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Digest
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By

**Interns of
SBS and Company LLP**

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INCOME TAX

SEC 40A(3) OF THE INCOME TAX - ACT, 1961

Contributed by Sameer Hussain & Vetted by CA Ram Prasad |

Introduction:

There are many sections in the Income Tax-Act, 1961 ("Act") which are anti- tax evasion in the nature and of the all Sections 40A is one of which disallow certain expenses or payments if they are not in compliance with the rules as laid down in the act.

In this article, we shall be having a glance on sub-section 3 of section 40A of the act which disallow the cash expense exceeding the threshold limit. This section is to be read with rule 6DD of the Income tax rules for in detailed understanding which prescribes the various circumstances under which a cash payment can be disallowed in order to stop from evasion of tax.

This section has been introduced to verify the genuineness of the transaction thereby minimising the risk of evasion of tax.

Section 40A (3): Below is the extract of the section which states that:

*"Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a **person in a day**, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, **exceeds twenty thousand rupees**, no deduction shall be allowed in respect of such expenditure."*

So, prima facie there is direct disallowance under this section for the payments made **purpose of expenses** if mode of payment is through cash or **cheque which doesn't have the characteristic of account payee** and amount of such payment exceed twenty thousand rupees.

Also to state, this section covers the payment of expenses so it is clear that purchase of capital items is not affected by this section.

Also, before amendment to this section through Finance act 2008, persons were splitting a particular high value payment into several cash payments, each below Rs.20,000/-. This splitting is also resorted to for payments made in the course of a single day. Courts have also held that the statutory limit in section 40A(3) applies to payment made to a party at one time and not to the aggregate of the payments made to a party **in the course of the day** as recorded in the cash book. According to the judicial opinion, the words used are '**in a sum**', i.e., **single sum**. Therefore, irrespective of any number of transactions, where the amount does not exceed the prescribed **amount in each transaction**, the rigours of section 40A(3) will not apply.

To overcome the splitting of payments made during a day as referred above and to increase the efficacy of the provision, **an amendment** was made and the above extract of the section was introduced wherein it state a payment or aggregate of payments made to a person in **a day**.

Rule 6DD:

As every section have its own exception, section 40A(3) has too which allows certain payments under rule 6DD in order to avoid the hardships to the assessee which are as follows:

1. Where payments are made to:
 - a. the Reserve Bank of India or any banking company
 - b. the State Bank of India or any subsidiary bank
 - c. any co-operative bank or land mortgage bank;
 - d. any primary agricultural credit society or any primary credit society
 - e. the Life Insurance Corporation of India

Note: It is clear that payments made to any bank is out of preview of this section and in case the insurance premiums payment is made to companies other than LIC then such payments are disallowed.

2. Where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender.

Here, Legal tender means the currency of a State which is to be used as money. For example, if we make payment to Indian railways for booking of wagons then it is out of preview of this section.

Also, payment of taxes to government (Let say Sales Tax, Excise duty, VAT) is out of preview of this section.

3. Where the payment is made by
 - a. any letter of credit arrangements through a bank;
 - b. a mail or telegraphic transfer through a bank;
 - c. a book adjustment from any account in a bank to any other account in that or any other bank;
 - d. a bill of exchange made payable only to a bank;
 - e. the use of electronic clearing system through a bank account;
 - f. a credit card;
 - g. a debit card.

It is clear that this clause has its relevance in order to promote the online transactions and also transaction made through this mode are easily traceable.

4. Where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;

Example: Let say A Ltd. has supplied goods to B Ltd. worth of Rs 1,00,000/- then in this case amount is receivable by A Ltd. Also, let say there is a supply of service by B Ltd to A Ltd. of Rs 60,000/-. In this case both A Ltd. and B Ltd. can come to an agreement for book adjustment and in this case amount of Rs 60,000/- is allowable as expenditure in books of A Ltd.

5. where the payment is made for the purchase of.
 - a. agricultural or forest produce or
 - b. the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming or
 - c. fish or fish products or
 - d. the products of horticulture or apiculture, to the cultivator, grower or producer of such articles, produce or products.

This clause is helpful for the assessee who are involved in the business of agricultural activities.

