

# Issues & Changes in Tax Audit & ICDS

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Sr No	Topic covered
1	Income Computation & Disclosure Standards
2	Applicability of Tax Audit
3	Changes in Tax Audit Report
4	Changes in Tax Audit

- Introduced vide notification No. 87/2016 dt. 29.09.2016 applicable from A.Y. 2017-18 onwards [Section 145(2) of the Income Tax Act, 1961]
- Applicable for computation of income under head "Profits and Gains of business/profession" and Income from Other Sources
- Applicable to all assessee (other than individual/HUF not liable to tax audit) following mercantile system of accounting.
- ICDS to be followed for purpose of computation of income and not for maintenance of books of account.
- Hon'ble Delhi High Court quashed certain ICDS and certain portions of other ICDS.
- Amendments brought out by Finance Act, 2018 w.r.e.f. A.Y. 2017-18 to over rule the judgement of the Hon'ble High Court.
- Circular No. 10/2017 – Clarifications made.

# ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
<b>ICDS 1- Accounting Policies</b>				
MTM Loss/ Expected loss	Prudence concept to be followed i.e. provision to be made for all known liabilities and losses on best estimate basis	Not to be recognized unless specified by any other ICDS [36(1)(xviii) r.w.s. 40A(13)]	Follow AS	Follow ICDS
Marked to Market Gains	Anticipated profits are not recognized	Q No. 8 of Circular- Same principle like MTM Losses to apply i.e. MTM Gains not to be recognized unless specified in any ICDS	Follow AS	AS and ICDS at par and old position continues
Materiality	Materiality to be considered i.e. financial statements should disclose all "material" items	No specific provisions- ICDS does not specifically exclude materiality.	Follow AS	Old position continues

## ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
Change in accounting policy	Change in accounting policy permitted if req. by statute <b>or</b> for compliance of AS <b>or</b> change results in more appropriate presentation of FS	Accounting policies shall not be changed without a "reasonable cause" <u>Q No. 9</u> - "reasonable cause" is an existing concept and has evolved over time	Follow AS	AS and ICDS at par and old position continues

### ICDS 2 - Valuation of Inventories

Methods of valuation	(a) FIFO (b) WAM formula; (c) Specific identification (d) Retail method; (e) Standard cost method	(a) FIFO (b) WAM formula; (c) Specific identification (d) Retail method; (e) Standard cost method	Follow AS	AS and ICDS at par and old position continues
Opening inventory	No specific provision	- same as the value of inventory at the end of the preceding FY - commencement of business- cost on the day of commencement	Follow AS	AS and ICDS at par and old position continues

## ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
Cost of Inventory	(a) Costs of purchase, (b) Costs of conversion (c) Other costs incurred in bringing the inventories to their present location and condition.	(a) Costs of purchase, <b>(b) Costs of services,*</b> (c) Costs of conversion and (d) Other costs incurred in bringing the inventories to their present location and condition.	Follow AS	AS and ICDS at par so old position continues
Inventory valuation in case of certain dissolutions	No specific provision	In case of partnership firm, AOP or BOI inventory on the date of dissolution shall be valued at *NRV, whether or not business is discontinued	*Dissolution Business is not discontinued inventory to be value at lower of cost or NRV.	Follow ICDS

\*Cost of services shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overhead. ICDS II does not cover valuation of service inventory

\*Net Realizable Value: Estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale. (AS2)

\*Shakti Trading Co. vs CIT (2001) 250 ITR 871 (SC)

## ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre ICDS)	Treatment (Post-ICDS)
<b>III- Construction Contracts</b>				
Recognition of contract revenue	Contract revenue to be recognized if it is possible to reliably measure the outcome of a contract & No profit during early stages of contract	ICDS requires recognition if there is reasonable certainty of its ultimate collection. ICDS objectively defines early stage as not to exceed beyond 25%	Follow AS	AS & ICDS at par, except for "early stage of completion" which is 25% in ICDS
Retention Money	Silent on treatment of accrual Income	Retention money to be considered as part of contract revenue and revenue to be recognised on POCM basis	Follow AS (not offered to tax)	Follow ICDS
Allowability of losses including probable / expected loss	Losses fully allowable irrespective of commencement, stage of completion and expected profits from other independent contracts	Losses not allowable unless actually incurred and only on POCM basis. ICDS on accounting policies also does not permit recognition of foreseeable loss.	Follow AS	Follow ICDS

## ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre ICDS)	Treatment (Post-ICDS)
Contract Work in progress recognition	Contract cost which relate to future activity shall be recognised as an asset only if recoverability is probable	Contract cost to be recognised as an asset	Follow AS	Follow ICDS
Pre-construction incidental income	Contract cost may be reduced by any incidental income that is not included in contract revenue	Contract cost shall be reduced by any incidental income (except interest, dividend and capital gains) that is not included in contract revenue	Follow AS	Follow ICDS ( <b>Interest, dividend and capital gain to be separately offered as income</b> )



# ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre ICDS)	Treatment (Post-ICDS)
<b>ICDS IV- Revenue Recognition</b>				
Method of revenue recognition for service contracts	Proportionate completion method or Completed service contract method	Section 43CB – POCM to be followed. However for <ul style="list-style-type: none"> <li>- Contracts with duration of 90 days or less, follow project completion method</li> <li>- Contracts involving indeterminate number of acts over specific period of time, follow straight line method.</li> </ul>	Follow AS	Follow ICDS
Postpone-ment of revenue recognition	if significant uncertainty exists on measurability and collectability of revenue from sale of goods, rendering of services, interest, royalties and dividends	Revenue to be recognized only if there is reasonable certainty of its ultimate collection from sale of goods and rendering of services.	Follow AS	AS and ICDS at par and old position continues

## ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre ICDS)	Treatment (Post-ICDS)
<b>ICDS V- Tangible Fixed Assets</b>				
Applicability	Fixed assets such as land, building, plant and machinery, vehicles, furniture and fittings.	Tangible fixed assets being land, building, machinery, plant or furniture.	Follow AS	AS and ICDS at par and old position continues
Component of cost	'Cost' of fixed asset comprises 1) its purchase price, import duties & non- refundable taxes after deducting trade discount and rebates 2) Any directly attributable cost of bringing the asset to its working condition for its intended use.	It has similar definition to AS 10 but words used are 'actual cost' as compared to 'cost' in AS 10	Follow AS	AS and ICDS at par and old position continues
Assets acquired for consolidated price	Consolidated price to be apportioned to various assets on a fair basis	Consolidated price shall be apportioned to various assets on a fair basis	Follow AS	AS and ICDS at par and old position continues

# ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre ICDS)	Treatment (Post-ICDS)
<b>ICDS VI- Effects of changes in foreign exchange rates</b>				
Initial Recognition	To be recorded at rate on date of transaction	To be recorded at rate on date of transaction	Follow AS	AS and ICDS at par and old position continues
Year end recognition of monetary items if realisable in Foreign Currency.	Converted into reporting currency by applying the closing rate. Exchange difference recognised in P&L a/c.	Converted into reporting currency by applying the closing rate. Exchange difference recognised in P&L a/c <b>subject to Rule 115</b>	Follow AS + rule 115	AS and ICDS at par + rule 115 and old position continues
Year-end recognition of Inventory valued in foreign currency	<u>If item is carried at historical cost</u> – Reported at the exchange rate on the date of transaction <u>If item is carried at fair value</u> – Reported at the exchange rate that existed when the value was determined	<u>If item is carried at historical cost</u> – Reported at the exchange rate on the date of transaction <u>If item is carried at NRV</u> – Reported at the exchange rate that existed when the value was determined	Follow AS	AS and ICDS at par and old position continues

## ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre ICDS)	Treatment (Post-ICDS)
<b>ICDS VII – Government grants</b>				
Recognition of grant	On reasonable assurance of compliance of attached conditions and reasonable certainty of ultimate collection. Mere receipt of grant is not sufficient.	On reasonable assurance of compliance of attached conditions and reasonable certainty of ultimate collection Recognition cannot be postponed beyond date of actual receipt	Follow AS	Follow ICDS
Grant in the nature of promoters contribution	To be credited to capital reserve and to be treated as shareholders' funds	ICDS silent on this category	Follow AS	Old position continues as no mention in ICDS
	<b>Note:</b> Grant received in nature of promoters contribution should be checked for implication of <u>Section 56</u>			
Grants relatable to depreciable fixed assets	To be reduced from cost or recognised as deferred revenue by systematic credit to P&L A/c	To be reduced from cost of fixed asset [in line with Explanation 10 to S. 43(1)]	Follow AS	AS and ICDS at par and old position continues

## ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre ICDS)	Treatment (Post-ICDS)
Relatable to non-depreciable fixed assets	To be credited as capital reserve, if no conditions attached to the grant. To be credited to P&L A/c over period of incurring cost of meeting conditions of grant.	To be considered as income on an upfront basis, if there are no conditions attached to grant. To be treated as income over period over which cost of meeting conditions is incurred.	Follow AS	AS and ICDS at par and old position continues
Grants other than those covered above	Revenue grant to be credited as income or reduced from related expense	Grant to be treated as income over period over which cost of meeting conditions is incurred.	Follow AS	AS and ICDS at par and old position continues
Compensation for expenses / loss incurred or for giving immediate financial support	To be recognised as income in the year in which it is receivable	To be recognised as income in the year in which it is receivable	Follow AS	AS and ICDS at par and old position continues

## ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre ICDS)	Treatment (Post-ICDS)
<b>ICDS VIII- Securities</b>				
Applicability	AS clarifies that principles applicable to 'current investments' can apply to securities held as stock-in-trade	ICDS applicable to securities held as stock-in-trade. 'Securities' defined to have meaning assigned in S.2(h) of SCRA except derivatives referred in s.2(h)(1a) of SCRA	Follow AS	For year end valuation of open contracts of derivatives follow ICDS I.
Security acquired against non-monetary consideration	Cost of security acquired should be recorded either at (a) fair market value of securities issued or (b) fair market value of asset given up, whichever is more clearly evident	actual cost of security acquired shall be recorded at fair value of security acquired	Follow AS	Follow ICDS
Year-end valuation of securities	Current investments- lower of cost or fair value on individual investment basis or category of investment but not on global basis.	Securities should be valued at lower of cost or NRV. Comparison of cost and NRV shall be done category wise.*	Follow AS	Follow ICDS

\*Securities are classified under following categories (a) shares; (b) debt; (c) convertible securities;(d) other securities

## ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre ICDS)	Treatment (Post-ICDS)
Opening value of securities	No specific provision. (However as per general presumption and judicial proceedings, value of opening inventory was the value of closing Inventory in PY, and in case of retrospective amendments the closing stock is accordingly restated.)	Value of opening inventory of securities shall be the same as the value of securities at the end of the preceding FY Commencement of business, Cost on the day of commencement of business will be opening value	As per the general presumptions.	AS and ICDS at par, however in case of retrospective amendment opening stock cannot be changed.
Security acquired against non-monetary consideration	(a) fair market value of securities issued or (b) fair market value of asset given up, whichever is more clearly evident	actual cost of security acquired shall be recorded at fair value of security acquired	Follow AS	Follow ICDS
Valuation of unlisted/thinly traded	No specific provision	Valuation of unlisted or thinly traded securities shall be valued at actual cost initially recognised	Usually valued at cost	AS and ICDS at par and old position continues

## ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre ICDS)	Treatment (Post-ICDS)
Determination of cost	Cost formulae are the same as those specified in AS 2 (e.g. FIFO; average cost, etc.)	Cost, which cannot be ascertained by reference to specific identification shall be determined on the basis of FIFO/weighted average method.	Follow AS	AS and ICDS at par and old position continues

### ICDS IX- Borrowing costs

Borrowing cost	Borrowing cost includes exchange difference to the extent that they are regarded as an adj. to interest costs	Borrowing cost does not include exchange differences arising from foreign currency borrowings	Follow AS	Follow ICDS
Qualifying Asset	Which necessarily takes a substantial period of time to get ready for its intended use or sale	Inventory - 12months or more. All Specified tangible and intangible assets are qualifying assets (regardless of substantial period condition)	Follow AS	Follow ICDS



## ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre ICDS)	Treatment (Post-ICDS)
Qualifying asset being inventory	Means inventory which take substantial period of time to bring them to a saleable condition	Means inventory for which 12 months or more are taken e to bring them to a saleable condition	Follow AS	AS and ICDS at par and old position continues
<i>In case of borrowing costs relating to Specific borrowing</i>				
Commencement and cessation of capitalisation	Commence when all the three conditions are satisfied: (a) incurrence of capital expenditure (b) incurrence of borrowing cost (c) construction activity is in progress and cessation from the date when asset is ready to use	Commence from date of borrowing of funds and cessation from the date when asset is put to use	AS was followed subject to 36(1)(iii)	ICDS and 36(1)(iii) are at par, hence pre and post ICDS position continues.
Method of capitalisation	Directly attributable to borrowing cost	Directly attributable to borrowing cost		

# ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre ICDS)	Treatment (Post-ICDS)
<i>In case of borrowing costs relating to General borrowing</i>				
Commencement and cessation of capitalisation	Commence when all the three conditions are satisfied: (a) incurrence of capital expenditure (b) incurrence of borrowing cost (c) construction activity is in progress and cessation from the date when asset is ready to use	Commence from date of utilisation of funds and cessation from the date when asset is put to use <b>(only for assets satisfying the 12m criteria)</b>	AS was followed subject to section 36(1)(iii)	Ambiguity as to whether 12 month criteria mentioned in ICDS is to be followed or Section 36(1)(iii) to be followed irrespective of 12 month criteria. In case view is taken that Act prevails over ICDS, then old position continues.
Method of capitalisation	Weighted average cost of borrowing applied to capital expenditure	$A * B / C$ A= Total borrowing cost excluding specific borrowings B= Avg. cost of qualifying assets excl. specific borrowing <b>(12m criteria)</b> C= Avg. amt. of total assets	Follow AS along with section 36 (1)(iii)	

## ICDS- Impact Analysis

Particulars	Accounting Standards	ICDS	Treatment (Pre-ICDS)	Treatment (Post-ICDS)
Income from temporary funds deployed	Income from temporary deployment of unutilised funds from specific loans to be reduced from borrowing cost	No similar provision in ICDS	Follow AS	Old position continues as no mention in ICDS
Suspension of capitalization	Capitalisation suspended during extended periods in which active development is interrupted	No similar provision in ICDS	Follow AS, however as per section 36(1)(iii), capitalisation to be done for the specific time period as provided, and no suspension provision.	Old position continues as no mention in ICDS
<b>ICDS X- Provisions, Contingent Liabilities and Contingent Assets</b>				
Executory contracts	Includes onerous executory contracts within its scope. Upfront recognition of liabilities required under onerous contracts	Executory contracts excluded from the scope of ICDS	Follow AS	Follow AS for onerous executory contracts

## ICDS- Impact Analysis

Particular	Accounting Standards	ICDS	(Pre-ICDS)	(Post-ICDS)
Recognition of provision	Provision shall be recognized when it is " <b>probable</b> " that an outflow of economic resources will be required to settle an obligation Provision is not discounted to NPV	Provision shall be recognised when it is " <b>reasonably certain</b> " that an outflow of economic resources will be required to settle an obligation Provision is not discounted to NPV	Follow AS	AS & ICDS at par*
Recognition of contingent asset and reimbursement claims	Contingent asset / reimbursement claims are recognised when the realization of related income is " <b>virtually certain</b> "	Contingent asset/reimbursement claims are recognised when the realization of related income is " <b>reasonably certain</b> "	Follow AS	AS and ICDS at par *
Meaning of obligation	Clarifies that obligations may be legally enforceable and may also arise from normal business practice, custom and a desire to maintain good business relations or act in an equitable manner.	No specific guidance on meaning of 'obligation'	Follow AS	Old position continues as no mention in ICDS

\*except that ICDS acknowledges concept of "reasonably certain" as against "probable" in AS

