

GIFTS/DEEMED GIFTS CHARGEABLE UNDER SECTION 56(2)(x) - CLAUSE 29B

AMOUNT CHARGEABLE U/S 56(2)(x)

Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub-section (2) of section 56? (Yes/No) [Clause 29B(a)]

If yes, please furnish the following details:

- (i) Nature of income
- (ii) Amount (in Rs.) thereof [Clause 29B(b)]

Requirements of New Clause 29B

33B.1

- ◆ Clause 29B has been newly inserted into Form No. 3CD with effect from 20-8-2018 by *Notification No. 33/2018* dated 20-7-2018
- ◆ Clause 29B will not apply to tax audit reports signed and uploaded before 20-8-2018. There is no need to revise such reports to include details required by new clause 29B
- ◆ Clause 29B will apply to tax audit reports signed on or after 20-8-2018
- ◆ Clause 29B pertains to gifts/deemed gifts received which is taxable u/s 56(2)(x)
- ◆ Clause 29B pertains to income from other sources under section 44AB, audit is required to be of books of account and accounts of business or profession.
- ◆ Therefore, reporting in respect of clause 29B which pertains to 'income from other sources' is required only to the extent entries in relation to such income are made in books of business or profession.
- ◆ Tax auditor is not liable to report in respect of income covered by clause 29B if no entries in relation to that are made in books of business or profession

- ◆ The reporting requirement is whether any amount is to be included as income chargeable under the head 'income from other sources'. This requirement requires the tax auditor to act as Assessing Officer and sit in judgment on taxability of income. If answer is 'yes', details to be furnished care (i) Nature of income and (ii) Amount thereof

Provisions of section 56(2)(x)

33B.2

- ◆ The Finance Act, 2017 amended clauses (vii) and (viii) of sub-section 2 of section 56 of the Act to make these clauses inapplicable with effect from 1-4-2017.
- ◆ The Finance Act, 2017 inserted a new clause (x) in sub-section (2) of section 56 so as to provide that receipt of the sum of money or the property by any person on or after 1-4-2017 without consideration or for inadequate consideration in excess of threshold limit of ₹ 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources". The Explanatory Memorandum to the Finance Bill, 2017 explained the changes as follows:

Widening scope of Income from other sources

Under the existing provisions of section 56(2)(vii), any sum of money or any property which is received without consideration or for inadequate consideration (in excess of the specified limit of ₹ 50,000) by an individual or Hindu undivided family is chargeable to income-tax in the hands of the resident under the head "Income from other sources" subject to certain exceptions. Further, receipt of certain shares by a firm or a company in which the public are not substantially interested is also chargeable to income-tax in case such receipt is in excess of ₹ 50,000 and is received without consideration or for inadequate consideration.

The existing definition of property for the purpose of this section includes immovable property, jewellery, shares, paintings, etc. These anti-abuse provisions are currently applicable only in case of individual or HUF and firm or company in certain cases. Therefore, receipt of sum of money or property without consideration or for inadequate consideration does not attract these anti-abuse provisions in cases of other assesseees.

In order to prevent the practice of receiving the sum of money or the property without consideration or for inadequate consideration, it is proposed to insert a new clause (x) in sub-section (2) of section 56 so as to provide that receipt of the sum of money or the property by any person without consideration or for inadequate consideration in excess of ₹ 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources". It is also proposed to widen the scope of existing exceptions by including the receipt by certain trusts or institutions and receipt by way of certain transfers not regarded as transfer under section 47.

