

# ***BHUJ BRANCH OF WIRC OF ICAI***

**E-NEWSLETTER FOR THE MONTH OF MAY-2018**

**(FOR PRIVATE CIRCULATION ONLY)**

**CA. Darshan Khandol**

**Chairman**

**8866583411**

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**Vice Chairman**

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**CA. Jitendra Thacker**

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**CA. Hemen Furiya**

**Member**

**9879379801**

**CA. Bhavee Thacker**

**Imm. Past Chairperson**

**9825227449**

**CA. Priyam Shah**

**Branch Nominee**

**9824096112**

**CA Jagrut Anjaria**

**Newsletter Advisor**

**9426788728**

**Address:-**

**311, Balram Complex, 3<sup>rd</sup> Floor  
Near ICICI Bank, Station Road  
Bhuj-Kachchh  
Phone:-258580  
E-mail:-bhujbranch.wirc@gmail.com**



## ***CHAIRMAN'S COMMUNICATION***

Dear Professional Colleagues,

Although its 40 degree + temperature in our Kutch, I hope this month would be little relaxed after hectic march and statutory bank audits thereafter during April and our most of the article trainees are also on leave in these days due to CA exams. This is also vacation month in India when people go to refresh themselves on family holidays.

After such refreshing holidays we charge ourselves for our routine of return filing for GST, Income tax and coping with other deadlines with which we are getting habituate day by day. But still we have to balance ourselves with our professional responsibilities and personal health.

We have again started with weekend learning on GST and we invite members to create more and more such informal study groups on different subjects and meet regularly to learn and update our selves.

I am very glad to share with you that this edition is going to set a record of some kind as it contains SEVEN articles, with SIX more members joining the elite group of WRITERS, while Harsh Joshi is concluding his series on Insolvency Legislation. I thank Harsh Joshi for completing first series for Bhuj Branch Newsletter and welcome CA Jitendra Thacker, CA Apurva Shah, CA Chetan Vador, CA Kaushalendra Dholakia, CA Sneha Varma and CA Priyanka Shah to the ever expanding group of writers. Let me thank them for their contribution and commitment.

## ***CHAIRMAN'S COMMUNICATION***

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You will notice that from this edition we have started a new series on TAX AUDIT. There are three articles on various clauses of Form 3CD. We intend to carry this section till August and try and cover maximum clauses of 3CD. We also intend to have a series on RERA from next edition. CA Vaibhav Sheth has volunteered to look after this series.

Earlier we used to get articles for news letter from new members but now we are also getting very good response from new as well as senior members in contributing to our newsletter. We are also getting appreciating words and feedback from reading community for the efforts put by our members in news letter. I would like to appreciate the efforts put by News letter committee.

We would also like to inform our members that we are trying to have our own branch land and building for which we have already discussed the matter at appropriate level during orientation program of WIRC and also got positive response from them. We also received infrastructure policy of the institute and also in process to form branch infrastructure committee under the chairmanship of Central Council Member. We would like to have suggestions from the members in this regard.

We are also in process to form sub committees & WICASA committee of the branch and will be informed shortly. As a ongoing process for continuous professional education, we have arranged 4 hrs CPE on practice management and capital market during the month of April and planning to have more such seminars on Amendments in ITR, GST, Tax Audit and some non academic topics also. We are also planning for industrial visit for students as well as members. We have also organising CA Students Talent Search - 2018 which will cover many activities details of which is covered separately in this news letter.

I request each and every member of the branch to actively participate in all the activities of the branch and guide us by giving suggestions and feed back to improve ourselves.

**Until we spread our wings.**

**We will have no idea how long we can fly,**

**Life is not about finding ourselves,**

**Life is about creating us.**

With warm regards,

**CA. Darshan V. Khandol**

**Chairman,**

**Bhuj Branch of WIRC of ICAI**

## **RELIEF U/S. 89(1) AND INTEREST U/S. 234**

**CA Kaushalendra Dholakia**  
**B.Com., FCA, DISA(ICAI)**

Whenever salary is received in arrears, a special tax treatment for the same is resorted to. The reason for the special treatment is that the tax payer should not suffer by paying an extra amount of tax, since the amount though received in the current financial year is actually belongs to more than one financial year.

With a view to provide the relief in arrears of salary received by an employee, Section 89 has been introduced in the Act. The same is reproduced below:

*“Where an assessee is in receipt of a sum in the nature of salary, being paid in arrears or in advance or is in receipt, in any one financial year, of salary for more than twelve months or a payment which under the provisions of clause (3) of section 17 is a profit in lieu of salary, or is in receipt of a sum in the nature of family pension as defined in the **Explanation** to clause (iia) of section 57, being paid in arrears, due to which his total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed.]”*

Further, the relevant rules for calculation of relief and procedure of application to be made in Form 10E are prescribed vide Rule 21A and 21AA respectively.

It is also important to read Section 192 (2A), which is reproduced here-in-below:

*“(2A) Where the assessee, being a Government servant or an employee in a [company, co-operative society, local authority, university, institution, association or body] is entitled to the relief under sub-section (1) of section 89, he may furnish to the person responsible for making the payment referred to in sub-section (1), such particulars, in such form and verified in such manner as may be prescribed, and thereupon the person responsible as aforesaid shall compute the relief on the basis of such particulars and take it into account in making the deduction under sub-section (1).]”*

Hence, an eligible employee can make an application to his employer, in Form 10E and the employer is authorized to compute relief on the basis of such particulars and deduct the tax accordingly, and provide the relief to the employee in the tax deduction.

In brief, the combined reading section 89 and 192 (2A) read with rule 21A and 21AA, the relief has been provided to the assessee from the additional burden of tax, which the assessee would otherwise have been liable to pay.

**The Controversy regarding Section 234B and Section 234C:**

Section 234B:

Interest for default in payment of Advance Tax:

*(1) Subject to other provisions of this Section ..... the assessee shall be liable to pay simple interest..... to the date of determination of total income under sub-section (1) of section 143 [and where a regular assessment is made, to the date of such regular assessment on an amount] equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.*

*Explanation 1.-In this section, "assessed tax" means*

*(1) the tax on the total income determined under sub-section (1) of section 143 and*

*(2) Where a regular assessment is made, the tax on the total income determined under such regular assessment as reduced by the amount of,-*

*(i) Any relief of tax allowed under section 90 on account of tax paid in a country outside India;*

*(iii) Any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;*

**Computation of Total Income under Sub-section (1) of Section 143:**

*[(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:-*

*(a) the total income or loss shall be computed after making the following adjustments, namely:-*

*(i)*

*(vi)*

The computation method to be followed while calculating the relief U/s 89, "total income" would be the figure including the amount of salary received in arrears. The relief is provided in the Income tax and not by reducing the amount of income itself.

Section 143 (1) prescribes the tax calculation method on the "Total income" so arrived at.

(b) The tax [, interest and fee], if any, shall be computed on the basis of the total income computed under clause (a);

(c) The sum payable by, or the amount of refund due to the assessee shall be determined after adjustment of the tax [, interest and fee], if any, computed under clause (b) by:

- (1) any tax deducted at source,
- (2) any tax collected at source,
- (3) any advance tax paid,
- (4) any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91,
- (5) any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax [, interest or fee];

Here, both of the above clause, does not refer to the relief allowable under Section 89, and hence the “assessed tax” means the tax calculated on the total income including arrears, is liable for interest computation U/s 234B.

