INCOME COMPUTATION & DISCLOSURE STANDARDS

ICDS I TO V

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INTRODUCTION TO ICDS

Legislative Background

Year	Particulars
1995	▪ S. 145 of the Income Tax Act, 1961 (ITA) amended to give power to Central Government (CG) to notify accounting standards to be followed by any class of taxpayers or in respect of any class of income
Jan 1996	▪ CG notified two standards comparable to ICAI AS-1 and AS-5
Dec 2010	▪ CG constituted new Committee with terms of reference
Aug 2012	▪ Committee submitted Final Report with final drafts of 14 ICDS
July 2014	▪ S.145(2) amended vide FA 2014 to replace the term 'Accounting Standard' with the term 'Income Computation and Disclosure Standards' (ICDS) and FM announced intent to notify ICDS
Mar 2015	▪ CG notified 10 ICDS for taxpayers following mercantile method of accounting, effective from FY 2015-16 ▪ Two standards notified in 1996 are superseded
April 2015	▪ Amendments made at enactment stage to Finance Bill 2015 to align ITA with ICDS

ICDS – overview

Notified

ICDS I - Accounting Policies
ICDS II - Valuation of inventory
ICDS III - Construction Contracts
ICDS IV - Revenue recognition
ICDS V - Tangible fixed assets
ICDS VI - Foreign exchange fluctuations
ICDS VII - Government grants
ICDS VIII - Securities
ICDS IX - Borrowing Cost
ICDS X – Provisions, Contingent liabilities and Contingent assets

Not notified

- Events occurring after the end of previous year
- Prior period expense
- Lease
- Intangible assets

Additional recommendations

- Share based payment
- Revenue recognition by real estate developer
- Service concession arrangements (example, Build Operate Transfer agreements)
- Exploration for and evaluation of mineral resource

ICDS – GENERAL PRINCIPLES

Applicability of ICDS

- ICDS applies only to computation of income under following heads:
  - Profits and gains of business or profession
  - Income from other sources
- Applicable to all taxpayers irrespective of turnover or quantum of income
- Applicable to all taxpayers irrespective of residential status
  - Non resident taxpayers may also have concern on computation of income of PE/branch
- ICDS applies only to taxpayers following mercantile method of accounting
  - Notification No. 33/2015 dated 31 March 2015 makes this clear

> - Taxpayer follows mercantile method for PGBP and cash method for IFOS
> - Taxpayer has 2 businesses under PGBP computation – mercantile method for 1 and cash method for other

Impact of ICDS

- ICDS to be given effect in computation of taxable income
  - *No two sets of books required to be maintained*
  - *Practically, will necessitate maintenance of memorandum records*
  - *Additional disclosures mandated by ICDS*
    - *Tax Return forms [FY 2015-16]*
    - *Tax Audit forms*
- MAT continues to be governed by books of account prepared as per AS/ Ind-AS
  - *Mismatch between MAT and normal computation likely to be widened*
    - *For eg. Foreseeable loss on construction contract on POCM basis, bucket approach for valuation of securities, Contingent assets on 'reasonable certainty' basis*
  - *Accelerated income recognition 'may' also result in duplicated levy of tax (i.e. Normal tax in year of recognition as per ICDS and MAT in year of recognition in books)[1] with no opportunity to offset MAT credit*

[1] Refer however HC ruling in Nagarjuna Fertilizers & Chemicals Ltd. [2015] 373 ITR 252 (AP) which upheld principle of no duplicated taxation under normal and MAT in different years

ICDS & ICAI AS

- ICDS is based on currently applicable ICAI AS subject to deviations/carve outs as suggested by Committee
  - *IFRS / Ind-AS are notified to become effective from F.Y. 2016-17 in phased manner*
  - *Differences of ICDS with Ind-AS will require independent evaluation*
- Revenue / expense on which there is no ICDS will continue to be governed by AS
  - *E.g. Leases, Prior period items*
- Unlike ICAI AS, ICDS contains only main principles; ICDS has no Explanations or Illustrations
- Undefined words/expression take their meaning from ITA

ICDS vs. ITA

- Provisions of ITA to prevail in case of conflict with ICDS
  - *Illustrative instances of likely conflict with provisions of ITA / Rules.*
    - *Disallowances under s. 43B , s.40(a)(ia), etc.*
    - *Presumptive taxation, tonnage tax, insurance companies, film producers/distributors, etc.*
- Would same position prevail in case of conflict between HC / SC rulings and ICDS?

