of assets, as the case may be, in the following form:–

(a) Description of asset/block of assets.

(b) Rate of depreciation.

(c) Actual cost or written down value, as the case may be.

(d) Additions/deductions during the year with dates; in the case of any addition of an
asset, date put to use; including adjustments on account of –

   (i) Central Value Added Tax credits claimed and allowed under the Central Excise
Rules, 1944, in respect of assets acquired on or after 1st March, 1994,

   (ii) change in rate of exchange of currency, and

   (iii) subsidy or grant or reimbursement, by whatever name called.

(e) Depreciation allowable.

(f) Written down value at the end of the year.

Having regard to the nature of requirements prescribed, it may be necessary for the tax
auditor to examine:

(a) Classification of the asset

(b) Classification thereof to a block

(c) The working of actual cost or written down value

(d) The date of acquisition and the date on which it is put to use
(e) The applicable rate of depreciation
(f) The additions / deductions and dates thereof
(g) Adjustments required – specified as well as on account of sale, etc.

For the purpose of determining the rate of depreciation, the tax auditor has to examine the classification of the assets into various blocks. The purpose for which the asset is used is also very material in this regard. Hence, the tax auditor should ensure that the classification as made by the assessee is in consonance with legal principles. In this connection, he should traverse through judicial pronouncements as well as through the past assessment history of the assessee, and upon an analysis thereof, if he comes to the conclusion that the matter is not free from doubt or controversy, he has to indicate the fact in his report by way of suitable qualification. It may also be necessary to rely upon technical data for determining the proper classification of the block. Since the tax auditor is not a technical expert, he has to obtain suitable certificate from concerned experts.

The tax auditor must have due regard to the Income-tax Rules, 1962, relevant clarifications from the Department and judicial decisions.

Under sub-clauses (a) to (b), information in respect of description of assets, block of assets under which the concerned asset is classifiable and the rate of depreciation are to be stated. This will include information about the existing assets. In respect of the existing assets, the computation of depreciation would involve stating the opening written down value of the block of assets which should be taken from the relevant income-tax records. The tax auditor will be conducting the audit in the current year only. As such the tax auditor can rely upon the classification of assets and written down value stated in the income tax records available with the assessee. The tax auditor should mention the fact that he has relied upon the income tax records of the assessee in respect of the information regarding the classification of assets and written down value of the existing assets.

For the purpose of determination of actual cost, the tax auditor has to be guided by the relevant legal provisions. Since determination of actual cost has got accounting implications, he can rely on the relevant Accounting Standards and Guidance Notes.

The additions/deductions during the year have to be reported, with dates. The tax auditor is advised to get the details of each asset or block of asset added during the year or disposed of during the year with the dates of acquisition/disposal. Where any addition was made, the date on which the asset was put to use is to be reported. In respect of deductions, the sale value of the assets disposed of along with dates should be mentioned. To ascertain when the asset has been put to use, the tax auditor could call for basic records like production records/installation details/excise records/service tax records/records relating to power connection for operating the machine and any other relevant evidence.

Details have to be given in respect of adjustments on account of three factors. The first adjustment relates to CENVAT claimed and allowed under the Central Excise Rules, 1944 in respect of assets acquired on or after 1st March, 1994.

The second adjustment relates to the change in the rate of exchange of currency. Section 43A
The third adjustment relates to the subsidy or grant or reimbursement, by whatever name called. Explanation 10 to section 43(1) provides that where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee.

Finally, the amount of depreciation allowable and the WDV at the year end have to be stated. The tax auditor will need to verify the claim of additional depreciation under this clause as well.

Wherever, the full deduction of the cost of capital goods is allowed (e.g. expenditure on Scientific Research u/s. 35) the auditor should verify that the cost of such asset is not included in the block of assets for the purpose of depreciation.

**Clause 19: Amounts admissible under sections:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Amount debited to profit and loss account</th>
<th>Amounts admissible as per the provisions of the Income-tax Act, 1961 and also fulfills the conditions. If any specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf.</th>
</tr>
</thead>
<tbody>
<tr>
<td>32AC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33AB</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33ABA</td>
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<td></td>
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<tr>
<td>35(1)(i)</td>
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<tr>
<td>35(1)(ii)</td>
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<td></td>
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<td>35(1)(iia)</td>
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<td></td>
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<td>35(1)(iii)</td>
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<td></td>
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<td>35(1)(iv)</td>
<td></td>
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<td>35(2AA)</td>
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<tr>
<td>35(2AB)</td>
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</tr>
<tr>
<td>35ABB</td>
<td></td>
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<tr>
<td>35AC</td>
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<td>35AD</td>
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<tr>
<td>35CCA</td>
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<td>35CCB</td>
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<td>35CCC</td>
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<tr>
<td>35CCD</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The assessee can claim deduction under the sections 32AC, 33AB, 33ABA, 35, 35ABB, 35AC, 35AD, 35CCA, 35CCB, 35CCC, 35CCD, 35D, 35DD, 35DDA and 35E subject to the terms and conditions mentioned in these Sections.

The Tax Auditor should indicate the amount debited to the Profit & Loss Account and the amount actually admissible in accordance with the applicable provisions of law.

The amount not debited to the Profit & Loss Account but admissible under any of the Sections mentioned in the clause have to be stated. For example, sections 33AB and 33ABA allow deduction in respect of amount deposited in designated account for specified purposes which, as per accounting principles, are not to be debited to the Profit & Loss Account. In this connection, the Tax Auditor has to work out, on the basis of the conditions prescribed in the concerned Section, the amount admissible there under and report the same.

An assessee may be eligible for deduction under one or more sub-sections of section 35. In such case, the Tax Auditor should state the deduction allowable under each sub-section separately under applicable part, i.e. the amount deductible in respect of the amount debited in Profit & Loss Account and the amount not debited to the Profit & Loss Account.

The Tax Auditor should also ensure the eligibility of the expenditure/payment for deduction and compliance of the conditions prescribed in the sub-section including approval from the relevant/prescribed authority, notification issued by the Central Government, any other guideline circular etc. issued in this behalf. Tax auditor should also refer Rule 6 of Income-tax Rules, 1962.

In case the auditor relies on a judicial pronouncement, he may mention the fact in his observations para provided in Form No.3CA or Form No.3CB, as the case may be.

Where under any section an assessee is eligible for deduction under one or more of the sub-sections of the said section, the Tax Auditor should certify the amount of deduction available under each sub-section separately in the applicable part, i.e. the amount deductible in respect of the amount debited to Profit & Loss Account and the amount not debited to the Profit & Loss Account.

Clause 20(a): Any sum paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend. [Section 36(1)(ii)].

Clause 20(b): Details of contributions received from employees for various funds as referred to in section 36(1)(va):
Explanation for Clauses 20(a) and (b): Section 36(1)(ii) provides for deduction of any sum paid to an employee as bonus or commission for services rendered where such sum would not have been payable to him as profit or dividend, if it had not been paid as bonus or commission. In other words, if bonus or commission is in the nature of profit or dividend, it may not be normally allowable as a deduction unless such payment is wholly and exclusively made to the employee. [Shahzada Nand & Sons v. CIT [1977]] 108 ITR 358 (SC).

Under Clause 20(b), the requirement is only in respect of the disclosure of the amount and the tax auditor is not expected to express his opinion about its allowability or otherwise. The tax auditor should verify the employment/contract details of the employees so as to ascertain the nature of payments.

The tax auditor should get a list of various contributions recovered from the employees which come within the scope of this clause and the date on which it is deposited. He should also verify the documents relating to provident funds and other welfare funds. He should verify the agreement under which employees have to make contributions to provident fund and other welfare funds. The ledger account of contributions from employees should be reviewed; the due dates of payments and the actual dates of payment should be verified with the evidence available. In view of the voluminous nature of the information, the tax auditor can apply test checks and compliance tests to satisfy himself that the system of recovery and remittance is proper. Under this clause, details regarding the nature of fund, details of the amount deducted, due date for payment, actual amount paid and actual date of payment to the concerned authorities in respect of provident fund, ESI fund or other staff welfare fund have to be stated.

