

Accountant's Report

November 2019

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Section 01

Statutory Law

Statutory Law

- Introduced by Finance Act, 2001
- The presence of multinational enterprises in India and their ability to allocate profits in different jurisdictions by controlling prices in intra-group transactions

Section 92E of the Act

*“Every **person** who has entered into an **international transaction or specified domestic transaction** during a previous year shall **obtain a report from an accountant** and furnish such report on or before the **specified date** in the prescribed form duly signed and verified in the **prescribed manner** by such accountant and setting forth such particulars as may be prescribed.”*

Read with Rule 10E

*“The report from an accountant required to be furnished under section 92E by every person who has entered into an international transaction or a specified domestic transaction during a previous year shall be in **Form No. 3CEB** and be verified in the manner indicated therein”*

Traditionally Form 3CEB entailed covering of International transactions with Associated Enterprises

However Domestic Transfer Pricing was made applicable from assessment year 2013-14 whereby existing Form 3CEB was revised to include 'Part C' covering Clause 21 to 25 to capture data relating to specified domestic transactions

Accountant's Report

- Obtained by every person entering into an international transaction / Specified Domestic Transaction (“SDT”)
 - Applies both to residents and non-residents
 - No exemption from filing Form 3CEB - Even if the Taxpayer has entered into **international transactions** of INR 1, Form 3CEB must be filed
 - For SDTs, reporting is mandatory if the aggregate value of such transactions exceeds INR 20 Crores
- To be filed by the due date for filing return of income
- **Opinion** whether prescribed documents have been maintained and the particulars in the report are “**true and correct**”
- An important document for the Assessing officer
 - Contains summary of international transactions/ SDTs
 - Contains certain details of the taxpayer
 - Contains method employed to determine ALP

FORM NO. 3CEB

[See rule 10E]

Report from an accountant to be furnished under section 92E relating to international transaction(s) and specified domestic transaction(s)

1. *I/We have examined the accounts and records of _____
(name and address of the assessee with PAN) relating to the international transaction (s) and the specified domestic transaction(s) entered into by the assessee during the previous year ending on 31st March, _____
2. In*my/our opinion proper information and documents as are prescribed have been kept by the assessee in respect of the international transaction(s) and the specified domestic transactions entered into so far as appears from *my/our examination of the records of the assessee.
3. The particulars required to be furnished under section 92E are given in the Annexure to this Form. In*my/our opinion and to the best of my/our information and according to the explanations given to *me/us, the particulars given in the Annexure are true and correct.

**Signed

Name

Address : Membership No. :

Place :

Date :

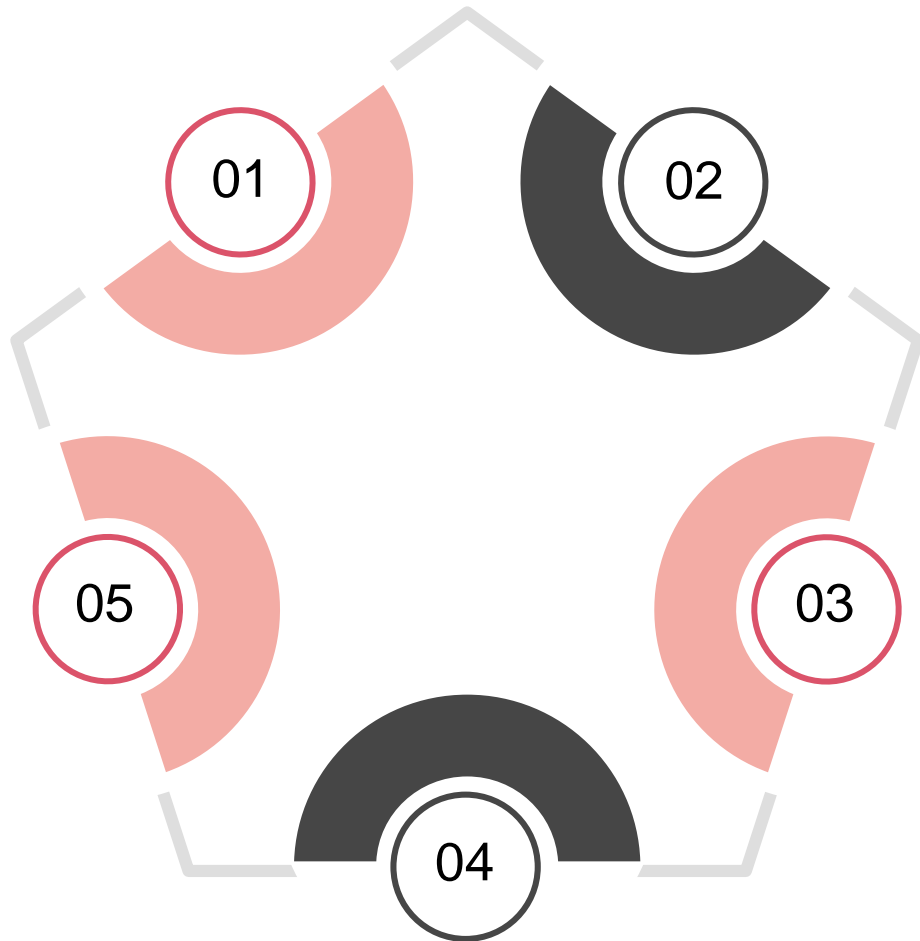
Section 02

Verification Program

- Understanding the responsibility
 - Taxpayer's responsibility
 - Accountant's responsibility
- Preliminary documents required



