The Chamber of Tax Consultants

JOINTLY WITH THE KALYAN TAX PRACTITIONERS ASSOCIATION

RECENT AMENDMENTS IN TAX AUDIT REPORT

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SETTING THE CONTEXT

Tax Audit - Applicability

- Applicability
  - Business (other than 44AD)
    - If Turnover or Gross Receipts exceed INR 1 crore
  - Business (S. 44AD opted for)
    - If profit offered to tax is below 8 percent or 6 percent
  - Profession (other than 44ADA)
    - If Gross Receipts exceed INR 50 lakhs
  - Profession (S. 44ADA opted for)
    - If profit offered to tax is below 50 percent

In case of Business having Turnover between INR 1 crore to INR 2 crore-

Tax Audit applicable unless presumptive taxation opted for under section 44AD – CBDT Press Release dated 20 June 2016

Tax Audit Report- Form 3CA / 3CB- Rule 6G

Form 3CA

- In case of a person carrying business or profession whose accounts are required to be audited under any other law.

Form 3CB

- Person other than those referred in Form 3CA.
- Person whose accounts are required to be audited under any other law but whose accounting year is different from the financial year. ***[Circular : No. 561, dated 22-5-1990]***

Failure to get Tax Audit done- Implications

Section 271B

- Penalty leviable at the rate of 0.5 percent of Turnover.
- Maximum Penalty of INR 150,000

Section 273B

- No Penalty if **reasonable cause**.
- Few examples of reasonable cause-
  - ✓ Natural calamity
  - ✓ Fire, Theft, etc.
  - ✓ Non-availability of accounts due to seizure
  - ✓ Death or physical disability of partner in charge of accounts
  - ✓ Bonafide interpretation of turnover based on expert advice

Recent Development in Penalty Provisions applicable to CAs

Section 271 J - Penalty for furnishing incorrect information in reports or certificates

(a) Without prejudice to the provisions of the 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 the 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**.

Penalty of Rs. 10,000 applicable w.e.f. 1 April 2017 for furnishing of incorrect information in any report or certificate

CHANGES IN TAX AUDIT REPORT – FORM 3CD

Changes in Tax Audit Report – Form 3CD

Summary of Changes in Form 3 CD

1. Changes in Clause 13 – Method of Accounting – Inclusion of clause (d), (e) and (f) on account of ICDS requirements.
2. Changes in Clause 31 – Manner of Accepting and Repayments of Loans and Advances

Changes in Tax Audit Report – Form 3CD – Clause 13

Clause 13 – Method of Accounting

Additional sub Clauses added to the Clause 13:

- **(d)** Whether any adjustment is required to be made to the profits or loss for complying with the provision of ICDS notified under section 145 (2)
- **(e)** If the answer to (d) above is in the affirmative give details of such adjustments.

ICDS Number	ICDS Name	Increase in Profit (Rs.)	Decrease in Profit (Rs.)	Net

- **(f)** Disclosures as per ICDS.

To be discussed in detail in subsequent slides

Changes in Tax Audit Report – Form 3CD – Clause 31

Clause 31 – Manner of Payment

(a) Sub-clause (a) of new clause 31 requires reporting on whether such loan or deposit is taken by cheque, bank draft or **ECS.** Thereafter, if the same is by cheque or bank draft, whether the same was taken or accepted by way of **account payee cheque/bank draft** has to be reported. Corresponding sub-clause (a) of erstwhile clause 31 directly required reporting of whether loan or deposit was taken or accepted otherwise than by account payee cheque or bank draft.

(b) **New reporting requirement**: Consequent to substitution of section 269SS by the Finance Act 2015 including within its scope specified sum receivable in relation to **transfer of an immovable property**, sub-clause (b) of new clause 31 requires reporting of particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year.

Changes in Tax Audit Report – Form 3CD – Clause 31

Clause 31 – Manner of Payment

(c) Sub-clause (c) of new clause 31 contains reporting requirement akin to sub-clause (b) of erstwhile clause 31. Sub-clause (c) of new clause 31 requires reporting on **whether repayment is made by cheque, bank draft or ECS**. Thereafter, if the same is by cheque or bank draft, then, whether the same is by way of account payee cheque/account payee bank draft has to be reported. Corresponding sub-clause (b) of erstwhile clause 31 directly required reporting of whether repayment was made otherwise than by account payee cheque or bank draft.

(d) New reporting requirement – The reporting requirement in respect of section 269T was earlier required only in case of the person making the repayment of loan or deposit or any specified advance. Under the new clause 31, reporting is also to be **done by the recipient**. The recipient has to furnish the name, address and PAN (if available with him) of the payer and the amount of loan or deposit or any specified advance received -

(1) under sub-clause (d), in case the repayment is received otherwise than by a cheque or bank draft or ECS

(2) under sub-clause (e), in case repayment is received by a cheque or bank draft, which is not an account payee cheque or account payee bank draft

CHANGES IN TAX AUDIT REPORT – FORM 3CD

W.E.F. 20 AUGUST 2018

Changes in TAR and disclosures- Snapshot

Connecting the dots – Project insight

- Deduction of Expenses – linking with **GST registered** entities
- Reporting of cases where **PAN not linked** to specified financial transaction
- Ensuring comprehensive reporting of **specified transactions**
- Reporting of Nil Rate/ other TDS cases not reported in **TDS returns** by companies

Special Anti-Avoidance Rules (SAAR)

- **Deemed Dividend**
- **Gift Tax** Reporting
- Restriction on **Cash Transactions**
- **Forfeiture** of advance money

General Anti-Avoidance Rules (GAAR)

- Existence of **Impermissible avoidance arrangement**
- Quantification of tax benefits
- Tax benefits to all the parties to the transaction
- Reporting of nature of impermissible avoidance arrangement

Transfer Pricing and Other Changes

- **Thin Capitalisation**
- **Secondary Adjustments**
- **CbC Reporting**
- **Other Changes**

CONNECTING THE DOTS- PROJECT INSIGHT

Tax authorities adopting an integrated approach- Rising Trend

PROJECT INSIGHT

- **Information-driven** tool built over 7 years at a cost of about USD 156 Mn
- Deters non-compliance through a **non-intrusive approach**
- **Uses Big Data** (*data mining, data warehousing etc)* to identify irregularities
  E.g. – **Auto-alert to field officer** if property of INR 10 Mn purchased but income in tax return reported as INR 500K

360 DEGREE PROFILE

- **Data Analytics** used to reveal patterns, trends, associations
- **Attacking multiple PANs** – using common address, mobile, email
- **Cross-referencing** – using data from banks, post office, RoC filings etc.
- **Profiling** – clustering common details, business-segmentation
- **'Whole of Govt' approach** – Multi-ministerial task force setup

OUTCOMES / RESULTS

- **Non-filer Monitoring System** – 7 Million non-filers identified in 2017
- **Quick detection of non-filers** – E.g. mapping luxury car purchases in small cities to return-filing status, mismatch in spending patterns etc.
- **Widening tax base** – Region-wise targets to expand tax base
- **Enhanced capacity** – 700K tax returns processed daily at CPC

Big step-up in monitoring non-compliance by Indian tax authorities

1 Linking of expense claims with GST- Clause 44

Reporting Requirements

Sl. No.	Total amount of expenditure incurred during the year	Expenditure in respect of GST registered entities				Expenditure relating to entities not registered under GST
		GST Exempt Expenditure	Entities under composition scheme	Others	Total	

Kept in abeyance till March 31, 2020 *vide* Circular no. 9 of 2018 dated 14 May 2019

Interpretation Issues

- Tax Auditor to opine on subjective issues like what constitutes GST-exempt expenditure
- Responsibility of tax auditor to review and report after evaluating classification disputes between exempt and non-exempt items
- GST-Exempt supplies to include
  - Nil Rated supplies with 0% GST – e.g. Hotel accommodation with tariff below INR 1,000
  - Non-taxable supplies with GST not applicable – e.g. Alcohol for human consumption
  - Exempt Supplies where GST payment is exempt for the time being – e.g. Health Services

Disclosure Issues

- Whether disclosure requirements apply
  - Vendor-wise ?
  - Expense-wise ?
  - Consolidated expenses for all vendors as just one line item ?
- Reconciling disclosures with data reported in GST returns
- Use of data analytics – Ratio of expense with GST registered entity with Non-GST registered entity – **Too low ratio may invite scrutiny**

2 Reporting of Specified Financial Transactions- Clause 42

Disclosure Requirements

42. (a) Whether the assessee is required to furnish statement in Form No.61 or Form No.61A or Form 61B? (Yes/No)

(b) If yes, please furnish :

Income tax Department Reporting Entity Identification Number	*Type of Form*	*Due date for furnishing*	*Date of furnishing, if*	*Whether the Form contains information about all details/ furnished transactions which are required to be reported. If not, please furnish list of the details/transactions which are not reported.*

Scope of Statements

Reporting of specified transactions entered with Non-PAN holders

Scope enlarged in Jan'16 - Companies to obtain PAN for all transactions of INR 2,00,000 of sale / purchase of goods / services

Penalty of INR 10,000 on the company for non-compliance

Reporting of specified financial transactions entered with PAN and Non-PAN holders

Scope enlarged in Apr'16 - Companies to report cash sales of INR 2 Lakhs or more

Penalty of INR 500 per day on the company for non compliance

Furnishing of reportable accounts by a reporting financial institution

Introduced as a part of FATCA & Common Reporting Standards (CRS)

Penalty of INR 500 per day on the reporting financial institution for non compliance

Onerous Responsibility on tax auditor to report on veracity of filings by the company

Source – Form 3CD, released by CBDT on 20th July2018

2 Reporting of Specified Financial Transactions- Clause 42

Whether Form 61 has been correctly furnished by the company or not ?

STEP 1
Transactions where PAN is required to be obtained and correctly verified

REPORTEE	SPECIFIED TRANSACTION
Bank, Authority, Institution etc.	• Opening of bank account/demat account • Purchase of Mutual Funds, Forex, RBI Bonds, etc. of INR 50,000 or more • Cash deposit of INR 50,000 or more • Purchase and sale of immoveable property for INR 10 Lakhs or more, etc.
Hotels and Restaurants	Cash receipts from person of INR 50,000 or more
Company	• Issue of Bonds/debts of INR 50,000 or more • Sale/ Purchase of shares of INR 1,00,000 per transaction
Any Person	Sale/ Purchase of goods or services of INR 2,00,000 per transaction

STEP - 2
What if no PAN is available ?

- Obtain Form 60 where PAN is not available.
- Report all Form 60s obtained in bi-annual Return in Form 61

STEP – 3
Confirmation

Report in Clause 42 of Tax Audit Report that

- All PANs has been correctly obtained and verified
- Form 60 is obtained in case where PAN is not available / verified
- All non-PAN cases have been correctly reported in Form 61

Onerous responsibility cast on tax auditor to report that company has obtained PAN, correctly verified PAN and reported “No PAN”/ Incorrect PAN in Form 61

2 Reporting of Specified Financial Transactions- Clause 42

Whether Form 61A has been correctly furnished by the company or not ?

STEP 1
Transactions where PAN is required to be obtained and correctly verified

REPORTEE	SPECIFIED TRANSACTION
Bank, Authority, Institution etc.	• Cash deposits of INR 10 Lakhs in Non-Current bank a/c and INR 50 Lakhs in current a/c • Cash withdrawal of INR 50 Lakhs from current account • Time deposit of INR 10 Lakhs • Credit Card payment of 1 Lakhs in cash or INR 10 Lakhs through other modes • Immoveable property purchased of INR 30 Lakhs or more
Company	• Issue of shares/ Bonds/ Debentures of INR 10 Lakhs or more • Buy back of shares of INR 10 Lakhs or more by a listed company only
Any Person	Cash sales of INR 2 Lakhs for goods or services

STEP - 2
What if no PAN is available ?