Scenario	Rulings relating to fundamental principles of law	Rulings overridden by amendments to align ITA with ICDS	Rulings on the basis of commercial principles of accounting
Rulings v. ICDS	Rulings may still hold good	ITA and ICDS override rulings	ICDS to override rulings
E.g.	• Retention money • Forex gain/loss on domestic assets	• Government grants • Proviso to s.36(1)(iii) – borrowing cost	• Revenue recognition on completion of contract • Foreseeable loss

ICDS – Canons of interpretation

- Function of ICDS is merely to facilitate the computation of income; but before such computation can be made, it has to pass the tests of:
  - *'income' within the meaning of s.2(24);*
  - *'accrue' to the assessee as per judicial principles (i.e. accrual of income based on enforceable debt due in favour of taxpayer); and*
  - *conform to the test of 'real income' theory.*
- Specific provisions like s.145A, 43B, 43A, etc. will override anything to the contrary contained in ICDS

FA 2015 Amendments to align ITA with ICDS

- Definition of 'income' amended to include 'assistance' in any form received from government in cash or kind except subsidy considered for reduction from 'actual cost' as per Exp. 10 to s.43(1)
  - *MOF Press Release dated 5 May 2015 clarifies that this does not apply to LPG or other welfare subsidies received by individuals*
- Proviso to s.36(1)(iii) amended to omit phrase 'for extension of existing business or profession' as a condition for disallowance of interest for acquisition of asset
- Second proviso inserted to s.36(1)(vii) to provide for bad debt deduction for income recognized as per ICDS (without recording in books) in the year in which such debt 'becomes irrecoverable'
  - *Debt shall be deemed to be written off as irrecoverable in books*

Transitional Provisions

- ICDS applies with effect from F.Y. 2015-16 (A.Y. 2016-17)
- Transitional provisions:
  - *All ICDS (except 'Securities) have transitional provisions to deal with open contracts/transactions as on 1 April 2015.*
  - *To ensure no double taxation or escapement of taxation*
- No 'grandfathering' for contracts/transactions entered prior to 1 April 2015.
  - *to be dealt with as per ICDS after taking into account income, expense or loss, if any, recognised in earlier years*

Nuances of transitional provisions of each ICDS may raise interpretation issues

ICDS I - ACCOUNTING POLICIES

Fundamental Accounting Assumptions & Materiality

- Inherent contradiction between non-applicability of ICDS to books of account v. ‘accounting’ policies
- *Going concern, consistency and accrual are fundamental accounting assumptions – disclosure required if any of the assumptions not followed*
  - *Accrual is merely an assumption but not a mandate, s.145 permits cash method as a choice*
  - *Accrual of income takes place when there emerges a debt in favour of taxpayer which is enforceable in law [E.D. Sassoon & Co. Ltd. (26 ITR 27) (SC)]*
- Concept of ‘materiality’ which was relevant in selecting and applying accounting policy omitted
  - *No likely significant tax impact, but possible litigation on small value items if Tax Authority insists on strict application of ICDS*

Prudence

- Prudence means non-recognition of anticipated profits while recognizing known liabilities and losses on best estimate basis
- As per Committee, prudence led to differential treatment of income and loss
- ICDS prohibits recognition of marked to market or expected loss unless permitted by any other ICDS
  - *Will MTM gain also not be taxed?*
  - Instances of losses permitted under other ICDS are:
    - Inventory valuation loss; subject to, Bucket approach for 'Securities'
    - MTM forex loss on monetary items (including forwards & options for hedging purposes)
    - Provisions for liabilities on 'reasonable certainty' basis
  - *Does not prohibit "actually incurred loss" which is recognised on best estimate basis (eg. loss by fire, theft, etc.) or actuarially valued liabilities (eg. pension obligation)*

