Issues in Corporate Taxation

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Contents

Ind AS and Income Tax

Ind AS

Introduction

MCA roadmap to Ind AS

MCA roadmap to Ind AS for all companies except banks, Non Banking Financial Company (NBFCs), and insurance companies	
2015-16 Voluntary adoption	• Early adoption
2016-17 Phase I	• Companies with net worth of Rs.500 crores or more
2017-18 Phase II	• All listed companies not covered above • All unlisted companies with net worth of *Rs.250 crores or more

MCA roadmap to Ind AS for banks#, insurance companies$, and NBFCs	
2018-19 Phase 1	• Scheduled commercial banks#, Term-lending Refinancing Institutions • Insurer / insurance companies$ • NBFCs with net worth of *Rs.500 crores or more
2019-20 Phase 2	• All listed NBFCs (or in the process of listing) and not covered in Phase I above • All unlisted NBFCs with net worth of *Rs.250 crores or more but less than *Rs.500 crores

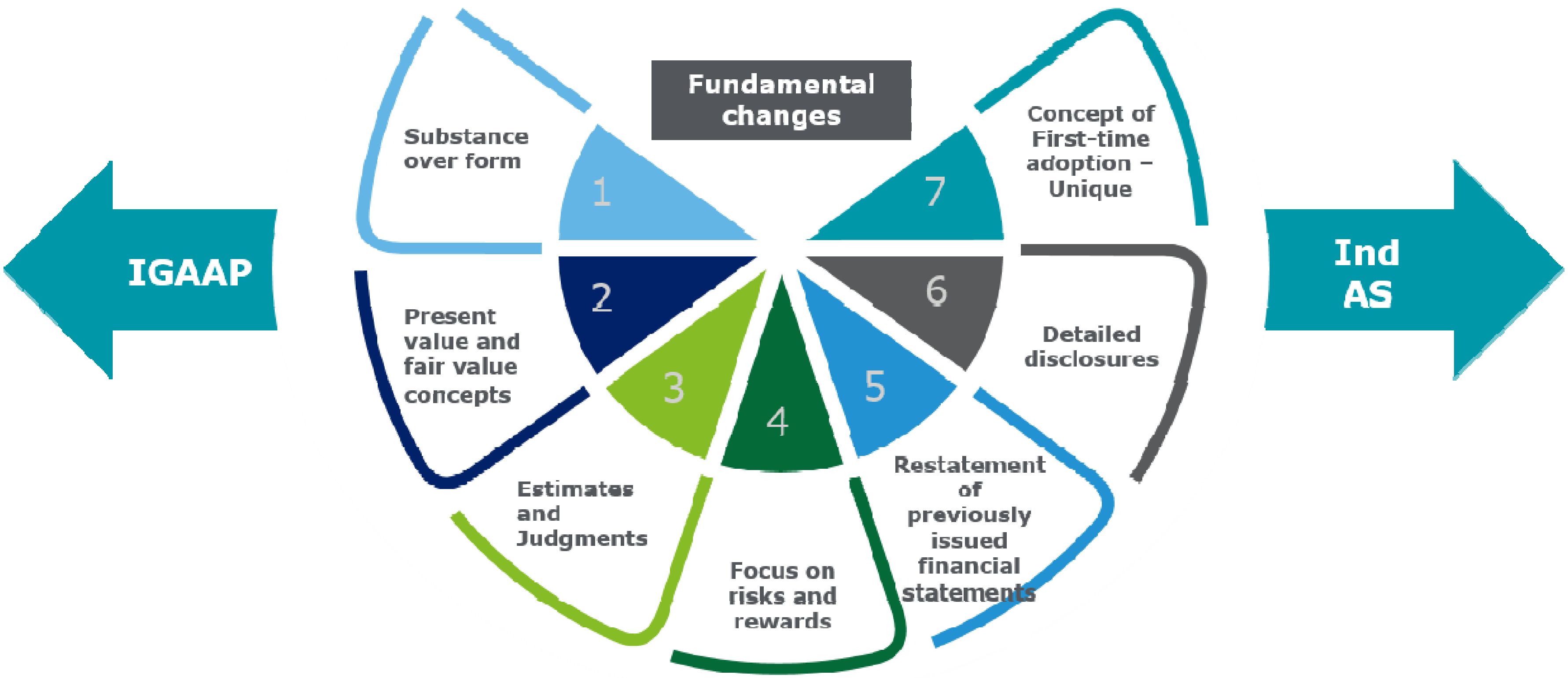
1. Applies to holding, subsidiaries, joint ventures, and associate companies of above companies
2. Applicable to both standalone and consolidated FS
3. FS to be presented with an opening B/s and comparative period