Taxpayer's Responsibility



- 01 Identify all international transactions / SDT during the year with Associated Enterprise(s) ['AE(s)'] / related party
- 02 Compute the Arm's Length Price ('ALP') as per Section 92C
- 03 Collate, maintain information / documentation prescribed under Section 92D
- 04 Furnish completed Annexure to Form No. 3CEB to Accountant
- 05 Approve the Form No. 3CEB uploaded online by the Accountant as a final step towards filing of e-form

Accountant's responsibility

- Review accuracy and completeness of information compiled by taxpayer
 - **Reconcile transactions and values** in Form No.3CEB with audited accounts (related party disclosure, notes to account)
 - **Test-check** agreements, invoices, negotiations, correspondence, ledger accounts, etc.
 - **Collate documents** – 100% CUP details, reimbursement / recovery details, documents evidencing the receipt of services and benefits, etc.
 - **Compare** last year's Form 3CEB with current year's to ensure no regular international transactions is missed out.
 - **'Smell test'** - to identify unreported transactions e.g. Guarantees given on behalf of subsidiaries, interest free loan, loan taken and repaid in the same year, etc.

Accountant's responsibility

- **Interview client** to check if AE relationship with any party exists under any clauses of Section 92A(2)
- Interview client to check if '**Deemed International Transaction**' exists under Section 92B(2)
- Certify information contained in Form 3CEB as 'true and correct'
 - Different from concept of 'true and fair' under audit
- General principles
 - Rely on judicial pronouncements
 - Rely on the Accounting Standards (AS), Guidance Notes, Auditing and Assurance Standards (AAS) issued by the Institute, to the extent applicable.

The CA Institute has issued a Guidance Note on report on international transactions u/s 92E of the Act

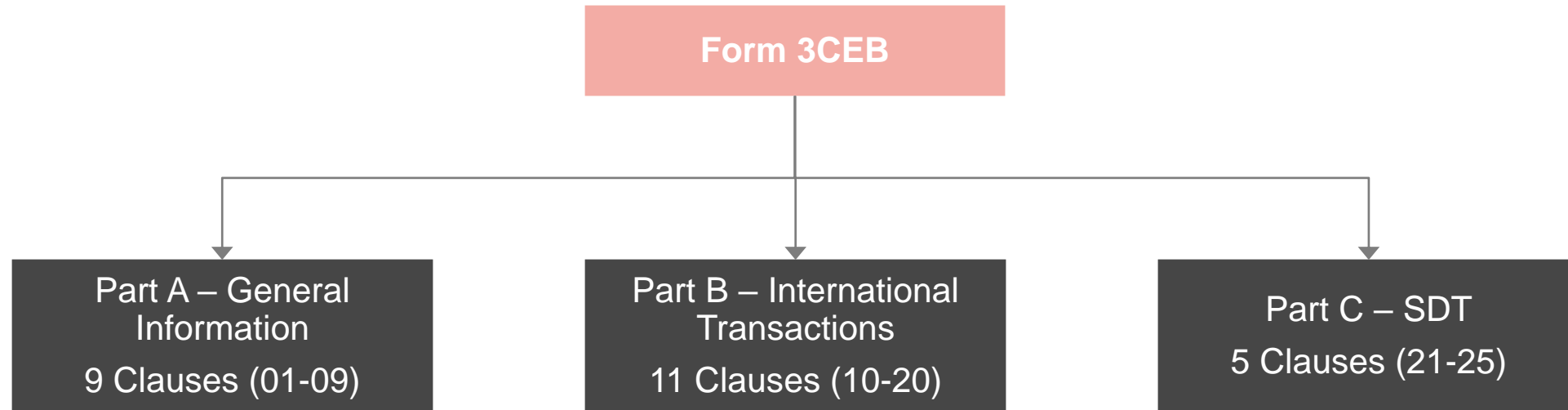
Information required

- 1 **No objection Letter** in case of new client;
- 2 **Audited accounts** of ABC India for concerned financial year;
- 3 Detailed summary (back-up) of **related party schedule**;
- 4 Detailed **schedule of Debtor and Creditor**;
- 5 **Inter-company ledger dumps**;
- 6 **Tax Audit Report** of the Company;
- 7 **Sample Invoices** for all international transactions with the group companies;