Change in Accounting Policy

- Accounting policy can be changed for any ‘reasonable cause’
- Earlier, change permitted if required by statute; or for compliance with AS; or considered as resulting in more appropriate presentation
- Upon change in accounting policy:
  - *Disclosure required in the year of change:*
    - Amount to be disclosed if ascertainable
    - Where such amount is not ascertainable, fact of change to be indicated
  - *If no material effect in the year of change, disclosure required in first year of material impact*
  - *Enhanced disclosure requirement and compliance burden*
  - *Default of sheer non disclosure unlikely to have any adverse impact on best judgement assessment*

ICDS II - VALUATION OF INVENTORY

Overview of Inventory valuation as per ICDS

Inventories

- Inventory of Assets
  - Lower of cost or NRV
  - Cost formulae[1]
    - Specific identification
    - FIFO
    - Weighted average
    - Retail method
- Inventory of Services[2]
  - Lower of cost or NRV
  - Cost to include labour and other direct/ supervisory personnel costs and **attributable overheads**
- WIP of Construction Contracts
  - Covered by ICDS III on Construction Contracts
- Shares, debentures and other financial instruments
  - Covered by ICDS VIII on Securities

[1] *Unlike ICAI AS-2, Standard cost method not permitted*
[2] *ICAI AS-2 does not deal with this item*

Service Inventory

- Definition of 'inventory' is ambiguous on inclusion of service inventory within its scope
- Challenge of determining NRV in case of service assignments on success fee model
- Cost to include direct cost of labour, supervision, personnel and attributable overheads
  - *Will overheads include depreciation?*
- Once revenue is recognised on POCM as per ICDS on revenue recognition, attributable inventory need not be carried forward

S.145A gives primacy to book treatment

***145A. Notwithstanding anything to the contrary contained in section 145**,—*

*(a) the valuation of purchase and sale of goods and **inventory** for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be—*

(i) in accordance with the method of accounting regularly employed by the assessee; and

(ii) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

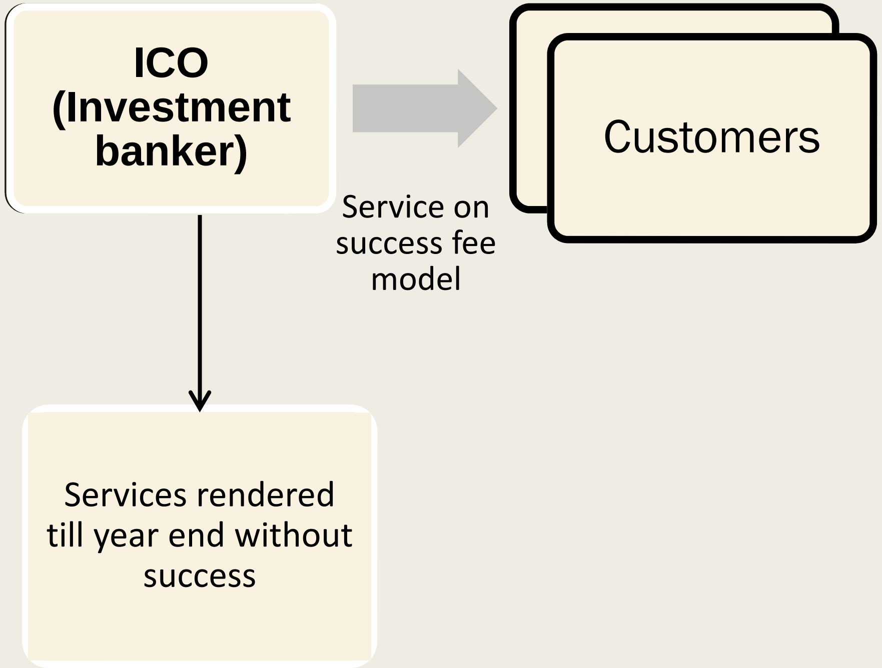
…………………

Valuation of inventory in certain situations

- Valuation of opening inventory to be same as closing inventory in preceding year – regardless of change in method of valuation of closing inventory
  - Courts have permitted bona fide change where changed method is as per GAAP and followed regularly thereafter (e.g. from cost to lower of cost or NRV)

Situation	**Value of opening inventory**
Newly commenced business	Cost of inventory as on the date of commencement of business
Conversion of capital asset into stock-in-trade	FMV as on the date of conversion
Business is commenced by acquiring a running business	Consideration paid (whether lump sum price or itemised value)
Dissolution of firm, AOP or BOI	Net Realisable value [closing inventory]