#On 5 April 2018, the RBI through its press release deferred the implementation of Ind AS by one year for scheduled commercial banks excluding Regional Rural Banks i.e. 2019-20 would be the first year of Ind AS with 2018-19 as the comparative year

$IRDAI through its circular no. IRDA/F&A/CIR/ACTS/146/ 06/2017 dated 28 June 2017 deferred the implementation of Ind AS in the insurance sector in India for a period of 2 years i.e. 2020-21 would be the first year of Ind AS with 2019-20 as the comparative year

*Rs.500 crores = USD74 million
Rs.250 crores = USD37 million

Fundamental changes

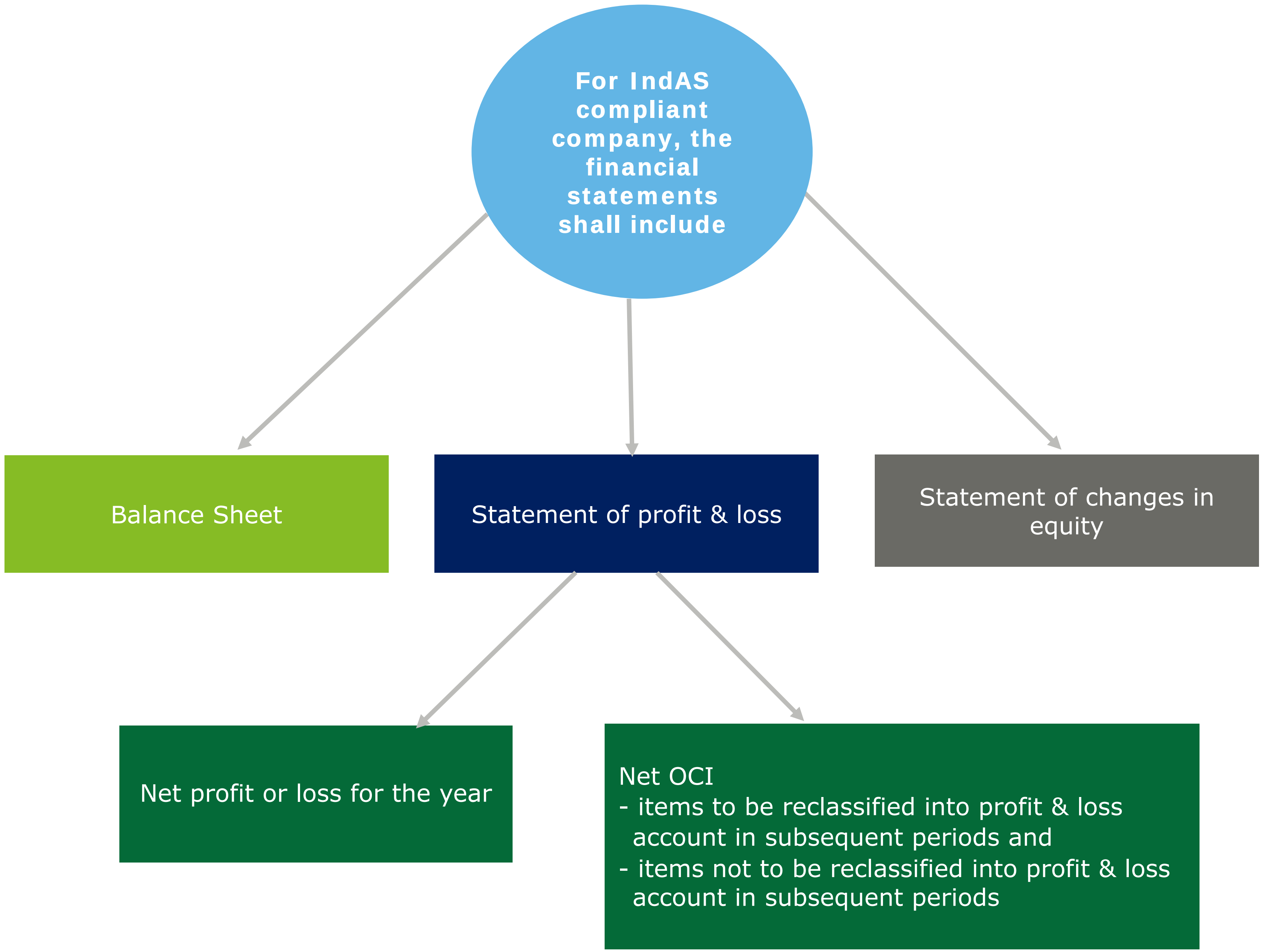


Moving from rules-based to principles-based environment
Little "industry-specific" GAAP | Impact based on the type of transactions

Why Ind AS needs your attention?

