

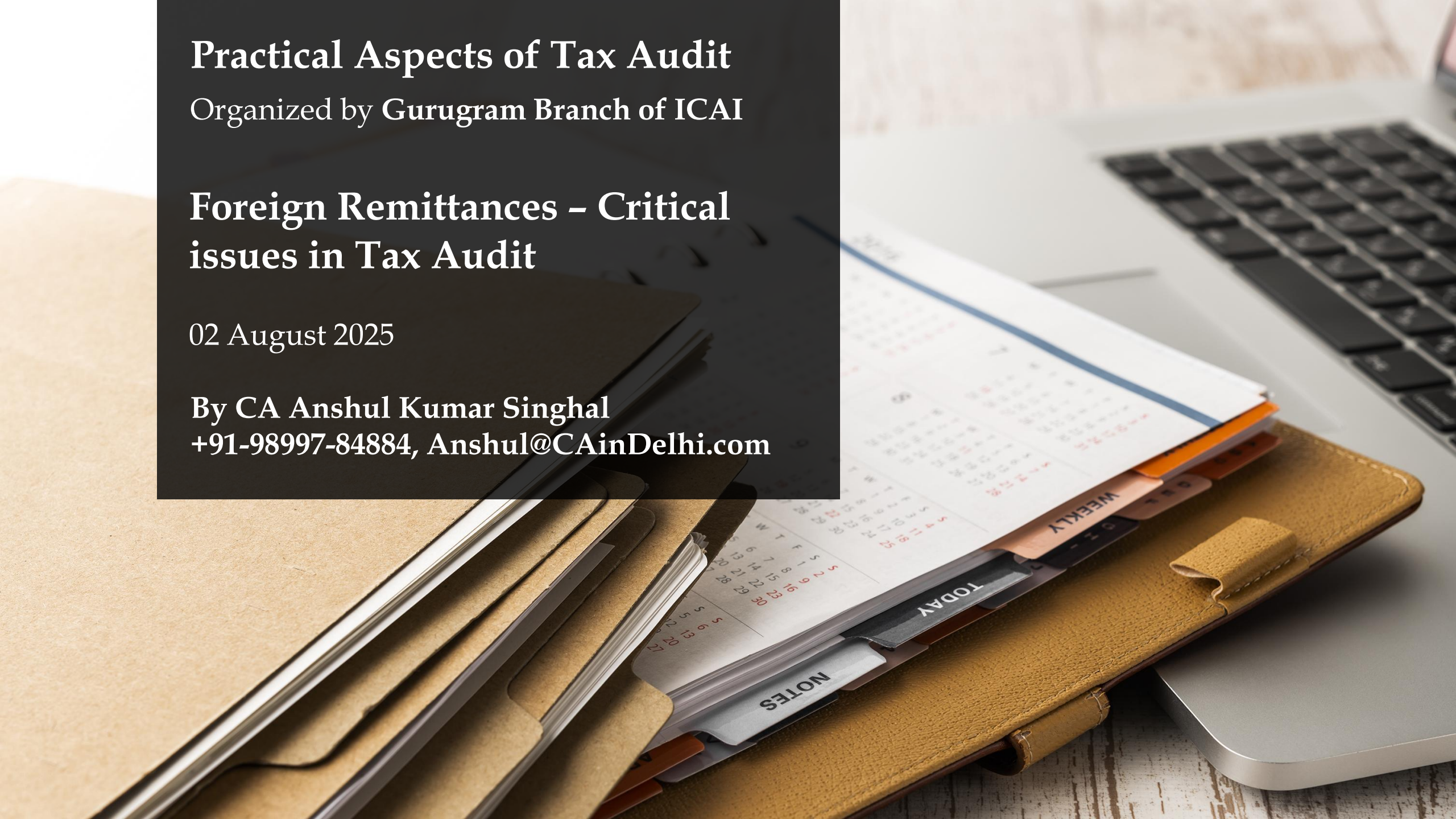
# Practical Aspects of Tax Audit

Organized by Gurugram Branch of ICAI

## Foreign Remittances – Critical issues in Tax Audit

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TDS on foreign remittances



# TDS on Foreign Remittances

## Common transactions

- a) Payments for services, such as IT maintenance, product testing, HR consultancy, marketing support, management support, business referrals, etc.
- b) Royalty payments for brand, logo, trademark, and other IPs
- c) Import of software, digital products, payments through credit cards
- d) Reimbursements to overseas parent company, such as for software, legal and professional, salary of expatriate employees, ESOPs, etc.
- e) Sitting fee paid to non-resident Directors