Clause 21(a): Please furnish the details of amounts debited to the profit and loss account, being in the nature of Capital, personal, advertisement expenditure etc.:

<table>
<thead>
<tr>
<th>Nature</th>
<th>Serial number</th>
<th>Particulars</th>
<th>Amount in `</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Expenditure</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal Expenditure</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Expenditure incurred at clubs being entrance fees and subscriptions

Expenditure incurred at clubs being cost for club services and facilities used.

Expenditure by way of penalty or fine for violation of any law for the time being force

Expenditure by way of any other penalty or fine not covered above

Expenditure incurred for any purpose which is an offence or which is prohibited by law

Expenditure of Capital nature:
Capital expenditure is not allowable in computing business income unless specifically provided in any sections of the Act.

The details of capital expenditure, if any, debited to the profit and loss account should be maintained in a classified manner stating the amount under various heads separately. Since part of this capital expenditure may be allowable as deduction in the computation of total income, it is advisable to maintain particulars regarding the nature of expenditure, the amount of expenditure incurred, and the relevant provision under which the expenditure is admissible. However, the total amount of capital expenditure debited to the profit and loss account is to be reported under this clause in the e-filing portal.

Expenditure of personal nature:
Personal expenses debited to the profit and loss account are to be specified under this sub-clause as they are not deductible in the computation of total income under section 37.

Section 143(1)(e) of the Companies Act 2013 specifically requires the auditor to inquire whether personal expenses have been charged to revenue account. In the case of a person whose accounts of the business or profession have been audited under any other law, the tax auditor will have to report in respect of personal expenses debited in the profit and loss account. In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, the tax auditor will have to verify the personal expenses if debited in the expenses account while conducting the audit and verify the amount of expenses mentioned under this clause.
Expenditure on advertisement in any souvenir, brochure, tract, pamphlet or the like, published by a political party:

Section 37(2B) provides that no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party. Therefore, the expenditure of this nature should be segregated and reported under this clause.

The tax auditor may come across advertising expenditure incurred on advertising in a souvenir, brochure, tract, pamphlet or journal published by a trade union or a labour union formed by a political party. The trade union or labour union though promoted or formed by a political party may have a distinct legal entity.

Expenditure incurred at clubs being cost for club services and facilities used, entrance fees and subscriptions:

The amount of payments made to clubs by the assessee during the year being cost for club services and facilities used should be indicated under this clause. The payments may be for entrance fees as well as membership subscription and for catering and other services by the club, both in respect of directors and other employees in case of companies and for partners or proprietors in other cases. The fact whether such expenses are incurred in the course of business or whether they are of personal nature should be ascertained. If they are personal in nature, they are to be shown separately under Clause 21(a) referred to earlier. This clause requires reporting of particulars and the amount of such expenses incurred in the respective fields.

Expenditure by way of penalty or fine for violation of any law for the time being in force; Expenditure by way of penalty or fine not covered above; Expenditure incurred for any other purpose which is an offence or is prohibited by law:

This clause requires separate reporting of penalty or fine for violation of any law for the time being in force, and any other penalty or fine. The tax auditor should obtain in writing from the assessee the details of all payments by way of penalty or fine for violation of any laws have been made and paid or incurred during the relevant previous year and how such amounts have been dealt with in the books of accounts produced for audit.

In order to ascertain the facts whether the sum debited in the profit and loss account is by way of penalty or fine for any violation of law, the tax auditor will have to refer to the relevant law under which the amount has been paid or incurred and ascertain whether such amount is in the nature of penalty or fine.

Clause 21(b): Amounts inadmissible under section 40(a):

(i) as payment to non-resident referred to in sub-clause (i)

(A) Details of payment on which tax is not deducted:

(I) date of payment
(II) amount of payment
(III) nature of payment
(IV) name and address of the payee

(B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time prescribed under section 200(1)

(I) date of payment

(II) amount of payment

(III) nature of payment

(IV) name and address of the payee

(V) amount of tax deducted

(iii) as payment referred to in sub-clause (ia)

(A) Details of payment on which tax is not deducted:

(I) Date of payment

(II) Amount of payment

(III) Nature of payment

(IV) Name and address of the payee

(B) Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub-section (1) of section 139.

(I) Date of payment

(II) Amount of payment

(III) Nature of payment

(IV) Name and address of the payer*

(V) Amount of tax deducted

(VI) Amount out of (V) deposited, if any

(iii) Under sub-clause (ic) [wherever applicable]

(iv) Under sub-clause (iia)

(v) Under sub-clause (iib)

(vi) Under sub-clause (iii)

(A) Date of payment

(B) Amount of payment

(C) Name and address of the payee

(vii) Under sub-clause (iv)

(viii) Under sub-clause (v)

*should be read as “payee” for proper reporting.
This clause is substantially expanded to furnish detailed information for deduction and deposit of TDS. Section 40(a) specifies certain amounts which shall not be deducted in computing the income chargeable under the head “Profits and gains of business or profession”. In case where the assessee submits that any sum debited to profit and loss account is not inadmissible under the provisions of sub-section (a) of section 40, the tax auditor may exercise his judgement in the light of the applicable laws and report accordingly about the compliance of this provision. The tax auditor may rely upon the judicial pronouncements while taking any particular view. In case of difference of opinion between the tax auditor and the assessee, the tax auditor should state both the view points. In case of voluminous nature of the information, the tax auditor can apply materiality principles, tests checks and compliance tests for verifying the information required to be provided under this clause.

Clause 21(c): Amounts debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof.

The tax auditor is required to state the inadmissible amount under section 40(b)/40(ba) and such information is also required to be given in respect of interest/ remuneration paid to a member of an Association of persons (AOP)/Body of individuals (BOI). By Finance Act (No.2) 2009, w.e.f. 1.4.2010, the term firm includes LLP (as registered under the provisions of LLP Act, 2008) The word "inadmissible" implies that the tax auditor will have to examine the facts, apply the conditions for allowance or disallowance and accordingly determine the prima facie inadmissibility of the deduction and also quantify the same.

In order to determine the amounts inadmissible under section 40(b), the tax auditor should obtain the computation of total income from the assessee.

The tax auditor should maintain the information in the prescribed format as a part of his working papers and report appropriately in the format provided in the e-filing utility. The tax auditor may note that the information required to be reported is the amount of inadmissible expenditure as per section 40(b) or 40(ba) and not the total amount debited to profit and loss account.

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:

<table>
<thead>
<tr>
<th>Serial Number</th>
<th>Date of Payment</th>
<th>Nature of Payment</th>
<th>Amount</th>
<th>Name and Permanent Account Number of the payee, if available</th>
</tr>
</thead>
</table>

(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):

<table>
<thead>
<tr>
<th>Serial Number</th>
<th>Date of Payment</th>
<th>Nature of Payment</th>
<th>Amount</th>
<th>Name and Permanent Account Number of the payee, if available</th>
</tr>
</thead>
</table>

For the purpose of furnishing the above particulars, the tax auditor should obtain a list of all cash payments in respect of expenditure exceeding ₹ 20,000 (₹ 35000/- in case of plying, hiring or leasing goods carriages w.e.f. 1.10.2009) made by the assessee during the relevant year which should include the list of payments exempted in terms of Rule 6DD with reasons. This list should be verified by the tax auditor with the books of account in order to ascertain whether the conditions for specific exemption granted under clauses (a) to (l) of Rule 6DD are satisfied. Details of payments which do not satisfy the above conditions should be stated under this clause.

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.

Clause 21(e): provision for payment of gratuity not allowable under section 40A(7).

As per section 40A(7), the deduction shall be allowed in relation to any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year.

The tax auditor should call for the order of the Commissioner of Income-tax granting approval to the gratuity fund, verify the date from which it is effective and also verify whether the provision has been made as provided in the trust deed.

In case the provision made for payment of gratuity is not allowable under section 40A(7), the same is to be stated under this sub-clause.