Tax and Accounting Interplay

		Indian Context
Dependent	Taxable income determined predominantly, based on books of accounts as per local GAAP	MAT
Quasi - Dependent	Taxable income based on book profits, with number of adjustments under tax laws	Business Income Computation under Income-tax Act, 1961 ('the Act')
Independent	Specific set of rules within the tax law, no or little correlation with books of accounts	Presumptive basis of taxation


For IndAS compliant company, the financial statements shall include
Balance Sheet
Statement of profit & loss
Statement of changes in equity
Net profit or loss for the year
Net OCI
- items to be reclassified into profit & loss account in subsequent periods and
- items not to be reclassified into profit & loss account in subsequent periods

Impact of Ind AS on computation of income for tax purposes

Interplay between accounts and taxation

Key principles for computing taxable income

- Business income is computed in accordance with the method of accounting regularly employed by the taxpayer – could be either cash or mercantile / accrual
- Business income as per method of accounting adopted to be adjusted by the specific deductions / allowances / disallowances specified in the Act
- Real income is taxable and not hypothetical income

  – unrealized gains / losses not recognized for tax computation
- Concept of time value of money not recognized
- Notional expenses not allowable. However, provisions are allowed if created on a scientific basis
- Adjustments to be made to accounting profits as per notified Income Computation and Disclosure Standards (ICDS) - effective from FY 2016-17

Profits as computed following Ind AS to be the starting point for computing taxable income and further adjusted in the light of principles stated above

Interplay between accounts and taxation

ICDS – a bird's eye view

ICDS – key features
Applicable to all taxpayers following accrual system of accounting
Non-compliance could lead to best judgement assessment
In case of conflict, Act to prevail over ICDS provisions
No impact on MAT Computation
Separate books of account not mandatory
Treatment of items not specifically dealt by ICDS to be governed as per provisions of the Act
Manner of disclosure – amendments to **ITR form** and **Form 3CD** notified

List of ICDS	
ICDS I	Accounting policies
ICDS II	Valuation of inventories
ICDS III	Construction contracts
ICDS IV	Revenue recognition
ICDS V	Tangible fixed assets
ICDS VI	Effects of changes in foreign exchange rates
ICDS VII	Government grants
ICDS VIII	Securities
ICDS IX	Borrowing costs
ICDS X	Provisions, contingent liabilities, and contingent assets

Ind AS computed profits would need to be adjusted as per ICDS

Impact of Ind AS on computation of MAT

Minimum Alternate Tax (MAT)

Objective

- All profitable companies should pay minimum corporate tax
- Increase in number of zero tax paying companies which are earning substantial income and paying handsome dividends

Provisions

- Where income tax payable by a company is less than 18.5% of book profits, such book profits are deemed to be taxable income and tax is payable thereon at 18.5% (plus applicable surcharge and cess)
- Book profit to be computed after making prescribed adjustments

MAT credit

- Excess of MAT paid over tax payable under normal provisions is available as MAT credit and can be carried forward for 15 years
- Set off restricted to difference between tax as per normal provisions and MAT for the year of set off

Section 115JB was amended with the objective to provide the framework for computation of book profits for Ind AS compliant companies in the year of adoption and thereafter

Ind AS adjustments under MAT

- Starting point for computation of MAT under Ind AS

Division II of Schedule III of Companies Act, 2013	Amount
Profit / (loss) before tax	XXX
Tax expense	XXX
Profit / (loss) for the period	XXX
Other comprehensive income (OCI) Items that will i) Not be reclassified to P&L ii) Reclassified to P&L	XXX
Total comprehensive income for the period	XXX

MAT is to be computed on the **profit for the year (before OCI)** considering the adjustments as per **section 115JB** and **Ind AS amendments**

- **Annual adjustment** - OCI items that will permanently be recorded in reserves (i.e., which will never be reclassified to the statement of P&L) to be adjusted in book profits as under