## ICDS- Disclosure Requirements in Form 3CD

- Clause 13(e) and 13(f) has been inserted in the Tax Audit Report (i.e. Form 3CD) for the disclosure requirements in ICDS.
- Clause 13(e) relates to the disclosure of monetary effect on the Income of the Assessee due to the Impact of ICDS
- Clause 13(f) relates to the disclosure requirements for the following ICDS:
  - ICDS I - Accounting Policies
  - ICDS II - Valuation of Inventories
  - ICDS III - Construction Contracts
  - ICDS IV - Revenue Recognition
  - ICDS V - Tangible Fixed Assets
  - ICDS VII - Governments Grants
  - ICDS IX - Borrowing Costs
  - ICDS X - Provisions, Contingent Liabilities and contingent Assets

## ICDS- Disclosure Requirements in Form 3CD

Particular	Accounting Standards	ICDS	(Pre-ICDS)	(Post-ICDS)
<p><b><u>ICDS I</u></b> Disclosure of change in accounting policy</p>	As per AS, change is to be disclosed in the year of change and if there is impact in current year, also quantify if ascertainable.	Disclosure required in the year of change (along with quantification if ascertainable) and also required in first year in which change has material effect.	Follow AS	Follow ICDS
<p><b><u>ICDS II</u></b> Change in method of inventory valuation</p>	Same as AS 1	Same as ICDS 1	Follow AS	AS and ICDS at par
<p><b><u>ICDS IV</u></b> Disclosure requirement</p>	Disclose circumstances in which revenue recognition has been postponed pending significant uncertainties.	Disclosures for amounts not recognized as revenue due to lack of reasonable certainty of its ultimate collection along with nature of uncertainty	Follow AS	Follow ICDS

## Applicability of Tax Audit (Section 44AB)

- Business- Gross Turnover, Receipts or **Total Sales > 1 crore** irrespective of whether income exceeds basic exemption limit.
- Profession - **Gross Receipts > 50 Lakhs**
- Eligible Assessee having **turnover ≤ 2 crores** declaring profits lower than estimated **u/s. 44AD** and total income exceeds Basic Exemption limit.
- Where profits & gains from business are taxable on presumptive basis u/s. 44ADA (where total income exceeds basic exemption limit), 44AE, 44BB or 44BBB & such person claims his income to be lower than profits & gains so estimated..
- NOTE: As per Circular no. 10/2017 dated 23.03.2017, tax payers (like say Firm) to whom ICDS is applicable and are offering their income under presumptive scheme of taxation, then the provisions of ICDS on Construction Contract and Revenue Recognition shall apply for determining the receipts or turnover, as the case may be.

# Applicability of Tax Audit (Section 44AB)

## Key Elements for AY 2019-20

- No change in Limit – It continues to be Rs. 1 crore for Business and Rs. 50 Lakh for Profession.
- Special Points for sec. 44AD for Business:
  - i. Limit of Rs. 2 crores only if profit declared under this scheme.
  - ii. No deduction of Interest and Remuneration to Partners.
  - iii. Declare profits under the scheme for continuous 5 years.
- Special points for sec. 44ADA for Professionals:
  - i. Applicable if Gross Receipt is  $\leq$  50 Lakhs.
  - ii. 50% of Gross receipt will be deemed income.
  - iii. No Interest and Remuneration to partners permissible.
  - iv. Commitment for 5 years (as provided in 44AD) not required.
- Tax Audit Report must be obtained on or before the due date of filing of return of income.



## Applicability of Tax Audit (Section 44AB)

- **Form 3CA:** It is to be furnished when assessee is liable to get his accounts audited under any other law.
- **Form 3CB:** It is to be furnished when assessee is not liable to get his accounts audited under any other law.
- **Form 3CD:** Parts and Clauses:
  - Part A: Clause 1 to 8 (Basic Details of the Assessee)
  - Part B: Clause 9 to 44 (Specific Details of Transactions and Compliance)

- Minor amendments
- Major amendments
  - Clause 31 – Section 269ST
  - Clause 34(b) – TDS Compliance
- New Clauses Added
  - Clause 29A – Sec. 56(2) (ix)
  - Clause 29B – Sec. 56(2) (x)
  - Clause 30A – TP Adjustments – Sec. 92CE
  - Clause 30B – Section 94B- Limitation on Interest Deduction
  - Clause 36A – Deemed Dividend – Section 2(22) (e)
  - Clause 42 – Form No. 61 / 61A / 61B
  - Clause 43 – Sec. 286 – Country by Country Reporting
- Clauses Deferred (the applicability of said clause is deferred till 31.3.20):
  - Clause 30C- GAAR u/s 96
  - Clause 44 – Break up of total expenditure from registered/ non registered dealer under GST

