

CLAUSE 23 OF FORM NO. 3CD : PAYMENTS TO PERSONS SPECIFIED UNDER SECTION 40A(2)(b)

PAYMENTS TO PERSONS SPECIFIED IN SECTION 40A(2)(b)

Particulars of payments made to persons specified under section 40A(2)(b). [Clause 23]

Applicability of clause 23 27.1

This clause applies to all assessees.

Persons specified under section 40A(2)(b) 27.2

The following Table gives the list of 'specified persons' in section 40A(2)(b) :

Sl No.	<i>Assessee (who has made the payment)</i>	<i>Specified persons - i.e. persons specified in section 40A(2)(b) to whom payment is made by the assessee</i>
1.	Individual	<p>(a) Relative as defined in section 2(41) of the Act - section 40A(2)(b)(i)</p> <p>(b) A person, in whose business or profession, the assessee or his relative has substantial interest - section 40A(2)(b)(vi)(A)</p> <p>(c) Individual who has substantial interest in the business or profession of the assessee/relative of such individual. - section 40A(2)(b)(iii)</p> <p>(d) Company which has substantial interest in the business or profession of the assessee/director of such company/relative of such director - section 40A(2)(b)(iv)</p> <p>(e) any other company in which the company in (d) above has substantial interest - section 40A(2)(b)(iv) (applicable w.e.f. A.Y. 2013-14) [See Note 1]</p>

Sl. No.	Assessee (who has made the payment)	Specified persons - i.e. persons specified in section 40A(2)(b) to whom payment is made by the assessee
		<p>(f) HUF/AOP/firm which has substantial interest in the business of the assessee/members of HUF/AOP/firm and their relatives - section 40A(2)(b)(iv)</p> <p>(g) Company of which a director has a substantial interest in the business or profession of the assessee, any director of such company/his relative - section 40A(2)(b)(v)</p> <p>(h) Any firm/HUF/AOP of which any partner or member, as the case may be, has a substantial interest in the business of the assessee or any partner/member of such firm/HUF/AOP or any relative of partner or member - section 40A(2)(b)(v)</p>
2.	Firm (including LLP)	<p>(a) Partner of the firm/LLP - section 40A(2)(b)(ii)</p> <p>(b) Any relative of a partner of the firm/LLP- section 40A(2)(b)(ii)</p> <p>(c) A person, in whose business or profession, the firm or partner in the firm or relative of partners has substantial interest. - section 40A(2)(b)(vi)(B)</p> <p>(d) Individual who has substantial interest in the business or profession of the assessee/relative of such individual. - section 40A(2)(b)(iii)</p> <p>(e) Company which has substantial interest in the business or profession of the assessee/director of such company/relative of such director - section 40A(2)(b)(iv)</p> <p>(f) any other company in which the company in (e) above has substantial interest - section 40A(2)(b)(iv) (applicable w.e.f. A.Y. 2013-14) [See Note 1]</p> <p>(g) HUF/AOP/firm which has substantial interest in the business of the assessee/members of HUF/AOP/firm and their relatives. - section 40A(2)(b)(iv)</p> <p>(h) Company of which a director has a substantial interest in the business or profession of the assessee, any director of such company/his relative - section 40A(2)(b)(v)</p> <p>(i) Any firm/HUF/AOP of which any partner or member, as the case may be, has a substantial interest in the business of the assessee or any partner/member of such firm/HUF/AOP or any relative of partner or member - section 40A(2)(b)(v)</p>
3.	Hindu undivided family	<p>(a) Any member of the HUF- section 40A(2)(b)(ii)</p> <p>(b) Relative of any member of the HUF - section 40A(2)(b)(ii)</p> <p>(c) A person, in whose business or profession, the HUF or members of the HUF or their relatives has substantial interest - section 40A(2)(b)(vi)(B)</p> <p>(d) Individual who has substantial interest in the business or profession of the assessee/relative of such individual. - section 40A(2)(b)(iii)</p>

