

E-circular dt 15-8-2006



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Faridabad Small Industries Association,
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The Amendments to Form 3CD

What is this 3CD ?

Answer : When you get your Balance Sheet audited, your CA issues a Tax Audit Certificate . The relevant form is called 3CD) The Government has recently amended this. (5 days ago , on 10.8.2006) vide Notification no. 208/2006, dated 10-8-2006

We at FSIA, analysed these new amendments threadbare for our members. The text of amendments, along with how they effect our members is as hereunder.

Summary of the amendments

- a) New rules , where the CA will have to take certificates from the businessmen, before issuing their own CA certificate
- b) New forms to make TDS offences more pronounced.
- c) New forms for calculation of the Fringe Benefit Tax.

The details are as under :---

The details to The Amendments to Form 3CD

2. In the Income-tax Rules, 1962, in Appendix II, in Form No 3CD, –

(i) in item 7, for sub-item (b), the following sub-item shall be substituted, namely –

“(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”;

((this is self explanatory))

(ii) in item 8, for sub-item (a), the following sub-item shall be substituted namely:-

“(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).”;

((this is also self explanatory. Earlier people used to mention only the main one business. Now mention all of them))

(iii) after item 12, the following item shall be inserted, namely:-

“12A 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.”,

((Though usually , rare, this above mentioned conversion of capital asset into Stock in trade is a planning exercise a lot of people do in the case of rising market of Stock market shares ,and property (real estate) Government seeks information on this now.))

(iv) in item 13, in sub-item (b), for the words “refunds of duty of customs or excise, or refunds of sales tax”, the words “refund of duty of customs or excise or service tax, or refund of sales tax or value added tax” shall be substituted;

((Govt has enlarged the list))

(v) in item 15 for the words, figures and letters “Amounts admissible under sections 33AB, 33ABA, 33AC, 35, 35ABB, 35AC, 35CCA, 35CCB, 35D, 35E”, the words, brackets, letters and figures “Amounts admissible under sections -

(a) 33AB

(b) 33ABA

(c) 33AC (wherever applicable)

(d) 35

(e) 35ABB

(f) 35AC

(g) 35CCA

- (h) 35CCB
- (i) 35D
- (j) 35DD
- (k) 35DDA
- (l) 35E”

shall be substituted;

((Govt has made things more specific. And now wants specific information on each of them))

Next : Cash expenditure disallowed over Rs, 20000

(vi) in item 17,-

(a) for sub-item (h), the following sub-item shall be substituted, namely.-

(b) “(h) (A) **whether a certificate has been obtained from the assessee** regarding payments relating to any expenditure covered under section 40A(3) that the payments were made by account payee cheques drawn on a bank or account payee bank draft, as the case may be, [Yes/No]

(c) (B) amount inadmissible under section 40A(3), read with rule 6DD [with break-up of inadmissible amounts]”;

FSIA comments :

This is a very interesting section. There is no change in the law. We all know that we cannot make an expense or a payment (for expense) of over Rs.20000 in cash. It has to be by an account payee cheque Now the change is that you have to issue a written certificate to your CA. and your CA has to mention whether you have given this certificate or not!!!! Now chances of doing the right thing are higher (so, tell your accountants to tighten their belts)

(b) after sub-item (k), the following sub-items shall be inserted, namely:-

“(l) 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,**

FSIA comments : This is important. And very few people take care of this precaution. The law is that if some incomes are tax-free, then , the expenses incurred for them are also not deductible. However, when most of the companies have some tax free income like Dividends from Mutual Funds, Shares, etc, then, they do not exclude any expense portion thereon. Meaning , as if there was NIL expense in getting that income. Now the Govt wants your CA to certify this amount So, Good luck.

Next : Interest expense disallowed => till the date the asset is put to use

(b) after sub-item (k), the following sub-items shall be inserted, namely:-

(m) amount inadmissible under the proviso to section 36(1)(iii).”;

FSIA comments : This is also very important. And being a recent legal amendment , very few people take care of this precaution. The law is that if you have purchased any capital asset – land, building, plant and machinery etc, and it is out of borrowed funds, like bank loan etc. Then, the interest from the date of loan to the date that machine/asset is put to use ----- shall not be allowed as an expense.

Example : Suppose you purchased land in Uttaranchal / Manesar / Palwal / Sector-58, for you new factory. Now you are yet to start production on that. So, all the interest due on the capital employed for that investment shall be disallowed. You have to capitalize it. You cannot debit it in your P & L account.

..... So, Take care .. please.

And your CA shall also have to take care now, due to Form 3CD..... !!!!

(vii) in item 21,-

(a) in sub-item (i), for the words, brackets, letters and figures “clauses (a), (c), (d) or (e) of section 43B”, the words, brackets, letters and figures “clauses (a), (b), (c), (d), (e) or (f) of section 43B” shall be substituted,

(b) sub-item (ii) shall be omitted;

Next : Cash Loans taken / repaid disallowed => Now, your certificate also required .

(viii) in item 24, after sub-item (b), the following sub-item shall be inserted, namely:-

“(c) **Whether a certificate has been obtained from the assessee** regarding taking or accepting loan or deposit, or repayment of the same through an account payee cheque or an account payee bank draft. [Yes/No] The particulars (i) to (iv) at (b) and the Certificate at (c) 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”,

FSIA comments : Govt is getting quite specific and “intelligent”. Trying to fix up the poor Chartered Accountant , with all responsibilities The law now wants him to say, whether you certify or not ... that you have taken or repaid all loan, by

account payee cheques only.