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  - Clause 30B – Section 94B- Limitation on Interest Deduction
  - Clause 36A – Deemed Dividend – Section 2(22) (e)
  - Clause 42 – Form No. 61 / 61A / 61B
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  - Clause 44 – Break up of total expenditure from registered/ non registered dealer under GST

- Clause 4- Reference to GST
  - Even if liability is only under RCM the fact of being liable is to be mentioned with clarification that liability is under RCM
  - All GST Numbers to be mentioned in case of multistate registrations
- Clauses 19 and 24 – Reference to Section 32AD
  - Clause 19
    - Amount Debited P/L – NIL
    - Eligible Deduction- 15% of the cost of new Plant & machinery
  - Clause 24- Reporting if deduction u/s 32AD availed in earlier year and asset sold within 5 years
- Clause 26 – Reference to clause (g) of Sec. 43B (Sum payable to Indian Railways for use for railway assets)
  - Payment of Basic Freight will not be covered
  - Would include Hire of Railway Wagons or sidings or lease rent for use of Railway Land and Buildings
- Clause – 31(c) 31(d) and 31(e) – Few words amended to meet the actual purpose of the clause

### **Clause 31- Section 269ST**

- 31(ba)- *Receipt* of amount exceeding 2L otherwise than by cheque/draft/ECS
- 31(bb)- *Receipt* of amount exceeding 2L by cheque/draft other than Account Payee cheque
- 31(bc)- *Payment* of amount exceeding 2L otherwise than by cheque/draft/ECS
- 31(bd)- *Payment* of amount exceeding 2L by cheque/draft other than Account Payee cheque
- Accordingly clause 31 (d) and 31 (e) requires reporting which affects the opposite party i.e. repayment made by assessee's borrower (Section 269 T)
- Details required
  - Name, address & PAN of the payer or receiver
  - Amount & Date\* of receipt or payment
  - Nature of transaction\*
    - \*not required when transaction is by account payee cheque/draft

### **Clause 31- Section 269ST- Issues**

- Transactions by Journal entries
  - Implementation Guide: such transaction are neither receipt or payment and not covered under 269ST, hence not required to be reported
  - CIT Vs. Triumph International Finance Ltd. ITA No. 5745 of 2010 (Bom.HC)
- Cash withdrawals from bank
  - As per notification no 28/2017 dt. 5.4.17- 269ST shall not apply to the above transaction
- Gift Received – As covered under section 56(2)(x)
- Government Vs. Government Company
  - 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
- Information to be retained in working papers for all clause (as per Implementation Guide)

### Clause 34(b)- Information regarding TDS/TCS statements

- Information required to be disclosed
  - Type of Form
  - Due Date of furnishing form
  - Actual date of furnishing the form
  - Whether all the required information has been furnished; if no then details of the same
- Hence the auditor will be required to make a detailed list of **all the transaction** whether the same are reported or not.
- Concept of Test Check??
- The auditor, shall take into account all the section, rules, notification, judicial pronouncements and If tax auditor does not agree with the interpretation/view taken by the auditee, then 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.

### **Clause 29A- Section 56(2)(ix)**

- Details of any forfeiture of advance received for transfer of Capital Asset where transfer eventually does not take place, being taxable as IFOS
  - Nature of Income
  - Amount forfeited
- How to detect that an amount has been forfeited in absence of accounting entry?
- 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 required for Forfeiture of amount in respect of stock in trade – will get covered u/s. 28(i)
- Unilateral write back of amount without any contractual right may not amount to forfeiture but may give indication to that effect.