Presently, CPC is calculating the interest on the income tax payable before granting of relief, citing the reason that “assessed tax on total Income” is the criteria for interest U/s 234B and 234C, which is resulting in adverse consequences to the assessee. As an example, I have attached the Intimation Order as reference:

क्रम संख्या Sl.No.	विवरण Particulars	विवरण देने वाले शीर्ष Reporting Heads	करदाता द्वारा आय विवरणों में दिए ब्याज As Provided by Taxpayer in Return of Income	धारा 154 के अधीन संगणित As Computed Under Section 154
25		स्टॉक/बैंक के बाद कुल आय TOTAL INCOME AFTER DEDUCTIONS 25=(4-24)	11,91,200	11,91,200
26		कुल आय पर कर TAX PAYABLE ON TOTAL INCOME	1,82,360	1,82,360
27	कर के ब्याज TAX DETAILS	छूट मु/एस 87A Rebate u/s 87A	0	0
28		छूट के बाद आयकर Tax Payable after Rebate 28=(26-27)	1,82,360	1,82,360
29		माध्यमिक एवं उच्च-विद्यालय स्तर पर शिक्षा पर EDUCATION CESS (SECONDARY & HIGHER) (on 28)	5,471	5,471
30		कर राहत से पूर्व कर का दायित्व GROSS TAX LIABILITY BEFORE TAX RELIEF 30=(28+29)	1,87,831	1,87,831
31	कर राहत TAX RELIEF	धारा 89 के अधीन राहत RELIEF U/S 89	1,87,538	1,87,538
32	कुल आय कर दायित्व TOTAL INCOME TAX LIABILITY	कुल आय कर दायित्व 32=(30-31)	293	293
33	संबंधित ब्याज INTEREST PAYABLE	234A के अधीन ब्याज 234A INTEREST	0	0
34		234B के अधीन ब्याज 234B INTEREST	0	14,912
35		234C के अधीन ब्याज 234C INTEREST	0	9,414
36		कुल ब्याज दायित्व 36=(33+34+35) TOTAL INTEREST LIABILITY	0	24,326
37	सकल आय कर दायित्व AGGREGATE INCOME TAX LIABILITY 37=(32+36)		293	24,619

As per the law, the Section 234B gets active only when the assessee defaults in payment of advance tax as prescribed U/s 211. As far as question of arrears of Salary is concerned, it is amply clear that arrears of Salary are not the “Current Income” of the assessee, and hence the relief provisions are introduced.

Subsection (1) of Section 210 reads as *“Every person who is liable to pay advance tax under section 208 (whether or not he has been previously assessed by way of regular assessment) shall, of his own accord, pay, on or before each of the due dates specified in section 211, the appropriate percentage, specified in that section, of the advance tax on his current income, calculated in the manner laid down in section 209”*.

The section clearly *mentions the* word “Current Income”, and hence, the amount without arrears of Salary should be treated as “Current Income” and only and only if tax of it exceeds the threshold as per Section 208, the person is liable to pay advance tax.

If the person is not liable to pay advance tax, the question of activation of Section 208 does not arise and accordingly the same rule applies to 234C and 234B.

Further, Section 192 (2A) specifically authorizes the employer to compute the tax on the basis of declaration furnished by the employee in the prescribed form and in the prescribed manner, and deduct the tax accordingly. Hence, the CPC, while processing the return, should compute the interest liability U/s 234B and 234C, on the income tax arrived at after providing for relief, as Section 192 (2A) should be covered U/s 143 (1) (c) (i) – Any tax deducted at source.

To conclude, it seems a fair statement to say that the action on the part of the CPC is difficult to understand and agree to as it leads to an apparent contradiction. On the one hand, the law and procedures prescribed permits the employer not to deduct tax to the extent of relief available under section 89(1) and on the other hand the CPC is demanding interest for not paying tax in advance on the same amount of relief. It is absolutely fair for the tax payer to expect that the law and implementation will speak the same language. It is more than fair for the tax payer to expect that he shall not be put to a disadvantage if the law and procedure do not agree with each other.

The reason behind the treatment preferred by the CPC can only be speculated by us in the absence of any definite answer from the CPC. One assumption may be that the sections imposing interest (234B in this case) talk about reducing TDS and Double Taxation Relief (Sections 90, 90A and 91) but do not specifically refer to section 89(1), and hence, the thought might have prevailed that section 234 does not envisage relief to be reduced from tax liability. However, this assumption is flawed in so far as it fails to realize the distinction between relief under section 89(1) and Double Taxation Relief. While double taxation relief is not an integral part of calculation of tax liability and comes into picture only after tax liability has been arrived at, relief under section 89(1) is an integral part of the process of arriving at the liability to tax. In other words, tax liability can not be determined unless section

89(1) is taken into account, and interest can become chargeable only after tax liability is determined. So, it is absolutely natural that section 234B (etc) do not talk about section 89(1). It may be pertinent to note here that while narrating the items to be deducted from tax liability, section 234B (and other similar sections) has treated double taxation relief at par with TDS, thereby, in a way, accepting the similarity between the two with reference to their role in discharging tax liability. Like TDS, Double Taxation Relief also goes on to DISCHARGE the tax liability and as such has been allowed to be excluded while demanding Interest. With section 89(1), the case is different. The role of 89(1) is not for DISCHARGE of tax liability but in DETERMINATION of tax liability. Unless 89(1), if applicable, is taken into account, no liability to tax can be DETERMINED. In other words, determined tax liability has to be net off the relief envisaged by 89(1) and interest can only be charges on determined liability, that too after deducting therefrom certain modes of discharge of the determined liability such as TDS and Double Taxation Relief.

Views, opinions and comments on this are welcome.

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## **PROVISIONS OF SECTION 43B OF THE INCOME TAX ACT 1961 AND ITS IMPLICATION IN TAX AUDIT REPORT**

**By CA APURVA SHAH**  
**B.Com., FCA**

Section 43B begins with non obstante clause and hence over rides all other sections in the Act. Even where a deduction is admissible under any other section, it may still not be allowable unless the amount is paid in respect of items covered by this section.

### **A. Provisions :**

- a) Section 43B provides that certain expenditure/ payments which are otherwise eligible for deduction under the Act shall be allowed as a deduction only in the year of actual payment irrespective of the year of accrual of such expenditure.
- b) However, the provisions of Section 43B shall not 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 his Income Tax Return under Section 139(1) in respect of the previous year in which liability to pay such sum was incurred by the assessee and the evidence of such payment is furnished along with the income tax return

### **Section 43B Not Applicable in following Case :**

*Section 43B is applicable only if the assessee maintains books of account on mercantile/accrual basis. However, if the books of account are maintained on 'cash basis' then section 43B shall not be applicable. In such a case, all the above mentioned payments for any previous year (like any other expense) shall be allowed as deduction only if the amount is paid during the same previous year. Thus, if such payment for any previous year is made after the close of previous year but on or before filing the return of income of that previous year, deduction shall be allowed in the previous year in which the payment is actually made.*

### **B. Nature of expenses covered under Section 43B –**

#### **a) Payment of Taxes**

any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force,

#### **b) Employer Contribution for benefit of Employee**

Contribution made **by employer** to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees;



c) Bonus or commission

Any Bonus or Commission payable to the Employees

d) Interest on any Loan or Borrowing

Interest on any loan or borrowing from any public financial institution or a State financial corporation or a State Industrial Investment corporation;

e) Interest on any loan or advances from a Scheduled bank;

f) Provision for Leave Encashment

Sum payable by the assessee as an employer by way of in lieu of any leave at the credit of his employee (ie. leave encashment.)

g) Payment made to Railways

any **sum payable by the assessee to the Indian Railways for use of railway assets** shall be allowed as deduction only, if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year. **This amendment will apply in relation to the assessment year 2017-2018 and subsequent years.**

With a view to promote prompt payment to Railways, Budget 2016 has amended Section 43B and from Financial Year 2016-17 onwards, the payments made to Railways would be allowed to be claimed as an expense on Payment basis.

**Also Following clause (d) shall be inserted after clause (c) of Explanation 4 to section 43B by the Finance Act, 2017, w.e.f. 1-4-2018:**

**(d) “co-operative bank”, “primary agricultural credit society” and “primary co-operative agricultural and rural development bank” shall have the meanings respectively assigned to them in the Explanation to sub-section (4) of section 80P.**

### **Other Relevant Points**

For the removal of any doubts, it has been clarified that a deduction of any sum being interest payable under Clause (d) or Clause (e) of this Section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or borrowing shall not be deemed to have been actually paid.