Section 03

Accountant's Report – Clauses

Form 3CEB - Overview



Accountant's Report – Clauses to Form 3CEB

Part A	
Clause 1: Name of assessee:	Full and complete name (In case of change in name, write both new and old name)
Clause 2: Address	In case of foreign company, provide foreign address (PE issue in case of Indian company address!)
Clause 3: PAN	Get copy of PAN card
Clause 4 : Nature of Business or Activities of the assessee	Verify the code for the nature of business of the company as per the instructions for filing ITR 6
Clause 5: Status	Refers to the person defined in Section 2(31) of the Act, namely, individual, Hindu undivided family, company, firm, an association of persons or a body of individuals whether incorporated or not, a local authority or artificial juridical person.
Clause 6: Previous Year ended	2019
Clause 7: Assessment year	2020
Clause 8 : Aggregate Value of International transactions as per books of accounts	Book Value of International transactions
Clause 9: Aggregate Value of Specified Domestic transactions as per books of accounts	Book Value of Specified Domestic transactions

Accountant's Report – Clauses to Form 3CEB

Part B	
Clause 10:	List of AEs with whom the assessee has entered into intl. trans.
Clause 11:	Particulars in respect of transactions in tangible property
Clause 12:	Particulars in respect of transactions in intangible property
Clause 13:	Particulars in respect of providing of services
Clause 14:	Particulars in respect of lending or borrowing money
Clause 15:	Particulars in respect of transactions in the nature of guarantee
Clause 16:	Particulars in respect of transactions in the nature of purchase or sale of marketable securities, issue and buy back of equity shares, optionally convertible/ partially convertible/ compulsorily convertible debentures/ preference shares.
Clause 17:	Particulars in respect of mutual agreement or arrangement
Clause 18:	Particulars in respect of transactions arising due to business restructuring or reorganisations
Clause 19:	Particulars in respect of any other transactions
Clause 20:	Particulars in respect of deemed international transactions

Accountant's Report – Clauses to Form 3CEB

Part C	
Clause 21:	List of AEs with whom the assessee has entered into SDT. trans.
Clause 22:	Particulars in respect of transactions in nature of any expenditure
Clause 23:	Particulars in respect of transactions in nature of transfer or acquisition of any goods or services a. If the unit transferring the goods is as referred to in section 80A(6), 80IA(8) of the Act to any other business carried on by the assessee b. If any unit of the assessee is as as referred to in section 80A(6), 80IA(8) of the Act has acquired any goods or services from any other business carried on by the assessee
Clause 24:	Particulars in respect of transactions with any AEs which has resulted in more than extra ordinary profits to an eligible business unit to which section 80IA(10) or section 10AA applies.
Clause 25:	Particulars in respect of any other transactions

Section 04

Accountant's Report- Flipside

Accountant's Report – Form 3CEB of the AEs

- When We Need To File Form 3CEB For Foreign Companies?
 - Mirror Form 3CEB
 - Payments made by the foreign affiliate (i.e. Income of the Indian entity) need not be disclosed
 - Further only taxable income in the hands of the foreign affiliate is to be disclosed –refer section 115A;
 - Return of Income of the Foreign company would be the starting point

Section 05

Important considerations

- Management Representation Letter
- Verification Checklist
- Penalties
- Date Matrix

Management Representation Letter and Verification Checklist

Management Representation Letter

- Management acknowledges and certifies its understanding of the facts relating to the international transaction and/or SDT undertaken
- Back-up documentation to support the arm's length nature of the transaction available with the client (including profit computations, economic adjustments, workings, etc.)
- Confirmation regarding the AEs, transactions (especially deemed international transaction and free of cost transactions) and the transaction amounts to be reported in the Form 3CEB
- Business note for a particular situation (e.g. business restructuring, etc.)

Verification Checklist (few verification checks)

- Check whether the related party transaction amount ties up with the AE ledgers
- Check the invoices, agreements, related party opening and closing balances
- Check the back up workings for arriving at the value of international transaction
- Check for abnormalities, if any, in the Balance Sheet / P&L line item amounts vis-à-vis last year
- Check the MDA, Directors Report, Notes to Accounts, etc

Tax Penalties

Default	Nature of penalty
Failure to maintain documents; or Failure to report a transaction in the accountant's report; or Maintaining or furnishing incorrect information or documents	2% of the value of transaction
Failure to furnish Form 3CEB by the due date	INR 100,000

Tax Penalties

Default	Nature of penalty
Failure to maintain documents; or Failure to report a transaction in the accountant's report; or Maintaining or furnishing incorrect information or documents	2% of the value of transaction
Failure to furnish Form 3CEB by the due date	INR 100,000
<p>Penalty for furnishing incorrect information in reports or certificates.</p> <p>271J. Without prejudice to the provisions of this Act, where the Assessing Officer or the Commissioner (Appeals), in the course of any proceedings under this Act, finds that an accountant or a merchant banker or a registered valuer has furnished incorrect information in any report or certificate furnished under any provision of this Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct that such accountant or merchant banker or registered valuer, as the case may be, shall pay, by way of penalty, a sum of ten thousand rupees for each such report or certificate.</p>	

Thank you

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