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Implementation Guide on Revision in Form No. 3CD and Form No. 3CEB in March, 2024

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The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Direct Taxes Committee
The Institute of Chartered Accountants of India
(*Set up by an Act of Parliament*)
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First Edition	:	June, 2024
Author/Editor	:	CA. Piyush S Chhajed
Committee / Department	:	Direct Taxes Committee
E-mail	:	dtc@icai.in
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Foreword

Tax audit under section 44AB of the Income-tax Act, 1961 is a significant compliance requirement aimed at ensuring transparency and fairness in tax assessments. It plays an important role in promoting tax compliance and preventing tax evasion.

Recently, the CBDT has amended Form No. 3CD and Form 3CEB vide Notifications issued in March, 2024. Amendments have been made in various clauses of Form No.3CD like in clause 8A relating to whether an assessee has opted for special provisions u/s 115BA/115BAA/115BAB/115BAC/115BAD, to include reference to section 115BAE; in clause 22, to include reporting requirement in respect of any other amount not allowable u/s 43B(h) relating to amount payable to micro and small enterprises; in clause 32(a) relating to details of brought forward loss/depreciation, to include reference to losses/allowances not allowed under section 115BAE and amount adjusted by way of withdrawal of additional depreciation on account of opting for taxation under section 115BAE. These changes have led to the need for appropriate Guidance.

I am happy to note that the Direct Taxes Committee of the Institute of Chartered Accountants of India (ICAI) has brought out **Implementation Guide on Revision in Form No. 3CD and Form No. 3CEB in March, 2024** to provide guidance on the recent revision in Form No.3CD and Form No.3CEB in March, 2024**'**. This Implementation Guide provides specific guidance to enable members to effectively discharge their duties in carrying out tax audit and reporting requirements under section 92E of the Income-tax Act, 1961.

I laud the efforts of CA. Piyush S Chhajed, Chairman, and CA. Cotha S Srinivas, Vice-Chairman and other members of the Direct Tax Committee, who were instrumental in bringing out this Implementation Guide timely to help the members effectively conduct tax audits.

I am sure that the members and other stakeholders would find this Implementation Guide as a valuable tool for efficiently discharging their professional responsibility.

Place: New Delhi
Date: 29th June, 2024

CA. Ranjeet Kumar Agarwal
President, ICAI

Preface

The Direct Taxes Committee is one of the important committees of ICAI which disseminates knowledge of direct taxes and international taxation to its members through its various publications, including Guidance Notes, Technical Guide, Implementation Guide and Handbooks on topics related to direct taxes.

Tax audit is one of the important areas of practice for Chartered Accountants. Section 44AB of the Income-tax Act, 1961 mandates audit of accounts of certain persons engaged in business or profession. Tax Audit Report along with the Audited financial statements are considered at very high pedestal by the Judicial authorities for the purpose of Tax Computation and Assessment. In order to guide the members of ICAI with respect to the recent changes in the provisions w.r.t tax audit vide Notifications issued in March 2024, the Direct Taxes Committee of ICAI has taken an initiative of bringing out this publication "**Implementation Guide on Revision in Form No. 3CD and Form No. 3CEB in March, 2024**". The guidance in the said publication relating to Form No.3CD has to be read along with the Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 (Revised 2023). Likewise, guidance relating to Form No.3CEB has to be read along with the Guidance Note on Report under section 92E of the Income-tax Act, 1961 (Revised 2022). These publications aim to address the situations faced by the Chartered Accountants while conducting tax audit under section 44AB / complying with reporting requirements under section 92E, as the case may be, by offering guidance to help them address the challenges they face in their professional work.

The Implementation Guide has been specifically brought out to provide guidance to our members on the recent changes made in Form No. 3CD and Form No. 3CEB. As the regulatory environment evolves, it is imperative for our members to stay updated and compliant with the changing tax compliance requirements.

We are extremely thankful to CA. Ranjeet Kumar Agarwal, President and CA. Charanjot Singh Nanda, Vice President of the Institute of Chartered Accountants of India who have been the guiding force behind this publication. We acknowledge the valuable contribution of the Study Group of experts formed for the purpose of drafting this publication. We extend our gratitude to all the members of the Study Group i.e. CA. Gautam Nayak; CA. Sanjeev

Pandit; CA. Pawan Kumar Agarwal; CA. Nitin Bhuta; CA. Avinash Rawani; CA. Rajesh Mehta for their efforts in preparation of this Implementation Guide.

We are sure that the Implementation Guide will equip the members to effectively discharge their responsibilities in respect to changes in Form No. 3CD and Form No. 3CEB.

CA. Piyush S Chhajed
Chairman
Direct Taxes Committee

CA. Cotha S Srinivas
Vice-Chairman
Direct Taxes Committee

Place: New Delhi

Date: 29th June, 2024

Acknowledgement

The Direct Taxes Committee (DTC) of ICAI acknowledges the contribution made by the Committee Members, Co-opted Members, Special Invitees and tax experts, in the capacity of study group member or otherwise in coming out with the "*Implementation Guide on Revision in Form No. 3CD and Form No. 3CEB in March, 2024"*. DTC of ICAI places on record its gratitude for their contribution in enrichment of knowledge of the members.

Committee Members (2024-25)

Central Council Members: CA. Piyush S Chhajed, Chairman; CA. Cotha S Srinivas, Vice-Chairman; CA. Chandrashekhar Vasant Chitale; CA. Dheeraj Kumar Khandelwal; CA. Durgesh Kumar Kabra, CA. Purushottamlal Khandelwal; CA. Mangesh Pandurang Kinare; CA. Umesh R. Sharma, CA. Aniket Sunil Talati, CA. Sridhar Muppala; CA. Prasanna Kumar D; CA. Rajendra Kumar P; CA. Sushil Kumar Goyal, CA.(Dr.) Debashis Mitra; CA. (Dr.) Rohit Ruwatia; CA. (Dr.) Anuj Goyal; CA. Gyan Chandra Misra; CA. Prakash Sharma; CA. Kemisha Soni; CA. Sanjay Kumar Agarwal, CA. (Dr.) Raj Chawla; CA. Hans Raj Chugh; CA. Pramod Jain; Shri Ritvik Ranjanam Pandey; Shri Sanjay Kumar.

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Special Acknowledgement to the Contributors

CA. Gautam Nayak; CA. Sanjeev Pandit; CA. Pawan Kumar Agarwal; CA. Nitin Bhuta; CA. Avinash Rawani; CA. Rajesh Mehta.

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Implementation Guide on Revision in Form No. 3CD and Form No. 3CEB in March, 2024

The Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 was revised last year, i.e., in 2023. This year, the CBDT has, vide Notification No.27/2024 dated 5.3.2024 (given as Appendix I) read along with Corrigenda by way of Notification No.34/2024 dated 19.3.2024 (given as Appendix II), made changes in the existing clauses of Form No.3CD as well as in Form No.3CEB. Revision has been made in clauses 8A, 12, 18(ca), 19, 21(a), 22 and 32 of Form No.3CD as well as in Part C of the Annexure to Form No.3CEB.

Amendments in Form No.3CD

Revision made in Form No.3CD is as under –

in PART A -

In **clause 8A** relating to whether an assessee has opted for special provisions u/s 115BA/115BAA/115BAB/115BAC/115BAD, to include reporting requirement in relation to section 115BAE;

in PART B -

A. In **clause 12** relating to whether profit and loss account includes profit computed on presumptive basis, to include specific reporting requirement in relation to section 44ADA;

B. In **clause 18** relating to particulars of depreciation, sub-clause (ca) has been substituted to require adjustment to the WDV under the different provisos to section 115BAA/115BAC/115BAD for the specified assessment years;

C. In **clause 19** relating to amounts admissible under different sections, to include reporting requirement in relation to section 35ABA and "any other relevant section";

D. In **clause 21(a)** relating to details of amounts debited to profit and loss account, being in the nature of capital, personal and advertisement expenditure etc., to include specific reference to expenditure incurred to compound an offence under any law for the time being in force, in India or outside India, expenditure incurred to provide any benefit or perquisite to a person and acceptance of such benefit or perquisite by

such person is in violation of any law or rule or regulation or guideline governing the conduct of such person, etc.;

E. In **clause 22**, to include reporting requirement in respect of any other amount not allowable u/s 43B(h) relating to amount payable to micro and small enterprises; and

F. In **clause 32(a)** relating to details of brought forward loss/depreciation, to include reference to losses/allowances not allowed under section 115BAE and amount adjusted by way of withdrawal of additional depreciation on account of opting for taxation under section 115BAE.

In this Implementation Guide, only the amendments made vide Notification No. 27/2024 dated 05.03.2024 (as read with Corrigenda issued vide Notification No. 34/2024 dated 19.03.2024) have been dealt with. In respect of each amendment, first the amendment is reproduced, then, the revised clause has been given. The discussion is, however, confined to only the amendment. Therefore, it is advisable that the existing Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 (Revised 2023) should be referred to by the members in respect of the clause as hitherto and then, the amendment as discussed in this Implementation Guide should be referred to. This Implementation Guide supplements the Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 (Revised 2023) issued by ICAI.

It may also be kept in mind that under section 44AB, the audit is required to be done of accounts maintained in respect of the business or profession carried on by the assessee. Therefore, so far as the reporting requirements under clauses relating to heads of income other than "Profits and Gains of Business or Profession" are concerned, these can only be in relation to entries made in such books of account, and does not extend to transactions not recorded in such books of account.

It also needs to be kept in mind that the particulars in Form No. 3CD are the responsibility of the assessee, as clarified in paragraph 13.11 of the Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 (Revised 2023), and that the tax auditor is required to verify whether the particulars therein are true and correct.

As in the case of all other audits, a tax audit under section 44AB is also subject to peer review. It is, therefore, important that the tax auditor retains working

papers and other documents, which demonstrate the work done by him and support the stand taken by him while reporting.

Attention is also invited to paras 19.2 and 19.3 of the Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 (Revised 2023) in respect of reporting of particulars in Form No. 3CD by the assessee. The tax auditor should obtain from the assessee, the statement of particulars in Form No. 3CD duly authenticated by him. Para 19.2 lays down the general principles, which the assessee is advised to take into consideration while preparing the statement of particulars.

Clause-wise amendments in Form No.3CD

The amendments carried out in Form No. 3CD are as under:

1. Clause 8A

Whether the assessee has opted for taxation under section 115BA/115BAA/ 115BAB/115BAC/115BAD/*115BAE*?

1.1 Amendment to Clause 8A

"*(i) in PART A, -*

in clause 8A, for the figures and letters "115BAD", the figures and letters "115BAD/115BAE" shall be substituted."

Prior to amendment of Form No. 3CD by Notification No.27/2024 dated 5.3.2024, Clause 8A read as follows -

Whether the assessee has opted for taxation under section 115BA/115BAA/ 115BAB/115BAC/115BAD?

The amended clause 8A reads as follows –

Whether the assessee has opted for taxation under section 115BA/115BAA/ 115BAB/115BAC/115BAD/115BAE?

Reporting requirement in relation to section 115BAE has been inserted in this clause.

1.2 This clause of Form No.3CD is in respect of whether the assessee has opted for any of the special tax regimes under the Income-tax Act, 1961 wherein the assessee would be entitled to concessional rates of tax, subject to the assessee not claiming certain deductions while computing total income.

1.3 Sections 115BA, 115BAA and 115BAB contain the special tax regime which domestic companies can opt for, subject to fulfilling the specified conditions. In particular, sections 115BA and 115BAB are available for manufacturing domestic companies fulfilling the specified conditions. Section 115BAA is available to any domestic company fulfilling the specified conditions. Section 115BAC(1A) is the default tax regime for individuals/HUFs/AOPs (other than co-operative societies)/BoIs and artificial juridical persons with effect from A.Y.2024-25. These assessees can opt out of the default tax regime and pay tax as per the regular provisions of the Act. Section 115BAD contains the special tax regime which co-operative societies resident in India can opt for, subject to fulfilling specified conditions. The Finance Act, 2023 had inserted section 115BAE, which new manufacturing co-operative societies can opt for from A.Y.2024-25, subject to fulfilment of certain conditions. Accordingly, reporting requirement in relation to section 115BAE has been inserted in this clause.

