

UPDATES IN TAX AUDIT FORMS

1. Clause 8a: Whether the assessee has opted for special taxation regimes of low tax rates without certain exemptions and deductions

Pre-amended Clause 8a requires the tax auditor to state "Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB/115BAC/115BAD".

The Finance Act 2023 introduced an alternative tax scheme for manufacturing co-operative societies under Section 115BAE. Clause 8a adds the reference to Section 115BAE and requires the tax auditor to report "Whether the assessee has opted for taxation under section 115BA/115BAA / 115BAB / 115BAC /115BAD/115BAE".

Impact of changes on tax auditor's reporting obligation

Where the resident cooperative society opts for Section 115BAE, the reporting under Clause 8a shall be made by the tax auditor as per the following:

Obligation of tax auditor is limited to reporting whether assessee opted for tax regime – Clause 8a does not require the tax auditor to state whether the resident manufacturing co operative society is eligible for the taxation regime under Section 115BAE, which the assessee co-operative society has opted for. The tax auditor is required to verify and report whether the assessee has exercised the option by e-filing Form 10-IFA in accordance with Rule 21AHA.

Whether assessee opted for the new regime under Section 115BAE by e-filing Form 10-IFA – It may be noted that the option for Section 115BAE is to be exercised by e-filing Form 10-IFA on or before the due date specified under Section 139(1) for furnishing the first return of income for any previous year relevant to the assessment year commencing on or after the 1st day of April 2024 (AY 2024-25). If the assessee wishes to exercise the option for the first time for AY 2024-25, then Form 10-IFA is to be filed on or before 31-10-2024. It should be noted that the tax audit report for AY 2024-25 must be signed and e-filed on or before 30-09-2024. If the assessee-cooperative society has already exercised the option for the assessment year 2024-25 by e-filing Form 10-IFA, then the tax auditor may report "Yes" against Clause 8a after obtaining a copy of Form 10-IFA. The auditor must also obtain an MRL from the assessee that mentions this fact with e-filing details and that the assessee does not intend to claim deductions mentioned in Section 115BAE(2) for AY 2024-25.

Assessee intends to opt for the new regime, but Form 10-IFA is yet to be filed as of the date of signing the tax audit report – As the audit report may be furnished before the due date to furnish the Form 10-IFA, it may happen that assessee has not e-filed Form 10-IFA as of the date of signing tax audit report though he intends to avail section 115BAE. If the assessee has not opted for Section 115BAE for AY 2024-25 as of the date of signing the tax audit report but intends to do so, the tax auditor should obtain a Management Representation Letter to that effect. The tax auditor should indicate in Clause (3) of Form 3CA that he has relied on the Management Representation Letter of the assessee's intent to avail Section 115BAE in reporting on Clause 8a, though the assessee has not e-filed Form 10-IFA as of the date of signing this report

Where the assessee is not opting for the new regime – If the assessee-cooperative society does not want to exercise the option for the assessment year 2024-25, then the tax auditor may report "No" against Clause 8a. The auditor must also obtain an MRL from the assessee that mentions this fact. The auditor should mention in clause (3) of Form No. 3CA that the

status reported is as of the date of signing the tax audit report and also the fact of reliance on MRL.

Impact on other Clauses – If the assessee has opted for Section 115BAE by e-filing Form 10-IFA, then the tax auditor should ensure the following:

(a) While reporting admissible depreciation under clause 18(e) of Form No. 3CD, additional depreciation under Section 32(1) (iia) is not to be considered, and a note is given to that effect;

(b) Report amounts admissible under Sections 32AD, 33AB, 33ABA, 35(1)(ii), 35(1) (iia), 35(1)(iii), 35(2AA), 35(2AB), 35AD, 35CCC as “Nil” against Clause 19 of Form No. 3CD; and

(c) Report amounts admissible under Section 10AA or under Chapter-VIA (except under Section 80JJAA) as “Nil” against Clause 33 of Form No. 3CD.

2. Clause 12: Reporting whether the P&L account includes profits & gains assessable on a presumptive basis

Pre-amended Clause 12 of Form 3CD requires the tax auditor to report “Whether the profit and loss account includes any profits and gains assessable on a 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)”.

Amended Clause 12 requires the tax auditor to report “Whether the profit and loss account includes any profits and gains assessable on a 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)”.

There is no mention of Section 44ADA in pre-amended Clause 12. Section 44ADA contains special provisions for computing the profits and gains of the profession on a presumptive basis. Though pre-amended Clause 12 does not refer specifically to Section 44ADA, as it refers to “any other relevant section” under which profits are computed on a presumptive basis and as the heading of Section 44ADA mentions the presumptive basis of taxation, the tax auditor was required to report in pre-amended Clause 12 profits assessable under Section 44ADA if credited to P&L account. Thus, practically, the amendment to Clause 12 makes no change to the auditor’s reporting obligation under Clause 12.