### **C. Issues for consideration For Tax Audit Purpose**

From the Assessment Year 2013-14, amongst other reports the tax audit report is also required to be filed electronically even though it does not support the facility of attaching any annexures/supporting documents. Clause 26 of Form 3CD deals with

sums covered by Section 43B of the Act. In the ensuing paras, some key issues (with relevant case laws) and an audit checklist has been discussed that may be borne in mind while conducting a tax audit –

➤ **Actual Payment – Whether it includes constructive Payment**

**Constructive Payments -**

- i) Sales tax deferment - If the sales tax ('ST') law provides that where deferred ST/ST is deemed to have been converted into loan it is to be treated as actual payment, the same will be treated as paid.  
- Mahalaxmi Bricks Mfg. Mldg & Fab Ind. (P.) Ltd.
- ii) Interest payable converted into loan – The aforesaid mentioned Circular No. 674 is not applicable, where with the consent of the lender, interest payable is converted into loan, i.e., it will not be considered as actual payment.  
- Kalpana Lamps and Components Ltd. v. DCIT

**D. Audit checklist & other issues vis-a vis clause 26 of Form 3CD**  
**And General- Issues**

**Clause wise – Checklist & issues**

➤ **Tax, duty, cess or fee [Sec.43B (a)]**

- a) Verify whether any sales tax, customs duty, excise duty, service tax or any other indirect tax, cess, levy, etc. is debited to profit and loss account. If so, report the amounts so debited to profit and loss account.
- b) If the assessee credits sales tax, excise duty etc. to a separate account and treats the amounts collected as a liability, the tax or duty collected but not paid should be indicated by way of a suitable note.
- c) Section 43B is applicable to interest payable on tax, duty, cess or fee – CIT Vs. Andhra Sugars Ltd.
- d) Excise duty paid under protest would qualify for deduction under Section 43B in the year of payment.  
– Maruti Suzuki India Ltd Vs. Addl.CIT

➤ **Employer's contribution to Provident fund, superannuation fund etc. [Sec. 43B(b)]**

- a) Verify that the provisions of section 40(a)(iv) are complied with in respect of provident fund or other fund established for the benefit of the employees. In case of any violations under Section 40(a)(iv) of the Act, then the payments will have to be reported under clause 21(b)(vii) of Form 3CD.
- b) Verify the dates of payment from the books and documents.

**C) Section 43B applicable to both employee and employer contributions.**

**No disallowance u/s 36(1)(va) if paid before ITR due date.**

The Supreme Court in the case of Alom Extrusions Ltd. (supra) held that when the contribution had been paid by the assessee towards provident fund, etc. prior to filing of return under [section 139\(1\)](#), the assessee would be entitled for deduction under [section 43B](#).

- CIT Vs. Gujarat State Road Transport Corporation ,
- CIT Vs. Hemla Embroidery Mills (P) Ltd. And other cases are there.

➤ **Bonus or Commission to employees [Sec. 43B(c)]**

- a) Ascertain that the provision/payments in respect of bonus or commission to employees are in reality bonus or commission and not dividends payable to them as shareholders but shown as bonus/Commission. If the payments are in the nature of dividends, it requires reporting under clause 20(a) to Form 3CD.
- b) Verify the dates of payment from records.
- c) Also Form No.16A issued online to the employee can be verified.

➤ **Interest payable to public financial institution/State Financial Corporation/State Industrial Investment Corporation [Sec. 43B(d)]**  
**Interest payable to a scheduled bank in respect of any loan or advance [Sec. 43B(e)]**

- a) Verify the loan agreement with the public financial institution/ Scheduled Bank etc.
- b) Mere conversion of interest into a loan or borrowing (i.e. funded loan) is not regarded as payment as per Explanation 3C to Section 43B. Therefore, verify the certificates of payment from the institutions.
- c) Verify the dates of payment of interest payable from books and records.
- d) Verify whether amount of any interest debited to profit and loss account is inadmissible under proviso to section 36(1)(iii). If so, the same should be reported against clause 21(i) to Form 3CD.
- e) Conversion of interest into shares to be treated as extinguishment of liability for the purpose of Section 43B – CIT Vs. Rati Graphics Technologies Ltd.

➤ **Leave encashment [Section 43(f)]**

- a) Verify the dates of payment from books and records.
- b) Appointment Letter can also be verified to ascertain the nature of payment as per contract for Leave Encashment or others.

While there are still quite a few controversial issues as far as when Section 43B will be applicable, the aforesaid mentioned instances would be something we would all like to remember at the time of Tax Audit and take care of that.

**PAYMENTS MADE TO PERSON SPECIFIED UNDER  
SECTION 40A(2)(b) – (CLAUSE 23 OF FORM 3CD)**

**CA CHETAN VADOR**  
**B.Com., FCA**

**PROVISION**

Section 40(A)(2) provides that expenditure for which payment has been or is to be made to certain specified persons listed in the section may be disallowed if, in the opinion of the Assessing Officer, such expenditure is excessive or unreasonable having regard to:

- (i) the fair market value of the goods, services or facilities for which the payment is made; or
- (ii) for the legitimate needs of business or profession of the assessee; or
- (iii) the benefit derived by or accruing to the assessee from such expenditure.

Further, proviso to section 40A(2)(a) provides that no disallowance on account of any expenditure being excessive or unreasonable having regard to the fair market value, shall be made in respect of a specified domestic transaction referred to in section 92BA, if such transaction is at arm's length price as defined in clause (ii) of section 92F.

**Specified Persons for the purpose of Section 40A(2)**

The specified persons for different categories of taxpayers for the purpose of Section 40A(2) are as under:

<b>Category of Taxpayer</b>	<b>Specified Persons</b>
<b>1. Individual</b>	a. Any Relative (i.e. Spouse, Brother, Sister, Lineal Ascendant or Descendant) of such individual; b. Any person in whose business or profession, the individual himself or his relative has substantial interest
<b>2. Company, Firm, AOP or HUF</b>	a. Any Director of the Company, Partner of the firm, or member of the association, or family or any relative of such director, partner or member; b. Any Person in whose business or profession the assessee or director or partner or member of the assessee or any relative of such person has a substantial interest
<b>3. All Assesseees</b>	a. Any Individual who has substantial interest in the business or profession of the Assessee b. A Company, Firm, AOP, or HUF having a substantial interest in business or profession of the assessee or any

	director, partner or member of any such person or any relative of any such director, partner or member c. A Company, firm, AOP or HUF of which a director, partner or member has a substantial interest in the business or profession of the assessee or any director, partner, or member of any such person or any relative of any such director partner or member
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**Meaning of Substantial Interest for purpose of Section 40A(2)**

A person shall be deemed to have substantial interest in a business or profession, if:

1. In a case where business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares carrying not less than 20% of the voting power
2. In any other case, such person is, at any time during the previous year beneficially entitled to not less than 20% of the profits of such business or profession

➤ Therefore, for an amount to be disallowed as an expense under *Section 40A(2)*, the following three conditions are to be satisfied:

1. The payment is in respect of any expenditure
2. The payment has been made or is to be made to a specified person in respect of such expenditure
3. The payment for the expenditure is considered excessive or unreasonable having regard to the fair market value of the goods, services or facilities provided.

If all the above conditions are fulfilled, the Income Tax Officer can disallow the expenditure to the extent he considers it excessive or unreasonable.

**Form 3CD- Tax Audit Report:**

In tax audit report, an auditor is required to give particulars of payments to persons specified under section 40A(2)(b) under Clause 23 of the Form 3CD(Tax Audit Report). He is not required to give his opinion on the unreasonability/excessiveness of the payments. That is the Assessing Officer's prerogative only.

**Procedure and Documentation:**

According to ICAI's Guidance Note, the tax auditor should apply the following procedures in respect of this clause:

- (a) Obtain full list of specified persons as contemplated in this section.
- (b) Obtain details of expenditure/payments made to the specified persons.
- (c) Scrutinise all items of expenditure/payments to the above persons.
- (d) It may be difficult to locate all such payments and it may also involve a time consuming effort. It is, however, possible to localize the area of enquiry by ascertaining the following:
- (i) Call for all contracts or agreements entered into by the assessee and list out the contracts or agreements entered into with the specified persons and segregate the items of payments made to them under these agreements.
  - (ii) In case of payments for purchases and expenses on credit basis, the appropriate ledger accounts can be scrutinised to identify the dealings with the specified persons.
  - (iii) In case of cash purchases and expenses, the purchase or expense account should be scrutinised. It may be difficult to identify such payments in each and every case where the volume of transactions is rather huge and voluminous. Therefore, it may be necessary to restrict the scrutiny only to such payments in excess of certain monetary limits depending upon the size of the concern and the volume of business of the assessee.
  - (iv) In case of a large company, it may not be possible to verify the list of all persons covered by this section and, therefore, the information supplied by the assessee can be relied upon. In this context, a reference may be made to Circular No.143 dated 20.8.1974, issued by the Board, in which it is clarified that a tax auditor can rely upon the list of persons covered under Section 13(3) as given by the managing trustee of a Public Trust. (Refer Appendix 'B' of "A Guide to Audit of Public Trusts under the Income-tax Act" published by the Institute). Where the tax auditor relies upon the information in this regard furnished to him by the assessee it would be advisable to make an appropriate disclosure.