- Obtain and verify PAN of second transaction party
- Obtain Form 60 where PAN not available
- Report transactions in annual return in Form 61A

STEP – 3
Confirmation

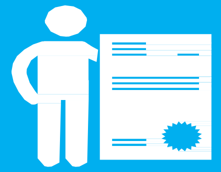
Report in Clause 42 of Tax Audit Report that

- All PANs has been correctly obtained and verified
- Form 60 is obtained in case where PAN is not available / verified
- All transactions have been adequately reported

Onerous responsibility cast on tax auditor to report whether company has obtained, verified PAN/ Form 60 & reported all the transaction in Form 61A

2

Clause 42- Implementation Guide issued on 23 August 2018 issued by ICAI



ICAI Implementation Guide

Guidance in relation to Form 61

- To verify whether assessee has entered any transactions where the other party was required to give PAN but gave Form 60
- Assessee need to file Form 61
- Details to be given about filing of Form 61

Guidance in relation to Form 61A

- Auditor to verify the applicability of sec. 285BA read with Rule 114E
- Applies also for Issue of Bonds / Shares and Buy back of shares for listed companies – Not regular transactions – special attention required
- Receipt of cash payment above Rs. 2 Lakhs by all assessees under Tax Audit – Different in operation than sec. 269ST – **Payment for different transactions on different dates covered here**

Guidance in relation to Form 61B

- Auditor should refer the CBDT Guidance Note on FATCA / CRS Released in November 2016
- Tax auditor should review Due Diligence Procedures in accordance with Rule 114H
- Review list of Reportable Accounts identified by the due diligence process and information to be maintained and reported

3 Reporting of transaction not reported in TDS Return- Clause 34(b)

Disclosure Requirements

34. (b) whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details :

Tax deduction and collection Account Number (TAN)	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all details/transactions which are required to be reported. If not, please furnish list of of details/transactions which are not reported.

Related Issues/ Challenges

- Tax Auditor to report details/ transactions, which are not reported in TDS/ TCS Returns
- TDS Return normally contains details of cases, where Nil rate/ lower rate has been applied pursuant to lower WHT certificate u/s 197(1)/ 195(2)
- Tax Auditor to evaluate those cases, where TDS has been considered to be not applicable/ or at nil rate, by the company without recourse to WHT certificate u/s 197/ 195(2) and not reported in TDS/ TCS Returns
- Onerous Responsibility casted on tax auditor to consider whether these should be reported –
  - Evaluate all positions of nil TDS taken by company suo-motu
  - Consider disclosing them in TAR, basis these should have been disclosed by company in TDS Returns

Source – Form 3CD, released by CBDT on 20th July2018

3 Clause 34(b)- Implementation Guide issued on 23 August 2018 issued by ICAI

ICAI Implementation Guide

- The auditor should take into consideration relevant sections, rules, notifications, circulars and various judicial pronouncements in relation to transactions of relevant payments or collections. – As stated in Para 59.2 of Guidance Note on Tax Audit (2014 Edition).

- If tax auditor does not agree with the interpretation/view taken by the auditee- Report about the views as observation in clause (3) of Form No. 3CA or clause (5) of Form No. 3CB, as the case may be.

SPECIAL ANTI AVOIDANCE RULES (SAAR)

4 Deemed Dividend- Section 2(22)(e)- Clause 36A

Reporting Requirement in Tax Audit Report	
	1. Whether **any amount has been received in nature of deemed dividend ?**
	2. Quantum of amount received
	3. Date of Receipt

Y N

Conceptual Framework of Deemed Dividend

Basis of taxation	• Loan or advance to a shareholder by a closely held company is deemed to be taxable as dividend, to the extent of accumulated profits • Taxable only on payment basis, even though accounts are maintained on mercantile basis
Levy of tax on deemed dividend	• Deemed dividend chargeable at normal rates of tax as - Business income, if shares are held as stock in trade - Income from other sources, if shares held as investment • Dividend distribution tax (DDT) u/s 115-O is not applicable on deemed dividend till FY 17-18 • From FY 2017-18 onwards, DDT applicable @ 30% u/s 115-O – Company giving loan or advance to shareholder is required to pay DDT @ 30%

4 Deemed Dividend- Section 2(22)(e)- Clause 36A

Scheme of taxation of Deemed Dividend

1 Attributes of Payer

- Closely Held Company.
- No Distinction between Indian or Foreign Company

2 Nature of Receipt

Payments in the nature of **loan or advances**

Exceptions –

- Payer in money lending business
- Amount set off against previous deemed dividend

3 Persons Covered

- Any Shareholder with 10% or more beneficial ownership
- Any Concern in which such shareholder is a member or a partner and has substantial interest of 20% or more

4 Quantum of Dividend

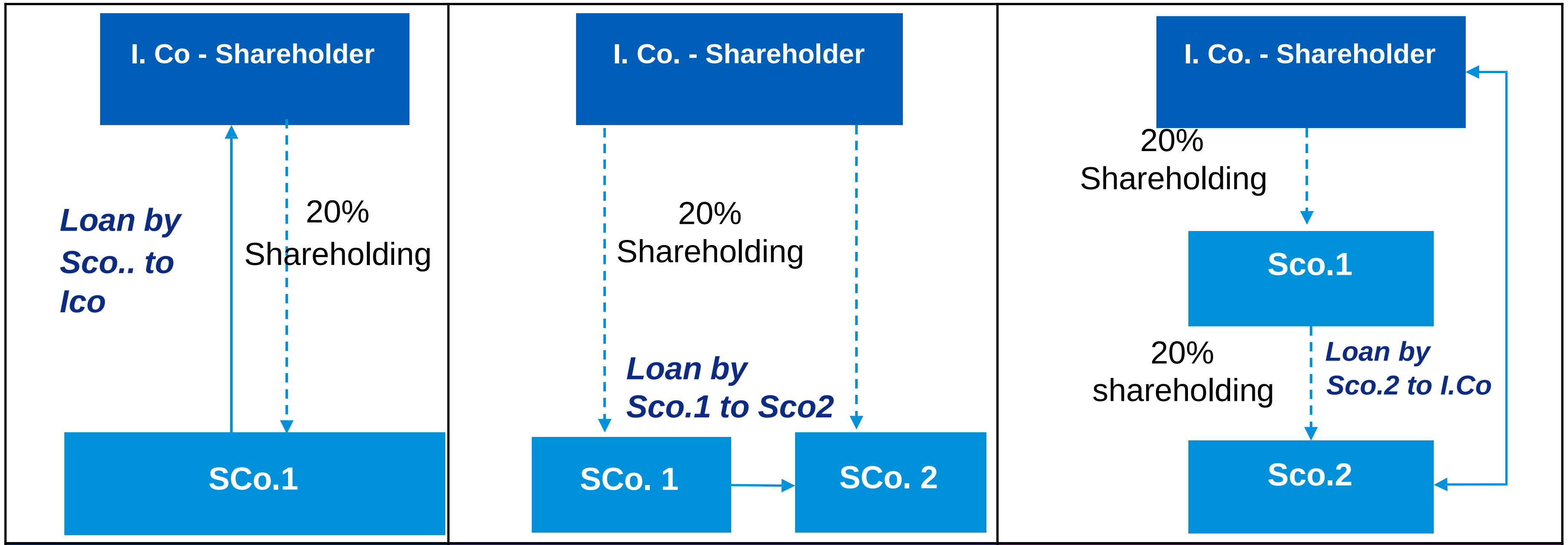
- Subject to the extent of accumulated profits
- Accumulated profits are to be considered as per books of account

5 Timing of Taxability

- Taxability on payment basis, even though accounts are maintained on mercantile basis

4 Deemed Dividend- Section 2(22)(e)- Taxability- Various Scenarios

Scenario 1	Scenario 2	Scenario 3



Loan given by SCo to I.co - **whether taxable as deemed dividend in the hands of I.co?**	Loan given by SCo. 1 to SCo.2 – whether taxable as deemed dividend in the hands of I. Co or SCo.2?	Loan given by SCo.2 to Ico – whether taxable as deemed dividend in the hands of I.co or SCo.1?

Wide ranging situations requiring tax auditor to evaluate taxability as deemed dividend

4 Deemed Dividend- Section 2(22)(e)- Coverage of Loans and Advances

Loans and Advances

What have been held to be loans and Advances	What are held not to be Loans and Advances
▪ Shareholder doing business with company and **always having debit balance** (CIT vs Jamnadas Khimji Kothari 92 ITR 105) – Bombay High Court ▪ Loan by a lending company only to shareholders also deemed as dividend ▪ Loan given **does not cease to be deemed dividend on account of any subsequent repayment of loan** *However, where a loan is granted and company declares regular dividend and sets it off against the loan , the dividend so set off will not be treated as loan*	▪ **Trade advances**, in the nature of commercial transactions: ➢ Advances given for ***adjustment against job work charges*** of the sister concern ➢ Advances given to ***install plant and machinery*** at shareholder's premise to enable him to do job work in order to meet an export order ▪ ***Inter-Company deposits*** are trade advances ▪ Advances received as ***security deposit against actual services***

Evaluation to be made based on facts and circumstances of each case

4 Deemed Dividend- Section 2(22)(e)- Meaning of accumulated profits

Securities premium ✗	Adjustments made to Book Profits under MAT ✗	Exempt Dividend Income ✗
Adjustment made to taxable Income ✗	Exempt Capital Gains ✗	General reserves ✓
Bonus Shares issued out of Reserves & Surplus ✓	Adjustment to other Equity under Ind-AS Accounting ?	Profits proportionate to holdings of other Shareholders ✗

Evaluation to be made based on facts and circumstances of each case

4 Deemed Dividend- Section 2(22)(e)- Key Considerations

Key action points for tax auditor

Auditor to **examine details of all loans received from group entities**

To evaluate accumulated profits of the lender entity –

Reliance will have to be placed on interim financial statements up to the date of distribution

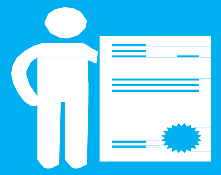
Trade Payables arising from transactions with subsidiary company, imputed by TPO as provision of credit facility -

Whether deemed dividend will apply ?

Secondary Adjustments on account of primary TP adjustment on transaction with subsidiary company are deemed as a loan under Act-

Whether deemed dividend would trigger on such deemed loans?

4 Clause 36A- Implementation Guide issued on 23 August 2018 issued by ICAI



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- Obtain certificate from assessee containing list of Closely Held Companies where assessee is beneficial owner of shares carrying not less than 10% of voting power.
- Obtain list of "concerns" taking loans from the Closely Held Companies.
- Appropriate remarks in Form No. 3CA / 3CB about inability to independently verify the information and reliance on the certificates.
- Payments made by CHC on behalf of assessee
  - ➢ Difficult to have any records – Remark shall be given in 3CA / 3CB
  - ➢ If already taxed in the hands of assessee as perquisite etc. – cannot be again taxed as deemed dividend – Not to be reported

4 Clause 36A- Implementation Guide issued on 23 August 2018 issued by ICAI

ICAI Implementation Guide

- Verify Form 26AS to find deduction made by the Companies u/s. 194 – This will indicate the view taken by the CHC.- No longer relevant from **AY 2019-20**.
- Appropriate Remark where beneficial share holder is not the registered shareholder.
- Accumulated profit on the date of transaction may be determined on time basis with appropriate remarks in 3CA/3CB.
- Give remarks as regards the decisions relied upon for taking any stand on any legal issue.