6. Where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products.
7. Where the payment is made in a village or town, which on the date of such payment is not served by any bank and such payment is to be made only to a person who ordinarily resides in such village or town who is carrying on any business, profession or vocation:

Example: Let say Mr A. is a doctor and is carrying on his service in a village (of which he is residence) and he has provided a consultancy service to B Ltd. for the health check-up of the employees and has raised an invoice amounting to Rs. 1,00,000/- for the same. Then in this case payment made by B Ltd. to Mr. A is allowed as expenditure even when such payment if made in cash. This clause is liberal as the payments generally falls in the TDS preview and through this the transaction finally is traceable.

Let say in the above Mr. A is a not a resident of village or town then the deduction in respect of such payment will be disallowed as the company has the alternative for initiation of the transaction through other payment modes which are permissible under this section.

8. When payment is made to an **employee or heir** of such employee :
 - a. on account or in connection with retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit **and**
 - b. such sums payable to the employee or his heir does not exceed **fifty thousand rupees.**
9. Where the payment is made to an employee by way of **salary** to after deducting the income tax from salary in accordance with the provisions of section 192 of the Act, **and**
 - a. when such employee is **temporarily** posted for a continuous period of **fifteen days** or more in a place other than his normal place of duty or on a ship and
 - b. does not maintain any bank account at **such place** or ship;
10. Where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike.

11. Where the payment is made by any person to his agent who is in turn required to make payment in cash for goods or services on behalf of such person.

Note: Here employee is not considered as an agent.

12. Where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

Example: Let say Mr A has approached a bank for exchange of USD 100 to rupees. In this case bank, can make payment in cash to such person.

Other Points:

1. The threshold limit of **twenty thousand rupees** should be substituted with **thirty-five thousand rupees** in the case of payment made for plying, hiring or leasing goods carriages as per section 40A(3A) of the act.
2. If the assessee has incurred liability against expenditure in a year and in subsequent year assessee has initiated the payment through the mode other than the permissible mode under section 40A(3) then such sum should be added back to the total income of the subsequent year and the same is chargeable to tax.

Example: Let say C Ltd. has booked a professional charge amounting to Rs 30,000 in a Financial Year 2015-16 and claimed as expense in that year. In the subsequent year say FY 2016-17 C Ltd. has made payment against the professional charges in cash mode then such expenditure should be disallowed in the books of C Ltd. for FY 2016-17 and the same is subject to tax.

"work hard in silence let your success be your noise"

INCOME TAX

DEMONETISATION AND THE INCOME TAX

Contributed by Priya Singh & Vetted by CA Ram Prasad |

INTRODUCTION:

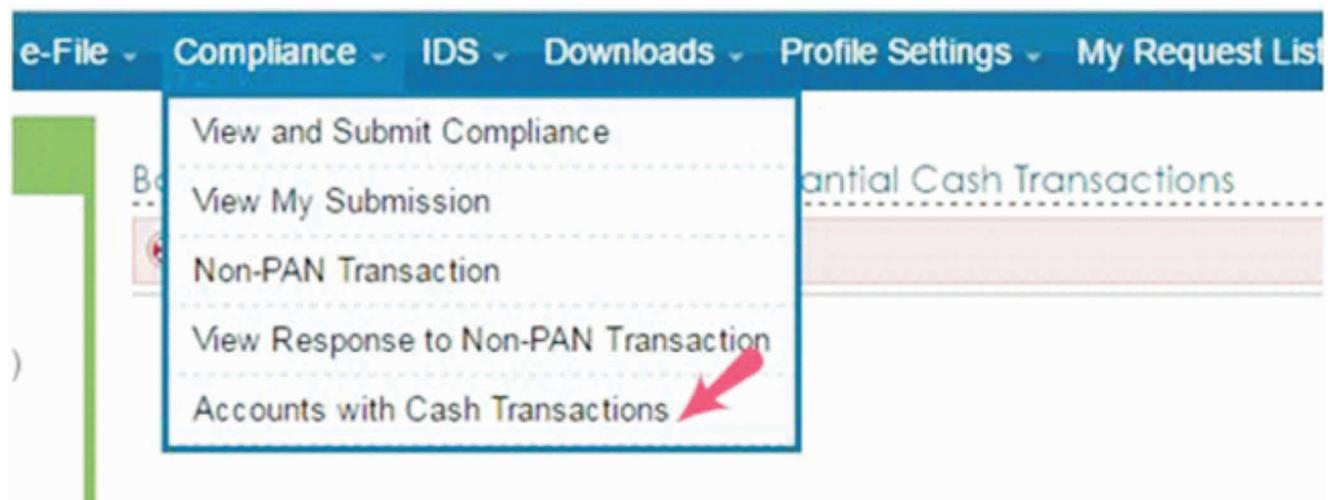
Honourable PM Narendra Modi announced on November 8th that Rs. 500 and Rs.1000 would cease to be a legal tender from the very next day. This caused sensation in the whole country.