Case Study on Valuation of ‘Service’ Inventory – Success Fee Model



- ICo is an investment banker who advises clients for making suitable acquisitions/ divestments & finds suitable buyer or seller for businesses
- It usually enters into contracts with clients on success fee model wherein fees become payable only on conclusion of a deal
- At each year end, there would be open mandates from clients for which efforts to find suitable buyer/seller would have been put in - but, fate of the deals is uncertain
- Expenses are booked as and when incurred whereas revenue is booked on successful negotiation of deal
- No inventory is recognized at the year end for costs incurred on open mandates in view of uncertainty of deal

Case Study on Valuation of 'Service' Inventory – Success Fee Model

Book treatment as per ICAI AS-2 and AS - 9

- ICAI AS-2 does not require valuation of service inventory
- ICAI AS-9 does not recognize revenue if it is unreasonable to expect ultimate collection
- ICo permitted to recognize costs as incurred while recognising revenue only when earned

PRE ICDS

Tax treatment pre ICDS

- Book treatment as per AS-9 acceptable for tax purposes
- SC ruling in Taparia Tools[1] affirms full deduction in year of incurrence of revenue expenditure
- Revenue cannot be recognised in absence of enforceable debt due

POST ICDS

Tax treatment post ICDS

- ICDS requires valuation of service inventory at lower of cost or NRV (but definition of 'inventory' is ambiguous)
- ICDS mandates POCM for recognition of service revenue
- Litigation may arise in current fact pattern if Tax Authority seeks to
  - Value service inventory at year end
  - Disputes that NRV is nil only because deal is not finalized
  - Imposes POCM method to recognise revenue
- Arguable that 'success fee model' will not be impacted by ICDS as
  - The accrual of income or reasonable certainty to income arises only upon conclusion of deal & there is no 'maturity'/accrual of revenue over a period
  - Till the deal is concluded, NRV of inventory is nil
  - Also that, 'inventory' definition requires strict interpretation and does not cover service inventory

[1] *TS-134-SC-2015*

ICDS III – CONSTRUCTION CONTRACTS

ICDS III - Construction Contracts

- Like ICAI AS, not applicable to real estate developers
- Applies to a fixed price, cost plus, or to a hybrid of fixed & cost plus contract
- Early stage recognise revenue to the extent of costs incurred
- Mandatory to recognize profit/loss on POCM basis beyond 25% of stage of completion
- Stage of completion:
  - Ratio of contract cost incurred to total estimated costs or by survey of work done or completion of a physical proportion of contract work
  - Not by progress payments or advances received from customers
- Components of revenue recognition on POCM basis:
  - Contract revenue to be recognised if there is reasonable certainty of ultimate collection
  - Retention money to be included as part of contract revenue
  - Variations, claims and incentives to the extent of probability of generating revenue and being reliably measurable
- Contract revenue recognized in the past and subsequently written off in books recognized as expense and not as adjustment to contract revenue

ICDS III - Construction contracts

- Components of Contract cost:
  - *Direct costs, attributable to contract, other costs specifically chargeable to customer, allocated borrowing cost [refer ICDS IX]*
  - *Reduced by incidental income if not in the nature of interest, dividends or capital gains*
  - *Costs that cannot be attributed excluded*
  - *Costs incurred from date of securing contract up to final completion*
  - *Costs relating to future activity recognized as asset*
- Foreseeable losses
  - *Prior to ICDS, judicial precedents favored tax deductibility of foreseeable loss in harmony with ICAI AS-7*
  - *ICDS III provides that losses incurred shall be allowed only in proportion to the stage of completion*
  - *Future/anticipated losses not allowed unless actually incurred*

Case study: Retention money

Entered into construction contract

I Co. → **Customer**

Customer pays consideration	
During construction period	95 %
Retention money after 2 years	5 %
Total	100%

- I Co. executes a large construction contract for customer for a total consideration of Rs. 100 Cr
- As per the terms of the contract, 95% of payment is released while construction is in progress and balance 5% will be released after 2 years post completion of contract subject to satisfactory performance without defects or against bank guarantee
- For tax purposes, based on judicial precedents, I Co. was adopting a position that retention money accrues only after 2 years of satisfactory performance – though for books it recognizes entire income inclusive of retention

What will be the impact of ICDS III?