Clause 21(f): any sum paid by the assessee as an employer not allowable under section 40A(9).

Under section 40A(9) any payment made by an employer towards the setting up or formation of or as contribution to any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860, or other institutions (other than contributions to recognised provident fund or approved superannuation fund or notified pension scheme or approved gratuity fund) is not allowable. The tax auditor should furnish the details of payments which are not allowable under this section.

Clause 21(g): particulars of any liability of a contingent nature.

The assessee is required to furnish particulars of any liability of a contingent nature debited to the profit and loss account. The tax auditor may not be able to immediately ascertain the details of contingent liabilities debited to the profit and loss account without a detailed scrutiny of various account heads e.g. outstanding liabilities, provision etc. Accounting policy followed...
and disclosed would be helpful in ascertaining and verifying details. The expenses relating to disputed claims will be revealed only on the basis of the scrutiny of records relating to contingent liabilities. The tax auditor may look into particular items of contingent liabilities of the earlier year in order to determine whether or not any items has been charged to the profit and loss account of the current year and if so, whether the liability continues to be contingent in nature. Wherever necessary, a suitable note should be given by the tax auditor as to the non-availability of such particulars relating to the contingent liabilities.

Clause 21(h): Amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income.

The tax auditor shall examine the details of amount of inadmissible expenditure as furnished by the assessee. While carrying out such examination the tax auditor is entitled to rely on the management representation. However, Standard on Auditing (SA) 580, “Written Representations” may be referred to.

The tax auditor will verify the amount of inadmissible expenditure as estimated by the assessee with reference to established principles of allocation of expenditure based on logical parameters like proportion of exempt and taxable income recorded, turnover, man hours spent to earn the relevant income etc. For allocation of interest between taxable and non-taxable income, the quantum of investment, the period and the rate of interest are generally the relevant factors to be considered. This requires proper estimates to be made by the assessee. The tax auditor is required to audit such estimates. Attention is invited to Standard on Auditing - 540 “Audit of Accounting Estimates, including Fair value Accounting Estimates and Related Disclosures”.

An assessee may claim that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act. Even in such a case the provisions of section 14A will apply. Accordingly, the tax auditor is required to verify such contention of the assessee.

Clause 21(i): amount inadmissible under the proviso to section 36(1)(iii).

The provisions of section 36(1)(iii) provide that the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession would be allowed as a deduction in computing the income referred to in section 28 of the Act.

The proviso thereunder (inserted by the Finance Act, 2003 w.e.f. A.Y. 2004-05) provides that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books or account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was put to use, shall not be allowed as a deduction.

The extension of an existing business or profession is a fact based exercise and the tax auditor should apply the professional judgment in determining the applicability of the proviso. The tax auditor is also advised to verify the treatment given for such asset under other provision of the Act like Chapter VI A deductions or under other statutes.
The tax auditor has to verify the correctness of the particulars furnished by the assessee with the documentary evidence.


This clause was inserted by the Central Board of Direct Taxes through its Notification No. 36/2009 dated 13-4-2009, in the Form No.3CD in Appendix II of the Income-tax Rules, 1962.

The tax auditor is required to state the amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006. The Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act) is an Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

Section 23 of the MSME Act lays down that an interest payable or paid by the buyer, under or in accordance with the provisions of this Act, shall not for the purposes of the computation of income under the Income-tax Act, 1961 be allowed as a deduction.

The inadmissible interest has to be determined on the basis of the provisions of the MSME Act.

The tax auditor while reporting in respect of clause 22 should take the following steps:

(a) The auditor should seek information regarding status of the enterprise i.e. whether the same is covered under the Micro, Small and Medium Enterprises Development Act, 2006. Where the information is available and has been disclosed the same should be reported as such in Form No. 3CD. Where the information is not available the auditor should also mention the same in the Form No.3CD.

(b) Since Section 22 of the Micro, Small and Medium Enterprises Development Act, 2006 requires disclosure of information, the tax auditor should cross check the disclosure made in the financial statements.

(c) Obtain a full list of suppliers of the assessee which fall within the purview of the definition of “Supplier” under section 2(n) of the Micro, Small and Medium Enterprises Development Act, 2006. It is the responsibility of the auditee to classify and identify those suppliers who are covered by this Act.

(d) Review the list so obtained.

(e) Verify from the books of account whether any interest payable or paid to the buyer in terms of section 16 of the MSME Act has been debited or provided for in the books of account.

(f) Verify the interest payable or paid as mentioned above on test check basis.

(g) Verify the additional information provided by the auditee relating to interest under section 16 in his financial statement.

(h) If on test check basis, the auditor is satisfied, then the amount so debited to the profit and loss account should be reported under clause 22.
Where the tax auditor, upon due verification, finds that the auditee has neither provided for nor paid any interest payable under the MSME Act, the no amount is inadmissible under section 23 of MSME Act. In such a case, appropriate reporting should be made against this clause in the format provided in the e-filing utility.

**Clause 23: Particulars of payments made to persons specified under section 40A(2)(b).**

Section 40(A)(2) provides that expenditure for which payment has been or is to be made to certain specified persons listed in the section may be disallowed if, in the opinion of the Assessing Officer, such expenditure is excessive or unreasonable having regard to:

(i) the fair market value of the goods, services or facilities for which the payment is made; or
(ii) for the legitimate needs of business or profession of the assessee; or
(iii) the benefit derived by or accruing to the assessee from such expenditure.

Further, proviso to section 40A(2)(a) provides that no disallowance on account of any expenditure being excessive or unreasonable having regard to the fair market value, shall be made in respect of a specified domestic transaction referred to in section 92BA, if such transaction is at arm’s length price as defined in clause (ii) of section 92F.

The section enjoins on the Assessing Officer the power to fix the quantum of disallowance. Under this clause, the particulars of payments coming under this sub-section are to be stated. The following steps may be taken by the tax auditor in this connection:

(a) Obtain full list of specified persons as contemplated in this section.

(b) Obtain details of expenditure/payments made to the specified persons.

(c) Scrutinise all items of expenditure/payments to the above persons.

(d) It may be difficult to locate all such payments and it may also involve a time consuming effort. It is, however, possible to localise the area of enquiry.

**Clause 24: Amounts deemed to be profits and gains under section 32AC, 33AB or 33ABA or 33AC.**

Section 32AC allows deduction @ 15% in respect of Investment in new Plant & Machinery to a company who is engaged in the business of manufacture or production of any article or thing and who acquires and installs new asset after the 31st day of March, 2013 but before the 1st day of April, 2015 and the aggregate actual cost of such new assets exceeds one hundred crore rupees. The Finance Act, 2014 has amended section 32AC w.e.f. financial year 2014-15. The investment limit in the plant and machinery has been reduced to ₹ 25 crores from ₹ 100 crores. The auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in sub sections (2) of section 32AC. Only because section 32AC(2) provides for chargeability of deemed income under the head “profit and gains from business or profession” in addition to taxability of capital gains, the auditor is not required to report any capital gains/losses arising on transfer on the said asset. The tax auditor will be required to verify the compliance to the conditions of the provisions of section 32AC and report the claim of deduction accordingly.
Clause 25: Any amount of profit chargeable to tax under section 41 and computation thereof.

The tax auditor should obtain a list containing all the amounts chargeable under section 41 with the accompanying evidence, correspondence, etc. He should in all relevant cases examine the past records to satisfy himself about the correctness of the information provided by the assessee. The tax auditor has to state the profit chargeable to tax under this section. This information has to be given irrespective of the fact whether the relevant amount has been credited to the profit and loss account or not. The computation of the profit chargeable under this clause is also to be stated.

The tax auditor should maintain the following in his working papers for the purpose of furnishing details required in the format provided in the e-filing utility:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name of person</th>
<th>Amount of income</th>
<th>Section</th>
<th>Description of transaction</th>
<th>Computation if any</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
</tr>
</tbody>
</table>

Clause 26: In respect of any sum referred to in clause (a), (b), (c), (d), (e) or (f) of section 43B, the liability for which:

(A) pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was
   (a) paid during the previous year;
   (b) not paid during the previous year;

(B) was incurred in the previous year and was
   (a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1);
   (b) not paid on or before the aforesaid date.