1.4 Under the regular provisions of the Act, an assessee is required to pay income-tax at the rates specified in the relevant Finance Act. However, sections 115BA, 115BAA, 115BAB, 115BAC, 115BAD and 115BAE provide for concessional tax rates, subject to computation of total income, without claiming certain deductions, exemptions etc. The assessee can opt to pay tax under the rates prescribed in the Finance Act or at the concessional rates specified in any of the aforesaid sections. In either case, certain income would be chargeable to tax at the rates specified in Chapter XII of the Income-tax Act, 1961, such as, long-term capital gains taxable under section 112/112A, short-term capital gains taxable under section 111A etc.

1.5 The tax auditor has to mention whether the assessee has opted for taxation under any of the aforesaid sections (namely, section 115BA, section 115BAA, section 115BAB, section 115BAC, section 115BAD and section 115BAE) and in case the answer is yes, then, he has to select the appropriate section. Further, the tax auditor is advised to examine the income-tax return of the earlier years to verify the option, if any, which has been exercised by the assessee. However, as the assessee has to file the return, he may opt for different alternative rates than reported by the auditor. Hence, the auditor should mention the selection or the choice of the assessee as on the date of signing of the Report. For the purpose of reporting under clause 8A, the tax auditor should verify whether the relevant form being 10-IB, 10-IC, 10-ID, 10-IF and 10-IFA under section 115BA, 115BAA, 115BAB, 115BAD and 115BAE,

respectively, for availing special tax regime is already filed by the assessee. In case the assessee has not filed the relevant form, written representation from the assessee should be obtained whether he will be availing the special regime or otherwise and based on written representation, reporting under this clause should be made. Where reporting is made solely on the basis of assessee's representation, the fact should be stated in para (3) of Form No. 3CA or para (5) of Form No. 3CB, as the case may be.

1.6 Form 10-IEA has to be filed by an assessee, being an individual, HUF, AOP (other than a co-operative society), BOI or Artificial Judicial Person having income from business and profession on or before the due date specified under section 139(1) for filing return of income, to opt out of the default tax regime under section 115BAC(1A) and pay tax under the regular provisions of the Act. In case of such assessees, tax auditor should verify whether Form 10-IEA has been already filed by the assessee. In case the assessee has not filed Form 10-IEA, written representation should be obtained from him on the basis of which reporting has to be done under this clause.

1.7 The scheme of taxation under the respective sections is broadly summarised below. The tax auditor should go through the relevant provisions in the Income-tax Act, 1961 and Income-tax Rules, 1962 along with the relevant circulars/notifications to ascertain whether the conditions specified in the respective section have been satisfied.

Section	Eligible assessee	Conditions (for detailed conditions, please refer the respective sections of the Income-tax Act, 1961)	Rate of Tax
115BA	Manufacturing Domestic Company (w.e.f. A.Y.2017-18)	1. The company should be set up and registered on or after 1st March 2016. 2. It should not be engaged in any business other than the business of manufacture/	25% (plus surcharge - @7% of income-tax, if the total income exceeds Rs.1 crore but does not exceed Rs.10 crore and @12% of income-tax, if the total income

		production of article/thing and research in relation to, or distribution of, such article/thing manufactured/ produced by it. 3. It should not claim deduction under sections 10AA, 32(1)(iia), 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35(2AB), 35AD, 35CCC, 35CCD and sections under the heading "Deductions in respect of certain incomes" other than the provisions of section 80JJAA while computing its total income. 4. It should not set-off loss carried forward from any earlier assessment year, if such loss is attributable to the deductions mentioned in 3 above. 5. Depreciation should be determined in the	exceeds Rs.10 crore; and cess@4% of income-tax and surcharge, if any. In respect of income chargeable to tax at special rates as per the provisions of Chapter XII, those rates will apply.

		prescribed manner. Additional depreciation is not allowable.	
115BAA	Domestic Company (w.e.f. A.Y.2020-21)	1. The company should not claim deduction under sections 10AA, 32(1)(iia), 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35(2AB), 35AD, 35CCC, 35CCD and deduction under Chapter VI-A (other than sections 80JJAA and 80M) while computing its total income. 2. It should not set-off loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to the deductions referred to in 1 above. 3. It should not set-off any loss or allowance for unabsorbed depreciation	22% (plus surcharge@10% of such tax and cess@4% on such tax and surcharge) Effective tax rate is 25.168% In respect of income chargeable to tax at special rates as per the provisions of Chapter XII, those rates will apply.

		deemed so under section 72A, if such loss or depreciation is attributable to the deductions referred to in 1 above. 4. Depreciation should be determined in the prescribed manner. Additional depreciation is not allowable.	
115BAB	New Manufacturing Domestic Company (w.e.f. A.Y.2020-21)	1. The company should be set up and registered on or after 1st October 2019 2. It should have commenced manufacture/production of an article/thing or business of generating electricity on or before 31st March 2024 3. The business should not be formed by splitting up/ reconstruction of business already in existence	(i) 15%, for income derived from or is incidental to manufacturing or production of an article or thing. (ii) In respect of income chargeable to tax at special rates as per the provisions of Chapter XII, those rates will apply. (iii) In respect of other incomes, the rate of tax is 22%, and no deduction or

		4. It does not use machinery/plant previously used for any purpose 5. It does not use any building previously used as hotel/ convention centre in respect of which deduction u/s 80-ID has been claimed and allowed 6. It is not engaged in any business other than manufacture/ production of article/ thing (which includes the business of generation of electricity) and research in relation to or distribution of such article/ thing manufactured/ produced by it. 7. It should not claim deduction under sections 10AA, 32(1)(iia), 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35(2AB), 35AD, 35CCC, 35CCD and Chapter VI-A (except section	allowance in respect of any expenditure or allowance shall be allowed. (iv) Profits in excess of the amount of the profits determined by the Assessing Officer in respect of transactions with persons having close connection would be deemed to be income of the assessee and would be subject to tax@30%. (v) In respect of STCG derived from transfer of a capital asset on which no depreciation is allowable under the Act, the rate of tax is 22%.

<table>
<tr><td></td><td></td><td>80JJAA and 80M) while computing its total income.
8. It should not set-off any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to the deductions referred to in 7 above.
9. Depreciation should be determined in the prescribed manner. Additional depreciation is not allowable.</td><td>Surcharge@10% of such tax and cess@4% on such tax and surcharge will apply.</td></tr>
<tr><td>115BAC</td><td>Individual/HUF/ AOP (other than co-operative society)/BOI/ Artificial Juridical Person</td><td>It is the default tax regime of such persons w.e.f. A.Y.2024-25.
1. The assessee should not claim deduction under sections 10(5), 10(13A), 10(14), 10(17), 10(32), 10AA, 16(ii)/(iii), 24(b) [in respect of the property referred to in</td><td>Slab rates as prescribed in section
<table><tr><th>Total Income</th><th>Rate of tax</th></tr><tr><td>Upto Rs.3,00,000</td><td>Nil</td></tr><tr><td>From Rs. 3,00,001 to Rs.6,00,000</td><td>5%</td></tr><tr><td>From Rs. 6,00,001 to Rs.9,00,000</td><td>10%</td></tr></table></td></tr>
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		section 23(2)], 32(1)(iia), 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD, 35CCC and Chapter VI-A (except section 80CCD(2), 80CCH(2) and section 80JJAA) while computing total income. 2. The assessee should not set-off loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to the deductions referred to in 1 above. 3. The assessee should not set-off loss under the head "Income from house property" with any other head of income. 4. Depreciation should be determined in the prescribed manner. Additional	<table><tr><td>From Rs. 9,00,001 to Rs.12,00,000</td><td>15%</td></tr><tr><td>From Rs. 12,00,001 to Rs.15,00,000</td><td>20%</td></tr><tr><td>Above Rs.15,00,000</td><td>30%</td></tr></table> In respect of income chargeable to tax at special rates as per the provisions of Chapter XII, those rates will apply. Surcharge at the applicable rates, where the income exceeds the specified threshold, will apply. Cess@4% will apply on the income-tax plus surcharge, if any.

		depreciation is not allowable. 5. No exemption or deduction can be claimed for allowances or perquisites provided under any other law for the time being in force.	
115BAD	Resident Co-operative Society (other than those mentioned in section 115BAE) (From A.Y.2021-22)	1. The co-operative society should not claim deduction under sections 10AA, 32(1)(iia), 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD, 35CCC and Chapter VI-A (except section 80JJAA) while computing total income. 2. It should not set-off loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to the deductions referred to in 1 above.	22% (plus surcharge@10% of such tax and cess@4% on such tax and surcharge) Effective tax rate is 25.168% In respect of income chargeable to tax at special rates as per the provisions of Chapter XII, those rates will apply.

		3. Depreciation should be determined in the prescribed manner. Additional depreciation is not allowable.	
115BAE	Resident new manufacturing Co-operative Society (w.e.f. A.Y. 2024-25)	1. The Co-operative Society should be set up and registered on or after 1st April 2023 2. It should commence manufacture/production of article/thing on or before 31st March 2024 3. The business should not be formed by splitting up/ reconstruction of business already in existence 4. It does not use machinery/plant previously used for any purpose 5. It is not engaged in any business other than manufacture/ production of article/thing (including the business of generation of	(i) 15%, for income derived from or is incidental to manufacturing or production of an article or thing. (ii) In respect of income chargeable to tax at special rates as per the provisions of Chapter XII, those rates will apply. (iii) In respect of other incomes, the rate of tax is 22%, and no deduction or allowance in respect of any expenditure or allowance shall be allowed. (iv) Profits in excess of the amount of the

		electricity) and research in relation to or distribution of such article/thing manufactured/produced by it. 6. It should not claim deduction under sections 10AA, 32(1)(iia), 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD, 35CCC, and Chapter VI-A (except section 80JJAA) while computing total income. 7. It should not set-off loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to the deductions referred to in 6 above. 8. Depreciation should be determined in the prescribed manner. Additional depreciation is not allowable.	profits determined by the Assessing Officer in respect of transactions with persons having close connection would be deemed to be the income of the assessee and would be subject to tax@30%. (v) In respect of STCG derived from transfer of a capital asset on which no depreciation is allowable under the Act, the rate of tax is 22%. Surcharge@10% of such tax and cess@4% on such tax and surcharge will apply.

2. 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, *44ADA*, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, Chapter XII-G, First Schedule or any other relevant section.

2.1 Amendment to Clause 12

"(ii) in PART B, -

A. in clause 12, for the figures and letters "44AD", the figures and letters "44AD, 44ADA" shall be substituted"

Prior to amendment by Notification No.27/2024 dated 5.3.2024, clause 12 read as follows –

"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?"

After amendment, the revised clause appears as follows:

"*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, **44ADA,** 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, Chapter XII-G, First Schedule or any other relevant section."*

Reporting requirement in relation to section 44ADA has been specifically included in clause 12.

2.2 Clause 12 of Form No. 3CD requires the auditor to state if the profit and loss account includes any profits and gains assessable on presumptive basis. If the profit and loss account includes any such profits and gains, then, the tax auditor has to state the amount so included in the profit and loss account. It may be noted that what is required to be stated is the amount of profits and gains of the business or profession covered by presumptive taxation included in the profit and loss account and not the amount assessable on presumptive basis.

2.3 Prior to the amendment, this clause contained reporting requirement in relation to sections 44AD, 44AE, 44AF (Section not operative from assessment year 2011-12), 44B, 44BB, 44BBA, 44BBB, Chapter XII-G, First Schedule of the Act and any other relevant section. Now, reporting requirement in relation

to section 44ADA has been specifically included. These sections contain special provisions for computation of profits and gains of certain businesses and profession as indicated below:

Section	Special Provisions for computation of profits and gains of certain businesses and profession
44AD	Eligible business of an eligible assessee resident in India
44ADA	***Professions referred to in section 44AA(1)***
44AE	Business of plying, hiring or leasing goods carriages of an assessee owning not more than ten goods carriages at any time during the previous year.
44AF	Not relevant from A.Y.2011-12
44B	Shipping business of a non-resident
44BB	Business (of a non-resident) of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in prospecting for, or extraction or production of, mineral oils
44BBA	Business of operation of aircraft in case of a non-resident
44BBB	Business (of a foreign company) of civil construction/erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government
Chapter XII-G	Tonnage income of shipping companies
First Schedule of the Act	Insurance business
Any other relevant section	

2.4 Prior to amendment of this clause, there was no specific reference to section 44ADA relating to taxation of profits and gains of profession on a presumptive basis. Therefore, profits and gains covered by section 44ADA and included in profit and loss account were reported under the residuary "any other relevant section". Now, since section 44ADA has been specifically included, the profits and gains covered by section 44ADA and included in profit and loss account has to be reported thereunder.