4 Deemed Dividend- Section 2(22)(e)- w.e.f. AY 2019-20

Deemed Dividend w.e.f. AY 2019-20

Finance Act 2018 amended section 115-O

Deemed Dividend is now subject to DDT at the rate of 30% under section 2(22)(e)

Such Deemed Dividend will be exempt in the hands of the recipient under section 10(34)

Whether Clause 36A will no longer be relevant as in any case there is no taxability in the hands of the recipient?

Instead, the above details should now be called for from the tax auditor of the payer Companies?

5 Reporting of Forfeiture of money received as advance for transfer of capital asset Section 56(2)(ix) - Clause 29A

56(2)(ix)

Forfeiture of money received as advance for transfer of capital asset - taxable in the hands of recipient as 'income from other sources'

Disclosure in TAR

	Y	N
1. Whether **amount included as income** as referred in 56(2)(ix)?		

2. If yes, please furnish – Nature of income and **amount**

To keep complete track of transactions, wherein 'sum of money' was forfeited

Issue for consideration

- Sum of money should be received as advance or otherwise in the course of negotiations for transfer of a capital asset
- Change in scheme of taxation from 2014 onwards:
  - Earlier, amount forfeited was reduced from cost of acquisition.
  - From FY 2014-15 (AY 2015-16) onwards, forfeited amount is taxable as 'income from other sources'
- How to detect that an amount has been forfeited in absence of any accounting entry to that effect
- Year of taxability in the case of long standing credit
- 'Sum of money' is wide enough to include **earnest money or other deposits**

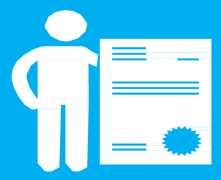
5

Clause 29A- Implementation Guide issued on 23 August 2018 issued by ICAI

ICAI Implementation Guide

- No reporting required for forfeited amount in respect of a personal capital asset where no entries are recorded in the books of account.
- Reporting required only if an advance is outstanding for a considerable period of time.
- No reporting unless it is forfeited by an act of the assessee – Should be a positive Act.
- No reporting required for Forfeiture of amount in respect of stock in trade – will get covered under section 28(i).
- There should be a right to forfeiture as per the contract.

5 Clause 29A- Implementation Guide issued on 23 August 2018 issued by ICAI



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- A mere notice of forfeiture contested by other party will not amount to forfeiture.

- If not written back by assessee – not to report giving the stand of the assessee.

- Where contingencies that permit forfeiture has occurred but yet assessee contends that amount is not forfeited then the auditor shall look at totality of developments and may obtain MR.

- Unilateral write back of amount without any contractual right may not amount to forfeiture but may give indication to that effect.

- Write back without forfeiture – Generally unlikely - Auditor should use professional judgment.

6 Reporting of Gift Tax – Section 56(2)(x) - Clause 29B

56(2)(x)

Income chargeable as 'Other Sources' in the hands of recipient, where property is received at lower than FMV or without consideration

Disclosure in TAR

1. Whether **amount included as income** as referred in 56(2)(x)?

Y N

Every transaction will have to be evaluated in line with FMV of the acquired property

2. If yes, please furnish – Nature of income and **amount**

Not every transaction is Fair valued as per Rule 11UA. The disclosure requires mentioning of amount of income chargeable as 'Income from other sources'

Issue for consideration

Key features

- Receipt of **sum of money** or **property** without consideration or for inadequate consideration in excess of Rs. 50,000. **Relaxation of 5% for Immovable Property- w.e.f. AY 2019-20**;
- Excess of FMV over consideration to be taxed as Income from other sources;
- **FMV** to be deemed as per **Rule 11UA** – Stamp duty value for immovable property, market value for jewelry, arts, etc., net assets value for other assets.

Food for thought

- **Double taxation**
  - **First tax u/s 50CA - in the hands of seller**
  - **Second tax u/s 56(2)(x) - in the hands of recipient**
- **Cost step-up in the hands of recipient for subsequent sale allowed** – FMV taken as per section 56(2)(x) will be taken as cost of acquisition, in case of subsequent sale by the recipient

6 Section 56(2)(x) – Key Issues

56(2)(x)

Income chargeable as 'Other Sources' in the hands of recipient, where property is received at lower than FMV or without consideration

Disclosure in TAR

1. Whether **amount included as income** as referred in 56(2)(x)?

Y N

Every transaction will have to be evaluated in line with FMV of the acquired property

2. If yes, please furnish – Nature of income and **amount**

Not every transaction is Fair valued as per Rule 11UA. The disclosure requires mentioning of amount of income chargeable as 'Income from other sources'

Issue for consideration

- **Whether fresh issue of shares will be covered-**
  - Khoday Distilleries Ltd. *v* CIT [2009] 307 ITR 312 (SC) – Allotment of shares is appropriation out of unappropriated share capital – Does not amount to **transfer**
  - **Wording of 56(2)(x) is "receives" and not "transfer"**
- **Whether issue of Bonus Shares will be covered-**
  - CIT *v* Dalmia Investment Co. Ltd [1964] 52 ITR 567 (SC) – Bonus shares are without payment but not without consideration

6 Section 56(2)(x) – Key Issues

56(2)(x)

Income chargeable as 'Other Sources' in the hands of recipient, where property is received at lower than FMV or without consideration

Disclosure in TAR

1. Whether **amount included as income** as referred in 56(2)(x)?

Y N

Every transaction will have to be evaluated in line with FMV of the acquired property

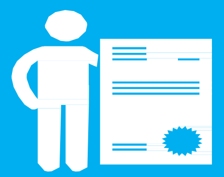
2. If yes, please furnish – Nature of income and **amount**

Not every transaction is Fair valued as per Rule 11UA. The disclosure requires mentioning of amount of income chargeable as 'Income from other sources'

Issue for consideration

- **Whether issue of Right Shares at less than FMV will be covered-**
  - **Proportionate allotment**- Sudhir Menon HUF *v* ACIT [2014] 148 ITD 260 (Mum)
  - **Disproportionate allotment-** Sudhir Menon judgement may not apply
- **Whether Buy Back of Shares at less than FMV will be covered-**
  - Vora Financial Services Pvt. Ltd *v* ACIT [2018] 96 taxmann.com 88 (Mum)- Shares should become "property" of the recipient Company and in that case, it should be shares of any other Company and could not be its own shares. Because own shares cannot become the property of the recipient Company.
- **Issues for valuation under Rule 11UA**
  - Chain Holding, Multiple Holding, Cross Holding etc.

6 Clause 29B- Implementation Guide issued on 23 August 2018 issued by ICAI



ICAI Implementation Guide

- The tax auditor should obtain a certificate from the assessee regarding any such receipts during the year, either received in his business or profession or recorded in the books of account of such business or profession.

  - ➢ Receipts in Personal accounts or not recorded in business books – suggestively out of purview of reporting

- If valuation disputed by assessee before the stamp authorities, and dispute is pending as on the date of finalisation of the audit- Mention about the facts giving the following details-

  - ➢ Value adopted by Stamp Duty Authorities; and

  - ➢ Value claimed by the Assessee to be the correct value.

- In case of any doubt about valuation – advisable to refer to the registered valuer.

7 Disclosure of restricted Cash transaction – Section 269ST - Clause 31(ba) to 31(bd)

Relevant provision in brief	• **No cash receipt** > = 2 lakhs from one person in a day / one event / one transaction • **Applicable to all persons** – Individuals and Businesses • **Penalty on Recipient** – equal to amount of cash receipt • **Restriction applies to all items –** revenue or capital, taxable income or exempt income
Application of provisions	• **INR 4.5 lakhs sale through 3 different invoices to same person on same day** • **INR 4 lakhs sales** in one invoice, but **receipt of INR 2 lakhs** on **two different days** • **INR 1 lakh each** for **three different services** from **same person**
Disclosure Requirements	**Disclosures to be made:** • Name, Address and PAN • Nature and amount of Transaction • Date of Payment

While Section 269ST covers only receipts, disclosure requirements in TAR extend to both payer and payee

7 Clause 31- Implementation Guide issued on 23 August 2018 issued by ICAI

Transactions by Journal Entries

- CIT *v* Triumph International Finance Ltd [2012] 345 ITR 270 (Bom);
- CIT *v* Noida Toll Bridge Co. Ltd. [2003] 262 ITR 260 (Del);
- CIT *v* Bombay Conductors & Electricals Ltd. [2008] 301 ITR 328 (Guj)

- **Implementation Guide : Such adjustments are not receipt / payment under section 269ST – Need not be reported but suitable note may be given**

Government v Government Companies

- No reporting required in case of receipt from / payment to a government company (due to language of Note below clause 31)

- For payments made to government – no disclosure – give a suitable note

7 Clause 31- Implementation Guide issued on 23 August 2018 issued by ICAI

ICAI Implementation Guide

- No difference between revenue and capital account.

- For clauses 31(bb) and 31(bd) – in absence of evidences the guidance given under para 49.6 of guidance note (2014 Edition) under similar circumstances shall also apply here and following comment may be inserted:

  “It is not possible for me/us to verify whether loans or deposits have been taken or accepted otherwise than by an account payee cheque or account payee bank draft, as the necessary evidence is not in the possession of the assessee”

- Information to be retained in working paper for all clauses is given in Implementation guide.

GENERAL ANTI AVOIDANCE RULES (GAAR)

GAAR - Disclosure of Impermissible transaction – Section 96 – Clause 30C

Clause 30C introduced

1. Whether an impermissible avoidance arrangement has been entered into?

Y N

To test each transaction on commercial substance parameters

2. Nature of impermissible arrangement

Impermissible arrangements broadly categorized in four baskets

- Rights and obligations not at Arm's length
- Involves abuse of provisions
- Lacks commercial substance
- Not for bona-fide purpose

3. Tax Benefits to <u>all parties</u>

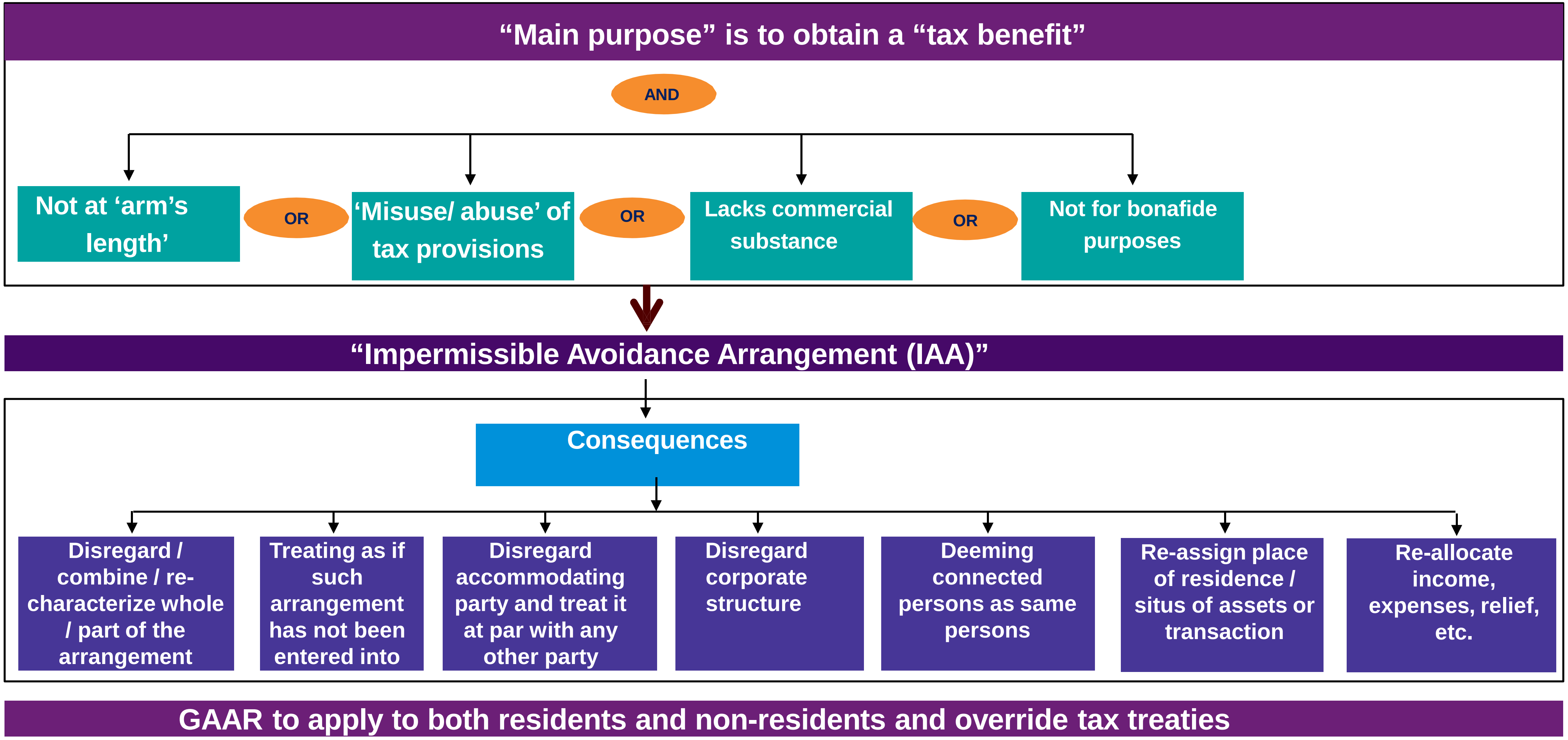
- Clause requires disclosure of tax benefits **<u>to all parties</u>** involved in a transaction
- Disclosure of tax benefit to all parties- Without access to financials of non-audit entity, it may be not be possible for auditor to certify such amount