(State whether sales tax, customs duty, excise duty or any other indirect tax, levy, cess, impost etc. is passed through the profit and loss account.)

In the case of an assessee maintaining its accounts on the mercantile system, the tax auditor should verify the aforesaid particulars of section 43B from the books of account for the year under audit as well as from the books of account, vouchers and documents of the immediately succeeding assessment year as well as return of income for the earlier assessment years so that the information about the aforesaid payments made in the subsequent year can be furnished.

The tax auditor, in his tax audit report, should clearly distinguish the liability incurred during the previous year in respect of all the specified sums referred to in clauses (a) to (f) from the liability that pre-existed on the first day of the relevant previous year.

In some cases the tax auditor may find amounts of the nature referred to in section 43B being credited to the profit and loss account although the relevant provisions for such liability had not been allowed as a deduction in any previous year in view of the specific provisions of
section 43B requiring actual payment as a condition precedent to allowance. The amounts so credited to the profit and loss account are not chargeable to tax since the conditions referred to in section 41(1) have not been satisfied. The tax auditor should identify such items and maintain the same in his working papers.

**Clause 27(a): Amount of Central Value Added Tax credits availed of or utilized during the previous year and its treatment in the profit and loss account and treatment of outstanding Central Value Added Tax credits in the accounts.**

CENVAT credit is available on eligible inputs, input services and capital goods. Such credits are utilized for the payment of the excise duty and service tax liability. Accordingly the tax auditor should check relevant statutory records maintained under the Central Excise Rules, 2002 and the records maintained under CENVAT Credit Rules, 2004 and ascertain therefrom the amount of credit on eligible inputs, input services and the capital goods and the amount utilised during the previous year. Records maintained in RG-23, wherever available should also be verified.

The tax auditor should verify that there is a proper reconciliation between balance of CENVAT credit in the accounts and relevant excise and service tax records. The tax auditor should report the amount of CENVAT availed and utilised under this sub-clause. In a given case CENVAT availed may be lesser than the CENVAT credit utilised during the year on account of opening balance in CENVAT account or vice-versa and as such it would be advisable, in order to avoid any misleading conclusion and inferences, to report the opening and closing balances of CENVAT. Further the sub-clause requires reporting of the credits availed of or utilized during the previous year, it is desirable to report both the credits availed and the credits utilized.

In so far as the reporting of accounting treatment of CENVAT credit is concerned the clause requires that its treatment in profit and loss account and the treatment of outstanding CENVAT credit in the account have to be reported upon.

The tax auditor should maintain the following information in his working papers for the purpose of reporting in the format provided in the e-filing utility:

<table>
<thead>
<tr>
<th>CENVAT</th>
<th>Amount</th>
<th>Treatment in Profit &amp; Loss Accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening balance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CENVAT Availed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CENVAT utilized</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Closing / outstanding Balance</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Clause 27(b): Particulars of income or expenditure of prior period credited or debited to the profit and loss account.**

It may be noted that information under this clause would be relevant only in those cases where the assessee follows mercantile system of accounting. Under cash system of accounting, expenses debited/ income credited to the profit and loss account would be current
year's expenses/income even though they may relate to earlier years. The tax auditor should obtain the particulars of expenditure or income of any earlier year debited or credited to the profit and loss account of the relevant previous year when mercantile system of accounting is followed. In the case of a person whose accounts of the business or profession have been audited under any other law, the information may be available from annual accounts. In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, however, a close scrutiny of the ledger in regard to the period for which expenditure or income is entered in the account books may be necessary.

The tax auditor should maintain the following information in his working papers file for the purpose of reporting in the format provided in the e-filing utility:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Type</th>
<th>Particulars</th>
<th>Amount</th>
<th>Prior Period to which it relates (Year in yyyy-yy format)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

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.

Section 56(2)(viia) provides that where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year any property being shares of a company (not being a company in which the public is substantially interested,

(i) without consideration, the aggregate fair value of which exceeds rupees fifty thousand, the whole of the aggregate fair market value of such property

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration shall be chargeable to income-tax under the head “Income from other sources”

Section 56(2)(viia) does not apply to the property received by way of a transaction not regarded as transfer under section 47(via), 47(vic), 47(vicb), 47(vid) and 47(vii). The fair market value of shares means the value determined in accordance with the method prescribed in rule 11UA of the Income-tax Rules, 1962.

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.
For reporting under this clause, the auditor has to consider the provisions of Rule 11UA(1)(c) which provides for manner of determining:

(a) fair market value of quoted shares and securities received by way of transaction carried out through any recognized stock exchange
(b) fair market value of quoted shares and securities received by way of transaction carried out OTHER THAN through any recognized stock exchange
(c) fair market value of unquoted equity shares
(d) fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange

Where for determining the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange, a valuation report has been obtained by the assessee from a merchant banker or an accountant, the auditor should obtain a copy of the same. Here, attention is invited to the Standard on Auditing- 620 “Using the work of an Auditor’s expert”.

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.

Section 56(2)(viib) provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head “Income from other sources”.

The provisions of this clause are not applicable where the consideration is received:

(a) by a venture capital undertaking from a venture capital company or a venture capital fund
(b) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

As per the explanation to section 56(2)(viib), the fair market value shall be the value as may be determined in accordance with such method as prescribed under Rule 11UA or as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, whichever is higher.

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 assesses. 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.
For reporting under this clause with respect to quoted shares, the auditor has to consider the provisions of Rule 11UA(1)(c)(a) which provides for manner of determining:

(a) fair market value of quoted shares and securities received by way of transaction carried out through any recognized stock exchange

(b) fair market value of quoted shares and securities received by way of transaction carried out OTHER THAN through any recognized stock exchange

For reporting under this clause with respect to unquoted equity shares, the auditor has to consider the provisions of Rule 11UA(2) which provides for manner of determining the fair market value of unquoted equity shares.

**Clause 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].

Details of the amount borrowed on hundi (including interest on such amount borrowed) and details of repayment otherwise than by an account payee cheque, are required to be indicated under this clause.

For this purpose, the tax auditor 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.

**Clause 31 (a)** Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:

(i) name, address and permanent account number (if available with the assessee) of the lender or depositor;

(ii) amount of loan or deposit taken or accepted;

(iii) whether the loan or deposit was squared up during the previous year;

(iv) maximum amount outstanding in the account at any time during the previous year;

(v) whether the loan or deposit was taken or accepted otherwise than by an account payee cheque or an account payee bank draft.

*(These particulars need not be given in the case of a Government company, a banking company or a corporation established by a Central, State or Provincial Act.)*

Section 269SS prescribes the mode of taking or accepting certain loans and deposits. As per this section, no person shall take or accept from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if,-

(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or
The amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more.

For the purposes of section 269SS "loan or deposit" means loan or deposit of money.

If the total of all loans/deposits from a person exceed ₹ 20,000/- but each individual item is less than ₹ 20,000/-, the information will still be required to be given in respect of all such entries starting from the entry when the balance reaches ₹ 20,000/- or more and until the balance goes down below ₹ 20,000/. As such the tax auditor should verify all loans/deposits taken or accepted where balance has reached ₹ 20,000 or more during the year for the purpose of reporting under this clause.

The tax auditor has to take into account the technological advancements in the field of banking and information technology where loans have been taken other than through an account payee cheque or bank draft which are capable of being tracked such as bank transactions made electronically through the internet or through mail transfer or telegraphic transfer. These types of payments, though not made by account payee cheques in the conventional manner are capable of being tracked. In order to judicially apply the provisions of section 269SS, the tax auditor need not report such cases under this clause. The Finance (No.2) Act, 2014 has acknowledged the fact and allowed the "use of electronic clearing system through a bank account" as a permissible mode for the purposes of section 269SS.