Transitional Provision

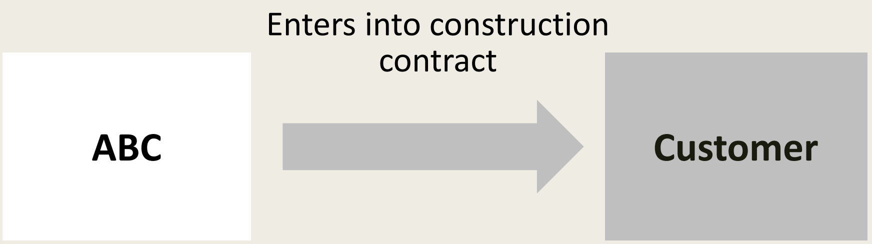
- *Transitional provision of ICDS III reads as follows (Para 22)*

  "Contract revenue and contract costs associated with the construction contract, which commenced on or before the 31st day of March, 2015 but not completed by the said date, shall be recognised as revenue and costs respectively in accordance with the provisions of this standard. The amount of contract revenue, contract costs or expected loss, if any, recognised for the said contract for any previous year commencing on or before the 1st day of April, 2014 ***shall be taken into account*** *for recognising revenue and costs of the said contract for the previous year commencing on the 1st day of April, 2015 and subsequent previous years."*

- *Para 16 of ICDS III reads as follows :*

  "Contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively ***by reference to the stage of completion*** *of the contract activity at the reporting date."*

Case study: Transition from Completed Contract to POCM



	Particulars		Stage of completion
	FY 2013-14	Pre ICDS	30%
	FY 2014-15		30%
Transitional year	**FY 2015-16**	Post ICDS	20%
	FY 2016-17		20%
			100%

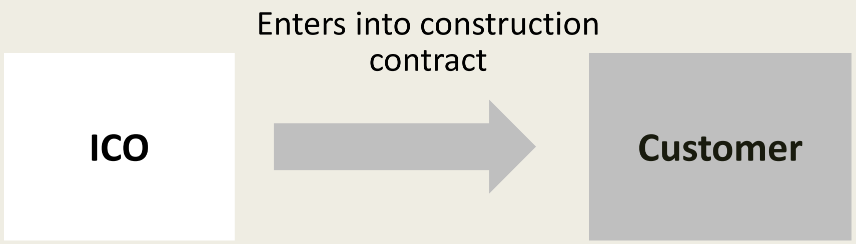
60%

80%

- ABC (non-corporate taxpayer) is executing a construction project which commenced during FY 2013-14
- ABC adopted Completed Contract method which was accepted by the Tax Authority
- By 31 March 2015, ABC has completed 60% of work
- During FY 2015-16, ABC expects to complete additional 20% of the work such that as at 31 March 2016, the work completed will be 80%
- Post 1 April 2015, ICDS III requires ABC to adopt POCM

Issue: How much % of profit should ABC recognize in F.Y. 2014-15? 20% or 80%?

Case study: Impact of transitional provision on foreseeable loss recognised in past