Need for GAAR

- Codify the principle of SUBSTANCE OVER FORM
- Examine cases of aggressive tax planning with use of sophisticated structures
- Plugging loopholes that may result in tax avoidance
- Critical examination of inbound & outbound transactions and check treaty shopping
- Preserve the tax base of the company from erosion
- If main objective of a business arrangement is tax mitigation, whether GAAR provisions would apply ?

Clause 30C- Kept in abeyance till March 31, 2020 *vide* Circular no. 9 of 2018 dated 14 May 2019

8 What is GAAR- an Overview



8 GAAR- Potential Triggers

MANY POSSIBILE GAAR SCENARIOS

1 INTERNAL RESTRUCTURING
Intra-group transfer of assets in tax-neutral manner

2 OTHER OVERSEAS PAYMENTS
Management fee, technical fee and other payments to affiliates

3 COST ALLOCATIONS
Overseas affiliates allocating costs like **IT, legal** etc

4 ROYALTY PAYMENTS
Payment of royalty to **overseas parent / group entities**

5 EXPATRIATE SECONDMENT
Payments to affiliates for deputation / assignment of expats

6 TAX FRIENDLY JURISDICTIONS
Use of **Intermediate Holding Structures**

7 EMPLOYEE COMPENSATION
Car lease arrangements

8 COMPOSITE ARRANGMENTS
For offshore and onshore work

Significant power of taxing notional income and disallowing real expense
GAAR risk exists despite Specific Anti Abuse Rules / provisions

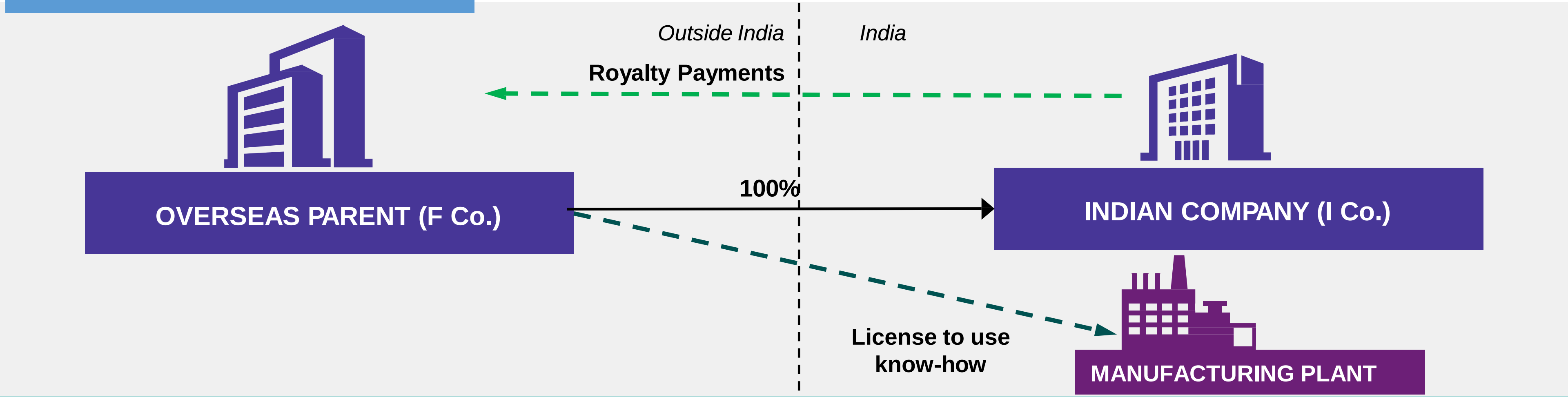
8 GAAR- How to test for Commercial Substance

S. No.	PARAMETERS TO TEST COMMERCIAL SUBSTANCE	RELEVANT FACTOR	SUFFICIENT FACTOR
1	Substance of **'whole'** vs **'individual steps'**	🟢	🟢
2	**Non-tax reasons** of location of asset or transaction or place of residence of any party	🟢	🟢
3	Non tax effects on **business risks** of all parties	🟢	🟢
4	Non tax effects on **net-cash flows** of all parties	🟢	🟢
5	No elements having effect of **offsetting** or **cancelling** each other	🟢	🟢
6	**Complete audit trail** of value, location, source, ownership or control of funds	🟢	🟢
7	No **round-trip financing** or **accommodating party**	🟢	🟢
8	**Period or time** for which the arrangement exists	🟢	🔴
9	**Payment of taxes**, directly or indirectly, under the arrangement	🟢	🔴
10	**Exit route** is provided by the arrangement	🟢	🔴

Several factors for testing 'commercial substance' in arrangements / transactions

8 Case Study: Royalty Remittance by I Co. to Parent F Co.

TRANSACTION	Royalty paid by I Co. to F Co. for technology / know-how
HOW GAAR MAY BE APPLIED	▪ **Allegation** – Royalty is in the nature of **dividend** paid to overseas parent ▪ **Tax benefit** : – **Lower 10% TDS** on royalty **vs. higher 20% DDT** on dividends – Royalty is **tax-deductible vs.** Dividend is **taxable** in hands of I Co.



Seemingly routine transactions may be re-characterized under GAAR

8 Safeguards prescribed by Government after representations

MINIMUM THRESHOLD
INR 30 Million tax benefit

GRAND-FATHERING
Investments made before 1 April 2017

TAX TREATY
LoB Clause sufficient in some cases

IMPLEMENTING TRANSACTION
No interplay with choice of implementation

NO REPETITIVE GAAR
If examined once, no GAAR on same facts

RELEVANT PART
GAAR on relevant part, not entire arrangement

COURT SCHEMES
No GAAR if Court has examined tax implications

ADVANCE RULING
To obtain certainty

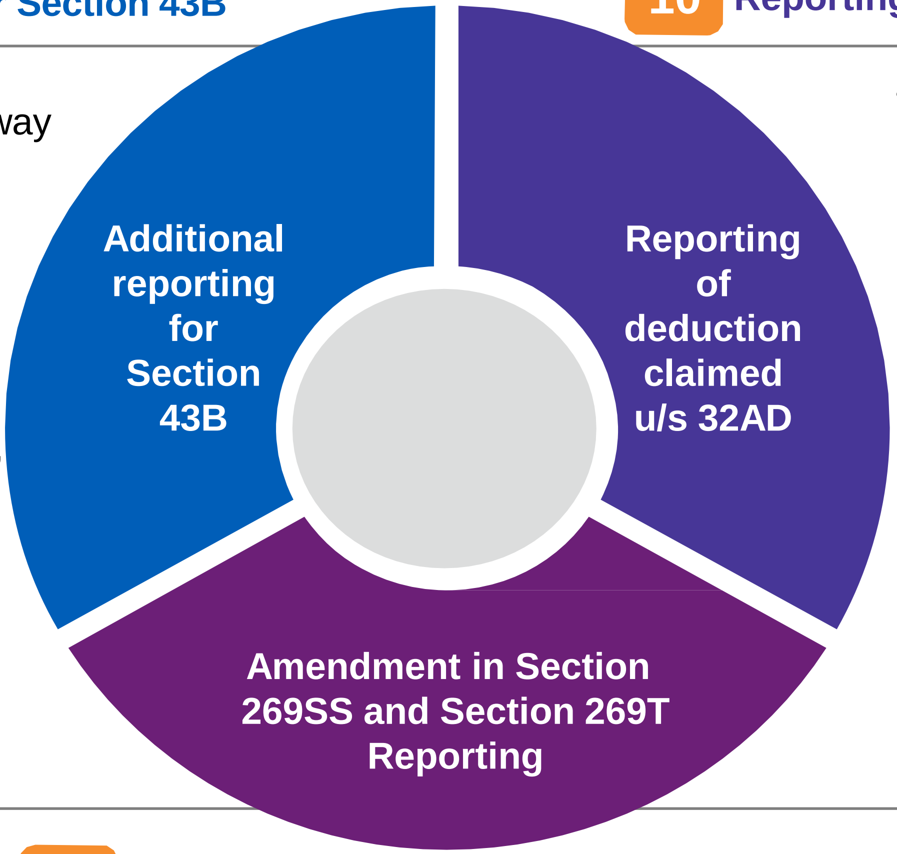
Safeguards do not address all potential GAAR risks

Onerous responsibility on tax auditor and company - Robust documentation can mitigate GAAR Reporting

Other Changes in Tax Audit Report

9 Additional reporting for Section 43B

- Payments made to railways for use of railway assets, allowed as deduction only on payment basis
- By including the clause, it appears railways is trying to improve their cash inflows



10 Reporting of deduction claimed u/s 32AD

- 32AD allows allowance of 15% of investment made in new plant and machinery to undertaking set in specified backward areas
- Reporting requires disclosure of amount debited to P&L and allowance that can be claimed

11

Repayment replaces “taken or accepted” (Section 269SS and Section 269T) – Clause 31

- Correctly rectified

TRANSFER PRICING AND OTHER PROVISIONS

12 Thin Capitalization- Meaning

Applicability & Meaning

- Expenditure by way of Interest or **similar nature** (>1 cr) to NR lender
- Applicable on transactions with AEs (NR)or transactions guaranteed by AEs

Quantum of disallowance

- Amount of total interest paid or payable in excess of 30% of EBITDA; Or
- Interest paid / payable to AE,

