

Apart from Clause 44 in the Tax Audit Report Form 3CD, it is important to note that the Clause 30C Is also applicable for the Tax Audit reports signed on or after 01.04.2022.

Clause 30C – Reporting of GAAR

Clause 30C mandates the organization to provide details of transactions designed to avoid taxes. If an assess entered into an impermissible avoidance arrangement, he/she is required to provide the details of nature of impermissible avoidance arrangement and amount of tax benefit in the previous financial year arising, in aggregate, to all the parties to the arrangement.

Section 96 of the Income Tax Act, 1961 (hereinafter referred to as Act) deals with any arrangement which is made only for obtaining any tax benefit which shall be treated as

(1) impermissible avoidance arrangement if it

(a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length or

(b) results, directly or indirectly, in the misuse, or abuse, of the provisions of the Act or

(c) lacks commercial substance or is deemed to lack commercial substance or

(d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.

(2) An arrangement shall be presumed, unless it is proved to the contrary by the assessee, to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.

Consequences of impermissible avoidance arrangement.

Section 98. (1) If an arrangement is declared to be an impermissible avoidance arrangement, then, the consequences, in relation to tax, of the arrangement, including denial of tax benefit or a benefit under a tax treaty, shall be determined, in such manner as is deemed appropriate, in the circumstances of the case, including by way of but not limited to the following, namely :—

(a) disregarding, combining or recharacterizing any step in, or a part or whole of, the impermissible avoidance arrangement;

(b) treating the impermissible avoidance arrangement as if it had not been entered into or carried out;

(c) disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;

(d) deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount;

(e) reallocating amongst the parties to the arrangement—

(i) any accrual, or receipt, of a capital nature or revenue nature; or

(ii) any expenditure, deduction, relief or rebate;

(f) treating—

(i) the place of residence of any party to the arrangement; or

(ii) the situs of an asset or of a transaction,

at a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or

(g) considering or looking through any arrangement by disregarding any corporate structure.

(2) For the purposes of sub-section (1),

(i) any equity may be treated as debt or vice versa;

(ii) any accrual, or receipt, of a capital nature may be treated as of revenue nature or vice versa; or

(iii) any expenditure, deduction, relief or rebate may be recharacterized.

Determination of consequences of impermissible avoidance arrangement.

Rule 10UA . For the purposes of sub-section (1) of section 98, where a part of an arrangement is declared to be an impermissible avoidance arrangement, the consequences in relation to tax shall be determined with reference to such part only.]

For Clause 44 of TAR, pls read

<https://taxonation.com/show-detail-article/42408/pointers-on-clause-44-of-tax-audit-report-form-3cd>