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# TDS related Clauses in Form 3CD

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# Inadmissible amounts u/s 40(a) - Clause 21(b)

Pre-amended clause: “amounts inadmissible under Section 40(a)”

Amended clause:

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

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

- date of payment, amount of payment, nature of payment, name and address of the payee, PAN of the payee, if applicable.

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

- date of payment, amount of payment, nature of payment, name and address of the payee, PAN of the payee, if applicable, amount of tax deducted.

# inadmissible amounts u/s 40(a) - Clause 21(b)

## i) as payment referred to in sub-clause (ia)

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

- date of payment, amount of payment, nature of payment, name and address of the payee, PAN of the payee, if applicable.

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

- date of payment, amount of payment, nature of payment, name and address of the payee, PAN of the payee, if applicable, Amount of tax deducted, Amount deposited, if any.

## vi) Under sub-clause (iii)

- Date of payment, Amount of payment, Name and address of the payee, PAN of the payee, if applicable.

[Any payment which is chargeable under the head “salaries”, if it is payable outside India or to a non-resident and if the tax has not been paid thereon nor deducted therefrom under Chapter

XVII-B.]

# Non-admissible amounts u/s 40(a) - Clause 21(b)

## Guidance in respect of Clause 21(b)

In respect of item (i) and (vi), the tax auditor should obtain in writing from the assessee the details of all payments debited to the P&L A/c.

An actual remittance overseas made during the relevant previous year without deducting TDS –

- ✓ The tax auditor may rely upon the legal opinion and/or certificates from chartered accountants based upon which remittances have been made without deduction of tax at source.
- ✓ The tax auditor may refer SA 620, Using the work of an auditor's expert issued by ICAI for reliance on certificates / legal opinion.
- ✓ In this connection the tax auditor is advised to refer the applicable Double Taxation Avoidance Agreement (DTAA)

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## No remittances during the year :

- ✓ The tax auditor may examine the relevant provisions vis-à-vis the agreement or correspondence in pursuance to which the liability is provided by the assessee in his books of account in order to determine whether any amount so provided is at all chargeable to tax under the Act.
- ✓ The tax auditor may use his professional judgment in these matters based upon decided cases and he may rely upon a legal opinion obtained by the assessee where no tax is required to be deducted in respect of the amount so provided.
- ✓ In case he disagrees with the stand taken by the assessee, he should give both the views in his report.

# Tax Deducted at Source Compliance - Clause 34(a)

Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:

Tax deduction and Collection Account Number (TAN)	Section	Nature of Payment	Total amount of payment or receipt of the Nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)
(1)	(2)	(3)	(4)	(5)
Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)*	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of **(6) and *** (8)
(6)	(7)	(8)	(9)	(10)

**For proper reporting - \*Should be read as (5), \*\* Should be read as (7) & \*\*\* Should be read as (9)**

# Tax Deducted at Source Compliance - Clause 34 b & c)

## Clause 34(b)

Information on timely filing of TDS Return to be reported with the following details:

TAN	Type of Form	Due date	Date of furnishing	Whether the statement of tax deducted or collected <b><u>contains information about all transactions</u></b> which are required to be reported

Point: If TDS/TCS return is filed late, entire late filed return will have to be verified.

## Clause 34(c)

Reporting of amount of interest payable and paid for late deposit of TDS/TCS under section 201(1A) / section 206C(7) in the following format.

TAN	Amount of interest under section 201(1A)/206C(7) is Payable	Amount paid out of column (2) along with date of payment.

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## Guidance on Audit Procedures:

- ✓ An auditor should use his professional judgment to apply the technique of audit sampling as prescribed in SA 530 on “Audit Sampling” depending on **the nature and volume of transactions, the materiality involved and the internal control procedures followed by the assessee.**
- ✓ The tax auditor may apply audit sampling techniques on the information provided by the assessee to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.
- ✓ The extent of check undertaken would have to be indicated by the tax auditor in his working papers and audit notes.
- ✓ The tax auditor would be well advised to so design his tax audit programme as would reveal the extent of checking and to ensure adequate documentation in support of the information being certified.



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## Guidance on Clause 34(a):

- ✓ In view of the voluminous nature of the transactions, the tax auditor can apply test checks and compliance tests on the transactions reported in the TDS return by the assessee for verifying the information required to be provided under this clause.
- ✓ It is extremely difficult for the tax auditor to verify each and every transaction in this regard.
- ✓ Therefore, while verifying such transactions, the tax auditor can apply the concepts of materiality and audit sampling.



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