### **Clause 29B- Section 56(2)(x)**

- Details of any amount chargeable under the head IFOS as referred in section 56(2)(x)
  - Nature of Income
  - Amount forfeited
- Section 56(2)(x)- Applies to all the assesses for Money, Immovable property and other property for no consideration or inadequate consideration
- Whether Bonus shares received will be covered- CIT Vs. Dalmia Investment Co. Ltd. 52 ITR 567 (SC) – Bonus shares are without payment but not without consideration
- FMV of unquoted equity shares to be made as per formulae in Rule 11UA (Rule amended w.e.f. 1-4-18)
- 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\* (Implementation Guide)

### **Clause 36A- Deemed Dividend section 2(22)(e)**

- Requires information to be given for Amount of Deemed Dividend as per sec. 2(22)(e) and date of receipt
- Deemed dividend to the extent company possess accumulated profit & Accumulated profits to be seen as on date of distribution or payment
- Practical Difficulties-
  - How to find out accumulated profit of the payer company
  - Possession of Accumulated Profits on the date of transaction
  - Difficulty in identifying the payments made on behalf of the share holder
  - Accumulated profits which can be distributed and which cannot be distributed
- Who is to be taxed – Registered share holder or beneficial share holder
  - ACIT Vs. Bhaumik Colour Pvt. Ltd. 118 ITD 1 (Mum. SB)
  - CIT Vs. Universal Medicare Pvt. Ltd. 324 ITR 263 (Bom.)

### **Clause 36A- Implementation Guide**

- 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
- Appropriate remarks in 3CA / 3CB about inability to independently verify the information and reliance on the certificates
- 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

### **Amendment w.r.t. deemed dividend- Section 115-O**

- What is the purpose of continuing clause 36A ?
- Will it not be appropriate to call for these details from the auditor of payer companies ?

### **Clause 42- Form 61/61A/61B**

- Information to be given
  - ITDREN
  - Type of Form
  - Due Date of Furnishing Return
  - Date of Furnishing
  - Whether the form contains information about all transactions – If not give details for transactions which are not reported
- Form No. 61 – Particulars of Declaration received in Form No. 60

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

### **Clause 42- Form 61/61A/61B**

- Form No. 61A – Statement of SFT u/s. 285BA(1)
  - 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
- Form No. 61B – Statement of Reportable Account u/s. 285BA(1)
  - 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

### Clause 30A- TP Adjustment

- Information about primary adjustment and consequential secondary adjustment
- Details to be provided-
  - Under which subsection of 92CE is the Primary Adjustment made
  - Amount of Primary Adjustment
  - Whether the excess money repatriated to India within the prescribed time limit
  - Amount of imputed interest on excess money which is not repatriated to India within the prescribed time limit
- Primary adjustment made by AO will be known only at the stage of assessment – How to report at audit stage ? Whether to report for the earlier year's adjustment made ?
- Certificate from assessee about-
  - TP adjustments made in Return of Income filed during the year (May be more than one)
  - APA or MAP entered
  - TP Adjustments made in assessment / confirmed in appeals
  - Certificate for SBI/ LIBOR rate of interest

### **Clause 30A- Section 94B- Thin Capitalisation**

- Applicable to Indian Company or PE of a foreign company (exception- Engaged in the business of Banking or Insurance)
- Details to be provided-
  - Amount of expenditure by way of interest or similar nature
  - Amount of EBITDA for the year
  - Amount of interest expenditure which exceeds 30% of EBITDA
  - Details of Interest Expenditure brought forward
  - Details of Interest Expenditure brought forward (*Excess payment can be carried forward upto 8 years*)
- “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
- Limit of Rs.1Crore to be for the total interest cost from all the Aes
- 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

### Clause 43- Country by Country Reporting

- International groups required to furnish CBCR – Section 286(2)
- Clause 43 – If Sec. 286 applicable give the following details-
  - Whether report furnished by assessee or parent entity or alternate reporting entity
  - Name of Parent entity
  - Name of alternate reporting entity (if applicable)
  - Date of furnishing report
- Time limit available u/s. 286 is 12 months from end of **accounting year**



### Clause 43- Country by Country Reporting

- International groups required to furnish CBCR – Section 286(2)
- Clause 43 – If Sec. 286 applicable give the following details-
  - Whether report furnished by assessee or parent entity or alternate reporting entity
  - Name of Parent entity
  - Name of alternate reporting entity (if applicable)
  - Date of furnishing report
- Time limit available u/s. 286 is 12 months from end of **accounting year**

THANK YOU