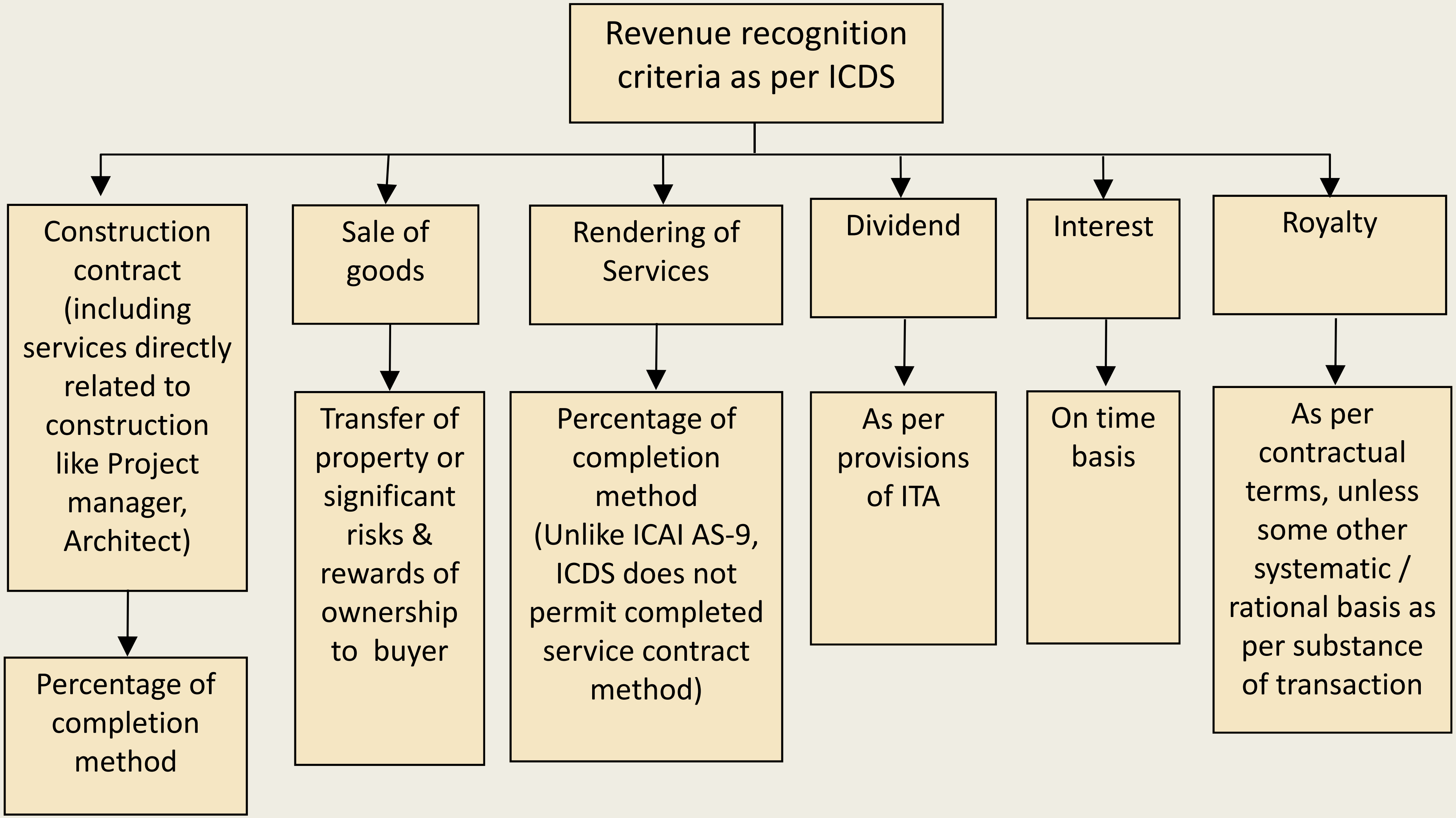
Contact parameters	As on 31.3.2015	As on 31.3.2016
Total revenue	900 cr	900 cr
Total estimated cost	1000 cr	1000 cr
Cumulative costs incurred	300 cr	600 cr
Foreseeable loss	100 cr	100 cr
Stage of completion	30%	60%

- ICo entered into a construction contract which commenced prior to 31 March 2015
- As at 31 March 2015, total project revenue was estimated at Rs. 900cr whereas total contract cost projected was Rs. 1000cr resulting in loss of Rs. 100cr on full contract
- During FY 2014-15, 30% of the work was completed
- Having regard to conservatism principle and ICAI AS-7, ICo recognised loss of entire Rs. 100cr as at 31 March 2015
- Additional 30% work was completed by 31 March 2016 (i.e. cumulative 60%)
- No change in foreseeable loss of Rs. 100cr even in March 2016

Issue: Does ICo need to reverse loss of Rs. 40 cr in F.Y. 2015-16?