2.5 Section 44ADA is applicable to a resident assessee who is an individual or a partnership firm other than the limited liability partnership and is carrying on a profession referred to in section 44AA(1). The professions referred to under section 44AA(1) are legal, medical, engineering, architectural profession, profession of accountancy, technical consultancy, interior decoration and any other profession as is notified by the Board in the Official Gazette. A reference may be made to paragraph 4 ('Profession' and 'business' explained) of the Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 (Revised 2023) for the meaning of `profession'. Section 44ADA applies if the gross receipts of the assessee in the previous year from the notified profession referred to in section 44AA(1) does not exceed Rs. 50 lakh. However, where the amount or aggregate of the amounts received during the previous year, in cash, by such assessee does not exceed 5% of the gross receipts of such previous year, then, the threshold limit in respect of gross receipts for eligibility under section 44ADA is Rs. 75 lakh from A.Y. 2024-25.

2.6 The amount of presumptive income chargeable under section 44ADA is higher of: (i) 50% of the total gross receipts of the assessee in the previous year on account of such notified profession and (ii) sum claimed to have been earned by the assessee from the profession. Deductions under the provisions of sections 30 to 38 are deemed to have been given full effect to and no further deduction is allowed in respect of income from the profession under these sections. Accordingly, no separate deduction is available in respect of remuneration and interest to the partners in case of a partnership firm carrying on profession, even to the extent permissible as deduction u/s 40(b). It may be noted that the provisions of section 40(b) provide limits on deduction on account of remuneration to the partners and do not provide for deduction *per se*. Also, depreciation computed in the prescribed manner shall be deemed to have been claimed and actually allowed under the Act. Such depreciation has to be reduced to arrive at the written down value of assets.

2.7 In case an assessee carrying on profession referred to in section 44AA(1), whose gross receipts does not exceed the threshold limit prescribed in section 44ADA, claims that profits and gains from such profession are lower than 50% of the gross receipts from profession and if his total income exceeds the maximum amount which is not chargeable to income-tax, he has to maintain books of account and other documents as required under section 44AA(1) and get them audited and furnish a report of such audit as required under section 44AB.

2.8 A summary of the main provisions of sections 44AD, 44ADA and 44AE are given below in a table form.

Sr. No.	Particulars	Section 44AD	Section 44ADA	Section 44AE
1	**Eligible Assessee**	An Individual, HUF, Partnership firm (other than LLP) being a resident, who has not claimed deduction u/s 10AA or deduction under any provision of Chapter VI-A under the heading "C - Deductions in respect of certain incomes" in the relevant assessment year	Individual, HUF, Partnership firm (other than LLP), who is resident in India	Any assessee owning not more than 10 goods carriages at any time during the previous year.
2	**Nature of activity covered**	Any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE	Profession referred to u/s 44AA(1)	Business of plying, hiring or leasing goods carriages
3	**Threshold relating to turnover/ gross receipts for being covered by this section**	Total turnover/gross receipts not to exceed Rs. 2 crore. However, if the amount or aggregate of amounts received during the previous year, in cash, does not exceed 5% of the total turnover/gross receipts of such	Gross receipts not to exceed Rs. 50 lakh. However, if the amount or aggregate of amounts received during the previous year in cash does not exceed 5% of the total gross receipts of such previous year, the threshold would be Rs.75 lakh.	N.A.

Sr. No.	Particulars	Section 44AD	Section 44ADA	Section 44AE
		previous year, the threshold would be Rs. 3 crore.		
4	**Persons not eligible for declaring income on presumptive basis**	(i) Person carrying on profession referred to in section 44AA(1) (ii) Person earning income in the nature of commission or brokerage (iii) Person carrying on agency business (iv) An eligible assessee having declared profit u/s 44AD(1) for any previous year, declares profit not in accordance with section 44AD(1) in any of the five assessment years relevant to the previous year succeeding such		An assessee who owns more than 10 goods carriages at any time during the previous year.

Sr. No.	Particulars	Section 44AD	Section 44ADA	Section 44AE
		previous year, then, he is not eligible to declare profits in accordance with section 44AD(1) for five assessment years subsequent to the assessment year relevant to the previous year in which he declares profit not in accordance with section 44AD(1)		
5	**Presumptive Income**	Higher of – (i) 8% of total turnover / gross receipts [6% of total turnover/gross receipts of the assessee in the previous year on account of such business received through account payee cheque/bank draft, use of ECS through bank account or through prescribed	Higher of - (i) Amount equal to 50% of the gross receipts of the assessee from such profession; and (ii) Amount claimed to have been earned by the assessee from such profession.	**In respect of heavy goods vehicle:** Higher of – (i) Rs.1,000/- per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of the month during which the vehicle is owned by the assessee in the previous year, and (ii) Amount claimed to have been actually earned from such goods vehicle.

Sr. No.	Particulars	Section 44AD	Section 44ADA	Section 44AE
		electronic modes on or before the due date of filing return u/s 139(1)]; and (ii) amount claimed to have been earned by the eligible assessee from such eligible business.		**In respect of other than heavy goods vehicle:** Higher of – (i) Rs.7,500/- for every month or part of the month during which the goods carriage is owned by the assessee in the previous year; and (ii) Amount claimed to have been actually earned from such goods carriage.
6	**Deduction for remuneration and interest to partners**	Deductions u/s 30 to 38 shall be deemed to have already been given full effect to and no further deduction under those sections shall be allowed.		
		Where the assessee is a firm, no separate deduction for remuneration and interest to partners is allowed.	Where the assessee is a firm, no separate deduction for remuneration and interest to partners is allowed.	Where the assessee is a firm, salary and interest to partners shall be deducted from the presumptive income, subject to the conditions and limits specified u/s 40(b).

2.9 The tax auditor will have to ascertain if the assessee is covered by the provisions of any of the sections specified in clause 12 and the assessee will be offering to tax profits under presumptive taxation, where applicable.

2.10 The tax auditor will have to keep in mind the above guidance in addition to the guidance provided in the Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 (Revised 2023), while furnishing information under this clause in the format provided in the e-filing utility.

2.11 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.

3. Clause 18(ca)

(ca) Adjustment made to the written down value––

(i) under the proviso to sub-section (3) of section 115BAA (for A.Y. 2020-21 only);

(ii) under the first proviso to sub-section (3) of section 115BAC or the proviso to sub-section (3) of section 115BAD (for A.Y.2021-22 only);

(iii) under the second proviso to sub-section (3) of section 115BAC (for A.Y.2024-25 only).

3.1 Amendment to Clause 18(ca)

(ii) in PART B, -

"B. in clause 18, for sub-clause (ca), the following sub-clauses shall be substituted, namely :––

(ca) Adjustment made to the written down value ––

(i) under the proviso to sub-section (3) of section 115BAA (for A.Y. 2020-21 only);

(ii) under the first proviso to sub-section (3) of section 115BAC or the proviso to sub-section (3) of 115BAD (for A.Y. 2021-22 only);

(iii) under the second proviso to sub-section (3) of section 115BAC (for A.Y. 2024-25 only).";

Prior to amendment by Notification No.27/2024 dated 5.3.2024, clause 18 read as under –

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.

(ca) Adjustment made to the written down value under section 115BAC/115BAD (for assessment year 2021-2022 only).

(cb) Adjustment made to written down value of Intangible asset due to excluding value of goodwill of a business or profession.

(cc) Adjusted written down value.

(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.

After amendment by way of substitution of sub-clause (ca), clause 18 reads as follows -

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.

(ca) Adjustment made to the written down value––

(i) under the proviso to sub-section (3) of section 115BAA (for A.Y. 2020-21 only);

(ii) under the first proviso to sub-section (3) of section 115BAC or the proviso to sub-section (3) of 115BAD (for A.Y.2021-22 only);

(iii) under the second proviso to sub-section (3) of section 115BAC (for A.Y.2024-25 only).";

(cb) Adjustment made to written down value of Intangible asset due to excluding value of goodwill of a business or profession.

(cc) Adjusted written down value.

(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.

3.2 Requirements as per amended sub-clause (ca) of clause 18

(i) For the assessment year 2020-21, the domestic companies opting for section 115BAA were required to adjust the opening written down value in terms of proviso to sub-section (3) of section 115BAA read with Rule 5 of the Income-tax Rules, 1962. Such adjustment was to be done only for A.Y. 2020-21 by companies which had opted for section 115BAA in A.Y. 2020-21 and not thereafter [item (i) of sub-clause (ca) of clause 18 of Form No. 3CD].

(ii) For the assessment year 2021-22, the individuals or HUFs opting for section 115BAC were required to adjust the opening written down value in terms of first proviso to sub-section (3) of section 115BAC read with Rule 5 of the Income-tax Rules,1962. Such adjustment was to be done only for A.Y. 2021-22 by individuals or HUFs who had opted for section 115BAC (1) in A.Y. 2021-22 and not thereafter [item (ii) of sub-clause (ca) of clause 18 of Form No. 3CD].

For the assessment year 2021-22, the co-operative societies opting for section 115BAD were required to adjust the opening written down value in terms of proviso to sub-section (3) of section 115BAD read with Rule 5 of the Income-tax Rules, 1962. Such adjustment was to be done only for A.Y. 2021-22 by co-operative societies who had opted Section 115BAD in A.Y. 2021-22 and not thereafter [item (ii) of sub-clause (ca) of clause 18 of Form No. 3CD]

(iii) For the assessment year 2024-25, an individual or Hindu undivided family or association of persons (other than a co-operative society), or

body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2, other than a person who has exercised an option under sub-section (6) of Section 115BAC, paying tax under section 115BAC(1A) is required to adjust the opening written down value in terms of second proviso to sub-section (3) of Section 115BAC read with Rule 5 of the Income-tax Rules, 1962 [item (iii) of Sub-clause (ca) of clause 18 of Form No. 3CD].

3.3 Reporting requirements in respect of item (i) of sub-clause (ca) of clause 18 of Form No. 3CD relevant for A.Y.2020-21

(i) A domestic company can opt for concessional tax regime under section 115BAA with effect from A.Y.2020-21. Section 115BAA provides for concessional rate of tax@22% (plus surcharge@10% of income-tax and cess@4% of income-tax and surcharge) on total income computed without claiming certain exemptions and deductions specified therein.

(ii) A domestic company can opt for the concessional tax regime in the previous year 2019-20 relevant to assessment year 2020-21 or in any other subsequent previous year by exercising the option u/s 115BAA(5) on or before the due date of furnishing return of income u/s 139(1) for that year. Once a company exercises this option, the chosen provision will apply for all subsequent assessment years also.

(iii) The provisions regarding payment of Minimum Alternate Tax (MAT) will not apply to companies opting for the concessional tax regime u/s 115BAA. At the same time, MAT credit will also not be allowed to be carried forward to companies opting for the tax regime u/s 115BAA.

(iv) As per sub-section (3) of section 115BAA, the loss and depreciation referred to in clause (ii) of sub-section (2) [loss and depreciation attributable to the impermissible deductions under section 115BAA(2)(i)] and clause (iii) of sub-section (2) [loss and unabsorbed depreciation deemed so under section 72A, attributable to the impermissible deductions under section 115BAA(2)(i)] shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year.

The proviso to sub-section (3) provides that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the A.Y.2020-21, corresponding adjustment shall be made to the written down value (WDV) of such block of assets

as on 1st April, 2019 in the prescribed manner, if the option under section 115BAA(5) is exercised for a previous year relevant to A.Y.2020-21.

(v) In terms of the second proviso to Rule 5, inserted vide Income-tax (Twenty-second Amendment) Rules, 2020 with effect from 1st October, 2020, for the purposes of section 115BAA, if the following conditions are satisfied, namely: -

i. option under sub-section (5) thereof is exercised for a previous year relevant to the assessment year beginning on the 1st April, 2020;

ii. there is a depreciation allowance, in respect of a block of asset, from any earlier assessment year or allowance of unabsorbed depreciation deemed so under section 72A, which is attributable to the provisions in clause (iia) of sub-section (1) of section 32; and

iii. such depreciation or allowance for unabsorbed depreciation is not allowed to be set off under clause (ii) or clause (iii) of sub-section (2) thereof,

the written down value of the block of asset as on the 1st April, 2019 shall be increased by such depreciation or allowance for unabsorbed depreciation not allowed to be set off.