The tax auditor should maintain the following information in his working papers for the purpose of reporting in the format provided in the e-filing utility: :

<b>Name of the related party</b>	<b>PAN of related person</b>	<b>Relation</b>	<b>Date</b>	<b>Payment made (Amount)</b>
1	2	3	4	5

The Finance Act, 2012 had amended Section 40A(2)(a) to provide that the transactions referred to in Section 92BA (called Specified Domestic Transactions) with persons referred to in 40A(2)(b) shall be at Arm's Length Price. The tax auditor is advised to refer the "Guidance Note on Report under section 92E of the Income tax Act, 1961" issued by ICAI for compliance of these provisions.

**What should be reported ?**

1. As per provision only the direct payments to related persons made on account of the related person will be covered, for example, any salary, interest, commission, rent, or charges for supplies and services provided by a related person will have to be reported.
2. Payments made to related persons even if they are on capital account are to be reported. However, the auditor can mention that the expenses have been capitalized in the accounts.
3. Payment made to a related person on account of an unrelated person needs to be mentioned. For example if rent is paid to a relative of a director (related person) for providing accommodation to an employee of company (not a related person), the payment of rent is required to be mentioned.

**What is not required to be reported ?**

1. Payments made to any party which is not a related party is not required to be mentioned though it may be in connection with a related person. For example, payments made to airlines or railways for booking tickets for a related person.
2. Reimbursement of expenses are not covered. When the assessee makes a reimbursement to the related person it does not amount to payment to a related person.
3. Salary to Partner is being regulated by the provision of section 40(b) of the Income tax Act. Hence, no reporting required here.

**Reporting about reasonableness of payments is desirable though not necessary:**

The purpose of TAR is to assist the A.O. in framing assessment. Therefore, relevant information with observation or opinion of auditor is desirable as to reasonableness of payment made to related persons. Though it is not specifically required to report whether the payments are reasonable or not. The auditor can easily have access to all relevant information available with the assessee. Therefore, on consideration of available material the tax auditor can very well mention suitable note that the payments are reasonable having regard to the market rates, payments made to other persons for similar supplies or services, and having regard to legitimate needs of business or profession of the assessee etc.

In case the auditor finds excessive payments, he should draw attention of the A.O. by giving suitable note. By making sufficient disclosure about excessive payments made to related persons, tax auditors will assist the A.O. in a meaning full manner, besides it will also protect interest of shareholders of assessee company, as it may put a check in siphoning of company funds by making hefty payments to related persons.

It is noticed that usually auditors do not give any remarks about reasonableness of payments to related person. As a result many times the A.O. makes full or partial disallowance by simply stating payments made to related persons u/s 40A(2)(b) as per TAR. To avoid such situation it is desirable that the auditor should give suitable note as to reasonableness or otherwise of the sum paid to related persons.



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## **Clause 31(a): Provisions of Section 269SS under Income Tax Act.**

**CA Sneha Parth Varma**  
**B.com. , ACA**

*Finance is the important part and need of every business. The own capital of a person may not be always sufficient to meet the needs of finance of the business. Therefore the Loans and deposits become necessary and important to meet the financial needs of the business. But while taking loans and accepting deposits one also has to keep in mind the restrictions imposed under the Income Tax Act on the mode of taking such loans and deposits. Such provisions regulating the mode of accepting or taking loans or deposits are contained under section 269SS of the Income Tax Act 1961*

### **1. Provisions Relating to Clause 31:** **a. Of the Law**

*Section 269SS provides that any loan or deposit shall not be taken or accepted from any other person otherwise than by an account payee cheque or account payee bank draft if, (a) the amount of such loan or deposit or the aggregate amount of such loan and deposit ; or (b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid and the amount or the aggregate amount remaining unpaid ; or (c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more : Thus it is clear that no person can accept any loan or deposit of Rs 20000 or more otherwise than by way of an account payee cheque or an account payee draft. The limit of Rs 20000 will also apply to a case even if on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from such depositor is remaining unpaid and such unpaid amount along with the loan or deposit to be accepted, exceeds the aforesaid limit. This can be explained with an example: If Mr X has a credit balance of a loan of Rs 19000 from Mr Y. Now in this case Mr X cannot take loan in excess of Rs 999 more from Mr Y except with an account payee cheque or account payee bank Draft.*

**Exemptions from section 269SS:** *The Following persons are exempted from the purview of section 269SS: a) Government ; (b) any banking company, post office savings bank or co-operative bank ; (c) any corporation established by a Central, State or Provincial Act ; (d) any Government company as defined in section 617 of the Companies Act, 1956 (e) other notified institutions (f) where the depositor and the acceptor are both having agricultural income and neither of them have any taxable income.*

**Consequences of contravention of section 269SS:** Section 271D of Income Tax Act 1961 provides that if a loan or deposit is accepted in contravention of the provisions of section 269SS then a penalty equivalent to the amount of such loan or deposit may be levied by the Joint commissioner.

**b. What Form 3CD Asks for**

“31. (a) Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year :—

(i) name, address and Permanent Account Number (if available with the assessee) of the lender or depositor;

(ii) amount of loan or deposit taken or accepted;

(iii) whether the loan or deposit was squared up during the previous year;

(iv) maximum amount outstanding in the account at any time during the previous year;

(v) whether the loan or deposit was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;

(vi) in case the loan or deposit was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

(b) Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:—

(i) name, address and Permanent Account Number (if available with the assessee) of the person from whom specified sum is received;

(ii) amount of specified sum taken or accepted;

(iii) whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;

(iv) in case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

*(Particulars at (a) and (b) need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act.)*

### **2. Procedure**

#### **a. Auditing and Evidence**

*The object of the provision of 269SS has been enacted in order to prevent the increase in black money and to stop tax evasion. It ensures that the taxpayer does not give any false explanation for his unaccounted money.*

*While reporting the details of loans and deposits in Tax Audit report, following points need to be reported:*

- (a) Name , address and permanent account number (if available with assessee)of the lender or depositor ;*
- (b) Amount of loan or deposit taken or accepted ;*
- (c) Whether the loan or deposit was squared up during the previous year ;*
- (d) Maximum amount outstanding in the account at any time during the previous year ;*
- (e) Whether the loan or deposit taken or accepted otherwise than by an account payee cheque or an account payee bank draft ;*

*\*(These particulars needs not to be given in the case of a Government company, a banking company or a corporation established by a Central, State or Provincial Act.)*

**For the purposes of this clause, auditor may keep in mind the following typical situations:**

- (a) Sale proceeds collected by the selling agent will not be considered as loan or deposit.*
- (b) A current account is not excluded from the definition of the term “deposit”.*
- (c) Advance received against agreement of sale of goods is not a loan or deposit.*
- (d) Even if the loans are taken free of interest the information will still have to be given.*
- (e) Loans and deposits taken or accepted by means of transfer enteries constitute acceptance of deposits or loans otherwise than by account payee cheques.*

**How to find out all the Transaction :**

- i. Obtain statement in the required format and check with relevant accounts in general ledger.*

- ii. *Decide if transaction is of loan nature or not.*
- iii. *Scrutinize cash book to find out loans or deposits taken or repaid in cash*
- iv. *Scrutinize loan accounts, current account and deposit accounts for similar items.*
- v. *Scrutinize advances account to find out whether such advances are in the nature of loans/deposits/specified sum\*.*
- vi. *Do the ledger scrutiny. Even ledger scrutiny of other groups for accounts that are hidden in other groups.*
- vii. *Scrutinize bank statement*
- viii. *Scrutinize other agreements and receipts.*
- ix. *Obtain loan confirmations.*
- x. *Disclose particulars of loans/deposits/specified sum\* taken in excess of ₹ 20,000 during the year.*

*\*"Specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place. This amendment is with effect from 1st June, 2015.*

### **3. Documentations**

#### ***The following documents to look for :***

- *The bank statement of the relevant period*
- *The pay-in-slip / counter foil should also be checked.*
- *The agreement which come into force during the year related to this clause need be taken in consideration.*
- *The receipt book should be given proper preference for scrutiny.*
- *The interest payment to various persons should also be checked.*
- *The TDS deducted should also be taken care of.*
- *The balance confirmation certificate should be obtained.*
- *Any other communication related to this section should not be ignored.*