The basic objective behind taking such immediate and massive step is to eliminate fake currency, disrupting terror and criminal activities and catch hold of the black money holders. Additional objectives are to enable growth in banks credit and turning India into cashless economy.

DEMONETISATION PERIOD – 9th November to 30th December

❖ “Accounts with Cash Transaction” – A new feature to monitor large cash deposits

The above-mentioned scrutiny is being undertaken by Income Tax Department (“IT Dept.”) with aid of new feature added in the Income tax e-filing account i.e. “*Accounts with Cash Transaction*”.



The banks server is connected to the Department’s website which results in tracking online by tax authorities about the cash deposits made in the bank account exceeding the limit. Such amount will get reflected under ‘*Account with Cash Transaction*’. The taxpayer has to explain the source and state whether their income-tax returns reflect these deposits or not .

In case a taxpayer declares that large cash deposits are linked to **farm income** then the department may decide to further investigate the matter by comparing the deposit with the land holdings of the farmer and the corresponding yields. In case of a big mismatch, the farmer might be probed for passing off income from other sources as farm income.

Advantage:

- ✓ This step of IT Dept helps to find out the nature and sources of cash deposits.

ANNUAL INFORMATION REPORT**Section 285BA – Obligation to furnish statement of financial transactions or reportable account**

It keeps a watch on high value transactions undertaken by the taxpayer. The person as specified in the section has to furnish the details of such financial transaction in Form 61A which exceeds the specified limit in a financial year.

The section 285BA read with rule 114E stipulates that the statement in Form no. 61A has to be furnished in case of high value transaction done and which are registered/ recorded. Such transaction shall be furnished by such class of persons as mentioned below:

	Nature of transaction	Person responsible for reporting
❖	Payment made in cash for purchase of pre-paid instruments issued by RBI, bank drafts, pay orders, banker's cheque where such amount aggregating to Rs. 10,00,000 or more in a financial year	Banking company or Co-operative banks
❖	Cash deposits or cash withdrawals (including through bearer's cheque) aggregating to Rs. 50,00,000 or more in a financial year from one or more current account of a person	Banking company
❖	One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to Rs. 10,00,000 or more in a financial year of a person	Co-operative bank, banking company, Post Master General, Nidhi company or NBFC as the case may be.
❖	Payments made by any person of an amount aggregating to Rs.1,00,000 or more in cash or Rs. 10,00,000 or more by any other mode against bills raised in respect of one or more credit cards issued to that person in a financial year	Co-operative bank or banking company
❖	Receipt from any person of an amount aggregating to Rs, 10,00,000 or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company)	Company or Institution issuing bonds or debentures

❖	Receipt from any person of an amount aggregating to Rs. 10,00,000 or more in a financial year for acquiring shares (including share application money) issued by the company	Company issuing shares.
❖	Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to Rs.10,00,000 or more in a financial year	Listed company on recognised stock exchange
❖	Receipt from any person of an amount aggregating to Rs.10,00,000 or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund)	Trustee of Mutual fund
❖	Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers cheque or draft or any other instrument of an amount aggregating to ten lakh rupees or more during a financial year	Authorised person under FEMA,1999
❖	Purchase or sale by any person of immovable property for an amount of thirty lakh rupees or more or valued by the stamp valuation authority referred to in section 50C of the Act at thirty lakh rupees or more	Authorised person under Registration Act,1908
❖	Receipt of cash payment exceeding Rs. 2,00,000 for sale by any person of goods or services of any nature	Tax audit assessee under section 44 AB of IT Act, 1961.
❖	Cash deposits during the period 09th November 2016 to 30th December 2016 aggregating Rs. 12,50,000 or more in one or more current account of a person or Rs. 2,50,000 or more in one or more accounts (other than a current account) of a person	Banking company or co-operative bank or Post Master.

One of the objectives of demonetisation is to unearth Black money so any cash deposited between the said 50 days would be watched and the proper explanation should be given by the taxpayer for the amount deposited to put light on the unexplained source. To carry out this 'Cash deposits during the period 09th November 2016 to 30th December 2016' transaction is inserted by Income tax (30th Amendment) Rules, 2016 w.e.f 15.11.2016 in the Rule 114E.