As per the proviso to section 269SS, the provisions of section 269SS shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by-

(a) Government;
(b) any banking company, post office savings bank or co-operative bank;
(c) any corporation established by a Central, State or Provincial Act;
(d) any Government company as defined in section 2(45) of the Companies Act, 2013; Section 617 of the Companies Act, 1956 has been replaced with section 2(45) in the Companies Act, 2013 with effect from 1.4.2014.
(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

The auditor should maintain the prescribed information in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility. These particulars need not be given in case of a Government Company, a banking company or a corporation established by a Central, State or Provincial Act.

Clause 31(b) Particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T made during the previous year:-

(i) name, address and permanent account number (if available with the assessee) of the payee;
(iii) amount of the repayment;

(iv) whether the repayment was made otherwise than by account payee cheque or account payee bank draft.

(The particulars (i) to (iv) above need not be given in the case of a repayment of any loan or deposit taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act.)

This sub-clause requires particulars of each repayment of loan or deposit in an amount exceeding the limits specified in section 269T made during the previous year. Section 269T after amendment by the Finance Act, 2002 w.e.f. 1.6.2002 is now applicable to repayment of both loans and deposits. Section 269T is attracted where repayment of the loan or deposit is made to a person, where the aggregate amount of loans or deposits held by such person either in his own name or jointly with any other person on the date of such repayment together with interest, if any, payable on such deposit is ₹ 20,000 or more. Explanation (iii) contains a definition of the term “loan or deposit” for the purposes of section 269T. Accordingly, “loan or deposit” means any deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature. As such, all repayments made to any person where the loan or deposit along with interest is ₹ 20,000 or more are to be reported under this sub-clause, even though the amount of repayment may be less than ₹ 20,000. The tax auditor should verify such repayments and report accordingly.

The second proviso to section 269T inserted by the Finance Act, 2003 w.e.f. 1.6.2002 excludes repayments of loans taken from Government, Government company, Banking company, Corporation established by a Central, State or Provincial Act etc from the scope of the above section and therefore the tax auditor need not report such repayments in his report. However, section 269T does not exclude Government companies, banking companies from the scope of its applicability. As such, details of repayment are to be shown in the case of these entities also.

The monetary limit of ₹ 20,000 or more is applicable in respect of a banking company or a cooperative bank with reference to each branch and in all other cases assessee as a whole.

The auditor should maintain the prescribed information in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility.

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

(The comment above need not be given in the case of a repayment of any loan or deposit taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act.)
Under this sub clause the tax auditor has to comment as to whether the taking or accepting loan or deposit, or repayment of the same through an account payee cheque or an account payee bank draft based on the examination of books of accounts & other relevant documents.

In the case of a repayment of any loan or deposit taken or accepted from Government, Government company, banking company or a corporation established by a Central, State or Provincial Act, the particulars (i) to (iv) mentioned in sub-clause (b) of clause 31 and also the comment mentioned above need not be given.

However, section 269T does not exclude loans repaid by Government companies, banking companies, corporation established by a Central, State or Provincial Act from the scope of its applicability. As such, details of repayment made by such entities are to be shown.

It may be noted that the new requirement should be made applicable for the loans and the advances which are in excess of ₹ 20,000/-. This is evident from a harmonious reading of the clause (c) with the clauses (a) and (b).

**Clause 32(a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available:**

<table>
<thead>
<tr>
<th>Sl No.</th>
<th>Assessment year</th>
<th>Nature of loss / allowance (in rupees)</th>
<th>Amount as returned (in rupees)</th>
<th>Amount as assessed (give reference to relevant order)</th>
<th>Remarks</th>
</tr>
</thead>
</table>

The amount of brought forward loss or depreciation allowance is required to be quantified as per return and assessment orders. A reporting format is prescribed for the sake of standardization.

At times while the particular claim for loss/allowance pertains to a particular assessment year as per the return of income, the same may relate to another assessment year as per the assessment order, e.g., depreciation claim in respect of assets capitalized at the end of the financial year. In those cases, once the assessment order is received, the particulars have to be re-stated with reference to the assessment year to which they relate as per the assessment order. This should be accompanied by suitable explanation in the remarks column.

The e-filing utility may require additional information regarding the relevant order. The information is required to be disclosed to the extent available. The tax auditor should consider the above guidance for the purpose of reporting under this clause in the format provided in the e-filing utility.

**Clause 32(b) whether a change in shareholding of the company has taken place in the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.**

Section 79 of the Act provides that, notwithstanding anything contained in Chapter VI of the Act, in the case of a company, not being a company in which the public are substantially interested, where a change in shareholding has taken place in a previous year, then no loss incurred in any year prior to the previous year shall be carried forward and set off against the
income of the previous year unless on the last day of that previous year and on the last day of
the previous year in which the loss was incurred, the shares of the company carrying not less
than 51% of the voting power were beneficially held by the same persons.

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.

Section 73 of the Act provides for the treatment of losses in speculation business. Section
73(1) provides that any loss, computed in respect of a speculation business carried on by the
assessee, shall not be set off except against profits and gains, if any, of another speculation
business.

The tax auditor should maintain the prescribed information in his working papers for the
purpose of reporting against this clause in the format provided in the e-filing utility.

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.

Section 73A provides for provisions relating to carry forward and set off of losses by specified
business. It provides that any loss, computed in respect of any specified business referred to
in section 35AD shall not be set off except against profits and gains, if any, of any other
specified business.

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.

The tax auditor should maintain the prescribed information in his working papers for the
purpose of reporting against this clause in the format provided in the e-filing utility.

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 to in explanation to section 73, if yes,
please furnish the details of speculation loss if any incurred during the previous year.

The Explanation to section 73 provides that where any part of the business of a company
(other than a company whose gross total income consists mainly of income which is
chargeable under the heads "Interest on securities", "Income from house property", "Capital
gains" and "Income from other sources" or a company the principal business of which is the
business of trading in shares or banking or the granting of loans and advances) consists in the
purchase and sale of shares of other companies, such company shall, for the purposes of this
section, be deemed to be carrying on a speculation business to the extent to which the
business consists of the purchase and sale of such shares. The Finance Act, 2014 has
amended the explanation to section 73 by deleting the words “the principal business of which
is the business of trading in shares” from financial year 2014-2015.
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 the following format from the assessee and verify the same from the books of account, income tax returns of earlier years and other relevant documents.

The prescribed information so maintained may be used by the tax auditor for the purpose of reporting against this clause in the format provided in the e-filing utility.

Clause 33: Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA).

| Section under which deduction is claimed | Amounts admissible as per the provision of the Income Tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income Tax Act, 1961 or Income Tax Rules,1962 or any other guidelines, circular, etc., issued in this behalf. |

Chapter VIA of the Act deals with various deductions which have to be given effect to by way of allowance from gross total Income of the assessee and they have been categorised under the Act as follows:

A. Deduction in respect of certain payments.
B. Deduction in respect of certain incomes.
C. Other Deductions.

While Chapter III relates to Income which do not form part of total income, the reporting under this clause is required only with respect to exemptions claimed under section 10A (Special provisions in respect of newly established undertakings in free trade Zone etc) and section 10AA (Special provisions in respect of newly established units in Special Economic Zones).

Some sections in Chapter VIA such as section 80-G (donations), Section 80-GGB/80-GGC (contributions to political parties), section 80-JJAA (wages of new workmen) etc. relate to the expenditure incurred by an assessee. There are other sections such as section 80-P (income of co-operative societies), 80-JJA (certain specified business relating treatment of biodegradable waste) etc. which relate to income of the assessee. In respect of all these sections the tax auditor should ascertain whether there is any expenditure or income covered by the above sections recorded in the books of accounts audited by him. Information with regard to such expenditure/income in respect of deduction allowable under Chapter VIA should be given on the basis of the examination of the books of account and other records under clause 33.

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:
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.

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 verifying the information required to be provided under this clause.