Carry forward of disallowance

- Allowed for succeeding 8 years

Amount of total interest paid or payable in excess of 30% of EBITDA — A1, A2 — A

OR

Interest paid / payable to — B

Whichever is lower

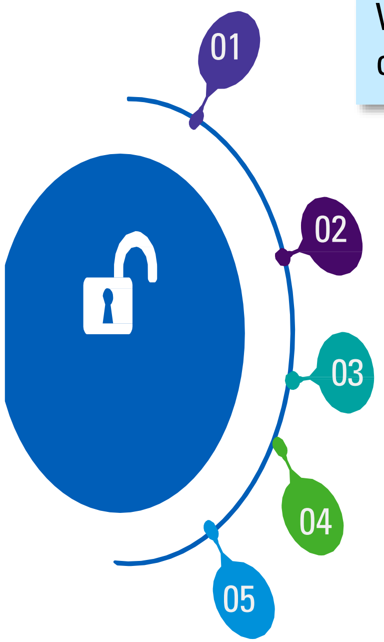
Particulars	Option I Amount	Option II Amount
Interest to AEs	5	35
Interest to Non-AE	35	5
Total interest (A1)	**40**	**40**
EBITDA	**100**	**100**
30% of EBITDA (A2)	**30**	**30**
Total Interest in excess (A = A1-A2)	**10**	**10**
Interest to AE (B)	5	35
Excess Interest disallowance Lower of (A) or (B)	**5**	**10**

To be disclosed in form 3CD

Information in 3CD ➔ Focus of tax officers

Thin Capitalization- Reporting Responsibilities - Clause 30B

Disclosure in TAR



Whether Expenditure by way of interest or similar nature incurred

Amount of expenditure by way of interest or similar nature

EBITDA during the previous year

Expenditure by way of interest or similar nature incurred, as exceeds 30% of EBDITA

Brought forward and carried forward interest expense which could not be deducted

Challenges in disclosures

- Banking & Insurance Companies not specifically excluded in the form
- EBITDA refers to **book profits or tax profits**?
- **30% of EDITDA is to be compared with total interest or interest to AE** – different wordings in circular
- **Meaning of "interest"** for the purpose of sub section (2) of Section 94B- The term is vide enough to cover other charges
- Clause not in line with the Section under the Act – (The term similar nature is not there in sub clause 2 of Section)

- The unresolved aspects associated with the concerned section may pose challenge for auditors to quantify the amount and hence, may sought management representation- This **<u>increases the onus on management to critically evaluate all the interest transactions for inclusion in TAR by the end of the year</u>**
- This disclosure will be **<u>used by the tax department to evaluate the lending transactions</u>**

Thin Capitalization- Key considerations / practical challenges

- Computation of allowable interest in case of entities having negative EBITDA
- Industries with high leverage -Infrastructure, NBFCs, Real estate - Additional burden
- Interest to AE though meets arm's length standard but exceeds threshold of 30% of EBITDA
- Applicability to Indian branches of foreign banks → guaranteed by AE (Resident / non-resident)
- AE guarantee (implicit and explicit) → whether partial guarantee (say 60% of loan availed by borrower) be covered

12 Clause 30B- Implementation Guide issued on 23 August 2018 issued by ICAI

ICAI Implementation Guide

- Expenditure of similar nature should be read in the context of debt as defined in section 94B(5)(ii). Debt is defined to mean loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discount or finance charges.

- “Expenditure of similar nature” as per section 94B would include discount or premium on securities, finance cost component of lease rentals or other finance charges.

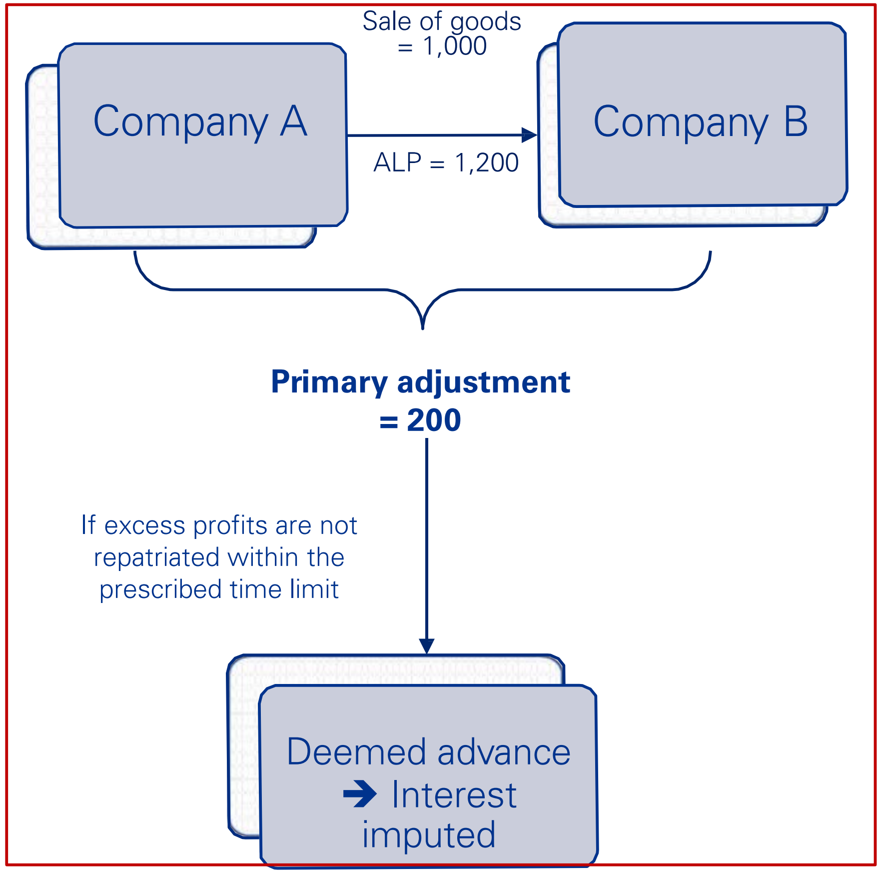
- For computing the limit of INR 1 Crore, interest and expenditure of similar nature, disallowable under other sections like 14A, proviso to 36(1)(iii), 40(a)(i) or 40A(2) should not be considered.
  - Also Interest disallowed on TP adjustment should not be considered.

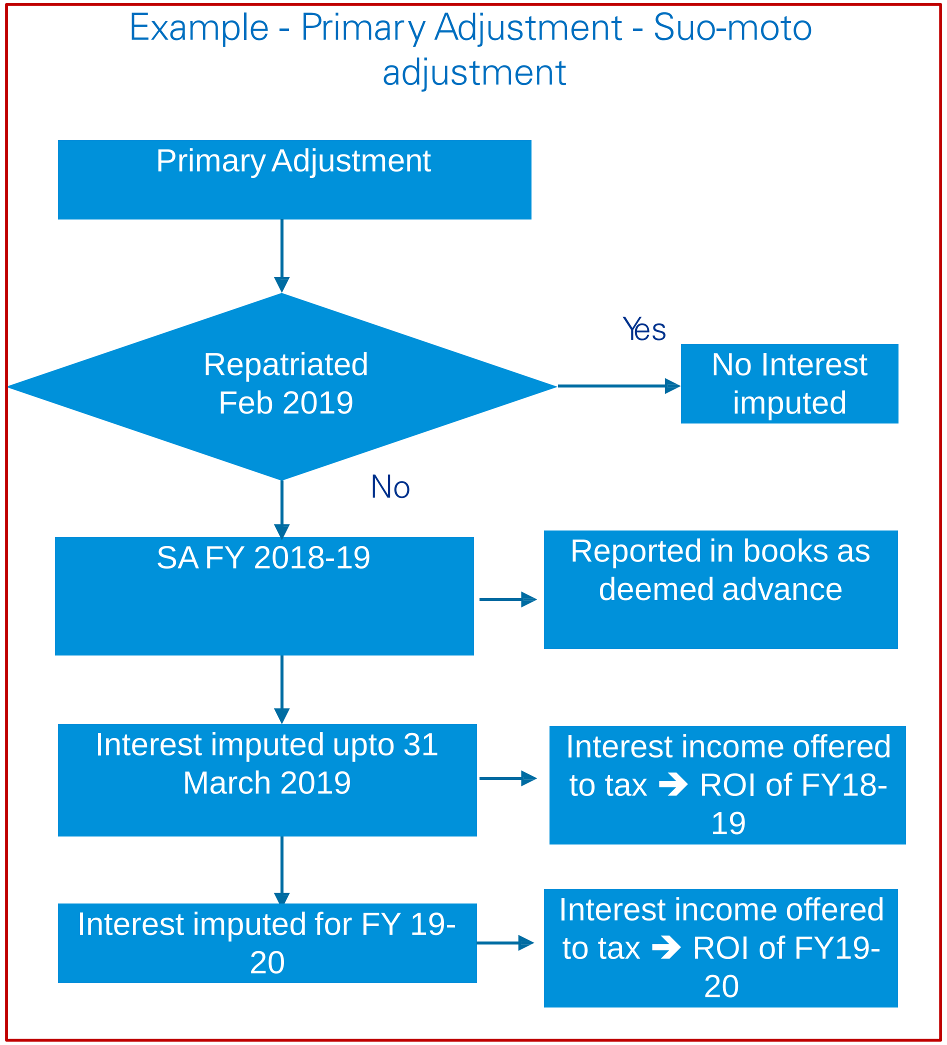
- Recognises two views – whether limit of INR 1 Crore is for each AE or all AEs together – Appropriate disclosure to be made as per view taken by assessee.

- Computation of disallowance of Interest shall be only in respect of Non-resident AEs and not for Resident AEs.

- EBITDA to be computed on final audited stand alone accounts

13 Secondary Adjustments – Meaning





Secondary Adjustments – Reporting Responsibilities - Clause 30A

Introduced by Finance Act 2017 – First time disclosure

1. Whether primary adjustment made to Transfer Price, if yes, under which clause

i. Suo moto adjustment in tax return?
ii. Assessing Officer adjustment and accepted
iii. Under APA
iv. Under MAP
v. As per Safe Harbor Rules

2. Amount of Primary adjustment?

- Adjustments accepted/ adjustments made

3. Whether such adjustment t o be repatriated to India?
- If yes, by when?
- If No, what is the interest on such sum

- Repatriation within 90 days of the finality of adjustment type
- Delay to deem amount as loan
- Interest adjustment based on SBI and LIBOR based rates

Issues for consideration

- Disclosure requirements whether applicable to primary adjustments less than INR one crore
- Imputed interest will be calculated from day 1 or 91st day?
- Repatriation required when primary adjustment made in case of non-resident taxpayer?
- If amount not recovered, interest amount to be quoted each year on the deemed advance for a lifetime

13 Secondary Adjustments – Other Key Considerations

Provision in books of account

- Section 92CE does not clarify as to how secondary adjustment would be entered in the books of account as the said approach would (possibly) be in conflict with the Companies Act

Impact on MAT Computation

- Whether credit to P&L a/c would form part of book profit for purpose of Sec 115JB

Adjustment required in the books of AE

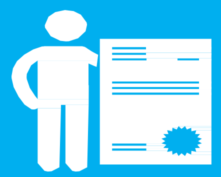
- Whether Indian authorities have a right to seek such an adjustment in the books of AE?

Multiple AEs / transactions

- In cases where overallTNMM is applied, whether secondary adjustment needs to be made in respect of a single AE/ transaction or multiple AEs/ transactions ? If multiple AEs/ transactions, then on what basis will the quantum be decided?

13

Clause 30A- Implementation Guide issued on 23 August 2018 issued by ICAI



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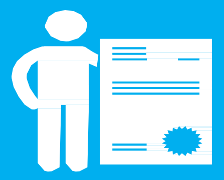
- Primary Adjustments (‘PAs’) may not necessarily be confined to the year under consideration.
- Disclosure to be made for each and every type of PA irrespective of the year to which it pertains.
- Certificate from assessee about -
  - TP adjustments made in Return of Income filed during the year (May be more than one);
  - Advance Pricing Arrangement (APA) entered;
  - TP Adjustments made in assessment / confirmed in appeals;
  - Agreement arrived at under Mutual Agreement Procedure.
- Obtain a MR for information to be True and accurate – Disclose about MR in the Report – Primary onus on management.