# TDS on Foreign Remittances

## Common transactions

- f) Interest payments
- g) Guarantee fee
- h) Dividend payments
- i) Purchase of shares of Indian company from a non-resident

Although TDS may be required to be deducted on purchase of shares from non-resident or on dividend payments, yet the same is not required to be reported, as amount has not been claimed as deductible expenditure. Thus, such amount is not disallowable u/s 40(a)(i).



# TDS on Foreign Remittances

## Documents and information to be collated for sample transactions selected

- a) Classification of transaction (business income, royalty, fees for technical services, etc.)
- b) Verify the factual details and basic documents, for e.g., invoice, contracts, legal status of payee, PAN in India, if applicable.
- c) Rate of tax, if applicable, as per Income-tax Act, 1961
- d) If beneficial provisions of DTAA availed then check TRC, Form 10F, no PE certificate, relevant Article of DTAA.



# TDS on Foreign Remittances

## Common transactions

- e) Copies of Form 15CB and Form 15CA
- f) Check if order or certificate for “NIL” or “Lower” rate is available
- g) Date of booking the amount in books and date of payment of expense
- h) Date of deducting TDS, if applicable
- i) Date of depositing TDS, if applicable



# TDS on Foreign Remittances

**Clause 21(b)** - Amounts inadmissible under section 40(a);  
i) as **payment to non-resident** referred to in sub-clause (i)

**A.** Details of payment on which **tax is not deducted**:

Sl. No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	Permanent Account Number of the payee, if available	Aadhaar Number of the payee, if available	Address
1							
2							



# TDS on Foreign Remittances

**Clause 21(b)** - Amounts inadmissible under section 40(a);

**i)** as **payment to non-resident** referred to in sub-clause (i)

**B.** Details of payment on which **tax has been deducted but has not been paid** on or before the due date specified in sub-section (1) of section 139

Sl. No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	Permanent Account Number of the payee, if available	Aadhaar Number of the payee, if available	Address
1							
2							

# TDS on Foreign Remittances

**Clause 21(b)** - Amounts inadmissible under section 40(a);

**vii. Salary payable outside India/to a non-resident** without TDS etc. under sub-clause (iii)

Sl. No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	Permanent Account Number of the payee, if available	Aadhaar Number of the payee, if available	Address
1							
2							



# Reporting related to Equalization Levy



# Reporting related to Equalization Levy

- Equalization Levy (EL), at the **rate of 6%**, is required to be deducted by payer in India while making payment of consideration for specified services provided by non-resident
- '**Specified service**' means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement
- Section 40(a)(ib) provides for **100% disallowance** of expenses on which EL was deductible, but was not deducted, or after deduction it was not deposited on or before due date of filing tax return



# Reporting related to Equalization Levy

**Clause 21(b)** - Amounts inadmissible under section 40(a);  
iii) as payment referred to in sub-clause (ib)

**A.** Details of payment on which **levy is not deducted**:

Sl. No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	Permanent Account Number of the payee, if available	Aadhaar Number of the payee, if available	Address
1							
2							