ICDS IV – REVENUE RECOGNITION

Revenue and it's recognition criteria



Revenue recognition

- Revenue from sale of goods recognised upon transfer of property or transfer of significant risk/rewards of ownership to buyer
  - *In case of timing mismatch; revenue to be recognised on transfer of significant risks/rewards*
- Revenue to be recognised only if there is reasonable certainty of its ultimate collection
  - *AS-9 permitted postponement of revenue recognition where significant uncertainty existed on measurability and collectability*
  - *Aligns with current judicial thinking; real income theory*
- Interest income to be recognized on time basis (including discount or premium on securities)
  - *Conflicts with judicially accepted position of taxation of interest on 'due' basis. (Refer, illustratively, CIT v Credit Suisse First Boston (Cyprus) Ltd. [351 ITR 323 (Bom)]*

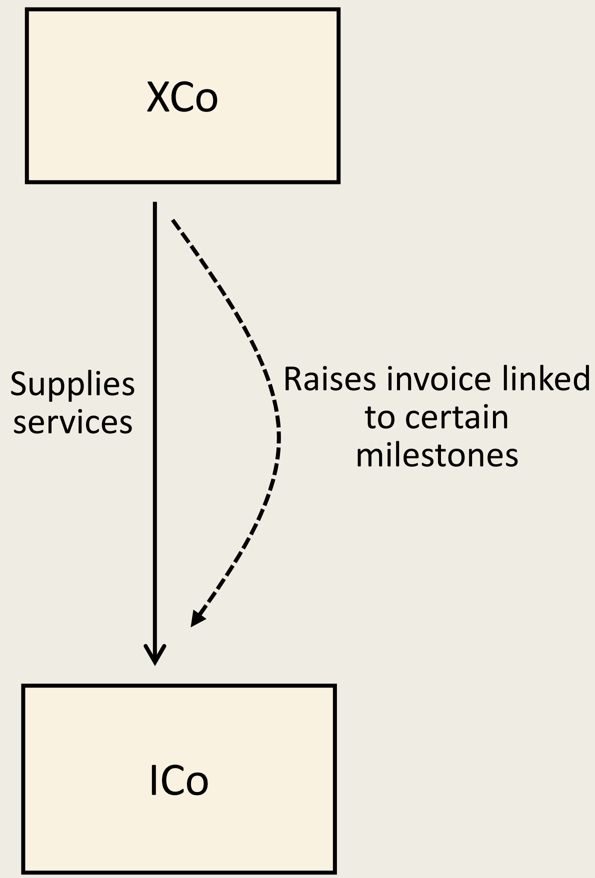
- Does condition of reasonable certainty of ultimate collection apply to interest and royalty income as well?
- Will second proviso to S.36(1)(vii) allow deduction in the event of such income becoming bad?

Revenue recognition

- Mandatory POCM for service sector, **mutatis mutandis Construction Contracts**, may pose challenges for several service activities:
  - *Telecom/Software/Online database – Royalty vs. service*
  - *Hotel industry – (e.g.. Time share plans)*
  - *Banking sector*
  - *Long term AMC contracts for complex equipment*
- ICDS on revenue recognition will not cover revenues dealt by other ICDS:
  - *Eg: Construction contracts, Government grants, Foreign exchange fluctuation, Contingent Assets*

Whether ICDS on Revenue recognition will cover revenues on which presently no specific ICDS is notified (e.g. Leases, BOT projects, Real estate development)?

Case Study: Revenue recognition for service sector



- XCo, a service company, has entered into a service contract for 2 years during the course of its business
- In terms of the contract conditions, XCo is entitled to raise invoice linked to certain milestones
- Normally, actual work performed is higher as compared to milestone linked billing done during the year

Contract revenue	**2000**
Cost of contract	1000
Work done till year end	50%
Cost incurred till year end	500
Billing based on milestone	600
Unbilled revenue	400
Pro-rata cost of unbilled revenue	200

Case Study: Revenue recognition of service sector

Alternative situations	Particulars
1	► Taxpayer complies with POCM as per ICDS III/IV ► Recognises income embedded in unbilled revenue of INR 400 i.e. revenue in respect of which cost is already incurred but, no right to raise bill as at the year end based on milestone ► Since unbilled revenue is recognised, there is no need to recognise inventory valuation
2	► Taxpayer does not recognise unbilled revenue, instead he recognises cost thereof as inventory ► Taxpayer argues that, in terms of S. 4 and 5, taxation cannot be beyond INR 600 since there is no perfected right. Further, as at year end, there is no reasonable certainty about collection of INR 400 since work is not completed. ICDS III recognises lack of reasonable certainty about collection as impacting revenue recognition. ► ICDS II requires inventory valuation of services. If unbilled revenue is always to be recognised, requirement of inventory valuation as per ICDS II becomes academic
3	► Taxpayer may defend non recognition of INR 400 as revenue by relying on arguments provided at Situation 2 above ► Further, after refraining from recognising revenue, taxpayer also does not record cost which is incurred on 20% unbilled portion by arguing that since work is incomplete and not reached billing milestone, NRV of such incomplete work is Nil