(vi) The adjustment (increase by such depreciation or allowance for unabsorbed depreciation not allowed to be set off) needs to be made in the manner prescribed in Rule 5 of the Income-tax Rules, 1962 to the opening written down value as on 1st April 2019 as provided under the proviso to sub-section (3) of section 115BAA. It may be noted that the said adjustment under clause 18(ca)(i) is applicable for Assessment year 2020-21 only.

3.4 Reporting requirements in respect of item (ii) of sub-clause (ca) of Clause 18 of Form No. 3CD relevant for A.Y.2021-22

(i) Section 115BAC(1) provided for a concessional tax regime, which individuals and HUFs could opt for from A.Y.2021-22 to A.Y.2023-24, subject to computation of total income, without claiming exemptions and deductions specified therein. Such option had to be exercised u/s 115BAC(5) in the prescribed manner on or before the due date of filing of return u/s 139(1) for a previous year relevant to that assessment year.

In case of an individual or HUF having income from business or profession, the option once exercised shall apply to subsequent assessment years.

(ii) Section 115BAD provides for a concessional tax regime, which co-operative societies can opt for from A.Y.2021-22, subject to computation of total income, without claiming exemptions and deductions specified therein. Such option can be exercised u/s 115BAD(5) in the prescribed manner on or before the due date of filing of return u/s 139(1) for furnishing return of income for any previous year relevant to A.Y.2021-22 or any subsequent assessment year. Such option once exercised shall apply to subsequent years.

(iii) The third proviso to Rule 5, inserted vide Income-tax (Twenty-second Amendment) Rules, 2020 with effect from 1st October, 2020, provides that for the purposes of section 115BAC and section 115BAD, if the following conditions are satisfied, namely: -

i. the option under sub-section (5) of the respective section is exercised for a previous year relevant to the assessment year beginning on the 1st April, 2021;

ii. there is a depreciation allowance, in respect of a block of asset, from any earlier assessment year which is attributable to the provisions in clause (iia) of sub-section (1) of section 32; and

iii. such depreciation is not allowed to be set off under sub-clause (a) of clause (ii) of sub-section (2) of section 115BAC or clause (ii) of sub-section (2) of section 115BAD,

the written down value of the block of asset as on the 1st April, 2020 shall be increased by such depreciation not allowed to be set off.

(iv) The adjustment (increase by such depreciation not allowed to be set off) needs to be made in the manner prescribed in Rule 5 of the Income-tax Rules, 1962 to the opening written down value as on 1st April 2020 as provided under the first proviso to sub-section (3) of section 115BAC and the proviso to sub-section (3) of section 115BAD. It may be noted that the said adjustment under clause 18(ca)(ii) is applicable for assessment year 2021-22 only.

3.5 Reporting requirements in respect of item (iii) of Sub-clause (ca) of Clause 18 of Form No. 3CD relevant for A.Y.2024-25

(i) Section 115BAC(1A) is the default tax regime of individuals or Hindu undivided family or association of persons (other than a co-operative society), or body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 [other than a person who has exercised an option under sub-section (6) of Section 115BAC], wherein the total income computed without certain exemptions and deductions is subject to tax at concessional rates. The default tax regime under section 115BAC(1A) is effective from A.Y. 2024-25.

(ii) As per section 115BAC(3), the loss and depreciation carried forward from an earlier assessment year attributable to the non-permissible deductions, shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year.

(iii) The second proviso to section 115BAC(3) provides that in a case where,-

(a) The assessee has not exercised the option under section 115BAC(5) for any previous year relevant to assessment year beginning on or before 1st April, 2023;

(b) The income-tax on the total income of the assessee is computed under sub-section (1A); and

(c) There is a depreciation allowance in respect of a block of assets which has not been given full effect prior to the assessment year beginning on 1st April, 2024,

corresponding adjustment shall be made to the written down value of such block of assets as on 1st April, 2023 in the manner as may be prescribed.

(iv) In terms of the fourth proviso to Rule 5 of the Income-tax Rules, 1962, inserted vide Income-tax (Tenth Amendment) Rules, 2023 dated 21st June, 2023, where income is chargeable to tax under sub-section (1A) of section 115BAC, the written down value of the block of asset as on the 1st day of April, 2023 shall be increased by such depreciation which is attributable to clause (iia) of sub-section (1) of section 32 and which is not allowed to be set off under sub-clause (a) of clause (ii) of sub-section

(2) of section 115BAC if both the following conditions are satisfied, namely:-

(a) the assessee has not exercised option under sub-section (5) for any previous year relevant to the assessment year beginning on or before 1st April, 2023; and

(b) there is a depreciation allowance in respect of a block of assets which has not been given full effect to prior to the assessment year beginning on 1st April, 2024, and is attributable to the provisions of clause (iia) of sub-section (1) of section 32.

(v) Adjustment (increase by such depreciation not allowed to be set off) needs to be made (in the manner prescribed in Rule 5 of the Income-tax Rules, 1962) to the opening Written down value as on 1st April 2023 as provided under second proviso to sub-section (3) of section 115BAC. It may be noted that clause 18(ca)(iii) of Form No. 3CD is applicable for Assessment year 2024-25 only.

3.6 In cases where the response to clause 8A regarding exercising of option under the relevant sections is yes, the tax auditor has to check adjustments, if any, required in regard to adjustment in opening balance of WDV.

The tax auditor needs to verify such aspects covered in the earlier paras and report accordingly. The tax auditor may also verify that the assessee has filed the relevant Form (like form 10-IC, 10-IEA etc.) within the due date while exercising the option, as applicable.

The tax auditor needs to see the relevant Sections and Rules, as applicable to the assessee. The tax auditor is advised to also refer the reporting made in Clause 8A of Form No. 3CD and the guidance given in this regard.

4. Clause 19

Amounts admissible under sections

4.1 Amendment to clause 19

(ii) in PART B, -

C. in clause 19, in the table,––

(i) after the row with entry "35(2AB)", the row with entry "35ABA" shall be inserted;

(ii) after the row with entry "35E", the row with entry "any other relevant section" shall be inserted;

After amendment by Notification No.27/2024 dated 5.3.2024, this clause reads as follows:

19 Amounts admissible under sections:

Section	**Amount debited to profit and loss account**	**Amounts admissible as per the provisions of the Income-tax Act, 1961 and also 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**
32AC		
32AD		
33AB		
33ABA		
35(1)(i)		
35(1)(ii)		
35(1)(iia)		
35(1)(iii)		
35(1)(iv)		
35(2AA)		
35(2AB)		
35ABA (newly inserted)		
35ABB		
35AC		
35AD		
35CCA		
35CCB		

35CCC		
35CCD		
35D		
35DD		
35DDA		
35E		
Any other relevant section (newly inserted)		

4.2 Clause 19 of Form No. 3CD requires quantification of the amounts debited to the profit and loss account, the amounts admissible under various sections by fulfilling the conditions prescribed by the relevant provisions of the Act, the rules, or any other guideline or circular issued in that behalf. Hitherto, this clause referred to sections 32AC, 32AD, 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(1)(iv), 35(2AA), 35(2AB), 35ABB, 35AC, 35AD, 35CCA, 35CCB, 35CCC, 35CCD, 35D, 35DD, 35DDA and 35E. **This clause has now been amended to include "section 35ABA" and "any other relevant section".**

4.3 The amount admissible under section 35ABA has to be reported w.e.f. A.Y.2024-25, although such deduction is applicable from A.Y. 2017-18. This section delineates tax treatment for capital expenditure incurred by an assessee to acquire the right to use Spectrum **for telecommunication services** either before the commencement of the business or thereafter at any time during any previous year and for which **payment has actually been made** to obtain a right to use spectrum.

As per clause (iii) of *Explanation* to section 35ABA, "payment has actually been made" means the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee or payable in such manner as may be prescribed.

As per Rule 6A(1), for the purpose of section 35ABA, the term "payment has actually been made" shall mean –

(a) where an assessee has opted and been allowed by the Department of Telecommunications (DOT), Government of India to make full upfront payment of spectrum fee, the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee;

(b) where an assessee has opted and been allowed by the DOT to make deferred payment, the amount which would have been payable by the assessee had he opted for full upfront payment of spectrum fee irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee.

The tax treatment of provisions of section 35ABA are *pari materia* (analogous or similar) to the amortization of telecom license fees as stipulated under Section 35ABB of the Act.

4.4 The tax auditor should indicate the amount debited to profit and loss account and the amount actually admissible in accordance with the applicable provisions of law. In case of section 35ABA, the amount debited to profit and loss account normally would be Nil, since the deduction is in respect of capital expenditure.

4.5 The tax auditor should examine the sanction letter issued by DOT to determine the amount admissible for reporting under this clause. Such sanction letters should be kept as part of the working papers documentation for the relevant assessment year.

4.6 The tax auditor should verify that the amounts reported under this clause as deduction shall consist of the following:-

1. The reported amounts represent capital expenditure incurred. The assessee has actually paid a Spectrum fee to acquire the right to use Spectrum for telecommunication services. Further, deduction shall be allowed in equal instalments over the tenure of the Spectrum, viz., say 5 years, 7 years or 10 years, as the case may be, depending on the terms and conditions of such sanction.

2. Deduction under section 35ABA would commence from the year when the assessee makes actual payment toward such Spectrum fees and not from the date of sanction. Thus, deduction under section 35ABA is

admissible only from the year of the actual payment or the year of commencement of business, whichever is later.

3. In the event of the Spectrum being transferred in the previous year and the proceeds of the transfer are less than the remaining unallowed expenditure, a deduction equal to the expenditure remaining unallowed as reduced by the proceeds of transfer shall be allowed in the previous year in which the Spectrum has been transferred;

4. If the whole or part of the Spectrum is transferred during the previous year and proceeds of the transfer exceed the amount of expenditure remaining unallowed, so much of the excess amount (to the extent it does not exceed deduction claimed under section 35ABA) shall be chargeable to tax as profits and gains of business in the previous year in which the Spectrum has been transferred;

5. If there is a part transfer of Spectrum during the previous year, then unallowed expenditure on account of Spectrum fees shall be amortised over the remaining Spectrum tenure;

6. The tax auditor shall verify that if any deduction claimed as well as admissible is reported under this clause, then, no deduction shall be allowed or claimed on account of depreciation u/s 32(1) for the same previous year or any subsequent previous year. The tax auditor should verify that no depreciation is claimed in clause 18 of Form No. 3CD

Amalgamation and/or Demerger Scenario

7. If, through a scheme of amalgamation as per section 2(1B) of the Act, the amalgamating company **sells or otherwise transfers the Spectrum to an amalgamated company, being an Indian company,** the provisions of this section will apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not transferred the spectrum. **Similar tax treatment applies in case of a Demerger as defined u/s 2(19AA) of the Act involving the demerged company and the resulting company**, being an Indian Company pursuant to a scheme of arrangement under sections 230 to 232 of the Companies Act, 2013. The tax auditor should examine the scheme of amalgamation and/or the demerger scheme for reporting any such deduction under this clause.

Deferred Payment – Spectrum Fee Expenditure

8. Additionally, Rule 6A of the Income-tax Rules, 1962 read with Section 35ABA provides that where an assessee has opted for and has been allowed by the DOT (Department of Telecommunications, Government of India) to make deferred payments, the amount that would have been payable by the assessee had he opted for full upfront payment of Spectrum fee, will be considered as the amount "actually paid"(for this purpose, previous year in which the liability for the expenditure is incurred according to the method of accounting regularly employed by an assessee, will not be considered). In such cases, deduction under this section is admissible in equal instalments only for the remaining Spectrum tenure based on the instalments paid by the assessee in accordance with sanctions granted by the DOT.

Consequences for non-compliance of DOT Sanction conditions

9. If the assessee has claimed and been granted deduction in a previous year as per the above provisions and there is a failure to comply with any of the DOT conditions, the deduction shall be deemed wrongly allowed in the case of upfront payment. The Assessing Officer shall recompute the assessee's total income for the previous year in which the deduction has been claimed and make necessary rectification u/s 154 of the Act. Such rectification is permissible within 4 years from the end of the previous year in which the failure to comply with the provisions of the section takes place.

10. If, in the case of deferred payment, the assessee fails to comply with any of the conditions specified by the scheme and DOT terminates the allotment or assignment of the spectrum, the Assessing Officer shall recompute the assessee's total income for the relevant previous year in which the deduction has been claimed and granted to him by deeming that –

    (i) The total amount of spectrum fee paid upto the date of termination is the amount of "payment actually been made";

    (ii) The spectrum was in force upto the date of its termination for the purpose of computing "relevant previous year".