Item	Point of time of inclusion (annual)
Changes in revaluation surplus of assets	Realisation / disposal
Gains and losses from investments in equity instruments designated at fair value through OCI	Realisation / disposal
Any other item including re-measurements of defined benefit plans	Every year, as the gain or loss arises

Specific adjustments to be made in relation to demerger accounting

Ind AS adjustments under MAT

Transition adjustments

Recorded in OCI

<table>
<tr><th>Item</th><th>Treatment</th></tr>
<tr><td>Changes in revaluation surplus of assets</td><td rowspan="2">To be included in book profits at the time of realization / disposal</td></tr>
<tr><td>Gains and losses from investments in equity instruments designated at fair value through OCI</td></tr>
<tr><td>Any other item including re-measurements of defined benefit plans</td><td>Equally over a period of 5 years starting from the year of first time adoption of Ind AS</td></tr>
</table>

Recorded in reserves and surplus (excluding capital reserve and securities premium reserve)

<table>
<tr><th>Item</th><th>Treatment</th></tr>
<tr><td>Assets at fair value as deemed cost</td><td>• Adjustment to retained earnings to be ignored
• Depreciation to be computed ignoring the retained earnings adjustment
• Gains / loss on disposal of such assets to be computed ignoring the retained earnings adjustment</td></tr>
<tr><td>Investment in subsidiaries, JVs, and associates at fair value as deemed cost</td><td rowspan="2">Aggregate adjustment to be made in year of retirement / disposal</td></tr>
<tr><td>Cumulative translation differences for all foreign operations at the time of transition</td></tr>
<tr><td>Any other item including re-measurements of defined benefit plans</td><td>Equally over a period of 5 years starting from the year of first time adoption of Ind AS</td></tr>
</table>

CBDT Circular no. 24/2017 dated 25 July 2017

FAQs as per the Circular to address issues in computation of book profit under Ind AS:

Items relating to Transition Amount

Sr. No	FAQs	Clarification
FAQ 3	Reference date for calculating the “transition amount”	Amounts as on start of the opening date of the first year of Ind AS adoption
FAQ 5	Whether deferred taxes corresponding to adjustments made on the transition date is to be considered for the purpose of computing transition amount	No
FAQ 6	Whether adjustment in respect of provision for diminution in value of asset at the time of transition on the convergence date is to be considered for the purpose of computing transition amount?	No
FAQ 7	Whether “share application money pending allotment” reclassified to “other equity” is to be considered for the purpose of computing transition amount?	No
FAQ 9	Whether “Equity Component”, if any, of financial instruments like non-convertible debentures (NCD), interest-free loan etc. included in other equity as per Ind AS, would be included in the transition amount?	Yes

CBDT Circular no. 24/2017 dated 25 July 2017 (Cont'd)

Clarifications issued by the CBDT - Items relating to 'Transition Amount'

Sr. No	FAQs	Clarification
FAQ 11	How should the adjustments on account of service concession arrangements be treated?	Adjustments would be included in the transition amount and also on an ongoing basis
FAQ 13	How Capital Reserve or Securities Premium existing as per IGAAP reclassified to Retained Earnings or Other Reserves on convergence date be treated?	- The same shall not form part of transition amount - It is further clarified that even after such reclassification, the amount of revaluation reserve will continue to be considered as revaluation reserve for computation under MAT and will also include transfer to any other reserves by whatever name called or capitalized
FAQ 4	Whether adjustment in respect of proposed dividend (including DDT) for preceeding FY, which is required to be reversed and credited to retained earnings on transition to Ind AS, is to be considered for the purpose of computing transition amount?	No

CBDT Circular no. 24/2017 dated 25 July 2017 (Cont'd)

Clarifications issued by the CBDT - Items relating to 'Profit & Loss Account'

Sr. No	FAQs	Clarification
FAQ 2	Starting point for computing book profit under MAT	Net Profit before OCI
FAQ 1	Whether marked-to-market (MTM) loss on account of fair value adjustments of various financial instruments recognized through profit and loss account (FVTPL) is required to be added back in computation of book profit under MAT?	- No - However, the existing adjustment of clause (i) of Explanation 1 to section 115JB(2) of the Act shall apply for provision for diminution / impairment in value of assets other than FVTPL financial instruments - For financial instruments where gains and losses are recognized through OCI, the amended MAT provisions to apply
FAQ 8	Whether dividend on preference shares recognized as interest in the profit and loss account under Ind AS is be added back in the computation of book profit under MAT?	Yes, whether classified as dividend or interest cost under Ind AS
FAQ 10	In case of revaluation/ fair value adjustments to PPE in the year of retire, disposal, or otherwise transferred– whether gross amount of revaluation or the amount after adjustment of depreciation on the revaluation amount to be considered?	The revaluation amount after adjustment of depreciation *(Example in the ensuing slide)*