The amendments made by the Finance Act, 2017 to widen the ambit of donee-based taxation of gifts regime are as under:

- (a) Section 56(2)(vi)/(vii) is made inoperative with effect from 1-4-2017 and accordingly, any sum or property received without or for inadequate consideration (as aforesaid) before 1-4-2017 shall be taxable as income under clause (vi)/(vii)
- (b) Clause (x) is inserted in section 56(2) to provide that the following receipts during a previous year would be taxable as income in the hands of *any person*, under the head 'Income from Other Sources' subject to the other provisions relating thereto, made in the clause:
- ◆ Any sum of money without consideration, in aggregate exceeding ₹ 50,000 during the financial year; or
 - ◆ Any immovable property without consideration, the stamp duty value of which exceeds ₹ 50,000; or
 - ◆ Any immovable property for a consideration which is less than stamp duty value by an amount exceeding ₹ 50,000; or
 - ◆ Any movable property (as defined and specified) without consideration where aggregate fair market value whereof exceeds ₹ 50,000; or
 - ◆ Any movable property (as defined and specified) for consideration which is less than fair market value by an amount exceeding ₹ 50,000.
- (c) The clause also provides for exceptions, mode of computation and other related provision for taxation of the above receipts.
- (d) In section 49(4), reference of clause (x) is inserted to provide that cost of acquisition of property, value whereof is subject to tax under section 56(2)(x), shall include such value, for computing capital gains.
- (e) Sub-clause (xvii) is inserted in clause (24) of section 2 so as to include income referred in clause (x) of sub-section (2) of section 56, in the definition of income.

Salient features of new donee-based taxation regime applicable to gifts w.e.f. 1-4-2017 under clause (x) 33B.2-1

- (a) The receipts contemplated [any sum of money or immovable property or movable property as per (b) above], exceeding threshold limit of ₹ 50,000 are taxable
- (b) The amount liable to tax would be:

<i>Item received</i>	<i>Threshold limit upto which not taxable</i>	<i>Amount liable to tax</i>
Sum of money without consideration	If such sums of money received during the previous year in question do not exceed ₹ 50000 in the aggregate	If threshold of ₹ 50,000 exceeded, entire amount received (and not just the amount in excess of ₹ 50000) is liable to tax
Immovable property received without consideration	Stamp duty value does not exceed ₹ 50000	Stamp duty value of property received (If stamp duty value of property received exceeds ₹ 50,000)

<i>Item received</i>	<i>Threshold limit upto which not taxable</i>	<i>Amount liable to tax</i>
Immovable property received for consideration less than stamp duty value	Difference between stamp duty value and consideration does not exceed ₹ 50000	Entire difference between SDV and consideration (if difference exceeds ₹ 50000)
Movable property received without consideration	Aggregate fair market value of movable property received during the financial year does not exceed ₹ 50000	If threshold of ₹ 50,000 exceeded, entire aggregate FMV (and not just the amount in excess of ₹ 50000) is liable to tax
Movable property received for consideration which is less than their fair market value	Difference between aggregate FMV and consideration does not exceed ₹ 50000	If threshold of ₹ 50,000 exceeded, entire difference is taxable and not just the difference in excess of ₹ 50000

- (c) The receipts could be by any person.
- (d) The receipt must be on or after 1-4-2017.
- (e) The sum of money or property received from any relative, etc. (as specified in the proviso to the clause) would not be liable to tax.
- (f) *Explanation* to the clause provides reference of certain terms or expressions as defined in *Explanation* to clause (vii).
- (g) Property is defined to mean immovable property being land or building or both and other movable properties, *i.e.*, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

Conditions for taxability of cash gifts received for previous year 2017-18 and subsequent years **33B.2-2**

The taxation of gifts of money received during previous year 2017-18 and subsequent previous years shall be governed by sub-clause (a) of clause (x) of section 56(2). Thus, any sum/sums of money received is taxable as income from other sources in the hands of the recipient if the following conditions are satisfied :

- (i) The recipient is any person-be it individual or a Hindu Undivided Family or a company or a firm or AOP or BOI or AJP.
- (ii) The sum/sums of money was/were received during the previous year. [See **Para 33B.2-3**]
- (iii) The sum/sums of money was/were received *without consideration*. [See **Para 33B.2-8**]
- (iv) The sum/sums of money may be received from *any* person or persons.
- (v) The aggregate of the sum/sums of money so received during the previous year exceed the limit ₹ 50,000 as stipulated by section 56(2)(x)(a). [See **Para 33B.2-13**]