4.7 Any other relevant section

The objective of reporting in clause 19 is to quantify the amounts debited to the profit and loss account and the amounts admissible under various specified sections while ensuring compliance with the conditions laid down by the

relevant provision, the rules, or any other guideline or circular issued in that behalf. Accordingly, the reporting under "any other relevant section" should align with reporting under preceding sections as required under clause 19 of Form No. 3CD. The tax auditor should take note of the principle of "Ejusdem Generis," while reporting under this clause. The tax auditor may give an appropriate observation in this regard.

The tax auditor should maintain detailed working papers with appropriate reasoning to support conclusions drawn for reporting purposes under this clause.

4.8 The tax auditor should take note of the guidance provided in para 31.1 to 31.9 of the Guidance Note on Tax Audit u/s 44AB of the Income-tax Act, 1961 (Revised 2023). The contents of the following table have to be read along with the contents of the table contained in para 31.8 of the Guidance Note.

Section	Eligible expenditure/ payment	Amount/Quantum of Deduction
35ABA	***Any expenditure, being in the nature of capital expenditure incurred for acquiring any right to use spectrum for telecommunication services [either before the commencement of the business to operate telecommunication services or thereafter at any time during any previous year and for which payment has actually been made to obtain a right to use spectrum]***	***A deduction equal to the appropriate fraction of the amount of such capital expenditure. "Appropriate fraction" means the fraction, the numerator of which is one and the denominator of which is the total number of the relevant previous years;***
Any other relevant section	***Deduction for expenditure as per stipulated term/s and condition/s specified under any other relevant section.***	***The deduction is to be claimed as provided under any other relevant section not covered above. At present, for A.Y.2024-25, there is no other relevant section.***

5. Clause 21(a) - Amounts debited to the profit and loss account, being in the nature of capital, personal, advertisement expenditure etc.

5.1 Amendment to clause 21

"(ii) in PART B, -

D. in clause 21, -

(I) in sub-clause (a), in the table, under the column relating to 'Nature', —

(i) for the words "Expenditure by way of penalty or fine for violation of any law for the time being force", the words and brackets "Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India)" shall be substituted;

(ii) after the row with the words "Expenditure by way of any other penalty or fine not covered above", the row with the words "Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India" shall be inserted;

(iii) for the words "Expenditure incurred for any purpose which is an offence or which is prohibited by law", the words "Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person" shall be substituted;

(II) in sub-clause (b), in paragraph (ii), in sub-paragraph (B), in item (IV), for the word "payer", the word "payee" shall be substituted;"

After the said amendment by Notification No.27/2024 dated 5.3.2024, this clause reads as follows:

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.

	Nature	Serial number	Particulars	Amount in Rs.
(i)	Capital expenditure			
(ii)	Personal expenditure			
(iii)	Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party			
(iv)	Expenditure incurred at clubs being entrance fees and subscriptions			
(v)	Expenditure incurred at clubs being cost for club services and facilities used.			
(vi)	***Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India)***			
(vii)	***Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India***			
(viii)	***Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule***			

	Nature	Serial number	Particulars	Amount in Rs.
	or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person			

5.2 The differences are in the reporting requirements in the last three items of clause 21(a)

Prior to amendment		Post amendment	
(vi)	Expenditure by way of penalty or fine for violation of any law for the time being in force	(vi)	Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India)
(vii)	Expenditure by way of any other penalty or fine not covered above.	(vii)	Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India
(viii)	Expenditure incurred for any purpose which is an offence or which is prohibited by law	(viii)	Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person.

The differences in the reporting requirements in items (vi), (vii) and (viii) are detailed in para 5.4.

5.3 The above changes in clause 21(a) have been made to align the reporting in line with *Explanation 3* to section 37 as inserted vide the Finance Act, 2022.

To clarify the position further, it is pertinent to read the provisions under Section 37(1) of the Income-tax Act, 1961 which states that if an assessee, during the course of business and profession incurs certain expenditure, which is an

offence or expense incurred which is prohibited by law, then, the said expenditure shall be disallowed while computing his income.

Section 37(1) along with *Explanations* thereto read as under:

"37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Explanation 1.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

Explanation 2……

Explanation 3.—For the removal of doubts, it is hereby clarified that the expression "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law" under Explanation 1, shall include and shall be deemed to have always included the expenditure incurred by an assessee,—

(i) for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or

(ii) to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person; or

(iii) to compound an offence under any law for the time being in force, in India or outside India."

5.4 As per the amendment made in clause 21(a), the following changes have been made in the reporting requirements:

a) Earlier the reporting under the said clause covered all types of expenses debited to the profit and loss account, the purpose of which is an offence or which is prohibited by law, but there was no specific reporting

requirement relating to such expenses prohibited by law in force outside India;

b) Item (vi) contains the reporting requirement in relation to expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India) which was earlier covered in items (vi), (vii) and (viii), though earlier there was no specific reporting requirement in relation to such expenses which was prohibited by law outside India.

c) Items (vii) and (viii) now contain the specific reporting requirements in alignment with clauses (iii) and (ii) of *Explanation 3* to section 37(1), namely, in relation to -

(vii) expenditure incurred to compound an offence under any law for the time being in force, in India or outside India; and

(viii) expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person

In fact, the specific reporting requirements in items (vii) and (viii) in amended clause 21(a) were earlier covered in the general reporting requirement in item (viii), since they fell within the meaning of "*expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law*" as per *Explanation 3* to section 37.

5.5 Item (vi) - Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India).

5.5.1 Under item (vi), any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law is to be reported. Item (vi) also requires reporting of expenditure by way of penalty or fine for violation of any law (enacted in India or outside India).

5.5.2 In the pre-amended clause, since there was no specific reporting requirement for penalty and fines paid for violation of law in force in a country outside India, the same had to be reported under item (vii), which required reporting of expenditure by way of any other penalty or fine not covered in (vi).

Now, post amendment, the tax auditor has to report the same in item (vi) since there is a specific requirement to report penalties and fines paid for violation of law in force in India as well as in a country outside India.

5.5.3 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 which have been made and paid or incurred during the relevant previous year and how such amounts have been dealt with in the books of account produced for audit. The courts have laid down that any penalty or fine for violation of law is not admissible as expenditure. It is in this context that the requirement stipulated by clause 21(a) has to be addressed.

5.5.4 The tax auditor may obtain a representation from the assessee as to whether an expenditure which is debited to the profit and loss account is prohibited by law or not. If any show cause notice/order is received by the assessee for violation of a law, then, the auditor should examine whether expenditure in relation to the same has been incurred against such notice or order and is debited to the profit and loss account, and if so, the same is required to be reported under this clause. He may also consider taking expert opinion on the subject matter of law involved.

5.5.5 The tax auditor should take note of the guidance contained in paras 33.17 to 33.28 of the Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 (Revised 2023) while reporting on item (vi).

5.6 Item (vii) - Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India

5.6.1 Compounding of an offence is a settlement mechanism, by which, the person is given an option to pay a fee in lieu of penal action or prosecution, thereby avoiding a prolonged litigation. In certain offences, the parties involved can effect a compromise before launching of prosecution or while the case is under trial in the court or under litigation. This may be at various levels and it is legally valid under various laws. When an assessee opts for compounding, further action under trial is discontinued. Cases in which this is permissible are called compoundable offences. Examples of such offences may be under various laws. The common laws where compounding is generally done is Income-tax law, Company law, Labour laws, some sections of Indian Penal Code, FEMA, etc.

5.6.2 The tax auditor needs to verify and report under the said clause any expenditure incurred by the assessee during the year to compound an offence under any law for the time being in force, in India or outside India. Item (vii) has been specifically included for reporting such expenditure although, prior to amendment of this clause, it was to be reported in item (viii) by virtue of *Explanation 3* to section 37(1) bringing such expenditure within the meaning of "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law".

5.6.3 Item (vii), which now requires reporting the said expenses of compounding, is not restricted to expenses incurred under any law for the time being in force in India but also outside India. The reporting in item (vii) is limited to expenditure incurred for compounding an offence. The tax auditor can rely on the expert opinion, in case if he is unable to verify if the expenditure is for compounding of offences. It must be borne in mind that the tax auditor while reporting under this clause is not required to express any opinion as to the allowability or otherwise of the amount of such expense by way of penalty (item (vi)/compounding fee. He is only required to give the details of such items as have been debited in the books of account. This clause covers reporting of the compounding fees debited during the year to the profit and loss account/income and expenditure account. Accordingly, the tax auditor has to exercise his professional judgement and

a) verify the nature of litigations which are ongoing and continuing. If he is unable to verify, then, he can obtain the management representation for the same;

b) obtain the list of applications and details where such compounding application has been made during the year;

c) call for the receipts of the fees and the compounding payment details made during the year;

d) verify the details with the books of account and see whether the same are debited to the profit and loss account/income and expenditure account during the year;

If in the opinion of the assessee, any penalty or fine or part of it is compensatory in nature, the tax auditor should, in addition to reporting in this clause, report the assessee's stand in para 3 of Form No. 3CA or para 5 of Form No. 3CB, as the case may be.

5.7 Item (viii) - Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person

5.7.1 Item (viii) requires specifically to report any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, where acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person. It may be noted that, prior to amendment, the said reporting was covered under residuary item (viii) "Expenses incurred for any purpose which is an offence or which is prohibited by law" by virtue of *Explanation 3* to section 37.

5.7.2 The condition for reporting under this clause is as under:

(a) There has to be any benefit or perquisite to be given either in cash or in kind, in whatever form. The value of benefit or perquisite should be debited to the profit and loss account/income and expenditure account;

(b) Such benefit or perquisite is given to a person, whether or not carrying on business or exercising a profession;

(c) Acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be for the time being in force.

5.7.3 The tax auditor should refer to Circular No. 5/2012 dated 1-8-2012 issued by CBDT in respect of inadmissibility of expenses particularly incurred in providing freebies to Medical Practitioners by pharmaceutical and allied health sector industry and the Supreme Court decision in *Apex Laboratories Pvt. Ltd. v. DCIT (2022) 442 ITR 1. Explanation 3* inserted in section 37(1) is in line with the above Supreme Court judgement. Accordingly, this clause now requires specific reporting of such expenses duly verified.

5.7.4 The tax auditor should obtain the list of beneficiaries in respect of whom tax has been deducted at source under section 194R to form an opinion as to whether any benefits and perquisites are inadmissible and require reporting under this clause.

5.7.5 The tax auditor has to verify whether there are any such payments made and debited to the profit and loss account/income and expenditure account. If such payments are identified, then, he is required to take a note of the same and obtain proper clarification in writing from the assessee, before forming an opinion. Also, if required, he may obtain confirmation from the recipient as to the nature of benefit or perquisite.

5.8 In case the tax auditor is of the opinion that any amount debited to the profit and loss account is to be disallowed as per section 37 and hence, has to be reported under this clause, then, reporting need not be done under clause 21(b) on amounts inadmissible under section 40(a)(ia) for non-deduction of tax at source. Appropriate disclosure should be made in the audit report in respect of such transactions in the observation in Para 3 of Form No. 3CA or Para 5 of Form No. 3CB, as may be applicable.

6. Clause 22 - Amount of interest inadmissible under section 23 of the Small and Medium Enterprises Development Act, 2006 or any other amount not allowable under clause (h) of section 43B of the Income-tax Act, 1961

6.1 Amendment to clause 22

(ii) in PART B, -

E. In clause 22, after the figures "2006", the words and figures " or any other amount not allowable under clause (h) of section 43B of the Income-tax Act, 1961" shall be inserted;'

Prior to amendment by Notification No.27/2024 dated 5.3.2024, clause 22 required reporting of amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

After the amendment, reporting of any other amount not allowable under clause (h) of section 43B of the Income-tax Act, 1961 is also required under clause 22.

Thus, under the amended clause 22 of Form No. 3CD, the reporting requirement has two limbs -

(1) the amount of interest inadmissible under section 23 of the MSMED Act, 2006;

(2) any other amount not allowable under clause (h) of section 43B of the Income-tax Act,1961.

Reporting for second limb in clause 22 of Form No. 3CD has been made applicable from A.Y.2024-25.

6.2 Reporting requirements under the first limb of clause 22

Guidance relating to reporting for the first limb of clause 22 i.e., the amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 is already contained in paras 42.1 to 42.9 of the Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 (Revised 2023), which may be referred to.