Sl. No.	Assessee (who has made the payment)	Specified persons - i.e. persons specified in section 40A(2)(b) to whom payment is made by the assessee
		<p>(e) Company which has substantial interest in the business or profession of the assessee/director of such company/relative of such director - section 40A(2)(b)(iv)</p> <p>(f) any other company in which the company in (e) above has substantial interest - section 40A(2)(b)(iv) (applicable w.e.f. A.Y. 2013-14) [See Note 1]</p> <p>(g) HUF/AOP/firm which has substantial interest in the business of the assessee/members of HUF/AOP/firm and their relatives. - section 40A(2)(b)(iv)</p> <p>(h) Company of which a director has a substantial interest in the business or profession of the assessee, any director of such company/his relative - section 40A(2)(b)(v)</p> <p>(i) Any firm/HUF/AOP of which any partner or member, as the case may be, has a substantial interest in the business of the assessee or any partner/member of such firm/HUF/AOP or any relative of partner or member - section 40A(2)(b)(v)</p>
4.	Company	<p>(a) Director of the company. - section 40A(2)(b)(ii)</p> <p>(b) Any relative of such director - section 40A(2)(b)(ii)</p> <p>(c) A person, in whose business or profession, the company or directors or their relatives has substantial interest. - section 40A(2)(b)(vi)(B)</p> <p>(d) Individual who has substantial interest in the business or profession of the assessee/relative of such individual. - section 40A(2)(b)(iii)</p> <p>(e) Company which has substantial interest in the business or profession of the assessee/director of such company/relative of such director - section 40A(2)(b)(iv)</p> <p>(f) Any other company in which the company in (e) above has substantial interest- section 40A(2)(b)(iv) (applicable w.e.f. A.Y. 2013-14) [See Note 1]</p> <p>(g) HUF/AOP/firm which has substantial interest in the business of the assessee/members of HUF/AOP/firm and their relatives. - section 40A(2)(b)(iv)</p> <p>(h) Company of which a director has a substantial interest in the business or profession of the assessee, any director of such company/his relative - section 40A(2)(b)(v)</p> <p>(i) Any firm/HUF/AOP of which any partner or member, as the case may be, has a substantial interest in the business of the assessee or any partner/member of such firm/HUF/AOP or any relative of partner or member - section 40A(2)(b)(v)</p>
5.	Association of Persons	<p>(a) Member of the AOP - section 40A(2)(b)(ii)</p> <p>(b) Relative of any member of the AOP - section 40A(2)(b)(ii)</p> <p>(c) A person, in whose business or profession, the AOP or member/relative of member has substantial interest - section 40A(2)(b)(iii)</p>

Sl. No.	Assessee (who has made the payment)	Specified persons - i.e. persons specified in section 40A(2)(b) to whom payment is made by the assessee
		<p>(d) Individual who has substantial interest in the business or profession of the assessee/relative of such individual. - section 40A(2)(b)(iii)</p> <p>(e) Company which has substantial interest in the business or profession of the assessee/director of such company/relative of such director - section 40A(2)(b)(iv)</p> <p>(f) any other company in which the company in (e) above has substantial interest - section 40A(2)(b)(iv) (applicable w.e.f. A.Y. 2013-14) [See Note 1]</p> <p>(g) HUF/AOP/firm which has substantial interest in the business of the assessee/members of HUF/AOP/firm and their relatives. - section 40A(2)(b)(iv)</p> <p>(h) Company of which a director has a substantial interest in the business or profession of the assessee, any director of such company/his relative - section 40A(2)(b)(v)</p> <p>(i) Any firm/HUF/AOP of which any partner or member, as the case may be, has a substantial interest in the business of the assessee or any partner/member of such firm/HUF/AOP or any relative of partner or member - section 40A(2)(b)(v)</p>
6.	Any assessee	<p>(a) Individual who has substantial interest in the business or profession of the assessee/relative of such individual. - section 40A(2)(b)(iii)</p> <p>(b) Company which has substantial interest in the business or profession of the assessee/director of such company/relative of such director - section 40A(2)(b)(iv)</p> <p>(c) any other company in which the company in (b) above has substantial interest - section 40A(2)(b)(iv) (applicable w.e.f. A.Y. 2013-14) [See Note 1]</p> <p>(d) HUF/AOP/firm which has substantial interest in the business of the assessee/members of HUF/AOP/firm and their relatives. - section 40A(2)(b)(iv)</p> <p>(e) Company of which a director has a substantial interest in the business or profession of the assessee, any director of such company/his relative - section 40A(2)(b)(v)</p> <p>(f) Any firm/HUF/AOP of which any partner or member, as the case may be, has a substantial interest in the business of the assessee or any partner/member of such firm/HUF/AOP or any relative of partner or member - section 40A(2)(b)(v)</p>