Report by 31st January, 2017

CBDT had instructed the Banks, Co-operative banks and Post office to submit the Annual Information report in the form 61 A with the details of large cash deposits (as newly added in Rule 114E) by 31.01.2017.

Quoting of PAN

Similarly Rule 114 B was amended post demonetisation. This rule states that the PAN must be quoted in all the documents, if the specified transaction exceeds the threshold limit. This rule has been amended by adding one more nature of transaction with limit which is given as below,

PAN should be quoted for cash deposit with banking company or a co-operative bank or Post Office.

- (i) exceeding fifty thousand rupees during any one day; or*
- (ii) aggregating to more than two lakhs fifty thousand rupees during the period 09th November, 2016 to 30th December, 2016.]*

- In case the assessee does not have PAN or stating incorrect PAN then penalty of Rs. 10,000 would be levied in terms of section 272B of IT Act, 1961.

TAXATION LAWS (SECOND AMENDMENT) ACT, 2016

By introduction of Taxation laws (Second Amendment) Act, 2016 w.e.f 15.12. 2016, Government has given the Black money holders a last chance to come clean. The assessee is given an option to offer undisclosed income voluntarily,

❖ SECTION 115BBE – TAX ON UNACCOUNTED INCOME.

- A. The section 115BBE has been amended w.e.f 01.04.2017 stating that if
 - i. the assessee, by himself, discloses the unaccounted wealth in the form of Unexplained Cash credits, Unrecorded Investments, unrecorded valuable assets, under-stated valuable article, unexplained Expenditure etc. in the return of Income
 - ii. Or, the Assessing Officer determines such income of assessee then,
- B. The rate of Income tax under Section 115BBE for such income shall be 60% plus surcharge @ 25% plus education cess @ 3% making the effective rate to 77.25%.

- C. If the assessee voluntarily disclose the unaccounted wealth in ITR as given in 'i' then
- i. Advance Tax is paid on or before March 31, 2017 then
 - o Income tax @ 60%
 - o Surcharge @ 25%
 - o Education Cess @ 3%
 - o Penalty – No so effective rate is 77.25%
 - ii Advance Tax Is Not Paid On Or Before March 31, 2017
 - o Income tax @ 60%
 - o Surcharge @ 25%
 - o Education Cess @ 3%
 - o Penalty @ 10% of income tax so Effective rate is 83.25%

Penalty under the Act

- ❖ Section 271 AAB – Penalty in case the search has been initiated, w.e.f, 01.04.2017

Case 1: If the undisclosed income is admitted and declared in return of relevant AY.

- o Income tax @ 60%
- o Surcharge @ 25%
- o Education Cess @ 3%
- o Penalty @ 30% on Undisclosed Income so Effective rate is 107.25%

Case 2: If the undisclosed income is not admitted and not declared in return.

- o Income tax @ 60%
- o Surcharge @ 25%
- o Education Cess @ 3%
- o Penalty @ 60% on Undisclosed Income so Effective rate is 137.25%

- ❖ Section 271AAC- Penalty in respect of certain income, w.e.f, 01.04.2017

If the AO has determined unaccounted wealth for which no explanation is provided. However, the same is declared in ITR then,

- o Income tax is levied @ 60%
- o Surcharge is levied @ 25%
- o Education cess is levied @ 3%
- o Penalty is levied @ 10% on income tax so Effective rate of tax is 83.25%

PRADHAN MANTRI GARIB KALYAN YOJANA, 2016- "Last Chance To Come Clean"

This scheme came into effect on 15.12.2016 and shall remain open till 31.03.2017. The assessee is offered to declare the undisclosed/black money under this scheme and no question will be asked regarding the source of income. Also, the declarant gets immunity from civil laws and other taxation laws but not from EMA, PMLA, Narcotics, and black money Act.

- o Income tax is charged at 30% unlike Section 115BBE @ 60%
- o Garib Kalyan Cess will be levied @ 33% on income tax for the welfare of poor people
- o Penalty is levied @10% on undisclosed income
- o 25% of undisclosed income*Interest free deposit with Government @ 25% for 4 years on undisclosed income
- o So, effective rate of tax is 50% and deposit is 25% and the balance 25% will be retained by declarant.

Example: If a person has Rs. 50,00,000 as unaccounted cash earned out of professional service. He can declare it under this scheme and get immunity from paying service tax or any other tax except under IT Act.