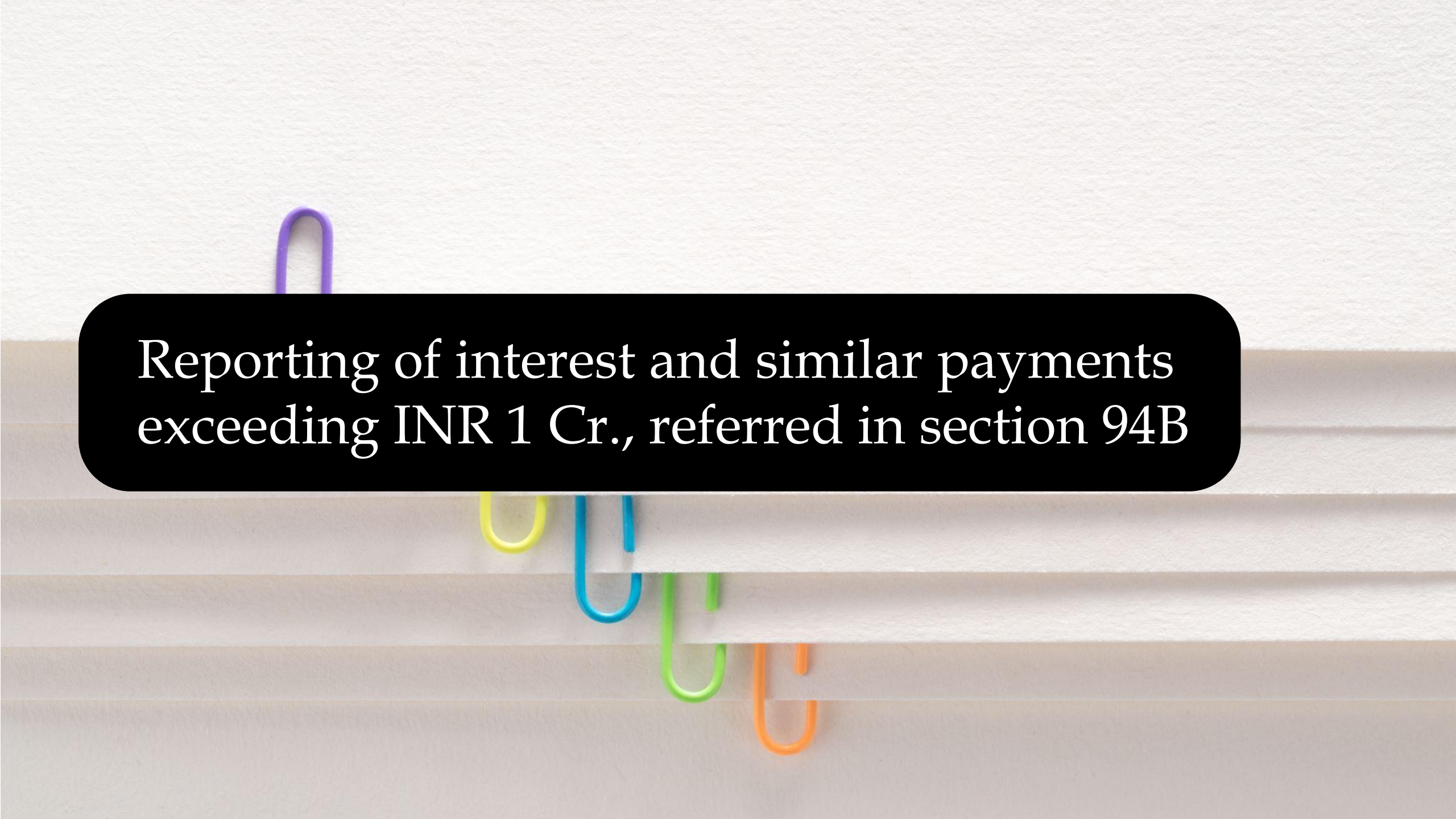
# Reporting related to Equalization Levy

**Clause 21(b)** - Amounts inadmissible under section 40(a);  
iii) as payment referred to in sub-clause (ib)

**B.** Details of payment on which levy has been deducted but has not been paid on or before the due date specified in sub-section (1) of section 139

Sl. No.	Date of payment	Amount of payment	Nature of payment	Name of the payee	Permanent Account Number of the payee, if available	Aadhaar Number of the payee, if available	Address
1							
2							



A white paper with a black rounded rectangle containing text, held by colorful paper clips. The paper is slightly wrinkled and has a soft shadow. The text is in a white serif font. The paper clips are purple, yellow, blue, green, and orange, arranged in a row along the bottom edge of the paper.