### **4. Disclaimers**

*A 'disclaimer' of opinion arises if the auditor simply refuses to provide an opinion, given limitations on the scope of the audit, or if significant material weaknesses in the internal controls and reporting material mean that an opinion can't be delivered. In a way, disclaimers of opinion can be the worst opinions of all.*

*In this section Disclaimer of Opinion may arise in the following mentioned cases.*

- i. *Like we the auditor don not have any proof of payment through Account payee cheque. Every time it might be possible that we are not able to check that the amount of loan/deposit which is go through the banking channels whether it is actually through the Account Payee Cheque?. Then we have to give our opinion on basis of that fact.*
- ii. *Sometimes it is not clear that the transaction is actually fall into loan/deposit transaction? For eg. If an assessee claims against any entry in February month that it is regarding advance against sale and not the loan/deposit transaction, then the auditor has to verify that it is really against sale? Any sale transaction actually take place for that advance?*

*Golden Rule to avoid 269SS & 269T applicability & avoid penalty*

*1. Do not receive any loan by way of cash more than Rs. 19,999. Please note that explanation & reason for every cash deposit into your Bank account by way of ATM/Bank should be maintained & need to be submitted during Scrutiny. ITO may ask you to give explanation even Rs. 5,000 cash credited to your account. Avoid CASH DEPOSIT of Rs. 20,000 or more through ATM/Bank unless you have proper reason & document.*

*2. If you receive any loan (even for one day) from your friend/relative for Rs. 20,000 or more by way of account transfer or cheque payment. Please repay that amount by account transfer/cheque. Avoid CASH REPAYMENT*

*3. If you paid any Loan ( even for one day) to your friend/relative for Rs. 20,000 or more BY WAY OF ACCOUNT TRANSFER OR CHEQUE PAYMENT. Please receive that amount by account transfer/cheque. Avoid CASH RECEIPT.*

**Be kind to the people, But be serious to the transaction**

**CREDIT INFORMATION BUREAU OF INDIA LIMITED-CIBIL  
AN INTRODUCTION**

*Compiled By:-CA Jitendra Thacker  
B.Com, FCA,DISA,DIRM*

**What is TransUnion CIBIL? What does it do?**

TransUnion CIBIL Limited is India's first Credit Information Company, also commonly referred as a Credit Bureau. Company collect and maintain records of individuals' and commercial entities' payments pertaining to loans and credit cards. These records are submitted to company by banks and other lenders on a monthly basis; using this information a CIBIL Score and Report for individuals is developed, which enables lenders to evaluate and approve loan applications.

A Credit Bureau is licensed by the RBI and governed by the Credit Information Companies (Regulation) Act of 2005.

**Credit score can affect your loan eligibility** : lender looks at the borrower from the point of view to repay the loan and willingness to repay the loan. Your income defines your ability to repay the loan, whereas your willingness to repay the loan is indicated by your credit score. “

**Your CIBIL Transunion score and credit information report is an evidence of your credit worthiness.**

*An individual's credit score provides a credit institution with an indication of the 'probability of default' of the individual based on their credit history. In other simple words, the score tells the credit institution how likely you are to pay back a loan (should the credit institution choose to sanction your loan) based on your past pattern of your credit usage and loan repayment behavior.*

Most of Banks/NBFC look at credit score as an important parameter while taking the lending decision, credit score becomes important.

Banks pull out the credit score while appraising the loan application . In India , CIBIL provides credit score that ranges between 300 and 900. “ It defines propensity of the customer to default in next 12 months . if you have a credit score closer to 900 you are a good customer and more favorably your loan application will be viewed by credit institution. But if you have a low credit score, typically closer to 300, then you are not seen as a good customer. low credit score means that the borrower is not keen to repay the loans on time and banks may not lend to such a customer.”

A Score of “NA” or “NH” means one of the below:

- You do not have a credit history or you do not have enough of a credit history to be scored, i.e. you are new to the credit system

- You do not have any credit activity in the last couple of years
- You have all add-on credit cards and have no credit exposure

It is important to note that while these Scores are not viewed negatively by a lender, some lenders' credit policy prevents them from providing loans to an applicant with Scores of "NA" or "NH" (applicants with no credit track record). Hence, you may have better chances applying for a loan elsewhere.

### Major factors that affect the score:-

1. **Late payments or default in recent pasts :**  
Your payment history has a significant impact on your score. Hence if you have missed payments on any of your existing loans, over the last couple of years, your score is likely to be negatively affected because it indicates that you are having trouble servicing your debts.
2. **Default in your co-signed, guaranteed and joint accounts:** In co-signed, guaranteed or jointly held accounts, you are held equally liable for missed payments. Your joint holder's (or the guaranteed individual) negligence could affect your ability to access credit when you need it
3. **High utilisation of credit limits:** While increased spending on your credit cards may not necessarily negatively affect your score, an increase in the current balance on the card over time is the indication of an increased repayment burden and negatively impact your score. It is always prudent to not use too much credit.
4. **Higher percentage of credit cards or personal loans** (i.e. unsecured loans): A higher concentration of home loans and auto loans ( i.e. secured loans ) is likely to be more favorable for your score than a large number of unsecured loans. Although unsecured loans offer easy access to finance, it is also by far most expensive form of credit.
5. **Behaving Credit Hungry :**  
If you have made many applications for loans, or have recently been sanctioned new credit facilities, a credit institution is likely to view your application with your caution. This credit hungry behavior indicates your debt burden is likely to or has increased, and you are less capable of honoring any additional debt.

### Can CIBIL delete or change records ?

CIBIL cannot delete or change records reflecting on your CIR on its own; we simply collect records of individuals provided to us by our members (Banks and financial institutions).

# The Insolvency and Bankruptcy Code

## Introduction : Part 3

By Harsh Joshi  
 B.Com.,  
 Awaiting Membership of ICAI

In the last article, we saw how the Corporate Insolvency Resolution Process starts. In this article, we will look at some of the aspects of the Resolution process itself.

### Section 12: Time-limit for completion of insolvency resolution process.

The time limit for completion of corporate Insolvency Resolution Process is 180 days from the date of admission of application. However, the extension can be provided by Adjudicating Authority if such resolution is passed by 75% votes of creditors. Such extension will be provided once only and also up to the maximum limit of 90 days.

### Section 13: Declaration of moratorium and public announcement

Adjudicating Authority, after admission of application....

1. Declare moratorium period as per Sec 14
2. Public announcement of initiation of Corp. Insol. Reso. Process. And calls for admission of claims as per sec 15
3. Appoints interim Resolution Professional (R.P.) as per Sec 16

### Section 14: Moratorium.

Moratorium is a calm period of 180 days. During this period, all the suits and legal proceedings etc. against the Corporate Debtor are held in abeyance.

What things are stopped	What things are not stopped
<ul style="list-style-type: none"> <li>• Institution / continuance of suit</li> <li>• Transfer of asset / legal right / beneficial interest</li> <li>• Any action to enforce security interest (including under SARFAESI )</li> <li>• Recovery of property by owner / lessor in possession of Company.</li> </ul>	<ul style="list-style-type: none"> <li>• Supply of essential goods and service</li> <li>• Transactions as notified by government.</li> </ul>

The moratorium period is effective...  
 From: the date of order declaring Moratorium period  
 Till: Completion of Corp. Insol. Reso. Process  
 OR



Till: Date of passing of order by Adjudicating Authority approving resolution plan or liquidation

**Section 15: Public announcement of corporate insolvency resolution process.**

Public announcement is made by interim R.P. immediately (but not later than 3 days) after his appointment (His appointment is done under Sec 16, which is the next section)

**What to announce u/s 15?**

1. Name and Address of Corporate Debtor
2. Authority with which it is registered / incorporated
3. Details of Interim RP (i.e. self)
4. Penalty for false claim
5. Last date of submission of claim
6. Date on which Corp. Insol. Reso. Process ends