Case Study: Revenue recognition of service sector

Particulars	Alt 1	Alt 2	Alt 3	Particulars	Alt 1	Alt 2	Alt 3
<u>Cost</u>				<u>Revenue</u>			
Billed portion	300	300	300	Billed portion	600	600	600
Unbilled portion	200	200	200	Unbilled portion[1]	400	-	-
				Inventory Valuation[2]	-	200	-
Net Profit	500	300	100				
Total	1000	800	600	Total	1000	800	600

Practically, ICDS will not have any adverse impact

Likely to face litigation

Highly litigative

[1] *Represents revenue pertaining to 20% work which is completed but unbilled*

[2] *Represents cost which is incurred on unbilled portion of the work*

ICDS V - TANGIBLE FIXED ASSETS

Tangible fixed assets

- Components of cost align largely with commercial concept and actual cost u/s.43(1) of ITA
- Fair value of a tangible fixed asset acquired in exchange constitutes cost of asset received
  - *No option to adopt fair value of asset given up*
- ICDS silent on expenses incurred between 'ready to commence' and 'actual commencement' of commercial production
  - *AS-10 permits treatment as revenue or deferred revenue expense*
- Depreciation and income arising on transfer will be as per ITA
- Requirement of maintaining ICDS specific fixed asset register as proposed earlier has been deleted
  - *But, consequential change not made in context of jointly owned assets which requires details to be indicated separately in tangible fixed assets register*

ICDS V v. Revised AS-10 ‘Property, Plant & Equipment’ (w.e.f. F.Y. 2016-17)

- ‘Component accounting’ mandatory under Cos Act and revised AS-10
  - *Unlikely to impact tax in view of ‘block of asset’ concept*
  - *But likely to create conflict for major repairs and overhaul expenditure capitalized in books v. revenue expenditure for tax*
- Revised AS-10 requires machinery spares to be classified as PPE if company intends to use for more than 12 months
  - *Conflicts with ICDS which requires capitalization only if spares are specific to a machine*
- Revised AS-10 requires ‘unit of measure’ approach – ‘enabling assets’ may be capitalized with main asset (eg. road to factory on Govt land may be capitalized to factory cost)
  - *ICDS does not envisage ‘unit of measure’ approach*
  - *Judicial rulings permit revenue deduction for construction of capital assets not belonging to taxpayer (except as specified in s.30/31)*

ICDS V vs. Revised AS-10 'Property, Plant & Equipment' (w.e.f. F.Y. 16-17)

- Revised AS-10 requires capitalization of decommissioning/site restoration obligations at NPV of estimated future cost
  - *ICDS X requires provision for liability meeting 'reasonable certainty' test on undiscounted basis – but no guidance on addition to asset cost*
- Revised AS-10 requires separation of implicit 'finance' component of PPE acquired on deferred payment basis based on cash price equivalent on date of acquisition
  - *ICDS V does not envisage such split and may lead to variation between book cost and tax cost*
- Revised AS-10 permits 'revaluation' model
  - *ITA and ICDS are based on 'cost' model*

TAX RETURN FORMS

AY 2016-17

Tax Return Forms – AY 2016-17

- ITR forms revised for reporting impact of ICDS on computation of total income:
  - Net effect of all 10 ICDS in Part A-OI which requires reporting of particulars of tax audit report
    - Optional for taxpayers not liable to tax audit
  - Effect of each ICDS separately in newly inserted Schedule ICDS
- Income reported in Part B – TI capturing overall computation of total income or individual schedules to be after taking into account impact of ICDS

Will reporting in Schedule ICDS also be optional for taxpayers not liable for tax audit?

Thank you

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