ITAT's Interpretation of reporting requirements**27.3**

In *Film Shoppe (India) Pvt. Ltd. v. ITO* [ITA No. 2019/Mum/2003 assessment year 1997-98] (17-1-2007), the Tribunal had the occasion to interpret the corresponding clause 6(a) in old Form No. 3CD (which was prevalent prior to 4-6-1999). Item 6(a)

of Form No. 3CD prior to its substitution by IT (14th Amdt.) Rules, 1999 read as under :

“Details of expenditure referred to in section 40A :

(a) Particulars of all payments made to persons specified in section 40A(2)(b).”

The above requirement was interpreted by ITAT as requiring that where the assessee has claimed any expenditure in the profit and loss account which is hit by the provisions of section 40A(2)(b) of the I.T. Act, 1961, the details of the same are to be furnished against clause 6(a) irrespective of whether payment has been made in respect of it or not. The Tribunal rejected the interpretation that clause 6(a) required only actual payments made to persons specified in section 40A(2)(b) and not amounts outstanding to these persons. It is useful to contrast the requirements of clause 6(a) of the old Form No. 3CD with the requirements of the present Form No. 3CD. Unlike clause 6(a) in (pre-1999) Form No. 3CD, clause 23 of present Form No. 3CD is not qualified by the words “Details of expenditure referred to in section 40A”. Therefore, it is possible to take a view that clause 23 of present Form No. 3CD requires only actual payments to persons specified in section 40A(2)(b) to be reported and not the amounts claimed in/debited to profit and loss account. This view also derives considerable force when one notices that clause 21(a) of present Form No. 3CD begins with words “Amounts debited to profit and loss account, being.....”. These words are absent in clause 23.

In any case, it may be advisable for the tax auditor to clarify that what has been reported are the actual payments made to specified persons during the previous year and these are not necessarily the amounts claimed in/debited to profit and loss account.

Audit Checklist - Clause 23

27.4

The following views of ICAI regarding clause 23 may be noted :

- ◆ The tax auditor is only required to give payments of particulars of payments to persons specified under section 40A(2)(b) under this clause.
- ◆ He is not required to give his opinion on the unreasonability/excessiveness of the payments. That is the Assessing Officer’s prerogative.

According to the 2014 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 section 40A(2)(b).
- (b) Obtain details of expenditure/payments made to the specified persons.
- (c) Scrutinise all items of expenditure/payments to the specified persons.
- (d) As locating all such payments would be difficult and time consuming, localise the area of enquiry as follows :
 - (i) Call for all contracts or agreements entered into by the assessee.
 - (ii) List out the contracts or agreements entered into with the specified persons and segregate the items of payments made to them under these agreements.

- (iii) In case of payments for purchases and expenses on credit basis, scrutinize the appropriate ledger accounts to identify the dealings with the specified persons.
- (iv) In case of cash purchases and expenses, scrutinize the purchase or expense account.
- (v) 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.
- (vi) In case of a large company, it may not be possible to verify the list of all persons covered by this section. Therefore, the information supplied by the assessee can be relied upon. Circular No. 143, dated 20-8-1974, issued by the Board, clarifies that tax auditor can rely upon the list of persons covered under section 13(3) as given by the managing trustee of a Public Trust. The same analogy may be extended to this case. 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:

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