CBDT Circular no. 24/2017 dated 25 July 2017 (Cont'd)

Clarifications issued by the CBDT - Items relating to 'Profit and Loss account'

FAQ 10 has been explained by an illustration as under:

Particulars	Erstwhile IGAAP	Ind AS (considering fair value / revaluation adjustment on PPE)	Fair Value / Revaluation Adjustments and corresponding depreciation
WDV/Deemed Cost as on 1 April 2015	100	1000	900
Depreciation @10% for FY 2015-16	10	100	90
WDV as on 1 April 2016	90	900	810
Depreciation @10% for FY 2016-17	9	90	81
WDV as on 1 April 2017	81	810	729
Sale value as on 1 April 2017	900	900	
Profit on sale credited to P&L	819	90	
Adjustment for MAT - revaluation amount after adjustment of the depreciation	0	729	
Profit on sale to be considered for MAT	**819**	**819**	

CBDT Circular no. 24/2017 dated 25 July 2017 (Cont'd)

Clarifications issued by the CBDT - Others

Sr. No	FAQs	Clarification
FAQ 12	Transition adjustments resulting into wipe-off of accumulated losses as per IGAAP Balance Sheet	- For AY 2017-2018, the deduction of lower of brought-forward loss or unabsorbed depreciation shall be allowed based on the position as on 31 March 2016 - For subsequent periods, the position as per books of account drawn as per Ind AS shall have to be considered
FAQ 14	Computation of MAT for companies following accounting year other than March 2017	Follow IGAAP for the pre-convergence period and Ind AS for the balance period

Ind AS - MAT issues

- No uniformity in taxation of non Ind AS and Ind AS companies
- Recognition of notional income / expense for computing book profit
  - Notional interest on interest free / below market rate of interest on loan to subsidiaries or interest free security deposits
  - Gain / loss on fair valuation of financial assets routed through profit or loss account
  - Recognition of guarantee commission for guarantee provided on behalf of subsidiaries
- No clarity on adjustment for prior period items (which are to be reflected in the same year to which the error pertains) if the return of income for the year has already been filed and due date of filing revised return has also lapsed
- Double taxation of transactions recorded in the standalone financial statements which are undertaken by a separate legal entity – say for jointly controlled operations

Illustrations

Illustration 1: Loans to subsidiaries

Under Ind AS, all financial assets and liabilities are required to be recorded at fair value at initial recognition instead of the actual cost. Difference between the same is required to be accounted in the P&L Account in most cases.

For example, interest free loans given / taken are required to be apportioned as principal and notional interest. Such notional interest should be recognized as income / expense in the P&L account over the period of loan.

Under tax provisions, loans and investments to be recorded at historical cost as against fair value

Example

A five year interest free loan of INR 1,000 to a subsidiary is re-casted in the books of accounts so as recognize INR 900 as principal and INR 100 as interest to be paid by the subsidiary over the period of 5 years. INR 100 will be recognized as income and investment by the parent company and as expense and equity contribution by subsidiary company in their respective books of accounts over a period of 5 years

Journal entries

In the books of Parent Co.	Amount in INR	
Loan to Subsidiary A/c…………..….Dr. Investment in Subsidiary A/c…...Dr. To bank A/c	900 100	 1,000
Loan to Subsidiary A/c………………Dr. To interest income A/c (Interest income recognized every year for 5 years)	20	 20

In the books of Subsidiary Co.	Amount in INR	
Bank A/c…………………………….Dr. To loan from Parent A/c To equity A/c (deemed capital contribution)	1,000	 900 100
Interest expense A/c……………..Dr. To loan from Parent A/c (Interest expense recognized every year for 5 years)	20	 20

Illustration 1: Loans to subsidiaries (cont'd)

Impact in the books of Parent Co.	Impact in the books of Subsidiary Co.
• Profit increases by the amount of interest income • Corresponding increase in the amount of investment in Subsidiary	• Profit is lowered by the amount of interest expense • Corresponding increase in the equity contribution of the holding company