**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:

<table>
<thead>
<tr>
<th>Tax deduction and collection Account Number (TAN)</th>
<th>Type of Form</th>
<th>Due date for furnishing</th>
<th>Date of furnishing, if furnished</th>
<th>Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported</th>
</tr>
</thead>
</table>

**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.

Clause 34(b) also 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.
Clause 34 (c) whether the assessee is liable to pay interest under section 201(1A) or section 206C(7). If yes, please furnish:

<table>
<thead>
<tr>
<th>Tax deduction and collection Account Number (TAN)</th>
<th>Amount of interest under section 201(1A)/206C(7) is payable</th>
<th>Amount paid out of column (2) along with date of payment.</th>
</tr>
</thead>
</table>

Under this clause, the auditor is required to furnish detailed information in case the assessee is liable to pay interest under section 201(1A) or section 206C(7) of the Act. 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 as required by the Act. 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 as required by the Act. The reporting as to whether the assessee is liable to pay such interest, should be in consonance with the reporting under clause 34(a) where the details of non-deduction are required to be reported by him.

Clause 35 (a) In the case of a trading concern, give quantitative details of the principal items of goods traded:

(i) Opening stock;
(ii) Purchases during the previous year;
(iii) Sales during the previous year;
(iv) Closing stock;
(v) shortage / excess, if any.

The tax auditor should obtain certificates from the assessee in respect of the principal items of goods traded, the balance of the opening stock, purchases, sales and closing stock and the extent of shortage/ excess/damage and the reasons thereof.

Clause 35 (b) In the case of a manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products:

A. Raw materials:

(i) opening stock;
(ii) purchases during the previous year;
(iii) consumption during the previous year;
(iv) sales during the previous year;
(v) closing stock;
(vi) yield of finished products;
(vii) percentage of yield;
(viii) shortage / excess, if any.
B. Finished products / By-products:
   (i) opening stock;
   (ii) purchases during the previous year;
   (iii) quantity manufactured during the previous year;
   (iv) sales during the previous year;
   (v) closing stock;
   (vi) shortage / excess, if any.

This 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 a large concern it may be difficult for tax auditor to verify each and every item of purchase, consumption and production. In such cases, he may verify the figures on a sampling method and satisfy himself as to the correctness of the figures furnished. This clause requires that quantitative details of “principal items” of raw materials and finished goods should be given. Therefore, information about petty items need not be given. The information about ‘yield’, ‘percentage of yield’, and ‘shortages/ excess’ is also required to be given.

In respect of assessees other than companies and those whose accounts have not been audited under any other law, the tax auditor should obtain the following certified documents for the principal items of raw materials, finished goods and by-products:

(a) Certificate from the assessee certifying the balance of the opening stock, purchases, sales and closing stock.

(b) Certificate to the extent of shortage/excess/damage and the reasons thereof.

Clause 36: In the case of a domestic company, details of tax on distributed profits under section 115-O in the following form:-

(a) total amount of distributed profits;

(b) amount of reduction as referred to in section 115-O(1A)(i);

(c) amount of reduction as referred to in section 115-O(1A)(ii);

(d) total tax paid thereon;

(e) dates of payment with amounts.

Section 115-O provides for a special levy at the prescribed rate, on the amount of dividend declared, distributed or paid by such company whether such dividend is out of current profit or accumulated profits. Vide this clause the tax auditor has to report on profit distributed during the financial year and therefore, the amount of tax worked and paid out on such distributed profit at the prescribed rate plus surcharge at the applicable rate on the tax along with the education cess thereon has to be reported against this clause. The amount of the dividend referred to in sub-section (1) is to be reduced by the amount referred to in sub-section (1A). Since the tax is payable on such reduced amount, the gross amount may be reported in the sub-clause (a) and the amount of reduction as referred to in section 115-O(1A)(i) and 115-
O(1A)(ii) shall be reported in sub-clause (b) and (c) separately. The tax auditor should keep the working papers to reveal how the net amount has been arrived at.

The tax auditor should maintain the prescribed information in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility.

Clause 37: Whether any cost audit was carried out, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor.

Clause 38: Whether any audit was conducted under the Central Excise Act, 1944, 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.

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.

Explanation for Clauses 37, 38 & 39: The tax auditor should ascertain from the management whether Cost Audit/Excise Audit under the Central Excise Act, 1944/Service Tax Special Audit as per 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 if any, 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 cost audit/Excise audit/Service tax audit which might have been ordered is not completed by the time the tax auditor issues his report, he has to report appropriately in this report stating that since cost audit is not completed and the cost audit report is not available with the assessee.

The tax auditor should examine the time period for which the cost audit/Excise audit/Service tax audit if any has been required to be carried out. Information is required to be given only in respect of such cost 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 cost audit report which is received up to the date of tax audit report.

Clause 40: Details regarding turnover, gross profit, etc., for the previous year and preceding previous year:

<table>
<thead>
<tr>
<th>Serial number</th>
<th>Particulars</th>
<th>Previous year</th>
<th>Preceding previous year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Total turnover of the assessee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Gross profit/turnover</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Net profit/turnover</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Stock-in-trade/turnover</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Material consumed/finished goods produced</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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(The details required to be furnished for principal items of goods traded or manufactured or services rendered)

These ratios have to be calculated only for assessees who are engaged in manufacturing or trading activities. Moreover, the ratios have to be given for the business as a whole and need not be given product wise. Further, the ratio mentioned in (5) need not be given for trading concern or service provider.

Clause 41: Please furnish the details of demand raised or refund issued during the previous year under any tax laws other than Income Tax Act, 1961 and Wealth tax Act, 1957 along with details of relevant proceedings.

The auditee may be assessed under various tax laws other than Income-tax Act, 1961 and Wealth-tax Act, 1956 resulting into a demand order or a refund order. The tax auditor should obtain a copy of all the demand/ refund orders issued by the governmental authorities during the previous year under any tax laws other than Income Tax Act and Wealth Tax Act. The auditor should exercise his professional judgment in determining the applicability to relevant tax laws for reporting under this clause.

It may be noted that even though the demand/refund order is issued during the previous year, it may pertain to a period other than the relevant previous year. In such cases also, reporting has to be done under this clause.

If there is any adjustment of refund against any demand, the auditor shall also report the same under this clause.

The tax auditor should maintain the information prescribed in his working papers for the purpose of reporting against this clause in the format provided in the e-filing utility.

SIGNATURE AND STAMP / SEAL OF THE SIGNATORY: Form 3CD has to be signed by the person competent to sign Form No. 3CA or Form No.3CB as the case may be. He has also to give his full name, address, membership number, firm registration number, wherever applicable, place and date. Further, the e-filing portal requires the tax auditor to affix his Digital Signature while registering himself. He is also required to put his stamp/Seal as well.

CODE OF ETHICS AND OTHER MATTERS: Some of the issues which are commonly raised in regard to different aspects of tax audit vis-à-vis the liability / obligations of the tax auditor are considered hereunder.

1. The liability of the tax auditor in respect of tax audit will be the same as in any other audit assignment. It may be noted that when any question relating to the audit conducted by a tax auditor arises, he is answerable to the Council of the Institute under the Chartered Accountants Act. In all matters concerning tax audit, ICAI’s disciplinary jurisdiction will prevail.

2. In case the assessee is found guilty of having concealed the particulars of his income it would not ipso facto mean that the tax auditor is also responsible. If the Assessing Officer comes to the conclusion that the tax auditor was grossly negligent in the performance of his duties, he can refer the matter to the ICAI so that appropriate action can be taken against the tax auditor under the Chartered Accountants Act.
3. The Assessing Officer or any other authority who is authorised to issue summons and to call for evidence or documents, can call upon the tax auditor who has audited the accounts to give any evidence or produce documents. For this purpose notice under section 131 can be issued by the Assessing Officer or other tax authority mentioned in the said section.

4. If the actual work relating to examination of books and records is done by a qualified assistant in a firm of chartered accountants and the partner of the firm signing the audit report has relied upon this work, action, if any, for professional negligence can be initiated against the member who has signed the report and in such an event, it would be open for the member concerned to prove that he has taken due care and diligence in the performance of his duties and is not aware of any reason to believe that he should not have so relied.