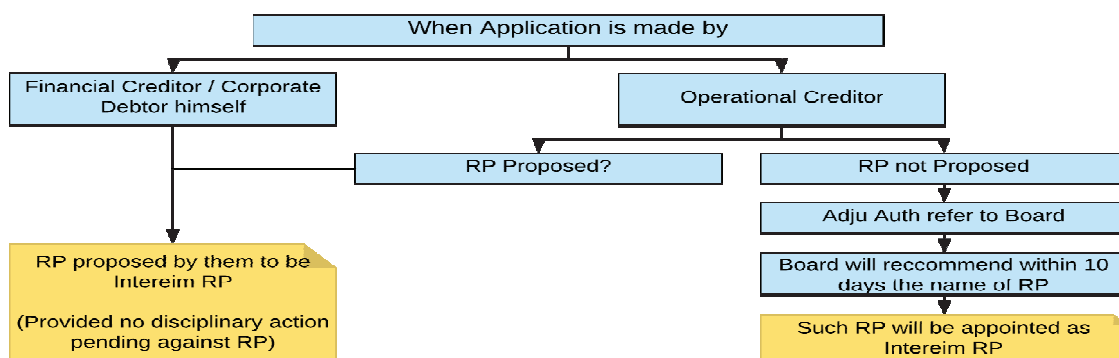
**Section 16 & 17: Appointment and tenure of interim resolution professional and his powers**

Interim RP is appointed by Adjudicating Authority within 14 days from commencement of Insolvency resolution process. He is appointed for 30 Days from his date of appointment. His role includes Issuance of public notice, collection of claims, Constitution of committee of creditors and conduct of first meeting of creditors.

**The powers of Interim RP are as follows:**

- Management of affairs of Corporate debtor
- Powers of BoD or Partners (in case of LLP)
- Reporting of officer and manager to him & access to all documents and records of corporate debtor
- Financial institution with whom the Corp. Debtor maintains his account, shall act on intimation of Interim RP only.

The appointment of Interim RD depends on whether the RP is proposed while making application for initiation of Resolution Process. In case of operational creditor it is



optional to propose interim RP. Hence help of Insolvency Board is taken. The process is explained in the chart as under.

### **Section 21: Committee of Creditors**

The committee of creditor is created by interim RP. It comprise of only Financial creditors (and not operational creditor). This discrimination has also been subject matter of debate that the Insolvency code was ultra-virus to the Constitution as it does not let Operational creditors have a say in the proceedings of Committee of creditors. However it has been held that the differentia is reasonable and hence, the code is not invalidated.

The first meeting is held within 7 days of constitution of committee. All the decisions are taken by not less than 75% of votes. The voting share is decided by the financial debt (Not operational debt) owned by them.

### **Section 22 & 23: Appointment and Function of RP**

In the very first meeting of committee of creditors, the RP is appointed. Here wither the existent Interim RP is appointed as RP or it is replaced by another RP. That decision is again taken by 75% or more majority.

Functions of RP include conducting the resolution process, managing operations of corporate debtor, taking over the management of corporate debtor and operate business as going concern.

### **Section 29: Preparation Of Information Memorandum**

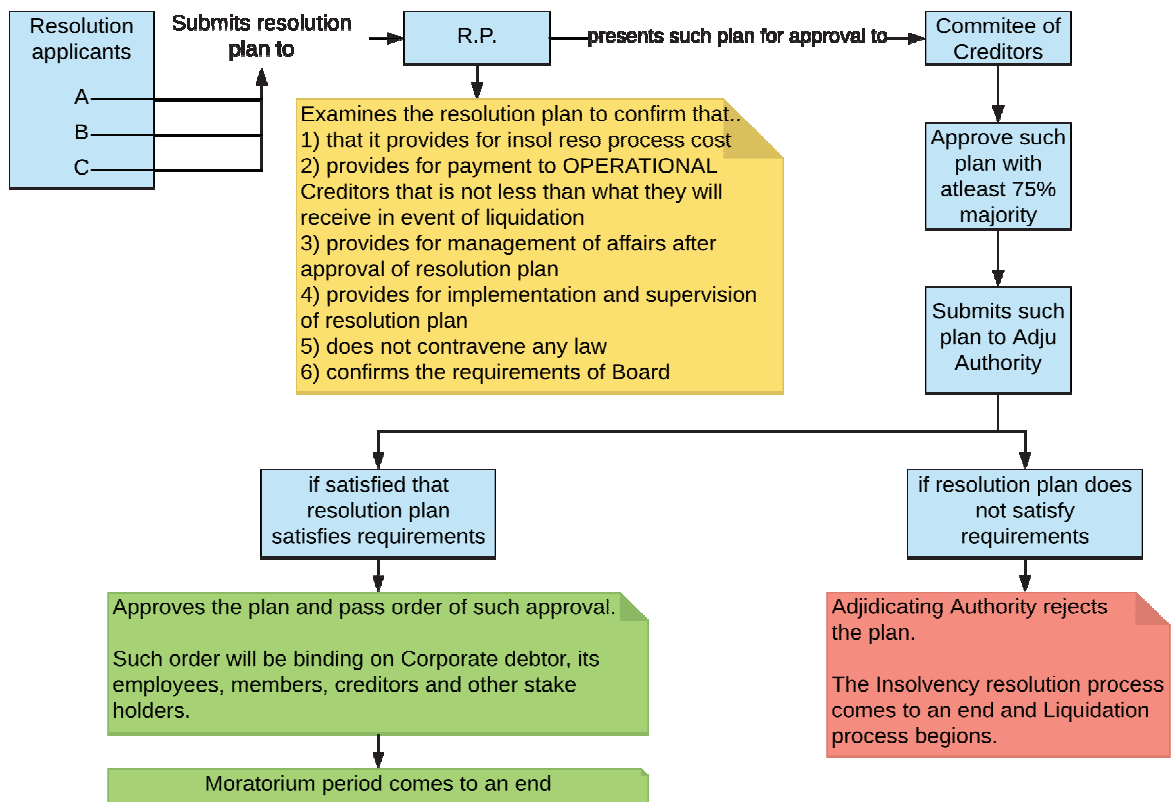
The RP prepares the information memorandum containing information required to make resolution plan including...

1. Financial position of Corporate Debtor
2. Information related to dispute by or against corporate debtor
3. Any other matter as may be specified

### **Section 30 & 31: Submission and Approval of Resolution Plan**

Finally, the resolution plan for the corporate debtor is prepared and sent to the adjudicating authority. If the Plan fulfils all the requirement, then the plan is approved. Thus the plan is carried out and the corporate debtor is saved from insolvency. But, if the plan is not approved, then the corporate debtor is sent to liquidation. The process is described in

the following chart:



**Section 33: Initiation of Liquidation**

The following are the cases under which the corporate debtor would go into liquidation.

1. On rejection by Adjudicating authority of Resolution Plan
2. Adjudicating authority does not receive any Resolution Plan within the specified time limit (i.e. 180 + 90 days)
3. Committee of creditors decides to liquidate during the resolution process before confirmation of resolution plan by 75% majority
4. After Adjudicating Authority accepts the resolution plan, Corporate debtor contravenes such plan and person prejudicially affected by it applies to Adjudicating Authority

The insolvency and Bankruptcy Code has brought about a paradigm shift in the insolvency law in India. The changes here are made for the smooth running of the economy. It provides a chance to the business to recover from the insolvency state. As a Chartered Accountant, it is our duty to understand a legislature and help our clients when one happens to be facing something related to that legislature.

## **SECTION-9: INCOME DEEMED TO ACCRUE OR ARISE IN INDIA-PART-2**

**CA Priyanka Shah**  
**B.Com., ACA**

In this article, we are going to concentrate on clauses (ii) to (vii) of Sub section (1) of Section 9 as well as Sub section (2) of Section 9.

These clauses deal with five types of income. They are Salary, Dividend, Interest, Royalty and Fee for technical services. These sub clauses talk about the situations and circumstances where income of these nature shall be deemed to accrue or arise in India.

Talking about "Salary," the basic rule laid down by clause (ii) is, if salary is earned in India, it is deemed to accrue or arise in India. The question that naturally arises is what is covered by the expression "earned in India." Explanation to clause (ii) clarifies this. It says that if salary is payable for services rendered in India, it is earned in India. It also says that salary payable for rest period and leave period is also salary earned in India. The condition is, such rest or leave period forms part of the contract of employment. Such leave/rest period may be prior to rendering of service or after, in either case it will be salary earned in India.