He has to pay;

- a) Tax @ 60% - Rs. 15,00,000
- b) GKC @ 33% - Rs. 4,95,000
- c) Penalty @ 10% - Rs.5,00,000
- d) Deposit – Rs12,50,000
- e) Retained – Rs 12,50,000

CONCLUSION

Is Demonetisation a success or failure? This cannot be answered now. Definitely, it is a bold move to minimise the black money circulation.

With the demonetisation, it is expected that many wealthy persons would be put under fire through assessment proceedings. It is also anticipated that the income tax rates would reduce over a period of time.

Short-term disturbance will be faced by Small traders, Households, Retails outlets facilitation in their transactions. Companies would face decline in profit in short-term.

However, there will be positive impact on consumption demand in long run. More money deposited in banks will lead to enhancement of liquidity position in coming years. As a result, more money could be utilized for lending purpose.

"A meaningful silence is always better than a meaningless words"

This article is contributed by Priya Singh, Intern of SBS and Company LLP. The author can be reached at interns@sbsandco.com

COMPANIES ACT , 2013**RULES, CIRCULARS AND NOTIFICATIONS ISSUED DURING THE MONTH OF JANUARY, 2017****RULES****❖ The Companies Incorporation (Amendment) Rules, 2017; Dt: 25.01.2017**

Vide the said rules, the Ministry has come up with amendment to the Form INC-32(SPICe form) for incorporation, as to make mandatory the applying of PAN and TAN along with the incorporation form. Further the format of Certificate of Incorporation (Form No INC 11) was also amended, so as to include the PAN of the company.

http://www.mca.gov.in/Ministry/pdf/IncorporatinRules_27012017.pdf

NOTIFICATIONS**❖ Exemption from applicability of certain provisions of the Companies Act, 2013 to Specified IFSC private companies and Specified IFSC Unlisted Public Companies, Dt: 04.01.2017**

Vide Two Separate Notifications, the Ministry has exempted/modified the applicability /applicable with some adaptations, the various provisions of the Act, to a private company and a Unlisted Public Company, which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006 (hereinafter referred to as "Specified IFSC private company").

Click for both the notifications, below:

Exemption to Specified IFSC Private Companies-

http://www.mca.gov.in/Ministry/pdf/IFSC_Private_04012017.pdf

Exemption to Specified IFSC Public Companies -

http://mca.gov.in/Ministry/pdf/IFSC_Public_04012017.pdf

These updates are contributed by K. Bhavani and vetted by CS D V K Phanindra of SBS and Company LLP, Chartered Accountants. For any queries, please reach at phanindra@sbsandco.com

SATURDAY SESSIONS

S.No.	Event	Date	Speaker	Venue
1	Taxability of Online Database, Access or Retrieval (OIDAR) Services	11/02/2017	Bhavani K	SBS - Hyd
2	Section 269SS and 269T under Income Tax Act, 1961	18/02/2017	Sai Krishna A	SBS - Hyd
3	An overview on NBFCs	25/02/2017	Vaishnavi A	SBS - Hyd
4	Credit Rating	04/03/2017	Uday Kumar P	SBS - Hyd



Charitable Trust and Association-Taxation - Kanakaraj J



Form 1 under PMGKY, 2016 - Priya S

National Convention at Chennai



"Technical Session on GST- The Law Model at ICAI branch of Chennai" - Bhavani K

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Hyderabad: 6-3-900/6-9, #103 & 104, Veeru Castle, Durganagar Colony, Panjagutta, Hyderabad, Telangana

Kurnool: No. 302, 3rd Floor, V V Complex, 40/838, R.S. Road, Near SBI Main Branch, Kurnool, Andhra Pradesh

Nellore: 16-6-259, 1st Floor, Near Santi Sweets Opp: SBI ATM, Vijayamahal Centre, SPSR Nellore, Andhra Pradesh

Tada: 8-3-425/2, Flat No. 202, 2nd Floor, Bigsun Avenue, Near SRICITY, TADA, SPSR Nellore Dist, Andhra Pradesh

Visakhapatnam: # 39-20-40/6, Flat No.7, Sai Yasoda Apartments, Madhavadhara, Visakhapatnam (Urban), Vizag, Andhra Pradesh

Bengaluru: B104, RIRCO, Santosh Apartments, Wind Tunnel Road, Murugeshpalya, Old Airport Road, Bengaluru, Karnataka.

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