Reporting of interest and similar payments  
exceeding INR 1 Cr., referred in section 94B

# Reporting of interest and similar payments exceeding INR 1 Cr., referred in section 94B

## Section 94B – Disallowance of interest and similar payments

Applicable to	Applicable on	Threshold	Extended coverage	Exclusion	Disallowance
<ul style="list-style-type: none"><li>• Borrower being an Indian company, or a PE of a foreign company in India</li></ul>	<ul style="list-style-type: none"><li>• Expenditure by way of interest or similar payment in respect of any debt issued by a non-resident, being an associated enterprise of such borrower</li></ul>	<ul style="list-style-type: none"><li>• Interest or similar expense should exceed one crore rupees in a year</li></ul>	<ul style="list-style-type: none"><li>• Debt issued by a lender which is not associated but an AE either provides an <b>implicit</b> or <b>explicit</b> guarantee to such lender or deposits a corresponding and matching amount of funds with the lender</li></ul>	<ul style="list-style-type: none"><li>• If debt is issued by an Indian branch of a foreign bank</li></ul>	<ul style="list-style-type: none"><li>• Interest or similar expense paid or payable <b>in excess of 30%</b> of earnings before interest, taxes, depreciation and amortisation (EBIDTA)</li></ul>

# Reporting of interest and similar payments exceeding INR 1 Cr., referred in section 94B

**Clause 30B:** Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in subsection (1) of section 94B ?

Sl. No.	Amount of expenditure by way of interest or of similar nature incurred (i)	Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (ii)	Amount of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above. (iii)	Details of interest expenditure brought forward as per sub-section (4) of section 94B (iv)	Details of interest expenditure carried forward as per sub-section (4) of section 94B. (v)
1					
2					





# Primary Adjustments under Transfer Pricing

# Primary Adjustments under Transfer Pricing

**Clause 30A:** Whether Primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year?

S. No.	Under which clause of sub-section (1) of section 92CE primary adjustment is made ?	Amount of primary adjustment	Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of subsection (2) of section 92CE ?	Whether the excess money has been repatriated within the prescribed time ?	The amount of imputed interest income on such excess money which has not been repatriated within the prescribed time	Expected date of repatriation of money
1						

The heading of the clause refers to Primary Adjustment, however, the clause requires reporting on secondary adjustment as well

# Primary Adjustments under Transfer Pricing

**Section 92CE(1) – Primary Adjustments to Transfer Price, where secondary adjustment would be required**

Suo-moto adjustment by Assessee

Adjustment made by AO and accepted by Assessee

Adjustment under Advance Pricing Agreement

Adjustment under Safe Harbor Rules

Adjustment under Mutual Agreement Procedure under Tax Treaty

**Exclusions** – If primary adjustment does not exceed INR 1 Cr., or the primary adjustment is for AYs prior to AY 2016-17



# Primary Adjustments under Transfer Pricing

## Section 92CE(2) read with Rule 10CB – Secondary adjustment

- a) If amount of primary adjustment is not received by entity in India within prescribed time, then interest on such amount will also be chargeable
- b) Annual interest to be computed, —
  - (i) at the one year marginal cost of fund lending rate of State Bank of India as on 1st of April of the relevant previous year plus 325 basis points in the cases where the international transaction is denominated in Indian rupee; or
  - (ii) at six month London Interbank Offered Rate as on 30th September of the relevant previous year plus 300 basis points in the cases where the international transaction is denominated in foreign currency.

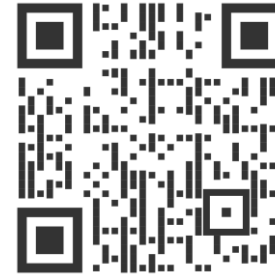


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## Professional experience:

- Anshul Kumar has 20 years of experience with him in corporate tax, transfer pricing and foreign direct investment regulations. He has worked with Big4 firms for more than 13 years.
- Anshul believes in technical thoroughness and assists various multinational clients in tax planning, compliance and litigation. He also represents clients at different income tax appellate levels, including tax Tribunals.
- Anshul has vast experience of supporting various multinational companies in formulating their tax and transfer pricing strategies. Anshul has hands-on experience in setting up global transfer pricing policy for his clients.
- He has undertaken various tax health check assignments and advised clients on best compliance practices.
- Anshul is also well versed in foreign exchange regulations of India and assists clients in advising on efficient modes of investment/repatriation strategies.
- Anshul is also working in the Startup ecosystem for past many years. He is the co-founder of '**Startup Bazaar**' and '**Invest Catalyst Angel Network**'.

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