5. If the qualified assistant (whether or not holding the certificate of practice) is found to be grossly negligent in the performance of his duties, the Council of the Institute can take disciplinary action against him.

6. A tax auditor can accept the assignment of tax representation.

7. Under the Code of Ethics, no tax auditor can charge professional fees by way of percentage of profits or which are contingent upon findings, or results of such employment, except as permitted under any regulation made under this Act.

8. Since the figures in Form No. 3CD are duly verified by a chartered accountant, they should normally be accepted by tax authorities. If, however, there is a specific reason for differing from the view taken by tax auditor, the Assessing Officer may compute the income of the assessee by adopting different figures.

9. The opinion expressed by the tax auditor is not binding on the assessee. If the tax auditor has qualified his report and expressed an opinion on a particular item, the assessee may take a different view while preparing his return of income. In such cases, it is advisable for the assessee to state his viewpoint and support the same by any judicial pronouncements on which he wants to rely.

**Format of Financial Statements:** The tax auditor of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited has to give his report in Forms No. 3CB/3CD and will have to ensure that the financial statements i.e. balance sheet and profit and loss account/ income and expenditure statement, are prepared in such a manner that adequate information which is necessary to convey a true and fair view of the state of affairs of the assessee is given. So far as a person whose accounts of the business or profession have been audited under any other law is concerned, the information to be given in the financial statements is normally provided in the particular statute by which the assessee is governed. Since there is no such legislation in respect of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, it is necessary to achieve some uniformity in respect of information to be provided in
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the financial statements. For presentation and disclosure requirements, applicable AS and AS (IT) should be kept in mind.

[Students may refer “Guidance Note on Tax Audit under Section 44AB of the Income Tax Act, 1961” given in CD with Handbook on Auditing Pronouncements for comprehensive knowledge.]

15.4 Audit Provisions under VAT Law

Some of the major States who have introduced VAT on 1.4.2005 and some other States which are in waiting to implement VAT have incorporated audit provisions in their VAT Legislations. Some of the important features of these provisions along with the eligibility of the professionals to undertake the audit function and their supportive role for the successful implementation of the VAT system are dealt with in following paragraphs.

15.4.1 Necessity of audit: Like majority of the developing economies our country is also facing the problem of lack of education and awareness about tax laws, more particularly amongst the trading community. Further, the VAT System of taxation is new to them. Since the trading community is not educated enough and equipped to understand the implications of the VAT system of taxation immediately, there is every possibility that they may not be in a position to arrange their business affairs to fall in line with the requirements of the State Level VAT, calculate and discharge their exact tax liability under the VAT Law. On the other hand, the tax administrator i.e. the authorities in the taxation department also find themselves devoid of sufficient resources to educate the tax payers and inform them about the procedural and accounting changes that are necessitated by the implementation of VAT system.

Another reason for prescribing an audit under the VAT law by a Chartered Accountant, is that under the VAT system a major thrust is to be laid on the ‘self assessment’ meaning thereby that the tax liability calculated and paid by the tax payers through their periodical returns will be accepted by and large and the tax payers will not be called to substantiate the tax liability shown by them in the returns by producing books of account and other relevant material. The assessments with books of account will be an exception. Therefore, there is a strong need to see that the tax payers discharge their tax liability properly while filing the returns. This can be ensured only where the particulars furnished by the tax payers are verified by an independent auditor in minute details by going not only through the books of account but also by analysing and interpreting the provisions of the State-Level VAT Laws and reporting, whether any under-assessment was made by the dealer requiring additional payment or whether there was any excess payment of tax warranting refund to the tax payer. In most of the countries tax evasion is rampant under the existing tax systems. In India too evasion of excise and sales-tax is estimated to be very high. If no audit is prescribed under VAT law, the chances of evasion of VAT tax will increase causing revenue leakage for the Government. It is, therefore, essential that the audit of the proposed VAT system is attempted on a regular basis. However, it is not possible to conduct the audit of all the VAT dealers. Therefore, the criteria for audit can be the amount of turnover or the class of dealer dealing in specified commodities.

The concept of audit is popular even in foreign countries where the system of VAT is in practice since long in the field of indirect taxation. In countries like France and Korea the audit
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has proved to be an effective tool to check the evasion of tax, which was mostly done by producing fake invoices etc.

Since VAT is a new concept, some of the States want to keep the procedural formalities to the minimum. Hence at the initial stage their law makers refrain from keeping any audit provisions in their Act and rules. Perhaps, this may be due to the initial stage of introduction of VAT. But most of the States, keeping in mind the importance of audit, have incorporated the audit provisions since inception.

15.4.2 The role of the tax auditor: The role of tax auditor in the initial years of implementation of VAT would be that of an adviser to the taxpayers. This role will cast upon him the responsibility to educate and guide the auditee regarding the maintenance of proper records and in assisting the auditees in maintaining accounting records in such a manner as to get the information needed for filing of return without delay and extra efforts. In playing the advisory role the auditor will have to help in devising a proper accounting system as will generate the required information regarding the output tax, input tax credit etc. While doing so the auditor may take the guidance from the guidance notes issued by the Institute of Chartered Accountants of India, New Delhi.

The role of tax auditor vis-a-vis the tax administrators is that the auditor while discharging his function finds out whether the turnover of sales/purchases is shown correctly in the returns and is backed up by the accounts and other relevant documents; the deductions claimed by the tax payer from the turnover of sales are genuine and are supported by valid documents; the claim of input tax credit has been properly made i.e. it has not been claimed on the higher side or on such purchases, which are not eligible for grant of input tax credit. There may be certain instances wherein at the time of purchases the goods might have been eligible for set-off and accordingly the same was claimed in the returns but subsequent events might have rendered the input tax credit in admissible. In such circumstances, it should be the responsibility of the VAT auditor to state whether the inadmissible input tax credit has been reversed or not and if not, he has to point it out in his report. Thus to a certain degree the VAT auditor is expected to assist the VAT administrators in the proper quantification of tax liability of the tax payer and see that State exchequer gets its revenue which is legally due.

15.4.3 Preparation for tax audit under VAT: A tax auditor has to make certain preliminary preparations before the actual execution of tax audit under the VAT law. The major steps required to be undertaken for the preparation are as under:

(i) Knowledge of business - After accepting the audit assignment the auditor should familiarize himself with the business of the auditee. In this regard, the auditor should refer to the SA 315- “Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and its Environment” issued by the Council of the Institute of Chartered Accountants of India. Before starting the audit, the auditor should have a preliminary knowledge of the industry/ business and of the nature of ownership, management etc. More detailed information should be obtained and should be assessed and updated during the course of audit. For this purpose the various sources of information may be tapped. The knowledge of business is important not only to the auditor but also to his staff engaged in the audit. The auditor has to ensure that the audit staff assigned to an audit engagement obtains
sufficient knowledge of the business to carry out the audit work delegated to them and further they should make effective use of the knowledge about the business and should consider how it affects the tax liability reported in the return. The facts and figures in the returns should be consistent with the auditor’s knowledge of the business. The auditor should also make himself familiar with the process of production and the distribution chain. The auditor should also obtain information about whether the auditee is a manufacturer/ importer/ retailer, the details of major customers to whom the sales are effected and the details of sales which are outside the scope of VAT law. Similarly, the sources of purchase and the items sold should be listed out. Further it should be ascertained whether the auditee has opted for the composition scheme or not.

(ii) Obtaining a list of all the accounting records maintained by the auditee - The auditor should obtain a complete list of all the accounting records relating to sale/purchase of goods, stocks, the various registers, the ledgers etc. maintained, in which the transactions are recorded, the various source documents in which the entries are recorded in the books of account and the process of their generation.

(iii) Ascertaining the major accounting policies adopted by the auditee - The auditor should know the major accounting policies based on which books of account have been recorded. The accounting policy regarding recording of sales, purchases and valuation of inventory must be made known and the auditor should also find out whether there has been any change in those policies during the year covered by audit. If there is any significant change in the accounting policy giving rise to some material effect on the tax liability, the same should be invariably reported.