Further, if the buyer has not provided interest and/or if there is any dispute pending before MSE facilitation centre, then, present status can be obtained from the auditee. Also, in case of an auditee being a company, reference may be made to MSME-1 form furnished on MCA portal.

6.3 Reporting requirements under second limb of clause 22

The second limb of clause 22 requires reporting of any other amount not allowable under clause (h) of section 43B of the Income-tax Act, 1961.

6.3.1 Legislative intent expressed in the Explanatory Memorandum to the Finance Bill, 2023

In this context, the legislative intent behind insertion of clause (h) in section 43B can be understood from the *Explanatory Memorandum* explaining the provisions of the Finance Bill, 2023, the relevant extract of which is given below -

"B. Socio Economic Welfare Measures:-

Promoting timely payments to Micro and Small Enterprises

Section 43B of the Act provides for certain deductions to be allowed only on actual payment. Further, the proviso of this section allows deduction on accrual basis, if the amount is paid by due date of furnishing of the return of income.

2. In order to promote timely payments to micro and small enterprises, it is proposed to include payments made to such enterprises within the ambit of section 43B of the Act. Accordingly, it is proposed to insert a new clause (h) in section 43B of the Act to provide that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006 shall

be allowed as deduction only on actual payment. However, it is also proposed that the proviso to section 43B of the Act shall not apply to such payments.

3. Section 15 of the MSMED Act mandates payments to micro and small enterprises within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the section mandates that the payment shall be made within 15 days. Thus, the proposed amendment to section 43B of the Act will allow the payment as deduction only on payment basis. It can be allowed on accrual basis only if the payment is within the time mandated under section 15 of the MSMED Act.

4. This amendment will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-25 and subsequent assessment years."

6.3.2 Amendments in section 43B of the Income-tax Act, 1961

Accordingly, Clause (h) has been inserted in section 43B w.e.f. 1-4-2024 (applicable from A.Y. 2024-25).

"43B. *Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—*

Following clause (*h*) shall be inserted after clause (*g*) of section 43B by the Finance Act, 2023, w.e.f. 1-4-2024:

*(*h*)* ***any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006),***

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:

Provided that nothing contained in this section **[[*except the provisions of clause(*h*)*]** shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.

Following clause (*e*) shall be substituted for the existing clause (*e*) of *Explanation 4* to section 43B by the Finance Act, 2023, w.e.f. 1-4-2024:

(e) ***"micro enterprise" shall have the meaning assigned to it in clause (h) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006);***

(*f*) .....;

(*g*) .....

Following clause (*g*) shall be substituted for the existing clause (*g*) of *Explanation 4* to section 43B by the Finance Act, 2023, w.e.f. 1-4-2024:

(g) ***"small enterprise" shall have the meaning assigned to it in clause (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)***."

6.3.3 Revised Classification applicable w.e.f 1st July 2020

As per MSME notification no. SO. 2119(E) dated 26-6-2020, the composite criteria of investment in plant and machinery or equipment and annual turnover as given below will apply for classification of micro, small and medium enterprises, with effect from 1-7-2020:-

Composite Criteria: Investment in Plant & Machinery/equipment and Annual Turnover

CLASSIFICATION	MICRO	SMALL	MEDIUM
Manufacturing Enterprises and Enterprises rendering Services	Investment in Plant and Machinery or Equipment does not exceed Rs.1 crore **and** Annual Turnover does not exceed Rs. 5 crore	Investment in Plant and Machinery or Equipment does not exceed Rs.10 crore **and** Annual Turnover does not exceed Rs. 50 crore	Investment in Plant and Machinery or Equipment does not exceed Rs.50 crore **and** Annual Turnover does not exceed Rs. 250 crore

6.3.4 Amendment to clause 22 of Form No. 3CD

CBDT has issued notification No. 27/2024 on 5-3-2024 to include additional reporting requirements in certain clauses in Form No. 3CD. Corrigenda to the said notification was issued vide Notification No. 34/2024 on 19-3-2024 by inserting in Clause 22 in Form No. 3CD, reporting of any other amount not allowable under section 43B(h). Accordingly, Clause 22 now reads as under:-

"**Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 [*or any other amount not allowable under clause (h) of section 43B of the Income-tax Act, 1961*]."**

6.3.5 Checklist for the tax auditor while reporting on section 43B(h)

While reporting on particulars regarding any other amount not allowable under section 43B(h) in clause 22 of Form No. 3CD, the tax auditor must refer to the relevant provisions and definitions of MSMED Act, 2006 and certain relevant notifications etc., which may enable determination of whether a particular amount is to be reported or not in clause 22 of Form No. 3CD and whether a particular amount is allowable or not while computing income.

The following is the checklist for the tax auditor while reporting on section 43B(h)

(i) The tax auditor should take note of the following -

(a) The second limb of clause 22 of Form No. 3CD has become applicable from A.Y.2024-25.

(b) Clause (h) of section 43B is attracted when any sum payable by the assessee to a micro enterprise or small enterprise is paid beyond the time limit specified in section 15 of the MSMED Act, 2006.

(c) The provisions of section 43B(h) are applicable only in respect of sum payable by the assessee to a micro or a small enterprise and not to a medium enterprise.

(d) Section 43B(h) is applicable only in respect of 'a deduction otherwise allowable under this Act'.

(e) The proviso to section 43B which provides relaxation (from applicability of Section 43B) for payment made in respect of "any sum payable" referred to in clauses (a) to (g) of section 43B on

or before the due date of filing of income-tax return is not available for the newly inserted clause (h) of section 43B, where payment has to be made within the time limit specified in terms of section 15 of MSMED Act 2006, which reads as under:

"*Section 15- Liability of buyer to make payment*

Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance."

(f) The terms supplier, buyer, enterprise, appointed day, day of acceptance, day of deemed acceptance etc. should be understood as defined in the MSMED Act, 2006 and not as understood in general parlance. The same are reproduced hereunder -

Section of the MSMED Act, 2006	Term	Definition
2(d)	Buyer	Whoever buys any goods or receives any services from a supplier for consideration.
2(n)	Supplier	A micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,-- (i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956;

		(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956; (iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;
2(b)	Appointed Day	'Appointed day' means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier" *Explanation – For the purposes of this clause –* (i) "the day of acceptance" means-- (a) the day of the actual delivery of goods or the rendering of services; or (b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen

		days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier. (ii) "the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.
2(e)	Enterprise	An industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or rendering of any service or services.

(ii) 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 supplier of the assessee i.e., whether the supplier being a micro or small enterprise is registered 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 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) The tax auditor should obtain a full list of suppliers of the assessee who 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) The tax auditor should obtain the list of trade payables and current liabilities being suppliers of goods and services to whom amount is outstanding as on the last day of the financial year along with working of disallowance u/s 43B(h) of the Act required to be reported under Clause 22. Against each supplier of goods and services, the auditee should mention whether it is registered under MSMED Act, 2006 or not, and in case it is registered, Udyam Registration Number, Type / Category of Enterprise (Micro/Small/Medium) and its Major Activity (Trading/ Manufacturing/Service), date of Udyam Registration should be mentioned. The list should mention whether there is a written agreement with the supplier, and if so, the credit period. Also, against each supplier, the amount outstanding as on the last date of the previous year should be mentioned.

(e) The tax auditor should review the list so obtained.

(iii) The tax auditor should check whether the enterprise is registered under the MSMED Act, 2006, since registration of MSME is a pre-requisite for attracting the provisions of section 43B(h) of the Income-tax Act, 1961. For this purpose, the tax auditor may note the following -

(a) As per section 2(n), "supplier means a micro or small enterprise, *which has filed a memorandum with the authority referred to in sub-section (1) of section 8,--".* This makes it abundantly clear that there is a requirement of registration of the supplier with Udyam Authority for availing benefits under the said Act.

Accordingly, the amount payable for supplies from entities which are not registered under MSMED Act, 2006 will not attract disallowance under section 43B(h) of the Income-tax Act, 1961 in the hands of the buyer.

(b) If an entity is registered at any time during the current previous year, then, such registration will be applicable prospectively. Accordingly, any transactions carried out before the date of registration will not attract disallowance under section 43B(h).

(c) If registration of the supplier is cancelled at any time during the previous year, then, it will be effective prospectively. Therefore, payment made for any purchases or services received before the date of cancellation shall be covered under section 43B(h).

(iv) The tax auditor should take note of the definition and scope of enterprise as per MSMED Act, 2006. Traders are allowed to be registered with MSME only for a limited purpose of Priority Sector Lending and not for any other benefit. Accordingly, if the supplier to the auditee is a retail or wholesale trader, the provisions of section 43B(h) of the Income-tax Act, 1961 would not be attracted.

In this regard, Office Memo dated 1st September 2021 of Ministry of MSME has categorically stated that the benefits to the Retail and wholesale trade MSMEs are to be restricted to priority sector lending only; and any other benefits, including provisions of delayed payments as per the MSMED Act, 2006, are excluded. In effect, such retail or wholesale traders, are eligible for registration under MSMED Act, 2006 for the limited purpose only.

Copy of the Office Memo dated 2nd July 2021 as well as 1st September, 2021 given as **Appendix III and IV** may be referred to in this regard.

In any case, for the purpose of section 43B(h), the definition of Enterprise, Micro Enterprise and Small Enterprise under the MSMED Act, 2006 read with relevant notifications are relevant. Traders are not included in the definition of "enterprise", hence, they do not fall within the scope of Micro or Small enterprise.

(v) For the purpose of disallowance under section 43B(h) of the Income-tax Act, 1961, the tax auditor should consider only the amount remaining outstanding as on 31st March of the financial year for the supply of goods

or services. Unpaid interest payable under section 16 of MSMED Act, 2006 need not again be considered for disallowance under section 43B(h) of the Income-tax Act, 1961, since, as per section 23 of the MSMED Act, 2006, the entire interest payable under section 16 of the said Act is inadmissible as deduction while computing income under section 28 of the Income-tax Act, 1961.

(vi) Section 15 of the MSMED Act, 2006 requires the buyer to make payment to the supplier of the goods or services on or before date agreed upon (subject to maximum 45 days from the day of acceptance or deemed acceptance) or where there is no agreement in this behalf, before the Appointed Day. The agreement relating to the due date of payment may be in writing or otherwise. Terms of payment on the invoice or the purchase order which is accepted can also be construed as agreement in writing.

a) **Where the agreement is in writing**: The buyer and supplier may agree in writing for any day for making payment. However, the proviso to section 15 of MSMED Act provides that for the purpose of section 15, the period agreed upon between the buyers and suppliers should not exceed 45 days from the day of acceptance or the day of deemed acceptance. This means that if the agreed upon period is 5 days or 15 days or 30 days or any other number of days (not exceeding 45 days), the payment should be made on or before such agreed upon period of 05 or 15 or 30 or such other number of days (not exceeding 45 days). Agreed period means period agreed in writing. However, if the agreed period is more than 45 days, say 60 days or 90 days, then, the same has to be restricted to 45 days for the purpose of MSMED Act and the buyer needs to pay within 45 days.

The outstanding as on 31st March due to the Micro or small enterprise will not be disallowed under section 43B(h), if the said amount is duly paid before the agreed period in writing or 45 days, whichever is earlier.

In other words, the amount remaining outstanding as on 31st March of the financial year but payment whereof has duly been made in the next financial year but within the time limit (agreed period or 45 days, whichever is earlier) will not attract disallowance under section 43B(h).

Some examples for applicability of Section 43B(h) in different cases

Sl. No.	Day of acceptance or deemed acceptance	Agreed upon payment date in writing	Due date of payment as per Section 15 of MSMED Act	Actual Date of Payment	Status in terms of Section 43B(h)
1	20th March 2024	19th April 2024	19th April 2024	19th April 2024	Allowed in A.Y. 2024-25
2	20th March 2024	19th April 2024	19th April 2024	10th May 2024	Disallowed in A.Y. 2024-25; Allowed in A.Y. 2025-26
3	20th March 2024	19th April 2024	19th April 2024	10th June 2025	Disallowed in A.Y. 2024-25; Allowed in A.Y. 2026-27
4	20th March 2024	20th June 2024	04th May 2024	02nd May 2024	Allowed in A.Y. 2024-25
5	20th March 2024	20th June 2024	04th May 2024	08th May 2024	Disallowed in A.Y.2024-25; Allowed in A.Y. 2025-26

b) **Where there is no agreement in writing**: In such a case, the payment needs to be made before the Appointed Day; Appointed Day means the day following immediately after the expiry of the period of 15 days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. Hence, in this case, the maximum period of 45 days will not hold good and the payment will have to be made before the Appointed Day for the purpose of section 15 of MSMED Act, 2006.