Else , you are gone. (there is a deterrent tax - of as much as 33.66 % on all such loan transactions) example, you take a cash loan of Rs. 1 lac . you pay tax of Rs. 33660 for this transaction Whew ..
This was an existing section. The problem is that things are being made , more and more government friendly.

- (ix) item 25 shall be lettered as sub-item (a) thereof and after the sub-item as so lettered the following sub-item shall be inserted, namely:-
“(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.”;

Next topic : TDS

(x) for item 27, the following item shall be substituted, namely -

- “27. (a) Whether the assessee has complied with the provisions of Chapter XVII-B regarding **deduction of tax at source** and regarding the payment thereof to the credit of the Central Government. [Yes/No]
(b) If the provisions of Chapter XVII-B have not been complied with, please give the following details*, namely:-

	<u>Amount</u>
(i) Tax deductible and not deducted at all
(ii) shortfall on account of lesser deduction than required to be deducted
(iii) tax deducted late
(iv) tax deducted but not paid to the credit of the Central Government

“Please give the details of cases covered in (i) to (iv) above.”;

FSIA comments : TDS provisions are Govt favourite pastime . and obviously, with time, govt is getting more professional (or is it ???).

Now, just as Govt is getting quite specific and “intelligent”. It further wants your friendly Chartered Accountant , to sign your tax warrant.

The above chart is going to kill--- either of you.

If he mentions anything above, you have to pay 33.66 % tax on that. Example , you paid Rs. 1.00 crores to

your contractor for construction of a factory building, and without TDS. So, if your CA writes this in the first para, you have to pay a tax of Rs. 33,66,000 for committing this crime. And if Mr CA does not write this, he is gone. As per new Form 3CD, he has to be more and more specific. And attach details.,

God !!!! help the businessmen (and the CA), both.

- (xi) (a) The **Annexure shall be numbered as Annexure-I** and in the Annexure as so numbered, in Part B thereof,
- (i) for the words, 'Nature of Business', the words 'Nature of business or profession in respect of every business or profession carried on during the previous year' shall be substituted;
 - (ii) in Sl. No. 1, for the words "Paid-up share capital", the words "Paid-up share capital/capital of partner/proprietor" shall be substituted;
 - (iii) in Sl. No. 2, for the words "Share Application Money", the words "Share Application Money/Current Account of Partner or Proprietor, if any," shall be substituted;
 - (iv) in Sl. No 3, for the words "Reserves and Surplus", the words "Reserves and Surplus/Profit and Loss Account" shall be substituted;
 - (v) in Sl. No. 8, for the words "Gross turnover", the words "Gross turnover/gross receipts" shall be substituted,
 - (vi) in Sl. No 15, for the words and brackets "Net Profit (or loss) before tax", the words and brackets "Net Profit (or loss) before tax as per Profit and Loss Account" shall be substituted.

(b) (b) after the Annexure-I as so numbered, the following Annexure shall be inserted, namely-
<< above para xi, is general in nature, self explanatory >>

Fringe benefit Tax

FSIA comments : How could Govt forget the latest fad – the FBT. ?

In our E-circular dt 6-8-2006 , we had described the details of new form no 1 and form no 2 (and the new form 3B - FBT return)

Now, just as Govt is getting quite specific and "intelligent". It further wants your friendly Chartered Accountant , to sign compute your FBT too

Just read the chart below, and understand to what depth, you and your CA have to go to and file your Fringe benefit tax properly.

And he has to sign it.

Now, whom will your CA protect , and plan for → "you" or "himself" ?

		(including fuel), maintenance of motor cars and the amount of depreciation thereon								(see Note 10)	
11.	115WB(2)(I)	Repair, running (including fuel) and maintenance of aircrafts and the amount of depreciation thereon								20% (see Note 11)	
12.	115WB(2)(J)	Use of telephone (including mobile phone) other than expenditure on leased telephone lines								20%	
13	115WB(2)(K)	Maintenance of any accommodation in the nature of guest house other than accommodation used for training purposes								20%	
14.	115WB(2)(L)	Festival celebrations								50%	
15.	115WB(2)(M)	Use of health club and similar facilities								50%	
16.	115WB(2)(N)	Use of any other club facilities								50%	
17.	115WB(2)(O)	Gifts								50%	
18.	115WB(2)(P)	Scholarships								50%	
19.	115WB(2)(Q)	Tour and Travel (including foreign travel) (see Note 12)								5%	
20.	Total										

Moral of the story :

The Government is getting very “Business like”.
It seeks to reduce the interface of the Income Tax department officers and staff , as such.

It wants you and your CA to analyse all matters in detail, And take proper decisions, come out clear in all these charts , tax forms. File returns electronically, pay tax electronically. And enjoy tax rates lower than even UK , France, Germany and USA. And live in peace.

And if you think otherwise, then, remember the Government is getting wiser.
 So, the better route is, get professional, have a properly qualified Accounts Department, consult your CA regularly, and file your Tax Returns after proper analysis.

For queries, suggestions and feedback , you can e-mail us at :

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