Issues that merit consideration

- Fair market valuation will lead to recognition of notional income / expenses. Whether such notional interest income / expense is taxable / allowable for tax under normal tax provisions?
- Whether withholding needs to be done on such notional interest expense to claim deduction for tax purposes?
- Recognition of notional investment in the books of parent company - implications on 14A disallowance read with Rule 8D

Plausible view

- Notional interest expense / income may not be allowable as deduction / taxable as there is no cash outflow towards interest payment to parent company
- Further, since interest is only notional, the same may not qualify as "interest" as per definition provided under the domestic tax laws, the interest expense in the books should not be liable for tax withholding
- 14A disallowance could be impacted if Rule 8D is applied

Illustration 2: Discounting of provisions

As per Ind AS 37, companies are required to discount provisions to their present value where the effect of time value of money is material

The increase in the provision due to the passage of time will be recognised as a finance cost - resulting in higher interest cost

ICDS X specifically provides that the amount of provision should not be discounted to its present value

Journal Entries	Amount in INR	
Expense A/c................................ Dr. To Provision A/c (Provisions created and recorded at discounted value)	xxx	xxx
Interest Expense A/c.......... Dr. To Provision A/c (Provision increased at every year-end to reflect the passage of time)	xxx	xxx

Impact of Ind AS accounting

Discounting of provision would result in increase in the overall income in the first year of creating provision, and subsequent recording of notional interest expense

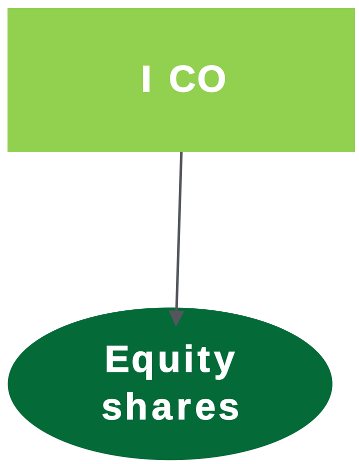
Issues that merit consideration

Whether for tax computation, provision to be considered at discounted value or at the original value (i.e., without considering the discounted factor)

Plausible view

- Deduction for amount of provision recognised on a scientific and rational basis should be claimed for tax purposes, as per ICDS X (even though the provision debited in the P&L a/c may be lesser)
- Notional interest expense recorded in the subsequent years may be ignored for tax computation and tax withholding purposes

Illustration 3: Treatment of equity instruments designated at FVTOCI



Amount in INR crores

Date	Cost	Fair value
1 April 2015	10	12
31 March 2016	10	15
31 March 2017	10	17
31 March 2018	10	20

- I Co holds equity shares of a cost of INR 10 crores as investment i.e. not for sale
- As per Ind AS 109, I Co has option to account for such shares at
  - Fair value through OCI ('FVTOCI'); or
  - Fair value through P&L ('FVTPL')
- I Co adopts to account for equity shares at FVTOCI
- The difference is annually routed through the OCI and accumulated in fair valuation through OCI surplus in other equity
- The treatment in books and for MAT is given in the ensuing slides for the following:
  - Comparative period
  - Convergence year
  - Year of sale

Illustration 3: Treatment of equity instruments designated at FVTOCI - on the transition date (cont'd)

- As on the transition date i.e. 1 April 2015, the fair value of equity shares is INR 12 crores. There is a difference of INR 2 crores (INR 12 crores – INR 10 crores) between fair value as on 1 April 2015 and cost of equity shares

- The journal entry passed in the books is as follows:

Date	Particulars	Amount in INR crores	
1 April 2015	Investment a/c ……. Dr. To Retained Earnings a/c (Difference between fair value and cost of equity shares credited to retained earnings)	2	2

Treatment for computation of book profit for MAT purpose
The difference of INR 2 crores is ignored for computation of book profit in the convergence year i.e. FY 2016-17

Illustration 3: Treatment of equity instruments designated at FVTOCI - On the last day of comparative period (cont'd)

- As on 31 March 2016 i.e. the last date of comparative period, the fair value of the equity instruments is INR 15 crores. There is a difference of INR 3 crores (INR 15 crores – INR 12 crores) between the fair value of the equity shares as on 31 March 2016 and the amount for which shares are recorded as on 1 April 2015
- The journal entry passed in the books is as follows:

Date	Particulars	Amount in INR crores	
31 March 2016	Investment a/c ……. Dr. To Fair valuation through OCI surplus (Difference of INR 3 crores is routed though OCI)	3	3

Treatment for computation of book profit for MAT purpose
The difference of INR 3 crores is ignored for computation of book profit in the convergence year i.e. FY 2016-17

Illustration 3: Treatment of equity instruments designated at FVTOCI - Convergence year (cont'd)

- As on 31 March 2017 i.e. the last date of convergence year, the fair value of the equity instruments is INR 17 crores. There is a difference of INR 2 crores (INR 17 crores – INR 15 crores) between the fair value of the equity shares as on 31 March 2017 and the amount at which equity instruments are recorded on 31 March 2016

- The journal entry passed in the books is as follows:

Date	Particulars	Amount in INR crores	
31 March 2017	Investment a/c .... Dr. To Fair valuation through OCI surplus (Difference of INR 2 crores is routed though OCI)	2	2

Treatment for computation of book profit for MAT purpose
The difference of INR 2 crores is ignored for computation of book profit in the convergence year i.e. FY 2016-17

Illustration 3: Treatment of equity instruments designated at FVTOCI - Year of sale (cont'd)

- On 31 March 2018, equity shares are sold for INR 20 crores. There is a gain of INR 3 crores (INR 20 crores – INR 17 crores) in the books for FY 2017-18

- The journal entry passed in the books is as follows:

Date	Particulars	Amount in INR crores	
31 March 2018	Bank a/c ……. Dr. To Investment a/c To OCI a/c (Being equity shares sold)	20	 17 3

Treatment for computation of book profit for MAT purpose
The gain on sale of equity shares in the books of accounts is INR 3 crores for FY 2017-18 However, the gain for MAT purpose is **INR 10 crores** (INR 20 crores – INR 10 crores) i.e. sales consideration – cost of equity shares should be included in the book profit for the FY 2017-18 i.e. the year in which the equity shares are sold

Recent Updates - Corporate Tax

A step towards E-assessment

Background		
Taking into account the digital transformation witnessed by India in the present times, the Income Tax Department is also embarking on a digital march by making amendments in the Act and starting facility of e-proceedings		
Section 133C(3) Empowers CBDT to frame a scheme for centralized issuance of notice and processing of information for making available the outcome to assessing officers	**Instruction dated 12 Feb 2018** For procedure outlined in revised 143(2) notice(s) for conduct of assessment proceedings electronically, it is directed that except for search related assessments proceedings, in other pending scrutiny assessment, cases shall be conducted only through the 'E-Proceeding' functionality	**Notification No. S.O. 771(E) dated 22 Feb 2018** CBDT notified the Centralized Communication Scheme, 2018 that empowers Centralized Communication Centre to issue digital notices (through email or online portal) to any person calling for information or documents for verification of information in its possession

1.What is the approach in case of bulky files which cannot be scanned and uploaded ?

2.What if, the assessee opted to go for manual and later chooses to go for e-proceeding ?

3.When the notice of the assessment is said to be received by the assesse ? There may be technical glitches while the notice is sent on assessee's valid e mail

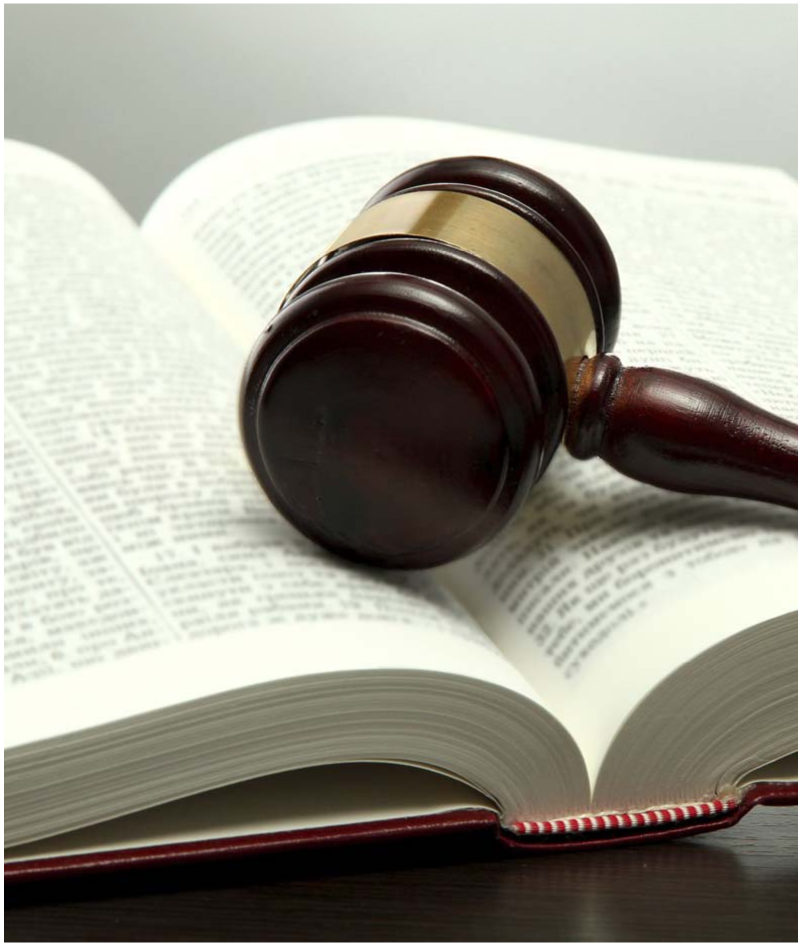
4.Clarity is required on the term 'team based assessment' as it is not defined