The outstanding as on 31st March due to the Micro or small enterprise will not be disallowed under section 43B(h) if the said amount is duly paid before the Appointed Day (i.e. the day

following immediately after the expiry of the period of 15 days from the day of acceptance or the day of deemed acceptance), if there is no such agreement in writing.

In other words, the amount remaining outstanding as on 31st March of the financial year but payment whereof has duly been made in the next financial year but within the time limit of 15 days will not attract disallowance under section 43B(h).

Some examples for applicability of Section 43B(h) in different cases

Sl. No	Day of acceptance or deemed acceptance	Agreed upon payment date in writing	Appointed Day	Due date of payment as per Section 15 of MSMED Act	Actual Date of Payment	Status in terms of Section 43B(h)
1	20th March, 2024	N.A.	5th April, 2024	04th April, 2024	29th March, 2024	Allowed in A.Y. 2024-25
2	20th March, 2024	N.A.	5th April, 2024	04th April, 2024	04th April, 2024	Allowed in A.Y. 2024-25
3	20th March, 2024	N.A.	5th April, 2024	04th April, 2024	10th April, 2024	Disallowed in A.Y. 2024-25; Allowed in A.Y. 2025-26

(vii) To determine whether there is a delay beyond 15 days or 45 days (or the agreed period not exceeding 45 days), as the case may be, and also regarding the day of acceptance, the tax auditor should verify the necessary communications with the suppliers.

7. Clause 32(a) - Details of brought forward loss or depreciation allowance

7.1 Amendment to clause 32(a)

"(ii) in PART B, -

F. In clause 32, in sub-clause (a),––

(I) in the table, in column (5), for the figures and letters "115BAD", the figures and letters "115BAD/115BAE" shall be substituted;

(II) in the table, in column (6), for the figures and letters, "115BAD^", the figures and letters "115BAD/115BAE^" shall be substituted;

(III) below the table, for the words and figures "To be filled in for assessment year 2021-22 only.", the words and figures "To be filled in only for assessment year 2021-22 and 2024- 25, as applicable.", shall be substituted;"

After amendment by Notification No.27/2024 dated 5.3.2024, the clause reads as follows:

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

Serial No.	*Assess-ment Year*	*Nature of Loss/ Allow-ance (in rupees)*	*Amount as Returned* (in rupees)*	*All losses/ allowances not allowed under sections 115BAA/ 115BAC/ 115BAD/* ***115BAE***	*Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAC/ 115BAD/* ***115BAE^***	*Amounts as assessed (give reference to relevant order)*	*Remarks*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*

**If the assessed depreciation is less and no appeal pending then take assessed*

^[To be filled in only for assessment year 2021-22 and 2024-25, as applicable.]

7.2 Consequent to insertion of section 115BAE in the Income-tax Act, 1961 vide the Finance Act, 2023 w.e.f. A.Y.2024-25, reference to this section has been included in columns (5) and (6). Section 115BAE provides for a concessional tax rate of 15% (plus surcharge@10% of tax and cess@4% of tax plus surcharge) for new manufacturing co-operative societies, subject to computation of total income without claiming certain deductions/exemptions.

7.3 A Co-operative society opting for section 115BAE is not eligible to claim deduction under sections 10AA, 32(1)(iia), 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD, 35CCC, and Chapter VI-A (except section 80JJAA) while computing the total income. It cannot set-off loss brought forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to deductions under these sections.

7.4 The tax auditor is advised to refer to para 62 of the Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 (Revised 2023) while reporting in respect of section 115BAE also.

7.5 Also, in relation to section 115BAA, 115BAC and 115BAD, the tax auditor has to align reporting in clause 18(ca) with the reporting in column (6) above

Amendments in Form No.3CEB

1. Notification No.27/2024 dated 5.3.2024 has also made an amendment in Part C (Specified domestic transaction) in the Annexure to Form No.3CEB, which is the Report from an accountant to be furnished under section 92E relating to international transaction(s) and specified domestic transaction(s). The amendment is as given hereunder -

b*) In Form No. 3CEB, in the Annexure thereto, in Part C (Specified domestic transaction), serial number 25 shall be re-numbered as serial number 26 thereof and before serial number 26 as so renumbered, the following shall be inserted, namely:—*

"25.	*Particulars in respect of specified domestic transaction in the nature of any business transacted between the persons referred to in sub-section (4) of section 115BAE:* *Has the assessee entered into any specified domestic transaction with any person referred to in sub-section*	*Yes/No.";*

	(4) of section 115BAE which has resulted in more than ordinary profits expected to arise in such business? *If 'yes', provide the following details : (a) Name of the person with whom the specified domestic transaction has been entered into. (b) Description of the transaction including quantitative details, if any. (c) Total amount received or receivable or paid or payable in the transaction– (i) as per books of account; (ii) as computed by the assessee having regard to the arm's length price. (d) Method used for determining the arm's length price [See sub-section (1) of section 92C].*	

2. This clause applies to new co-operative manufacturing societies which have opted for section 115BAE by fulfilling conditions specified therein. This clause is consequent to insertion of section 115BAE by the Finance Act, 2023 and inclusion of any business transacted between the assessee and the person referred to in section 115BAE(4) in the definition of "specified domestic transaction" in section 92BA w.e.f. A.Y.2024-25.

3. It may be noted that clause 24, inserted in Form No.3CEB w.e.f. 1.10.2020, containing similar reporting requirement in respect of specified domestic transaction in the nature of any business transacted between the persons referred to in sub-section (6) of section 115BAB. The guidance for reporting in respect of clause 25 is similar to the guidance contained in respect of clause 24 in para 9.81 of the Guidance Note on Report under section 92E of the Income-tax Act, 1961 (Transfer Pricing) (Revised 2022).

4. Accordingly, under clause 25, the assessee has to furnish details of specified domestic transactions entered into with any person referred to in sub-section (4) of section 115BAE which has enabled it to earn more than ordinary profits for a business transacted between them.

Sub-section (4) of section 115BAE reads as follows -

"Where it appears to the Assessing Officer that, owing to close connection between the assessee to which this section applies (a new manufacturing co-operative society) and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such business, the Assessing Officer has to take the

amount of profits as may be reasonably deemed to have been derived therefrom while computing the profits and gains of such business for the purpose of this section.

***Provided** that in case the aforementioned arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction has to be determined having regard to the arm's length price as defined in clause (ii) of section 92F.*

***Provided further** that the amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the assessee".*

5. Hence, if a co-operative society is seeking benefits of lower rate of tax under section 115BAE, then, the Accountant should examine whether any transaction would be covered under the first proviso to sub-section (4) as mentioned above and take action accordingly.

6. In case the Accountant is of the opinion that a transaction does not result in more than ordinary profits to the assessee, then, he does not have to disclose such transaction as specified domestic transaction under clause 25. However, the assessee has to maintain robust documentation as prescribed under Rule 10D of the rules to substantiate that such transaction has not resulted in more than ordinary profits to it.

7. With respect to the reporting requirements in clause 25 such as the name of the person, description of the transaction, amount received/receivable or paid/payable, method used for determining the arm's length price, the Accountant can refer to the guidance elaborated in the paragraphs preceding para 9.81 of the Guidance Note on Report under section 92E of the Income-tax Act, 1961 (Transfer Pricing) (Revised 2022).

Appendix I

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 5th March, 2024

G.S.R. 155(E).— In exercise of the powers conferred by section 295 read with sections 44AB and 92E of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (Fourth Amendment) Rules, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, in Appendix II,—

(a) in Form No. 3CD,—

(i) in PART A, in clause 8a, for the figures and letters "115BAD", the figures and letters "115BAD/115BAE" shall be substituted;

(ii) in PART B,—

A. in clause 12, for the figures and letters "44AD", the figures and letters "44AD, 44ADA" shall be substituted;

B. in clause 18, for sub-clause (ca), the following sub-clauses shall be substituted, namely:—

"*(ca) Adjustment made to the written down value—*

(i) under the proviso to sub-section (3) of section 115BAA (for assessment year 2020-21 only);

(ii) under the first proviso to sub-section (3) of section 115BAC or the proviso to sub-section (3) of 115BAD (for assessment year 2021-22 only);

(iii) under the second proviso to sub-section (3) of section 115BAC (for assessment year 2024-25 only).";

C. in clause 19, in the table,—

(i) after the row with entry "35(2AB)", the row with entry "35ABA" shall be inserted;

(ii) after the row with entry "35E", the row with entry "any other relevant section" shall be inserted;

D. in clause 21, —

(I) in sub-clause (a), in the table, under the column relating to 'Nature',–

(i) for the words "Expenditure by way of penalty or fine for violation of any law for the time being force", the words and brackets "Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India)" shall be substituted;

(ii) after the row with the words "Expenditure by way of any other penalty or fine not covered above", the row with the words "Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India" shall be inserted;

(iii) for the words "Expenditure incurred for any purpose which is an offence or which is prohibited by law", the words "Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person" shall be substituted;

(II) in sub-clause (b), in paragraph (ii), in sub-paragraph (B), in item (IV), for the word "payer", the word "payee" shall be substituted;

E. in clause 26, for the brackets, letters and word "(f) or (g)", the brackets, letters and word "(f), (g) or (h)" shall be substituted;

F. in clause 32, in sub-clause (a),—

(I) in the table, in column (5), for the figures and letters "115BAD", the figures and letters "115BAD/115BAE" shall be substituted;

(II) in the table, in column (6), for the figures and letters, "115BAD^", the figures and letters "115BAD/115BAE^" shall be substituted;

(III) below the table, for the words and figures "To be filled in for assessment year 2021-22 only.", the words and figures "To be filled in only for assessment year 2021-22 and 2024-25, as applicable.", shall be substituted;

b) In Form No. 3CEB, in the Annexure thereto, in Part C (Specified domestic transaction), serial number 25 shall be re-numbered as serial number 26 thereof and before serial number 26 as so renumbered, the following shall be inserted, namely:—

"25.	*Particulars in respect of specified domestic transaction in the nature of any business transacted between the persons referred to in sub-section (4) of section 115BAE:* Has the assessee entered into any specified domestic transaction with any person referred to in sub-section (4) of section 115BAE which has resulted in more than ordinary profits expected to arise in such business? If 'yes', provide the following details : (a) Name of the person with whom the specified domestic transaction has been entered into. (b) Description of the transaction including quantitative details, if any. (c) Total amount received or receivable or paid or payable in the transaction– (i) as per books of account; (ii) as computed by the assessee having regard to the arm's length price. (d) Method used for determining the arm's length price [See sub-section (1) of section 92C].	Yes/No.";

c) In Form No. 65,—

(i) under the heading "Verification", after clause (4), the following clause shall be inserted, namely:—

"(5) *I certify that the applicant company is a unit of an International Financial Services Centre and has filed the application within three months from the date on which the deduction under section 80LA of the Income- tax Act, 1961 is no longer applicable.";

(ii) in the Annexure, in PART A, for clause 6, the following clauses shall be substituted, namely:—

"6. Date on which the company became a qualifying company [to be given only in case of a company which becomes a qualifying company after the initial period] (enclose evidence in support of the claim)

6A. (a) Has the applicant company availed of deduction under section 80LA of the Income-tax Act, 1961?

(b) If so, please specify the date on which such deduction is no longer applicable?".

[Notification No. 27/2024 /F. No. 370142/3/2024-TPL]
KHUSHBOO LATHER, Under Secy.

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii), vide notification number S.O. 969 (E), dated the 26th March, 1962 and were last amended vide notification number G.S.R 153 (E), dated the 1st March, 2024.

Appendix II

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

CORRIGENDA

New Delhi the 19th March, 2024

INCOME-TAX

G.S.R. 223(E).—In the notification of the Government of India, Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) *vide* number G.S.R. 155(E), dated 5th March, 2024, at page 2, *for* item E, *read*:—

'E. in clause 22, after the figures "2006", the words and figures " or any other amount not allowable under clause (h) of section 43B of the Income-tax Act, 1961" shall be inserted;'.

[Notification No. 34 /2024 F. No. 370142/3/2024-TPL]
KHUSHBOO LATHER, Under Secy.

