

WIRC ICAI Mumbai

**Session on tax Audit on
2nd Sept 2023 at ICAI
BKC**

**Applicability of Clause 44
of Form 3CD Tax Audit
Report for F.Y. 2022-23
(A.Y. 2023-24)**

Coverage of Topics

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Applicability of Clause 44

Overview of information to be furnished in 3CD-Clause 44

Meaning of Total Expenditure for reporting

Reporting of capital expenditure in clause 44

Inclusions and exclusions from reporting

Reporting of Provisions and Accrued Expenses in Clause 44

Consolidated details or account head wise to be furnished?

Clause 44 vis-à-vis line Items of Profit & Loss Account

Insight into ICAI Guidance Note on Tax Audit, 2022 edition

Clause 44 – Applicability

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- Clause 44 is applicable for all 3CD reports issued after 31st March 2022.
- Para 82.16 of GN: Reporting is qua PAN, not GSTIN

This report may be prepared for an entity as a whole or for a branch thereof, as may be audited and accordingly the information in these columns may have to be filled up consolidating the expenditure incurred under various GST registrations.

Clause 44 – Applicability

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- Para 82.4 of GN: Applicable even if auditee is not registered under GST (e.g., Doctors, Lawyers, GTAs)

It may be noted that any expenditure that is incurred, wholly and exclusively for business or profession of the assessee qualifies for the deduction under the Act. Registration or otherwise of the payee under the GST Act has no relevance in considering allowability of expenditure.

- Applicable even if auditee is registered and his entire/part income is exempt.

Overview of information to be furnished in 3CD-Clause 44

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- **Clause 44:** Break-up of total expenditure of entities registered or not registered under the GST –
- 1. Col. 2: Total amount of Expenditure incurred during the year
- 2. Expenditure in respect of entities registered under GST
 - ❖ Col. 3: to goods or services exempt from GST
 - ❖ Col. 4: Relating to entities falling under composition scheme
 - ❖ Col. 5: Relating to other registered entities
 - ❖ Col. 6: Total payment to registered entities
- Col. 7: Expenditure relating to entities not registered under GST

Overview of information to be furnished in 3CD-Clause 44

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Sl No	The total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure relating to entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under the composition scheme	Relating to other registered entities	Total payment to registered entities	
1	2 (6+7)	3	4	5	6 (3+4+5)	7

GN: Inclusions and exclusions

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Para	Recommendations
82.2	Depreciation under section 32, deduction for bad debts u/s 36(1)(vii) etc. which are not expenses should not be reported under this clause in any of the Columns from 3 to 7*. These are innature of allowances
82.3	Schedule III to the CGST Act, 2017 lists out activities or transactions which are treated neither as a supply of goods nor a supply of services and thus expenditure incurred in respect of such activities need not be reported under this clause in any of the columns from 3 to 7*. ☞ Remuneration to employees need not be reported.
82.15	Both Revenue & Capital expenditure is covered. Separate reporting of capital expenditure will provide ease in reconciliation.

Schedule III: GST

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

Schedule III: GST

4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
 5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
 6. Actionable claims, other than lottery, betting and gambling.
 7. 1[Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
 8. (a) Supply of warehoused goods to any person before clearance for home consumption;
(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.]
- 2[Explanation 1.-For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.
- 1[Explanation 2.- For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (50 of 1962).]

Schedule III: GST

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Principally these are to be excluded from column 3 to 7:

- Items of which are in the nature of allowances.
- Items of which are not in the nature of expenses.
- Items which are not “supplies” as per GST law.

Clause 44 – Consolidated?

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Para 82.1 of GN, 2022 edition:

A question may arise whether the above information is to be given in respect of each and every head of expenditure or only the total expenditure is to be given. Here, guidance may be taken from the heading of the table which starts with the words “**Breakup of total expenditure**” and hence the total expenditure including purchases as per the above format may be given. It appears that head-wise/nature wise expenditure details is not envisaged in this clause.

Provisions & accrued expenses

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Head	Explanations
Definition	Ind-AS 37: A provision is a liability of uncertain timing or amount.
	AS-29: A provision is a liability which can be measured only by using a <u>substantial degree of estimation</u> .
Accruals v/s provisions	Ind-AS 37: Provisions can be distinguished from other liabilities such as trade payables and <u>accruals</u> because there is <u>uncertainty</u> about the timing or amount of the <u>future expenditure</u> required in settlement.
	AS-29: Provisions can be distinguished from other liabilities such as trade payables and <u>accruals</u> because in the measurement of provisions substantial degree of estimation is involved with regard to the <u>future expenditure</u> required in settlement.
Summary	<ul style="list-style-type: none"> • Accrued expenses and provisions are separated by their respective degrees of certainty. • All accrued expenses have already been <u>incurred</u> but are not yet paid. • By contrast, provisions are allocated toward probable, but not certain, future obligations. They act like a rainy-day fund, based on educated guesses about future expenses.

Provisions & accrued expenses

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Provisions example

- Provisions for warranties or post-sales client support
- Provisions for gratuity
- Provisions for lease encashment
- Provisions for long term service award

Accrued expenses examples

- Audit fee payable
- Electricity expenses payable
- Telephone expenses payable
- Salary payable

Exempt v/s non-taxable supplies

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CGST Section reference	Provisions
Levy Sec. 9	1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, ^{***} 2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council
Exempt Supply Sec. 2(47)	means supply of any goods or services or both <ul style="list-style-type: none"> • which attracts nil rate of tax or • which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and • includes non-taxable supply;
Non -taxable supply Sec. 2(78)	means a supply of goods or services or both <ul style="list-style-type: none"> • which is not leviable to tax • under this Act {read CGST/SGST} or • under the Integrated Goods and Services Tax Act

Clause 44 vis-à-vis line Items of Profit & Loss Account

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PL line head	Clause 44 treatment
High sea purchases (used for high sea sales)	Sch. III - "No supply", hence excluded from col. 3 ~ 7
Remuneration to employees	Sch. III - "No supply", hence excluded from col. 3 ~ 7
Depreciation	Allowance, hence excluded from col. 3 ~ 7
Petroleum crude, high speed diesel oil, motor spirit etc.	Exempt supplies. Petrol/HSD vendors are usually registered under GST, hence should be reported in Col. 3
Electricity expenses	Exempt supplies. Power distribution companies are usually registered under GST, hence should be reported in Col. 3
Cash discount or early payment discount for sales, Sundry balances of AR w/off	Not a supply
Inward returns of goods sold	Not an expenditure, should be reduced from revenue
Interest paid on loan to banks/NBFCs	Exempt supplies. Should be reported in col 3
Interest paid on loan to individuals	Exempt supplies. Either Col. 3 or Col. 7 depending upon registration status of lender
Foreign exchange loss	Not a supply. Excluded from col. 3 ~ 7
ESI, EPF expenses	Not a supply. Excluded from col. 3 ~ 7
Fee for trade license > Rs. 5000	Taxable supply of services. Col. 7
Import of goods or services	Supply from unregistered suppliers. Col. 7
Royalty payment to Government	Taxable supply of services. RCM. Col. 7

Clause 44: Sample auditor's Note

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- Assessee has informed auditor's that "Expenditure relating to entities not registered under GST" includes import of goods, import of services and services from unregistered suppliers on which GST liability under RCM has been discharged.
- Assessee has further informed that the difference between Clause 2 (i.e. "Total expenditure") and sum of clause 6&7 is on account of depreciation, bad debt and expenditure, like salary, which is not a supply as per GST. Also, Total Expenditure as per column 2 includes "capital expenditure".



Thank You

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