3. Clause 18: Reporting on admissible amount of depreciation under Section 32

The pre-amended sub-clause (ca) of Clause 18 requires reporting the following: “Adjustment made to the written down value under Section 115BAC/115BAD (for the assessment year 2021-22 only).”

The substituted Clause 18(ca) requires the tax auditor to report as follows:

“(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).”;

This amendment is consequential to the amendment of Section 115BAC by the Finance Act, 2023, with effect from the assessment year 2024-25.

4. Clause 19: Amounts admissible under Sections 32AC, 32AD, etc.

The pre-amended Clause 19 requires tax auditor to report amounts admissible under Sections 32AC, 32AD, 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(ia), 35(1)(iii), 35(1)(iv), 35(2AA), 35(2AB), 35ABB, 35AC, 35AD, 35CCA, 35CCB, 35CCC, 35CCD, 35D, 35DD, 35DDA and 35E. The amount admissible has to be reported section-wise in Tabular form. The pre-amended Clause 19 in Notified Form 3CD contains no reference to Section 35ABA, while the e-filing utility contains a reference to Section 35ABA.

Clause 19 has been amended to include a reference to the following two entries:

Adding a row with the entry "35ABA"

Adding a row of "any other relevant section".

The words "any other relevant section" casts a very wide duty on tax auditor to examine the deductibility of every item debited to profit and loss account and every item otherwise claimed as a deduction by assessee. It appears the tax auditor will also have to comment on the admissibility of deductions under Sections 30, 31, 36, 37, 43A and 43B. Amendment of Clause 19 of Form No. 3CD has increased the responsibilities of tax auditor manifold by requiring certification of deductibility in respect of all deductions claimed in the computation of business income, whether by way of debit to P&L account or otherwise.

Tax auditor will have to rely on the draft computation of income obtained for purposes of Clauses 13(d) and 13(e) for reporting under this clause also and mention the fact of such reliance in Clause (3) of Form 3CA or Clause (5) of Form 3CD. Tax auditors may also give suitable cross-references in their notes to amounts reported in other clauses so that multiple allowances/ disallowances for the same item are avoided.

5. Clause 21(a): Items of expenditure debited to P&L account of the nature covered by 6th ,7th and 8th items in the Tabular format

Items 6, 7 and 8 of Tabular format in Pre-amended Clause 21(a) require the tax auditor to report amounts debited to the P&L account in respect of:

Expenditure by way of penalty or fine for violation of any law for the time being force (6th item)

Expenditure by way of any other penalty or fine not covered above(7th item)

Expenditure incurred for any purpose which is an offence or which is prohibited by law (8th item)

The amended Clause 21(a) increases the number of items from 8 to 9 as follows:

(a) Entry 6, "Expenditure by way of penalty or fine for violation of any law for the time being force", has been substituted with "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)”;

(b) A new entry 8, “Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India”, has been inserted;

(c) Entry 9, “Expenditure incurred for any purpose which is an offence or which is prohibited by law”, has been substituted with “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 impact of substitutions as above are as follows:

Pre-amended entries 6 and 8 have been merged into new substituted entry 6, which requires reporting of 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). Such expenditure debited to P&L requires reporting irrespective of whether it is for violation of Indian law or foreign law.

New entry 8 requires reporting of expenditure incurred to compound an offence under any law for the time being in force, in India or outside India. This expenditure must be reported if it is debited to the profit and loss account. Reporting is required regardless of whether the amount paid for compounding is under Indian or foreign law.

The new entry 9 requires reporting of expenditure incurred to provide any benefit or perquisite 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. Unlike new 6th and 8th entries, there is no reference in Entry 9 to law, rule, regulation or guideline outside India.

The tax auditor has only to report amounts debited to the P&L account with respect to the above and is not required to comment on the allowability or otherwise of these items in Clause 21(a). However, the tax auditor will have to comment on the admissibility or otherwise of these items (along with the first 5 entries in this Table) in Clause 19 against the new entry of “any other relevant section”.

It may be noted that the “Amount of interest inadmissible under Section 23 of the Micro, Small and Medium Enterprises Development Act, 2006” will not require reporting under the new 6th entry of Clause 21(a) and will continue to be reported in Clause 22 of Form No. 3CD. This is so despite interest under Section 16 of the MSMED Act, 2006, being in the nature of penalty, as interest at the rate of 3 times the bank rate is required to be paid if payment is delayed to a supplier who is a micro or small enterprise.