Sub clause (ii) covers only service rendered in India. Hence, all services rendered outside India do not attract clause (ii). Here clause (ii) steps in. If salary is payable for services outside India, clause (iii) deems it as accruing or arising in India if two criteria are met; One, if it is Payable by the Govt of India, and two, it is payable to a citizen of India. So, according to clause (iii) if salary is payable by Govt of India to a citizen of India, it is to be deemed as accruing or arising in India even if service is outside India.

### **Section 9(1)(iv) – Dividend paid by an Indian Company Outside India**

Dividend paid by an Indian company outside India is deemed to accrue or arise in India by virtue of provision of Section 9(1)(iv). Any dividend paid by an Indian Company shall be chargeable to tax in India irrespective of the residential status of the assessee. Dividend from a foreign company paid in India shall be taxable in India on **receipt basis** as income received in India.

The place of accrual of dividend should be decided on the basis of the place of registered office of the company. The place of declaration or payment of such dividend is immaterial. **Dividend declared by a domestic company is exempt u/s 10(34).**

## **Section 9(1)(v) – Income by way of Interest**

Section 9(1)(v) provides that the income by way of an interest is deemed to accrue or arise in India in case of Interest is payable by: -

- a. The GOVERNMENT (both Central or State); or
- b. a resident person except where the interest pertains to any debt incurred or moneys borrowed and used for the purposes of business or profession carried on by such person outside India or for the purpose of making or earning any income from any source outside India
- c. a non-resident where interest pertains to any debt incurred or moneys borrowed and used for the purpose of a business or profession carried on by such person in India

Following Explanation shall be inserted after sub-clause (c) of clause (v) of sub-section (1) of section 9 by the Finance Act, 2015, w.e.f. 1-4-2016:

Explanation. —For the purposes of this clause, —

- (a) In case of a non-resident, being a person engaged in the business of banking any interest payable by the Permanent Establishment (PE) in India of such non-resident to the head office or Any permanent establishment or Any other part of such non-resident Outside India shall be deemed to accrue or arise in India and Shall be chargeable to tax in addition to any income of the PE & PE shall be deemed to be a separate and independent from the non-resident;
- (b) "permanent establishment" shall have the meaning assigned to it in clause (iiia) of section 92F;

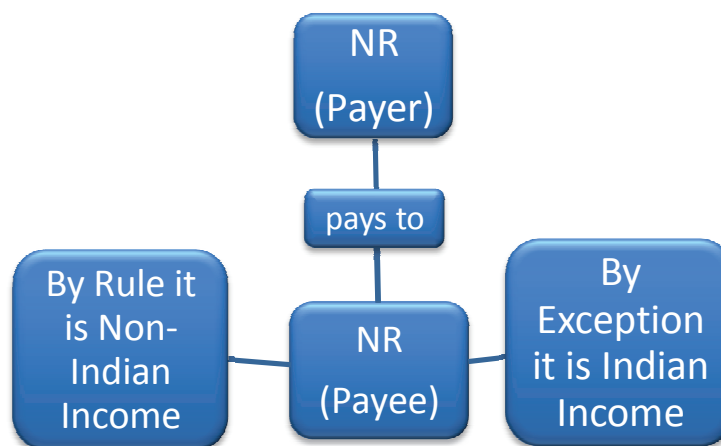
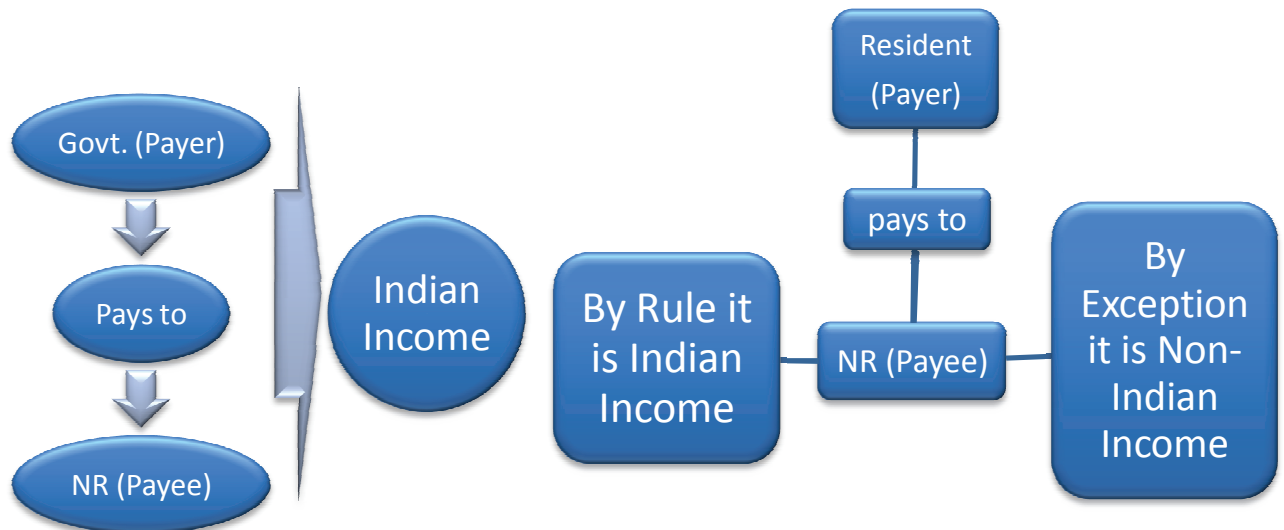
## **Section 9(1)(vi) – Royalty**

Income by way of royalty payable by—

- (a) the Government; or
- (b) a person who is a resident(Exception: Royalty is not Indian income where the royalty is payable in respect of any right, property or information used or services utilized for the purpose of a business or profession carried on by payer outside India or for the purposes of making or earning any income from any sources outside India); or

- (c) a person who is a non-resident, (Exception: Royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by payer in India or for the purposes of making or earning any income from any source in India)