13 Clause 30A- Implementation Guide issued on 23 August 2018 issued by ICAI



ICAI Implementation Guide

- If the PA amount not repatriated – Imputed Interest income to be computed.
- Obtain Certificate for SBI / LIBOR Rate and provide computation – Verify the computation.
- Interest to be computed upto the end of the FY and not upto the date of completion of audit.
- If Interest computed upto date of audit report – give break up upto FY and beyond.
- Imputed Interest Income may relate to PAs made in more than one year - Only to report the Interest pertaining to PAs made during the year under audit.

14 Country –by-Country reporting- Section 286(2) - Clause 43

Disclosures in new Form 3CD

01 Whether assessee / its parent entity / alternate reporting entity (ARE) is liable to furnish CbCR

02 Whether CbCR furnished by assessee / its parent entity / ARE

03 Name of parent entity

04 Name of ARE (if applicable)

05 Date of furnishing of CbCR

Applicability

- Indian Parent entity or Indian Constituent Entity *(with Indian parent)* would be required to disclose the aforesaid details in the TAR if furnishing of CbCR is applicable to such MNE Group under 286(2)
- Not applicable to taxpayers furnishing CbCR under section 286(4). Notification for such cases covered in Form 3CEAE

Reporting till date

FORM NO. 3CEAD

[See rule 10DB]

COUNTRY-BY-COUNTRY REPORT

Report by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the purposes of sub-section (2) or sub-section (4) of section 286 of the Income-tax Act, 1961

Name of the reporting entity	
PAN of the reporting entity	
Address of the reporting entity	
Whether the reporting entity is the parent entity of the international group	

PART A: OVERVIEW OF ALLOCATION OF INCOME, TAXES AND BUSINESS ACTIVITIES BY TAX JURISDICTION

Name of the Multinational Enterprise group:
Reportable accounting year:
Currency used:

Tax Jurisdiction	Revenues			Profit(Loss) before Income Tax	Income Tax Paid (on Cash Basis)	Income Tax Accrued – Reportable Accounting Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

PART B: LIST OF ALL THE CONSTITUENT ENTITIES OF THE MULTINATIONAL ENTERPRISES GROUP INCLUDED IN EACH AGGREGATION PER TAX JURISDICTION

Name of the Multinational Enterprise group:
Fiscal year concerned:

Tax Jurisdiction	Constituent entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax	Main Business Activity (ies)													
			Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management and Support Services	Provision of Services to	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or other Equity Instruments	Dormant	Other

FORM NO. 3CEAC

[See rule 10DB]

Intimation by a constituent entity, resident in India, of an international group, the parent entity of which is not resident in India, for the purposes of sub-section (1) of section 286 of the Income-tax Act, 1961

1. Name of the constituent entity –
2. Address of the constituent entity –
3. Permanent account number of the constituent entity –
4. Name of the international group –
5. Name of the parent entity of the international group –
6. Address of the parent entity of the international group –
7. The country of residence of the parent entity –
8. Whether the international group has designated an alternate reporting entity in place of the parent entity to furnish the report referred to in sub-section (2) of section 286 - Yes/No
9. If yes, name and address of the alternate reporting entity of the international group –
   (i) Name of alternate reporting entity
   (ii) Address
10. The country of residence of the alternate reporting entity –
11. Reportable Accounting Year –

I, ..., son/daughter/wife* of Shri .... hereby declare that I am furnishing the information in my capacity as .... (designation) of .... (name of the assessee) and I am competent to furnish the said information and verify it.

Place: ....

Date: ....

....
Signature**

....
Address of the declarant

....
PAN of the declarant

Note: *Strike off whichever is not applicable.

**This form has to be signed by the person competent to verify the return of income under section 140.

CHANGES IN RELATION TO ICDS

Significant Implications of Income Computation and Disclosure Standards (ICDS)

Applicability

From Financial Year 2016-17 i.e. Assessment Year 2017-18

All assessees following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head “profits and gains of business or profession” or “income from other sources”.

Significant Implications of Income Computation and Disclosure Standards (ICDS)

Please note*:*

The net profit as per financial statements is required to be adjusted for specific requirements of ICDS for determining taxable income. In other words there is no requirement for maintenance of separate books of accounts.

In the case of conflict between the provisions of the Income-tax Act and the Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Notified ICDS

ICDS	Income Computation and Disclosure Standards	Equivalent AS	Equivalent IND AS
ICDS I	Accounting Policies	AS-1	IND AS-1 and 8
ICDS II	Valuation of Inventories	AS-2	IND AS-2
ICDS III	Construction contracts	AS-7	IND AS-115 / IND AS-11
ICDS IV	Revenue Recognition	AS-9	IND AS-115
ICDS V	Tangible Fixed Assets	AS-10	IND AS-16
ICDS VI	Effects of Changes in Foreign Exchange Rates	AS-11	IND AS-21
ICDS VII	Government Grants	AS-12	IND AS-20
ICDS VIII	Securities	AS-13	IND AS-32
ICDS IX	Borrowing Costs	AS-16	IND AS-23
ICDS X	Provisions, Contingent Liabilities and Contingent Assets	AS-29	IND AS-37

Disclosure in Form No. 3CD in relation to ICDS

Disclosure

Notification No. 88/2016 – Income-tax (23rd Amendment) Rules, 2016

- ✓ W.e.f 1.4.2017
- ✓ In Form 3CD, in part B, in clause 13, for sub-clause (d), the following clause shall be substituted.

(d) Whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards notified under section 145(2)

Disclosure in Form No. 3CD in relation to ICDS

(e) if answer to (d) above is in the affirmative, give details of such adjustments:

		Increase in profit (Rs.)	Decrease in profit (Rs.)	Net Effect (Rs.)
ICDS I	Accounting Policies			
ICDS II	Valuation of Inventories			
ICDS III	Construction Contracts			
ICDS IV	Revenue Recognition			
ICDS V	Tangible Fixed Assets			
ICDS VI	Changes in Foreign Exchange Rates			
ICDS VII	Governments Grants			
ICDS VIII	Securities			
ICDS IX	Borrowing Costs			
ICDS X	Provisions, Contingent Liabilities and Contingent Assets			
	Total			

Disclosure in Form No. 3CD in relation to ICDS

(f) Disclosure as per ICDS:

(i)	ICDS I-Accounting Policies
(ii)	ICDS II-Valuation of Inventories
(iii)	ICDS III-Construction Contracts
(iv)	ICDS IV-Revenue Recognition
(v)	ICDS V-Tangible Fixed Assets
(vi)	ICDS VII-Governments Grants
(vii)	ICDS IX Borrowing Costs
(viii)	ICDS X-Provisions, Contingent Liabilities and Contingent Assets".

Significant Implications of ICDS I

Particulars	Accounting Standard and Ind AS	ICDS
Concept of Materiality	• AS and Ind AS both consider the concept of Materiality	• The concept of materiality is impliedly removed from ICDS I
Concept of Prudence	• Prudence is one of the major consideration governing selection and application of accounting policies	• The concept of prudence is impliedly excluded from ICDS I • Further, ICDS I does not allow Mark to Market Loss and Expected Losses unless it is allowed by any other ICDS
Changes in Accounting Policies	• AS 1 allows a change if it results in a more appropriate presentation or required by a standard or statute • Ind AS 1 and Ind AS 8 allows a change where it results in reliable and more relevant information or required by a standard	• ICDS does not permit changes in accounting policies without a 'reasonable cause'

Disclosure Requirements under ICDS I

ICDS I – Disclosure Requirements

- All significant accounting policies adopted by a person.
- Any change in an accounting policy which has a material effect shall be disclosed to the extent ascertainable.
- Where such amount is not ascertainable, wholly or in part, the fact shall be indicated.
- If change in accounting policies does not have material impact in the current period but in later year then it shall be appropriately disclosed in the period in which change is adopted and in which change has material impact for the first time.
- Disclosure of accounting policies or of changes therein cannot be a remedy for a wrong or inappropriate treatment of the item.
- If the fundamental accounting assumptions of Going Concern, Consistency and Accrual are followed, specific disclosure is not required.
- If a fundamental accounting assumption is not followed, the fact shall be disclosed.

Significant Implications of ICDS II

Particulars	Accounting Standard and Ind AS	ICDS
Inclusion in the scope of Inventories	• Spare parts not meeting the definition of Property, Plant & Equipment are classified as inventory	• Inventory does not include machinery spares that can be used only in connection with an item of fixed asset and whose use is expected to be irregular
Cost Formula for Inventories	• AS-2 requires use of a cost formula that reflect the fairest possible approximation to the cost incurred in bringing the items of inventory to their present location and condition • Ind AS 2 does not state so and requires the use of same cost formula for all inventories having a similar nature and use to the entity.	• ICDS is in line with AS-2
Deferred Settlement Terms	• AS 2 does not include provisions with regard to deferred settlement terms • Under Ind AS If the arrangement effectively contains a financing element, difference between the purchase price for normal credit terms and the amount paid, is recognised as interest over the period of financing	• ICDS does not include provisions with regard to deferred settlement terms

Disclosure Requirements under ICDS II

ICDS II – Disclosure Requirements

- Accounting Policies adopted in measuring inventories including the cost formulae used;
- Where Standard Costing has been used as a measurement of cost, details of such inventories and a confirmation of the fact that standard cost approximates the actual cost; and
- The total carrying amount of inventories and its classifications appropriate to a person.

Significant Implications of ICDS III

Particulars	Accounting Standard and Ind AS	ICDS
Definition of Contract Revenue	• Retention Money is included as a part of contract revenue.	• Definition of Contract Revenue specifically includes Retention Money. • However, in the Pre-ICDS period, there are few judicial precedents, wherein various High Courts have held that Retention Money shall be taxable only in the year when there is a right to receive the same or in the year of receipt.
Recognition of Revenue in the early stage of completion	• Recognition of Revenue in the early stage of contract only to the extent of cost. • No threshold provided for determining early stage of contract.	• Recognition of Revenue in the early stage of contract only to the extent of cost. • Early stage of contract shall not extend beyond **25 percent**

Significant Implications of ICDS III

Particulars	Accounting Standard and Ind AS	ICDS
Future or Anticipated Losses	• Future or Anticipated losses are recognised as expenses immediately.	• ICDS III is silent on allowability of provision for expected or anticipated losses. • However, as per ICDS I, provision for expected losses shall not be allowed unless it is specifically allowed by other ICDS.
Incidental Income	• AS-7 provides that any incidental income shall be reduced from contract cost. • Ind As does not provide any such guidance.	• Incidental income being interest, dividend and capital gains are specifically not allowed to be reduced from contract cost.

Disclosure Requirements under ICDS III

ICDS III – Disclosure Requirements

- The amount of contract revenue recognised as revenue in the period;
- The methods used to determine the stage of completion of contracts in progress.
- For contracts in progress at the reporting date:—
  - ✓ amount of costs incurred and recognised profits (less recognised losses) upto the reporting date;
  - ✓ the amount of advances received; and
  - ✓ The amount of retentions.