6. Correction of clerical error in Clause 21(b)((ii)(b)(IV)

Pre-amended Clause 21(b)(ii)(b)(IV) of Form 3CD required reporting of amounts inadmissible under section 40(a):

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

(A) *****

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

(I) date of payment

(II) amount of payment

(III) nature of payment

(IV) name and address of the payer

(V) amount of tax deducted

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

To correct the clerical error in (IV) above, for the word "payer", the word "payee" shall be substituted. Practically, this will have no impact on the reporting obligations of the tax auditor.

7. Clause 26: Reference of clause (h) in Section 43B dealing with delayed payments to MSEs

In Clause 26, for the brackets, letters and word "(f) or (g)", the brackets, letters and word "(f), (g) or (h)" have been substituted. The amended Clause 26 now reads as follows:

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

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

(a) paid during the previous year;

(b) not paid during the previous year;

(B) was incurred in the previous year and was

(a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1);

(b) not paid on or before the aforesaid date.

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

This amendment is consequential to new clause (h) inserted by Finance Act, 2023, in Section 43B, with effect from the assessment year 2024-25, to disallow on accrual basis sums payable to micro or small enterprises if these are not paid within the time allowed under Section 15 of MSMED Act, 2006. Though the reference to Clause (h) of Section 43B has been inserted in Clause 26 opening sentence, sub-clause (B) of Clause 26 has not been amended to require reporting of amounts not paid within the due date under Section 15 of the MSMED Act. The deadline of depositing amounts on or before the ITR due date to claim deduction on an accrual basis applies to amounts covered by clauses (a) to (g) of Section 43B and not to amounts

covered by clause (h) of Section 43B. It is hoped that CBDT will issue the necessary corrigendum in this regard.

Impact on reporting by tax auditor

Reporting of delayed payment – Where payments of the outstanding amount as of 31-03-2024 are made after 31-03-2024 beyond the due date under Section 15 of the MSMED Act, these are to be reported in Clause 26(B) even if they are made on or before the ITR due date under Section 139(1). The interest payable under Section 16 of MSMEDA with respect to these delayed payments is to be reported in Clause 22.

Identification of MSEs – Verify that the assessee has a system to identify suppliers who are micro/small enterprises. This may include writing to the vendors to confirm their Udyam Registration and identifying them from the Udyam Registration Numbers printed on their bills.

Verification of registration – Verify that the assessee has a system to check the Udyam Registration Number from the Udyam portal and the Udyam Certificate to verify the supplier's status as a Micro or Small enterprise.

Upward reclassification – Verify by random check whether suppliers who were micro/small in the last three years and upgraded to medium are treated as micro/small for 3 years as per Para 8(5) of Notification No 2119(E), dated 26-06-2020.

MCA Filing – In the case of the company assessee, verify whether Form MSME-I was filed with MCA on a half-yearly basis.

Payments by cheques – Where MSE suppliers are paid by cheque and the books show that the cheque is issued on the due date, verify that cheques have been handed over on the due date and acknowledgement has been received to that effect.

Check BRS – Verify the bank reconciliation statement (BRS) regarding cheques issued but not presented for a long time and whether these pertain to MSE suppliers.

Interest on delayed payments – Verify cases where the payment for the purchases during FY 2023-24 from Micro/Small enterprises have been made after the due date under Section 15 of the MSMED Act but on or before 31st March 2024. In such cases, the interest under Section 16 of the MSMED Act for the period of delay should be provided for and/or paid, and it should be reported under Clause 22. Though these cases of delayed payments within the financial year of purchase will not require reporting in Clause 26, interest liability on delayed payments will require reporting in Clause 22.

Advance payments – Verify that advances paid to MSE Suppliers are booked under a separate ledger so that they can be easily collected and claimed as a deduction on an actual payment basis.

Payment due date to be reckoned delivery-wise – Verify that each purchase of goods/services is paid individually within the due date as per Section 15 of the MSMED Act. Payment made on an average due date basis is not in compliance with Section 15 of the MSMED Act.

Payment for capital goods – Verify that the assessee has paid MSE suppliers of capital goods within the time allowed by Section 15 of the MSMED Act. Although these delayed payments will not need to be reported in Clause 26, they will require reporting in Clause 22.

8. Clause 32: Reference to Section 115BAE

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;

The above changes are consequential to the insertion by the Finance Act,2023, of Section 115BAE dealing with Tax on certain new manufacturing co-operative societies) of the Income-Tax Act,1961 (“the Act”) with effect from the assessment year 2024-25.