Appendix III

No. 5/2(2)/2021-E/P & G/Policy
(E-19025)
Government of India
Ministry of Micro, Small & Medium Enterprises
(Policy Division)
*****

710, Nirman Bhawan, New Delhi
Dated:02.07.2021

OFFICE MEMORANDUM

Subject: Activities (NIC code) under MSMED Act, 2006 for Udyam Registration –Addition of Retail and Wholesale Trade- regarding

This Ministry's O.M. No. UAM/MC/01/2017-SME dated 27.06.2017 on the subject 'Activities (NIC codes) not covered under MSMED Act, 2006 for registration of Udyog Aadhaar Memorandum (UAM)' excluded certain activities from registration on UAM Portal. This O.M. was further validated for Udyam Registration vide O.M. no. 5/2(1)/2020-P&G/Policy dated 17.07.2020. Certain changes were made vide 5/2(1)/2020/E-P&G/Policy dated 01.12.2020; where it was clarified that in Table. 1 of O.M. no. UAM/MC/01/2017-SME dated 27.06.2017, NIC codes 45, 46 and 47 and the activities mentioned against these NIC codes, are not permitted for registration in Udyam Registration Portal (https://udyamregistration.gov.in).

2. The Government has received various representations and it has been decided to include Retail and wholesale trades as MSMEs and they are allowed to be registered on Udyam Registration Portal. However, benefits to Retail and Wholesale trade MSMEs are to be restricted to Priority Sector Lending only.

3. Accordingly, the list of eligible additional activities under NIC Code 45, 46 and 47 are as under :

45	Wholesale and retail trade and repair of motor vehicle and motorcycles
46	Wholesale trade except of motor vehicles and motor cycles
47	Retail Trade Except of Motor Vehicles and motor cycles

4. The Udyam Registration is allowed for above three NIC Codes and activities mentioned against them.

5. The Enterprises having Udyog Aadhaar Memorandum (UAM) under above three NIC Codes are now allowed to migrate to Udyam Registration Portal or they can file Udyam Registration afresh.

6. Consequent upon above changes, para 2 including Table. 2 mentioned in O.M. no 5/2(1)/2020/E-P&G/Policy dated 01.12.2020, stands omitted.

Tamaria 02.07.2021
(A.K.Tamaria)
Deputy Director (Policy)

Distribution:

1. Secretary, Department of Financial Services, Ministry of Finance.
2. Secretary, Department for Promotion of Industry and Internal Trade, M/o Commerce & Industry.
3. CGM, RBI with reference to RBI letter no. FIDD.CO.Plan/871/04.09.001/2020-21 dated 29.01.2021 and letter dated 10.05.2021.
4. AS& DC, O/o Development Commissioner, Ministry of MSME
5. AS&FA, Ministry of MSME
6. All Joint Secretaries/EA/DDG, Ministry of MSME
7. CEO, KVIC
8. CMD, NSIC
9. All ADCs/DDG, Office of DC(MSME), Ministry of MSME
10. All AIAs/Directors/Joint Directo/In-Charge Directors, MSME-DIs
11. On the website of Ministry/DC-MSME, in the Section related to Udyam Registration, for the information of all stakeholders in the MSME Sector
12. NIC- For taking necessary action to make suitable changes in Udyam Registration Portal to include NIC Coode 45, 46 and 47 for registration under service enterprise category.

Copy to information:-

i. PS to Hon'ble Minister (MSME), for kind information of Hon'ble Minister (MSME)
ii. PS to Hon'ble MoS (MSME), for kind information of Hon'ble Mos(MSME)
iii. PPS to Secretary (MSME).

F. No. S/2(1)/2020/E-P&G/Policy
Government of India
Ministry of Micro, Small & Medium Enterprises
(Policy Division)
*****

Nirman Bhawan, New Delhi
Dated: 01.12.2020

OFFICE MEMORANDUM

Subject: Activities (NIC codes) not covered (with exception of certain categories) under MSMED Act, 2006 for Udyam Registration-regarding

In partial modification of the O.M. No. UAM/MC/01/2017-SME dated 27.06.2017 on the subject Activities (NIC codes) not covered under MSMED Act, 2006 for registration of Udyog Aadhaar Memorandum (UAM), as further validated for Udyam Registration vide O.M. no. S/2(1)/2020-P&G/Policy dated 17.07.2020, it is clarified that the activities in Table.1 below would also not be included in the manufacture or production of goods or providing or rendering of services in accordance with Section 7 of the Micro, Small and Medium Enterprise Development Act, 2006 and, hence, may be treated as included in Table 1 of the aforesaid O.M.

Table.1

National Industrial Classification (NIC) Division	Description
92	Gambling and betting activities

2. Even though the enterprises involved in activities pertaining to the Divisions mentioned in Table.1 above and also in Table 1 of the O.M.dated 27.06.2017 are barred from registration as MSMEs, in view of the nature of activities (production of goods and services), the following categories at the sub-class level (in 5 - digit) of the National Industrial Classification as mentioned in Table.2 below, are to be treated as exceptions in the Divisions thus mentioned in the said O.M. dated 27.06.2017 as per Section 7 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, and are eligible for registration under Udyam Registration system and, hence, may be treated as included in Table 2 of the O.M. dated 27.06.2017.

Table.2

Sub-Class Level under National Industrial Classification (NIC) Division	Description
45200	Maintenance and repair of motor vehicles
45403	Maintenance and repair of motor cycles, mopeds, scooters and three wheelers

A.K. Tamaria 01.12.2020

(A. K. Tamaria)
Deputy Director (Policy)

Distribution:

1. AS&DC, O/o Development Commissioner, Ministry of MSME
2. AS&FA, Ministry of MSME
3. All Joint Secretaries/EA/DDG, Ministry of MSME
4. All ADCs/ DDG, Office of DC(MSME), Ministry of MSME
5. All AIAs/ Directors/ In-Charge Directors, MSME-DIs
6. On the website of Ministry / DC-MSME, in the Section related to Udyam Registration, for the information of all stakeholders in the MSME Sector
7. NIC - For taking necessary action in the system

Copy to:

(i) PS to Hon'ble Minister (MSME), for kind information of Hon'ble Minister (MSME)
(ii) PS to Hon'ble MoS (MSME), for kind information of Hon'ble MoS (MSME)
(iii) PPS to Secretary (MSME), for kind information of Secretary (MSME)
(iv) PPS to Secretary, Department of Financial Services, Ministry of Finance, with a request to Secretary for circulation of the instant O.M. to the RBI, the Banks and other Financial Institutions, as deemed appropriate.

5/2(1)/2020-P&G/Policy
Government of India
Ministry of Micro, Small & Medium Enterprises
Office of Development Commissioner
***

Nirman Bhawan, New Delhi-110108
Dated: 17.07.2020

OFFICE MEMORANDUM

Subject: Substitution of "Udyog Aadhaar Memorandum (UAM)" with "Udyam Certificate" in the OM no. UAM/MC/01/2017-SME dated 27.06.2017 on the subject Activities (NIC codes) not covered under MSMED Act, 2006 for registration of Udyog Aadhaar Memorandum (UAM) – regarding

Kindly refer UAM/MC/01/2017-SME dated 27.06.2017 issued by SME section in connection with the above subject matter (Enclosed herewith).

2. In this regard, I am directed to state that "Udyog Aadhaar Memorandum (UAM)" is replaced with "Udyam Registration Certificate" in the above-said OM, with immediate effect.

3. This issues with the approval of the Competent Authority.

17.7.2020
(A.K Tamaria)
Deputy Director
Ph.:01123061163

Enclosure: As above
To

(i) JS (ARI)/ JS (SME)/ JS (AFI)/ EA/ DDG, M/o MSME
(ii) ADC (PS)/ ADS (SM)/ ADC (AS)/ DDG, O/o DC (MSME)
(iii) AIA/ All Directors, O/o DC (MSME)
(iv) All AIA/ Director/ Director incharge, MSME-DIs – requested to circulate this OM amongst all District Industries Centres
(v) Senior Technical Director, NIC - requested to upload this OM on Champions Portal and Udyam Registration Portal

Copy to:

(i) PS to Minister (MSME)/ PS to MoS
(ii) PPS to Secretary (MSME)
(iii) PPS to AS&DC (MSME)
(iv) PPS to AS&FA, M/o MSME

F.No. UAM/MC/01/2017-SME
Government of India
Ministry of Micro, Small & Medium Enterprises
(SME Section)
***

Udyog Bhawan, New Delhi
Dated: 27.06.2017

OFFICE MEMORANDUM

Sub: Activities (NIC codes) not covered under MSMED Act, 2006 for registration of Udyog Aadhaar Memorandum(UAM)- regarding

The undersigned is directed to inform that Sub Section 1 of Section 7 of Micro Small or Medium Enterprises Development Act 2006 provides for classification of enterprises engaged in manufacturing or production of goods as well as enterprises engaged in providing or rendering of services as micro, small and medium based on investment in plant and machinery and equipment respectively. Sub Section 1 of Section 8 provides that any person who intends to establish a micro or small or medium enterprise engaged in manufacture or production of goods or providing or rendering of services may at his discretion shall file a memorandum of micro, small or medium enterprises in accordance with the provisions of Act. Subsequently, Ministry of Micro Small or Medium Enterprises notified vide notification number S.O. 2576 (E) dated 18.9.2015 and subsequent notification No. SO 85(E) dated 10.1.2017 for registration of Udyog Aadhaar Memorandum for Micro, Small or Medium Enterprises. In this context it is further clarified that the activities in **Table.1** below would not be included in the manufacture or production of goods or providing or rendering of services in accordance with Section 7 of the Micro, Small and Medium Enterprise Development Act, 2006:-

Table.1

NIC Code	Activity
02	Forestry and logging
03	Fishing and aquaculture
45	Wholesale and retail trade and repair of motor vehicle and motorcycles
46	Wholesale trade except of motor vehicles and motor cycles 47
47	Retail Trade Except of Motor Vehicles and motor cycles
97	Activities of households as employees for domestic personnel
98	Undifferentiated goods and services producing activities of private households for own use
99	Activities of extraterritorial organization and bodies

2. The NIC 2-digit activity **01- crop, animal production, hunting and related activities** would also not be included as per Section 7 of the Act **except** for the sub-classes of activities at 5-digit level given in Table 2.:

Table. 2

NIC Code	Activity
01462	Production of eggs
01463	Operation of poultry hatcheries
01492	Bee- keeping and production of honey and beeswax
01493	Raising of silk worms, production of silk worm cocoons
01612	Operation of agricultural irrigation equipment
01620	Support activities for animal production
01631	Preparation of crops of primary markets i.e. cleaning, trimming, grading disinfecting
01632	Cotton ginning, cleaning and bailing
01633	Preparation of tobacco leaves
01639	Other post-harvest crop activities, n.e.c
01640	Seed processing for propagation

27/4/17

(K. S. Ngangbam)
Deputy Director (SME)
Tel.No. 23061546

Distribution:

(i) AS&DC, O/o Development Commissioner, Ministry of MSME.
(ii) JS(SME)/JS(ARI)/JS(TC), Ministry of MSME.
(iii) All Director, MSME-DIs
(iv) All GM, District Industries Centres.

Copy to:

(i) PS to Minister(MSME)/PS to MoS(GS)/PS to MoS(HPC)
(ii) PPS to Secretary(MSME)

Appendix IV

1/4(1)/2021-P&G/Policy
Government of India
Office of Development Commissioner (MSME)
Ministry of Micro, Small and Medium Enterprises
MSME Policy Division
E-19630

Nirman Bhavan, New Delhi
Dated: 01 .09.2021

OFFICE MEMORANDUM

Subject: - Benefits of provisions of delayed payments as per MSMED Act, 2006 available to MSMEs viz-a-viz Traders related

Vide OM No. 5/2(2)/2021-E/P&G/Policy dated 2.7.2021 issued by this office, Retail and Wholesale Trades have been included as MSMEs, allowing them to be registered on Udyam Registration Portal and benefits to Retail and Wholesale trade MSMEs are to be restricted to Priority Sector Lending only.

2. In this context, some MSEFCs have been approached by Traders to get the benefits of provisions of delayed payments as per MSMED Act, 2006 available to MSEs. It is clarified that as mentioned in the aforesaid OM, the benefits to Retail and Wholesale trade MSMEs are restricted upto Priority Sector Lending **only,** and any other benefits, including provisions of delayed payments as per MSMED Act, 2006, are **excluded**.

3. This issues with the approval of the competent authority.

01.09.21

(Amit K. Tamaria)
Deputy Director(Policy)


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