Significant Implications of ICDS IV

Particulars	Accounting Standard and Ind AS	ICDS
Revenue Recognition for Service Contracts	• Completed service contract method permitted. **There is no bright-line of 90 days** • When the outcome of the transaction involving the rendering of services cannot be estimated reliably, revenue can be recognised only to the extent of the expenses recognised that are recoverable. **There is no bright-line of 90 days**	• Revenue from service contracts permitted to be recognised on percentage of completion method • Completed service contract method permitted only for service contracts with duration of not more than ninety days • Where services are provided by an indeterminate number of acts over a specific period of time, revenue may be recognised on straight line basis over the specific period
Executory Contract	• It requires recognition of provision for onerous contracts	• ICDS IV scopes out executory contracts
Exchange of goods or services	• **As per Ind AS**- When goods/ services are exchanged for goods/ services which are of similar nature and value, it is not regarded as a transaction generating revenue. • In case of dissimilar goods/ service, revenue is measured at fair value of the goods/ services received, adjusted by the amount of any cash or cash equivalents transferred	• Does not provide explicit guidance on revenue recognition in case of exchange of similar and dissimilar goods and services

Significant Implications of ICDS IV

Particulars	Accounting Standard and Ind AS	ICDS
Obligation to provide free or discounted goods or services (‘awards’)	• AS 9 does not provide guidance regarding revenue recognition in case of obligation to provide free or discounted goods or services (‘awards’) to its customers due to any customer loyalty programme. • As per Ind AS, Separately identifiable component of revenue and related revenue recognition is deferred	• Similar to AS 9
Separately identifiable components of a single transaction	• AS 9 does not provide explicit guidance for recognition of separately identifiable components of a single transaction. • **Ind AS** - The identification of components within a single arrangement is consistent with the general principles in Ind AS 18 - i.e. the requirement that it may be necessary to apply the revenue recognition criteria to the separately identifiable components of a single transaction to reflect the substance of the transaction.	• Similar to AS 9
Interest Income	• As per AS 9, Interest income is to be recognised on time basis determined by the amount outstanding and the rate applicable • As per Ind AS, Interest is recognised using the effective interest method	• ICDS requires recognition of income on time basis • However, there are judicial precedents in the past which have held interest to be taxable only when there is a right to receive the same.

Disclosure Requirements under ICDS IV

ICDS IV – Disclosure Requirements

Following disclosures shall be made in respect of revenue recognition, namely:—

- in a transaction involving sale of good, total amount not recognised as revenue during the previous year due to lack of reasonable certainty of its ultimate collection along with nature of uncertainty;
- the amount of revenue from service transactions recognised as revenue during the previous year; and
- the method used to determine the stage of completion of service transactions in progress.

For service transactions in progress at the end of the previous year:—

- amount of costs incurred and recognised profits less recognised losses upto end of previous year;
- the amount of advance received; and
- the amount of retentions.

Significant Implications of ICDS V

Particulars	Accounting Standard and Ind AS	ICDS
Capitalisation of Exchange Differences	• Para 46/46A of AS 11 • Exchange difference relating to tangible fixed assets cannot be capitalised unless they form part of borrowing cost or where transition benefit available under Ind AS 101	• Capitalisation of exchange differences to be in accordance with section 43A and other provisions of the Income-tax Act
Tangible Fixed Assets acquired in exchange of another asset	• Cost of an item of property, plant and equipment that is acquired in exchange of monetary/ non-monetary/ combination of both items, is measured at fair value of asset given up unless the fair value of the asset received is more clearly evident. • If the acquired item is not measured at fair value (where the exchange transaction lacks commercial substance or the fair value of neither the asset received nor the asset given up is reliably measurable), its cost is measured at the carrying amount of the asset(s) given up	• Where a tangible fixed asset is acquired in exchange for another asset, shares or securities, the actual cost in such cases would be the fair value of the asset acquired
Revaluation	• **AS 10 and Ind AS 16** – Provide guidance on revaluation of items of PPE	• Revaluation is not permitted

Significant Implications of ICDS V

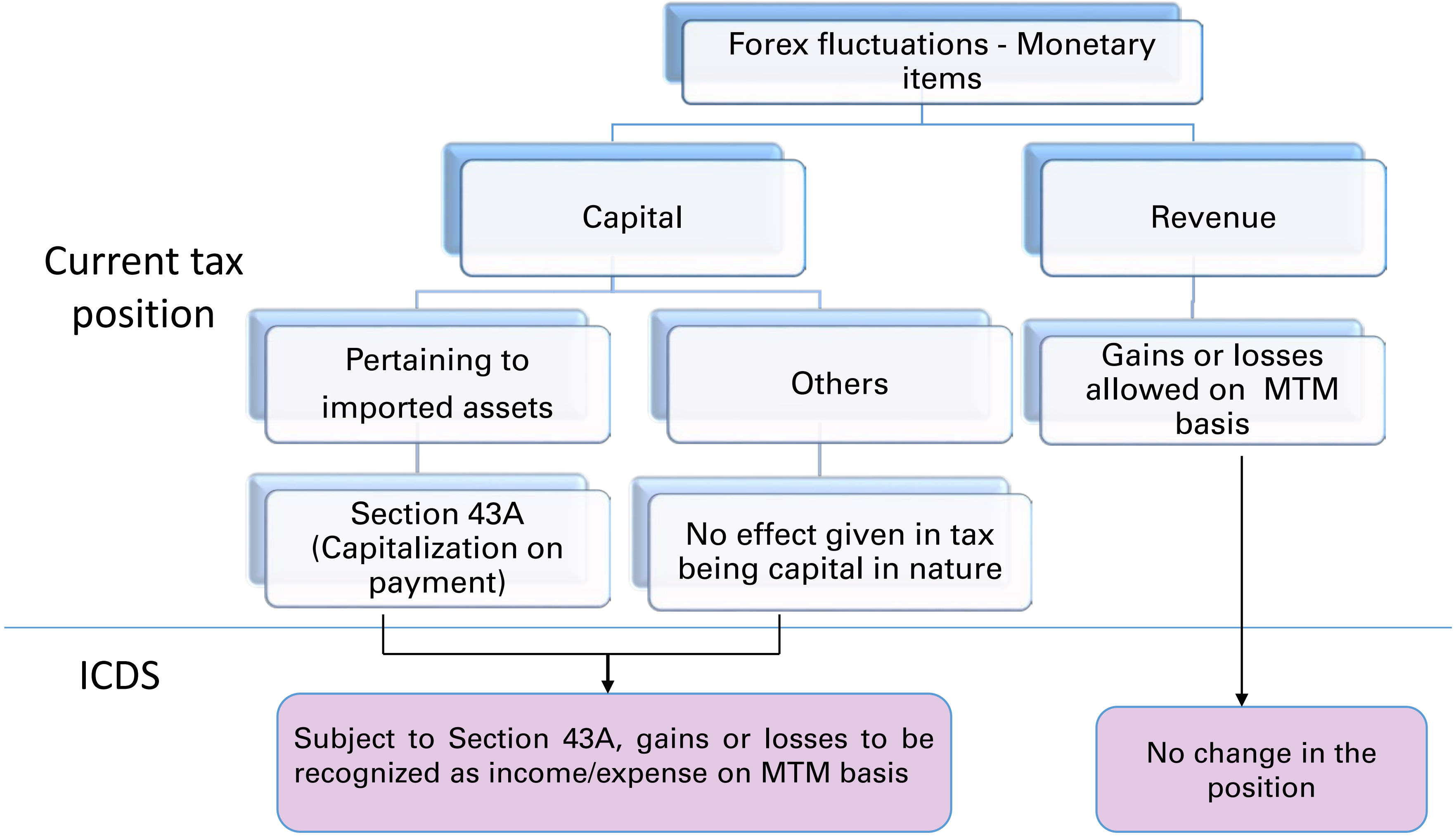
Particulars	Accounting Standard and Ind AS	ICDS
Several Assets purchased at a consolidated price	• **Under AS** - Consideration to be apportioned based on respective fair values on the date of acquisition • **Ind AS** - If the group of assets meets the definition of business (as per Ind AS 103), accounting will be governed by Ind AS 103. If group of assets is not a business, consideration allocated to various assets on a relative fair value basis	• Where several assets are purchased for a consolidated price, the consideration shall be apportioned to the various assets on a fair basis
Deferred Payment Terms	• If payment is deferred beyond normal credit terms, the difference between the cash price equivalent and the total payment is recognised as interest over the period of credit and dealt with in accordance with AS 16	• No adjustment for deferred payment terms. Price paid/ payable is capitalised

Disclosure Requirements under ICDS V

ICDS V – Disclosure Requirements

- Description of asset or block of assets;
- Rate of Depreciation;
- Actual cost or Written Down Value ('WDV'), as the case may be;
- Additions or deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of-
  - ✓ CENVAT Credit claimed and allowed under the CENVAT Credit Rules, 2004;
  - ✓ Change in rate of exchange of currency;
  - ✓ Subsidy or grant or reimbursement, by whatever name called.
  - ✓ Actual cost or Written Down Value, as the case may be;
- Depreciation Allowable; and
- WDV at the end of the of the year.

Significant Implications of ICDS VI



- Exchange differences on forward contracts entered for-
  - ✓ trading / speculation / hedging of firm commitment or
  - ✓ a highly probable forecast transaction

to be allowed **only on settlement**

Pre-ICDS MTM losses / gains on derivatives were generally claimed / offered relying on settled judicial precedents

Significant Implications of ICDS VI

Treatment for Derivatives

Derivatives

Forward Exchange Contracts – For trading/ speculation

- Premium or discount on contracts and exchange difference shall be recognized at the time of settlement
- (AS 11 permits MTM on year end)

Forward Exchange Contracts – To hedge foreign currency risk of a firm commitment or a highly probable forecast transaction

- Premium or discount on contracts and exchange difference shall be recognized at the time of settlement
- (AS 11 excludes these contracts)

Other Forward Exchange Contracts (such as hedging for on-Balance Sheet items)

- Premium or discount arising at inception shall be amortised over the life of the contract
- Spot exchange difference shall be recognized on year end basis
- (Same as AS 11)

Other Derivative contracts (Covered in ICDS on Accounting policies)

- MTM shall not be recognized unless permitted by other ICDS. MTM deferred till settlement

"Forward Exchange Contract" means an agreement to exchange different currencies at a forward rate, and includes a foreign currency option contract or another financial instrument of a similar nature;

Significant Implications of ICDS VII

Particulars	Accounting Standard and Ind AS	ICDS
Scope	• **AS** – Does not include 'waiver or concessions' as a part of government grant • **Ind AS** - Though not specifically stated in the standard, waiver of expenses qualify as government grant because in substance there is a transfer of resources, although it is in the form of a waiver of expenses	• ICDS VII includes 'waiver, 'concessions' also as government grants.
Non Monetary Assets given by Government at concessional rate	• **AS**- Measured at their acquisition cost • **Ind AS**- The fair value of the non-monetary asset is assessed and both grant and asset are accounted for at fair value	• Measured at their acquisition cost
Grant relating to depreciable assets	• **AS** – There is an option to present the grants related to depreciable assets in the balance sheet either (a) by setting up the grant as deferred income or (b) by deducting the grant from the gross value of asset concerned in arriving at its book value • **Ind AS** - Presented in balance sheet by setting up the grant as deferred income – both grant and asset are accounted for at fair value of the asset and the grant is usually recognised in profit or loss over the period and in the proportions in which depreciation expense on those assets is recognised	• Deducted from the cost of the asset or from written down value ('WDV') of the block of assets to which the concerned asset belongs

Significant Implications of ICDS VII

Particulars	Accounting Standard and Ind AS	ICDS
Grant relating to non-depreciable assets	• **AS** – Grant for non-depreciable assets is recognized (a) as capital reserve (part of shareholders' funds). However, if such grant requires the fulfilment of certain obligations, the grant should be credited to income over the same period over which the cost of meeting such obligations is charged to income or (b) as a deduction from the cost of such asset. • **Ind AS** - Ind AS 20, is based on the principle that all government grants would normally have certain obligations attached to them and these grants should be recognised as income over the periods which bear the cost of meeting the obligation. It, therefore, specifically prohibits recognition of grants directly in the shareholders' funds.	• Grants for non-depreciable assets requiring fulfilment of certain obligations have to be recognised as income over the same period over which the cost of meeting such obligation is charged to income
Initial Recognition	• **AS and Ind AS** - A grant is recognised when there is reasonable assurance that the entity will comply with the attached conditions and ultimate collection is reasonably certain	• Initial recognition of grant cannot be postponed beyond the date of actual receipt (even if there is no reasonable assurance that the enterprise will comply with the attached conditions)

Disclosure Requirements under ICDS VII

ICDS VII – Disclosure Requirements

- Nature and extent of Government grants recognised during the previous year by way of deduction from actual cost of the asset or assets or from WDV of block of assets during the previous year;
- Nature and extent of Government grants recognised during the previous year as income;
- Nature and extent of Government grants not recognised during the previous year by way of deduction from actual cost of the asset or assets or from WDV of block of assets and reasons thereof;
- Nature and extent of Government grants not recognised during the previous year as income and reasons thereof.