(iv) Evaluation of internal control etc. - Before determining the extent of audit checks to be applied i.e. whether to go in- depth or to do only test check, the auditor should ascertain whether there is an internal check system in operation in the entity. He should particularly find out how the purchases and sales gets initiated, focused and processed. For example, in case of purchase, receipt of indent by the purchase department, determining the need for purchases, initiation of purchase order, receipt of material, preparation of MRN, entries made in the books of accounts etc. should be verified. For sales, receipt of inquiry, acceptance of sales order, execution of sales, preparation of sale invoice and realization of transaction. If the internal control is reliable, the extent of audit may be reduced and should be focused only on those areas where the auditor feels that greater degree of audit risk is involved.

(v) Knowledge about the VAT law and allied laws - The auditor and his staff should obtain a thorough knowledge of the State VAT law under which the audit is to be conducted. The auditor should study the VAT law starting from the definition of various terms, the procedure to be adopted, the provisions regarding issue of invoices, claiming of input tax credit, composition schedule in the VAT law, the manner in which the output tax is to be calculated the provisions of audit, the contents of the audit report, the periodicity of the return to be filed, the format of the forms of returns, and the various notifications issued. Further the auditor should know the Central Sales-tax law as he has to comment on the liability under that law also. The auditor should also have some knowledge about the judicial pronouncements made by the Tribunals and the Courts on the various facets of these laws.
15.4.4 Approach to tax audit under VAT: The audit approach of the tax auditor under the value added tax system will be more or less similar to the approach, which is adopted by the auditor while conducting the tax audit under the provisions of section 44AB of the Income-tax Act, 1961. However, the reporting requirements vary to a considerable extent.

While the auditor has to apply the basic principles of audit he has to keep in mind that the requirements of VAT audit are different and accordingly he should design his audit programme.

While designing the audit program the auditor has to ensure that the program includes the performance of such audit checks as would generate the information which would enable him to ensure the following and also to draw his audit reports.

(i) The turnover of sales /purchases of goods has been properly determined keeping in view not only the generally accepted accounting policies but the definition of turnover of sales in the relevant VAT law. The sales turnover arrived at by applying the generally accepted accounting policies may not be the same as required under the VAT law. To take an example, the sale proceeds of a fixed asset will not form a part of turnover or sales as per the generally accepted accounting policies but will form a part of turnover or sales for the purpose of VAT law. Similarly, the price of goods returned is deducted from the turnover or sales even if the returns are from the sales effected in the previous years, while under VAT law, the goods returned are to be deducted only if they are made within the prescribed time, say six months from the date of sale. Thus, the results of the audit procedure adopted by the auditor should be such as will give him a reasonable assurance regarding the figures of sales reported in the returns. Not only that, he should also be able to get the exact quantum of the sales under reported or over reported duly classified for different tax rates and its impact on overall tax liability. The sales as per the financial statements may include the turnover or sales effected by all the branches, but for the purposes of VAT law the turnover or sales of only those branches will be included which are included in one registration certificate.

(ii) The turnover of purchases should be tested by applying audit checks as will enable the auditor to get the purchases eligible for grant of input tax credit segregated from other purchases. Further, the purchases on which the input tax credit is available in full and the purchases on which it is available partially should also be ascertained correctly. Thereafter, the auditor should get the exact amount of input tax credit available, compare the same with the credit claimed in the returns and report on the excess/short claim of the credit in the returns filed.

(iii) The auditor is also required to comment on the timely filing of the returns under the VAT law. For this purpose the auditor is expected to list out the due dates of filing of returns and find out the reasons for delay in filing the returns if any.

(iv) The auditor is also required to give his report on the composition scheme. He should apply such compliance tests as will be enable him to ascertain that the auditee is eligible for composition, it has paid the requisite composition fee and all the procedural formalities in relation thereto have been complied with.

(v) The auditor has to give his report on the TDS. Therefore, such tests are to be applied as will enable him to report on the applicability of TDS provisions, the accuracy of the amount deducted and paid, timely issue of TDS certificate and filing of TDS returns.
(vi) The auditor is also expected to check the consolidation of the returns filed for all the periods covered in the year under audit, both under the State-Level VAT law and the Central Sales-tax Act, 1956. These returns are to be compared with the books of account and the documentary evidences available. The auditor is expected to apply such substantive steps as would enable him to judge whether all the transactions relating to sale and purchase are entered in the books of account and have been taken into consideration while filing the returns. In case of any inconsistency a proper reconciliation of book figures and the returned figures should be made and also the correct quantification of tax liability is to be done.

The above are only the major areas which are to be tested by the auditor while conducting the tax audit under VAT laws. The auditor has to take a judgement of his own regarding the adequacy and appropriateness of the audit checks to be applied and the areas where the tests are to be applied, so as to give him all the information needed to form a view not only on the authenticity of the books of account, correctness of the returns filed but also in the quantification of tax liability.

15.4.5 Audit report under the VAT law: All State-Level VAT laws have been framed by following a common VAT law Module suggested by the Central Government. Further the Empowered Committee which pioneered the concept of model VAT law based on certain common principles also insisted that the basic framework of all the VAT laws in the various States should be common. It is felt that there should be a common design for VAT Audit Report also so that the auditor should not find it difficult to conduct the audit and the reports can be made more meaningful and comprehensible to all. The Institute of Chartered Accountants of India has already taken a major initiative in this direction and has already developed a standard format of the audit report. The standard format of audit report was also submitted to the Empowered Committee. States can take the benefit of the same and incorporate the format of the audit report suggested by the ICAI in their VAT laws.

At the end of the audit the auditor has to arrive at his conclusion on the matters to be reported in the audit report. The format of the audit report is generally prescribed under the relevant VAT law and the auditor has to fill in all the columns of the audit report that are applicable. While performing the audit under VAT law the auditor is expected to conduct the audit presuming himself to be the tax assessor. His audit report will therefore have to be comprehensive commenting on each and every aspect which goes to the root of quantification of tax liability. The auditor is expected to give his opinion on the adequacy of accounting records, correctness and completeness and arithmetical consistency of returns filed. Further he has to State the basis of his opinion on the accounts, financial statements and the documents verified by him to arrive at the above conclusion. The auditor is also expected to give the summary of additional tax liability/additional refund arising on his verification of the returns together with the books of account. While the auditor is giving a general opinion on the truth and fairness of books and account he can make a qualified opinion or an unqualified opinion. He can also report to disclaimer where he finds that the accounting records were insufficient to enable him to frame either a unqualified opinion or a qualified opinion.

So far as the comment on the variation of tax liability is concerned the auditor has to quantify exactly the amount by which the liability increases or decreases. He has also to State the transactions against which there is variation in tax liability. Therefore, either he has to State that the tax liability shown in the return is correct or is incorrect and to what extent. Thus, an amount of certification of tax liability is involved therein which casts greater responsibility on the auditor.
Several State VAT Legislations have provided for audit of accounts by chartered accountants. Such audit becomes necessary whenever the turnover of the assessee exceeds the prescribed limit under the relevant State VAT Legislations. In this context the ICAI has developed a model State VAT Audit report. Maharashtra VAT legislation has also prescribed a form of audit report and also the details to be furnished along with the audit report. The audit report and the prescribed details are largely similar to the Model VAT Audit report developed by the ICAI. The objective of furnishing such details is to help the VAT authorities to determine the correct turnover and also to satisfy themselves whether the VAT has been remitted properly to the credit of the State Government. Wherever applicable such particulars have to be verified by the Chartered accountants. Such verification ensures that the input VAT credit has been claimed by the assessee in a proper manner.

Student may note that Government of India is geared up to roll out the GST regime - unified tax regime - by subsuming the major indirect taxes namely, central excise, service tax, VAT/sales tax, CST, luxury tax, etc. presently being levied on goods and services by the Centre and States. GST would be applicable on the supply of goods or services as against the present concept of tax on the manufacture and sale of goods or provision of services. It would be a destination based consumption tax.