## Royalty / Fees for Technical Service

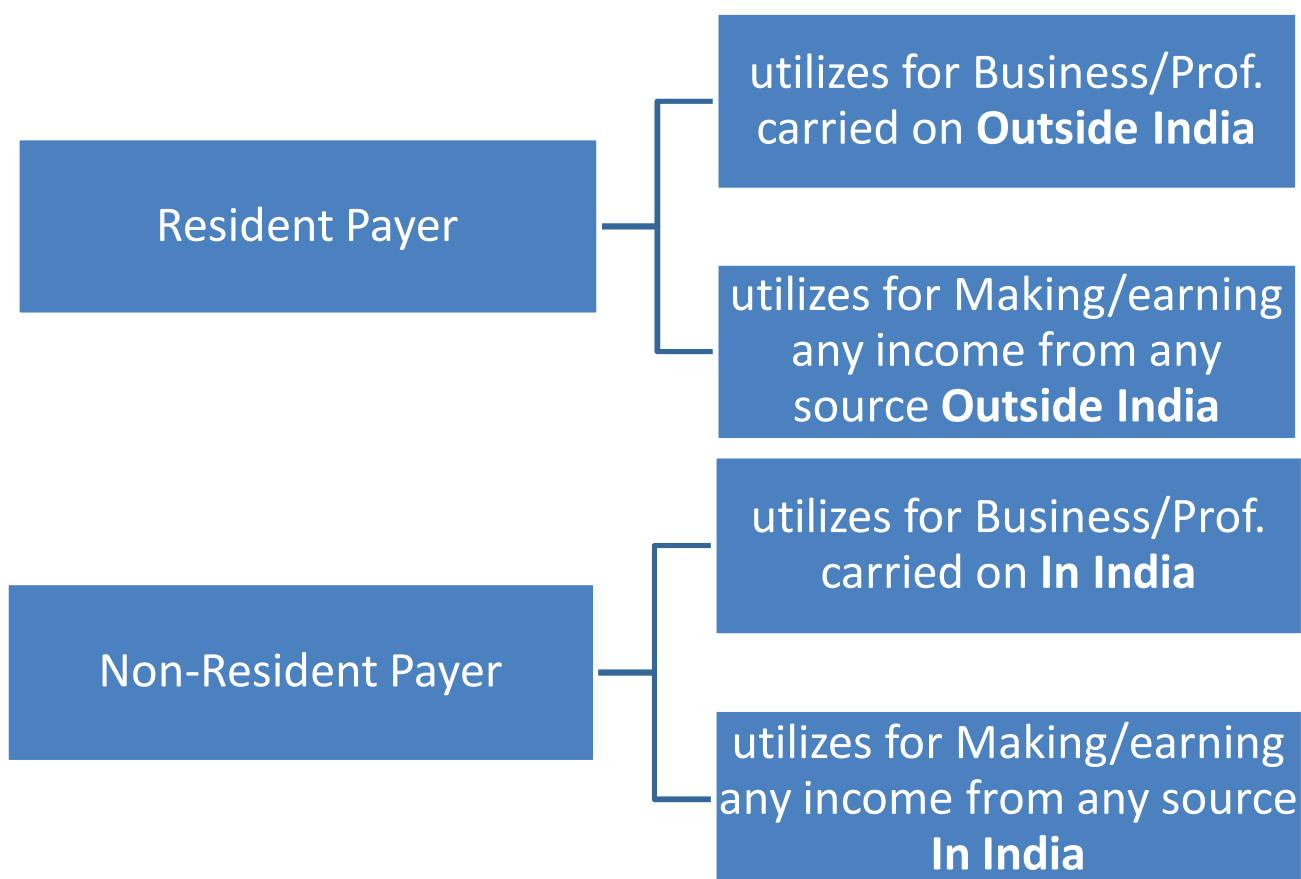


### E

**Exceptions:** - To have clear understanding of exception please refer the below diagrams.

## ***INTERNATIONAL TAXATION***

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### **Explanations to Section 9(1)(vi):-**

**Explanation 1:-** For the purposes of the foregoing proviso, an agreement made on or after 1st day of April, 1976 shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date.

**Explanation 2:-“Royalty”** means consideration (**including** any lump sum consideration but **excluding** any consideration which the income of the recipient would be chargeable under the head Capital Gain) for –

- i. For the transfer of all or any right (including granting of license) in respect of
  - a. A patent or,
  - b. Invention or,
  - c. Model or,
  - d. Design or,
  - e. Secret Formula or,
  - f. Process or,

- g. Trademark or,
  - h. Similar Property;
- ii. The imparting of any information concerning the working of, or the use of,
  - a. A patent or,
  - b. Invention or,
  - c. Model or,
  - d. Design or,
  - e. Secret Formula or,
  - f. Process or,
  - g. Trademark or,
  - h. Similar Property;
- iii. The use of any,
  - a. A patent,
  - b. Invention,
  - c. Model,
  - d. Design,
  - e. Secret Formula,
  - f. Process,
  - g. Trademark,
  - h. Similar Property;
- iv. The imparting of information concerning technical, industrial, commercial or scientific knowledge, experience or skill.
- v. The use or right to use any
  - a. Industrial,
  - b. Commercial or,
  - c. Scientific equipment,
  - d. But not including the amounts referred to in section 44BB;
- vi. The transfer of all or any rights (including the granting of a license) in respect of any
  - a. Copyright
  - b. Literary
  - c. Artistic or,
  - d. Scientific work including films or video tapes for use in connection with radio broadcasting,
  - e. Excluding consideration for the sale, distribution or exhibition of cinematographic films or,



- vii. The rendering of any services in connection with the activities referred to in sub-clauses (i) to (iv), (v) and (vi).

### **Explanation3:** –“Computer Software” means

- a. Any computer programme recorded on any disc, tape, perforated media or any other information storage device and
- b. **Includes** any such programme or any customized electronic data;

**Explanation4:** –Transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

**Explanation5:** –Royalty includes and has always included consideration in respect of any right, property or information, whether or not;

- a. the possession or control of such right, property or information is with the payer;
- b. such right, property or information is used directly by the payer;
- c. the location of such right, property or information is in India.

**Explanation6:** –“Process” includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal) cable, optic fibre or any other similar technology, whether or not such process is secret.

### **Section 9(1)(vii) – Technical Service**

Section 9(1)(vii) provides that income by way of technical service is deemed to accrue or arise in India if payable by:

- a. the **Government**(both Central or State)
- b. **resident person** (except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purpose of making or earning any income from any source outside India)

- c. a **non-resident** (where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purpose of making or earning any income from any source in India)

### **Explanation1:** -“Fees for Technical Services” means

- a. Consideration (including any lump sum consideration)
- b. For the rendering of any Managerial, technical or consultancy services (including the provision of services of technical or other personnel)
- c. But **excludes:**
  - i. Consideration for any construction, assembly, mining or like project undertaken by the recipient or
  - ii. Consideration which is chargeable under the head “Salaries”.

**Explanation2:** -For the purposes of the foregoing proviso, an agreement made on or after 1st day of April, 1976 shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date.

### **Section 9(2): - Pension**

Finally talking about sub section 2 of section 9 regarding certain pensions payable outside India. Any pension payable outside India shall not be deemed to accrue or arise in India, if the pension is payable to a person to be a Judge of the Federal Court or of a High Court.

**Explanation1:** - For the removal of doubts, it is hereby declared that for the purposes of this section, income of a non-resident shall be deemed to accrue or arise in India under clause (v) or clause (vi) or clause (vii) of sub-section (1) and shall be included in the total income of the non-resident, whether or not, —

- a. the non-resident has a residence or place of business or business connection in India; or
- b. the non-resident has rendered services in India.

## CA STUDENTS' TALENT SEARCH-2018

Board of Studies  
The Institute of Chartered Accountants of India

### Objective

The Institute since its inception has been imparting education to students pursuing Chartered Accountancy course through distance education mode across the country in a consistent manner which equips them with sound technical knowledge. For grooming them as all-round professionals, it has been felt that special efforts and vision need to put in to improve their communication and presentation skills and extra-curricular activities for overall development of their personality. Based on aforesaid background, it has been decided to organize CA Students Talent Search 2018 with various activities such as Quiz, Elocution, Instrumental Music and Nukkad Drama.

### Structure of the Contest:

This year, the Board has decided that under the banner of "CA Students' Talent Search-2018" the following four contests would be organized:

1. Quiz
2. Elocution
3. Instrument music (any kind of )
4. Nukkad Drama

The Student Talents would be organized in three stages i.e. Branch, Regional and last at National level.

- The Branch level contests to be completed by 31<sup>st</sup> May, 2018.
- The Regional level contest to be completed by 10th June.
- The National Level contest will take place on 30<sup>th</sup> June and 1<sup>st</sup> July, 2018

At first level, these activities will be organized at the Branch level and the winners of branch level would contest at Regional level and finally the winners of Regional levels will contest in the Grand Finale at National Level for each activity.

**WE ARE PLEASED TO ANNOUNCE THAT BHUJ BRANCH IS GOING TO ORGANISE THIS CONTEST AT THE BRANCH LEVEL ON 27-05-2018.**

**Students covered under the jurisdiction of Bhuj Branch of WIRC of ICAI are invited to take part in this STUDENT TALENT SEARCH.**

**To enrol yourself, please fill in the Registration Form (attached with this email) for the event you want to participate in and send it to emails mentioned in the form, or contact CA Jagrutkumar A.Anjaria on 9426788728 (call or whatsapp).**

**You may participate in multiple events.**

**For QUIZ, you are requested to register as a TEAM comprising of TWO PARTICIPANTS.**

**Events will be conducted subject to sufficient number of entries received.**

**Venue will be intimated in due course.**

**ENTRIES WILL BE ACCEPTED TILL 5:00 PM ON 20-05-2018.**

### **Students' Eligibility:**

Students registered for Final Course and are undergoing articleship and students registered for Intermediate (Integrated Professional Competence) / Intermediate Course are eligible to participate in these contests. Thus, students who have completed articleship are not eligible to participate.

You may participate in more than one event.

For further details, you may contact CA Jagrutkumar A.Anjaria on 9426788728 (call or whatsapp) or send an email at "anjariaja@gmail.com."

### **Topics for Branch Level Elocution Contest, 2018-19**

- New ITR Forms - Towards deterring tax avoidance?
- Place of supply under GST.
- Letter of Undertaking (LOU) whether a boon or bane for banking system in India.
- Data privacy over internet.
- Impact of automation on employment opportunities in India.
- How far revenue is important to assess the financial performance of a company?
- Class Action Suit - Remedy for Investors.
- Role of Bank Auditors in Present Scenario.

**CPE PROGRAMME HELD ON 29-04-2016**



**DISCLAIMER**

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