Significant Implications of ICDS VIII

ICDS VIII – Securities

- **ICDS** - ICDS covers only securities held as stock–in-trade; does not cover other securities (investments), which will be governed by provisions of the Income-tax Act.

  AS – AS 13 covers both securities held as ‘investments’ and those held as ‘stock-in-trade’.

- **ICDS** - Under ICDS, where a security is acquired in exchange for other securities or other assets, the actual cost in such cases would be the fair value of the security so acquired.

  AS - Under AS 13 it is the fair value of asset given up/securities issued or fair value of the investment acquired, whichever is more clearly evident..

- **ICDS** - Under ICDS, subsequent measurement would be at cost or NRV whichever is lower (as in the case of any other stock-in-trade). However (a) Unquoted/ irregularly quoted securities to be carried at cost, (b) NRV provision on quoted securities made category-wise.

  AS and Ind AS - Under AS 13 it is the lower of cost or fair value determined either on an individual investment basis or by category of investment, but not on an overall (or global) basis.

Significant Implications of ICDS IX

Particulars	Accounting Standard and Ind AS	ICDS
Qualifying Assets	• **AS and Ind AS** - Tangible and intangible assets are considered as qualifying asset only if it necessarily takes a substantial period of time to get ready for its intended use or sale.	• All tangible and intangible assets are considered as qualifying asset • Inventories that require 12 months or more to bring them to a saleable condition The assessment of an asset as qualifying asset is not based on 'substantial period of time to get ready' in case of specific borrowing.
Commencement of capitalisation	• **AS and Ind AS** - Capitalisation of borrowing costs to commence when - Expenditure for acquisition, construction or production of a qualifying asset is being incurred, - Borrowing costs are being incurred, and - Construction activities are in progress	• In case of funds borrowed specifically for the asset: Date of borrowing • In case of funds borrowed generally: Date of utilisation of funds
Active development interrupted	• AS does not permit capitalisation when active development is interrupted	• ICDS requires capitalisation of borrowing costs even if active development is interrupted

Significant Implications of ICDS IX

Particulars	Accounting Standard and Ind AS	ICDS
Cessation of capitalisation	• **AS and Ind AS** - Capitalisation of borrowing cost ceases when substantially all activities necessary to prepare the qualifying asset are complete	• Capitalisation of borrowing cost ceases when qualifying asset (other than inventory) is first put to use
Income from temporary deployment of funds	• In case of specific borrowing, income from temporary deployment of unutilised borrowing is reduced from borrowing cost	• Income from temporary deployment of unutilised borrowed funds is considered as income and not reduced from borrowing cost

Significant Implications of ICDS IX

Formula for capitalising General Borrowing Cost = A X B / C

Where,

A = borrowing costs incurred during the previous year except on borrowings directly relatable to specific purposes;

B =

(i) the average of costs of qualifying asset as appearing in the balance sheet of a person on the first day and the last day of the previous year;

(ii) in case the qualifying asset does not appear in the balance sheet of a person on the first day or both on the first day and the last day of previous year, half of the cost of qualifying asset;

(iii) in case the qualifying asset does not appear in the balance sheet of a person on the last day of previous year, the average of the costs of qualifying asset as appearing in the balance sheet of a person on the first day of the previous year and on the date of put to use or completion,

Excluding the extent to which the qualifying assets are directly funded out of specific borrowings;

C = the average of the amount of total assets as appearing in the balance sheet of a person on the first day and the last day of the previous year, other than those assets which are directly funded out of specific borrowings

Disclosure Requirements under ICDS IX

Key Differences between ICDS and Accounting Standards

ICDS IX – Disclosure Requirements

- The accounting policy adopted for borrowing costs; and
- The amount of borrowing costs capitalised during the previous year.

Significant Implications of ICDS X

ICDS X – Provisions, contingent liabilities and contingent assets

- **ICDS** - ICDS does not apply to onerous executory contracts i.e provision for loss on onerous contracts not allowed as deduction

  AS and Ind AS - Standard applies to executory contracts that are onerous i.e. provision to be recognised for loss on onerous contracts

- **ICDS** - ICDS allows recognition of provision only if there is 'reasonably certainty' of outflow of resources

  AS and Ind AS – Recognition of provision is based on 'probability' of outflow of resources

- **ICDS** - ICDS requires recognition of contingent assets when inflow of economic benefits is 'reasonably certain'

  AS and Ind AS – Recognition of contingent assets is permitted when inflow of economic benefits is 'virtually certain

Disclosure Requirements under ICDS X

Provisions- Following disclosure shall be made in respect of each class of provision, namely:-

- a brief description of the nature of the obligation;
- the carrying amount at the beginning and end of the previous year;
- additional provisions made during the previous year, including increases to existing provisions;
- amounts used, that is incurred and charged against the provision, during the previous year;
- unused amounts reversed during the previous year; and
- the amount of any expected reimbursement, stating the amount of any asset that has been recognised for that expected reimbursement.

Disclosure Requirements under ICDS X

Contingent Assets- Following disclosure shall be made in respect of each class of asset and related income recognised, namely:—

- a brief description of the nature of the asset and related income;
- the carrying amount of asset at the beginning and end of the previous year;
- additional amount of asset and related income recognised during the year, including increases to assets and related income already recognised; and
- amount of asset and related income reversed during the previous year.

KEY TAKEAWAYS

Key Takeaways

- **Linking of Expenditure claims with GST –** Data integration between government departments
- **Reporting of PAN & Financial transaction -** Onerous responsibility casted on Tax Auditor
- **Reporting on Deemed Dividend –** Subjective and contentious issue
- **Abusive practices on gift transactions –** Tax Auditor to review valuations
- **Restriction on cash transactions –** Difficult to verify voluminous data **Reporting on**
- **GAAR –** Highly onerous responsibility on Tax Auditor **(Kept in Abeyance)**
- **Thin Capitalization & Secondary Adjustment –** Certain subjective / interpretation issues
- **CbCr filings –** Review group structure and assess applicability

SAMPLE SPECIMEN OF 3CD ANNEXURE FOR CLAUSE 13(F)

Sample Specimen of 3CD Annexure for Clause 13(f)

ICDS	Model Disclosure required as per ICDS	Disclosures
I - Accounting Policies	1) All significant accounting policies adopted by a person shall be disclosed	Please refer to Other Notes to Financial Statements
	2) Any change in an accounting policy which has a material effect	No Change
	3) The amount by which any item is affected by such change	Not Applicable
	4) Where such amount is not ascertainable, wholly or in part	Not Applicable
	5) If a change is made in the accounting policies which has no material effect for the current previous year but which is reasonably expected to have a material effect in later previous years.	Not Applicable
II - Valuation of Inventories	1)The accounting policies adopted in measuring inventories including the cost formulae used.	Inventories are valued at lower of cost or NRV
	2) Where Standard Costing has been used as a measurement of cost, details of such inventories	Not Applicable
	3)The total carrying amount of inventories and its classification appropriate to a person.	Please refer to Note _ of the Notes to Financial Statements

Sample Specimen of 3CD Annexure for Clause 13(f)

ICDS	Model Disclosure required as per ICDS	Disclosures
III - Construction Contracts	1) Disclose the amount of contract revenue recognised as revenue in the period	Not Applicable
	2) Disclose the methods used to determine the stage of completion of contracts in progress	Not Applicable
	3) For contracts in progress, amount of costs incurred and recognised profits (less recognised losses) upto the reporting date.	Not Applicable
	4) For contracts in progress, the amount of advances received	Not Applicable
	5) For contracts in progress, the amount of retentions	Not Applicable

Sample Specimen of 3CD Annexure for Clause 13(f)

ICDS	Model Disclosure required as per ICDS	Disclosures
IV- Revenue Recognition	1) In a transaction involving sale of goods, total amount not recognised as revenue during the previous year	Refer to Note _ of the Financial Statements
	2) The amount of revenue from service transactions recognised as revenue during the previous year	Refer to Note _ of the Financial Statements
	3) The method used to determine the stage of completion of service transactions in progress	Physical Completion Method
	4) For service transactions in progress, disclose amount of costs incurred and recognised profits (less recognised losses) upto end of previous year	Nil
	5) For service transactions in progress, disclose the amount of advances received	Nil
	6) For service transactions in progress, disclose the amount of retentions	Nil

Sample Specimen of 3CD Annexure for Clause 13(f)

ICDS	Model Disclosure required as per ICDS	Disclosures
V- Tangible Fixed Assets	1) Description of asset or block of assets	Refer Annexure 3 to Form No. 3CD
	2) Rate of depreciation	
	3) Actual cost or written down value, as the case may be	
	4) Deductions during the year with dates	
	5) In the case of any addition of an asset, date put to use including adjustments on account of—	
	i) Central Value Added Tax credit claimed and allowed under the CENVAT Credit Rules, 2004	
	ii) Change in rate of exchange of currency	
	iii) Subsidy or grant or reimbursement, by whatever name called	
	6) Depreciation Allowable	
	7) Written down value at the end of year	

Sample Specimen of 3CD Annexure for Clause 13(f)

ICDS	Model Disclosure required as per ICDS	Disclosures
VII- Government Grants	1) Nature and extent of Government grants recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets during the previous year	Not Applicable
	2) Nature and extent of Government grants recognised during the previous year as income	
	3) Nature and extent of Government grants not recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets and reasons thereof	
	4) Nature and extent of Government grants not recognised during the previous year as income and reasons thereof	
IX- Borrowing Costs	1) The accounting policy adopted for borrowing costs	Please refer to Note _ of the Notes to Financial Statements
	2) The amount of borrowing costs capitalised during the previous year	Nil

Sample Specimen of 3CD Annexure for Clause 13(f)

ICDS	Model Disclosure required as per ICDS	Disclosures
X- Provisions, Contingent Liabilities and Contingent Assets	1) A brief description of the nature of the obligation	A provision shall be recognised when the Assessee has a present obligation as a result of a past event, it is reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation, and a reliable estimate can be made of the amount of the obligation
	2) The carrying amount at the beginning and end of the previous year	Please refer to Note _ of the Notes to Financial Statements
	3) Additional provisions made during the previous year, including increases to existing provisions	
	4) Amounts used, that is incurred and charged against the provision, during the previous year	
	5) Unused amounts reversed during the previous year	
	6) The amount of any expected reimbursement, stating the amount of any asset that has been recognised for that expected reimbursement	

Sample Specimen of 3CD Annexure for Clause 13(f)

ICDS	Model Disclosure required as per ICDS	Disclosures
X- Provisions, Contingent Liabilities and Contingent Assets	1) A brief description of the nature of the asset and related income	Not Applicable
	2) The carrying amount of asset at the beginning and end of the previous year	
	3) Additional amount of asset and related income recognised during the year, including increases to assets and related income already recognised	
	4) Amount of asset and related income reversed during the previous year	

Any Questions?

Questions

&

Answers

THANK YOU!

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