5. Jurisdiction-free assessment

Significant Beneficial Ownership

Background

- Complex structures and chains of corporate vehicles are being used to hide the real owner behind the transactions. To counter it, jurisdictions world over, have been putting in place mechanisms to identify the natural person controlling a corporate entity.
- Section 90 of the Companies Act 2013 (2013 Act) has been amended by Companies (Amendment) Act, 2017. It requires disclosures to be made:
  - To the company by **individuals** holding "significant beneficial interest" in shares of the company; and
  - By the company to the Registrar of Companies (RoC).
- The amended section 90 of the 2013 Act and Companies (Significant Beneficial Owners) Rules, 2018 (Rules) are effective from 13 June 2018 and are aligned with FATF recommendations.



Significant Beneficial Ownership Concept

SBO has been defined as:

an ***individual*** acting either alone or together, or through one or more persons or Trust, including a Trust and persons resident outside India, holding at least:

- 10%, or such other percentage as may be prescribed in shares* of a company ***or***
- The right to exercise or the actual exercising of “significant influence” ***or***
- “Control” as defined in section 2(27) of the 2013 Act;

but whose name is not entered in the register of members of a company as the holder of the shares, is required to make a disclosure of beneficial interest or rights to the company

** Global Depository Receipts (GDRs), Compulsorily Convertible Preference Shares (CCPS), and Compulsorily Convertible Debentures (CCDs) shall be treated as ‘shares’ for this purpose*

Significant Beneficial Ownership
Interplay with Income Tax Act

- ITR-6 Form requires an individual to be reported as the Ultimate Beneficial Owner (UBO). Whether the UBO and SBO reporting need to be aligned?
- Whether any loan or advances given to individuals be regarded as deemed dividend in the hands of the individuals (reported as SBO)?
- Whether there could be any impact from General Anti-Avoidance Rules (GAAR) on account of SBO disclosure?
- Can the reporting of individuals as SBO cause the treaty benefit to Special Purpose Vehicles (SPV) to be denied?

Statement of Financial Transactions (SFT)

Section 285BA
Obligation to furnish Statement of Financial Transactions ('SFT')

Rule 114E
Furnishing of SFT in Form 61A

Form 61A
Format & Instructions

Background

- Every person, listed in section 285BA(1) is under an obligation to furnish a periodic statement of specified financial transactions (SFT) as prescribed under the Income Tax Rules, 1962 ('the Rules')
- Rule 114E of the Rules, as amended w.e.f. 01.04.16, specifies the nature and value of reportable transactions, periodicity of furnishing of SFT, format of SFT, etc.
- The due date for filing the SFT is 31st day of May in the succeeding financial year

Consequences of non-compliance

- Penalty @ Rs.100/- per day of default
- Penalty, on non-compliance to notice calling for return, at Rs. 500/- per day
- Penalty of Rs. 50,000/- for providing inaccurate information in the statement

Statement of Financial Transactions (SFT) (cont'd)

List of transactions and reporting requirements

Sr. #	Nature of transactions	Reporting Entity
1(a,b)	Cash payment for buying **bank drafts, pay order , Banker's cheque, pre-paid instruments from RBI** for an amount aggregating to Rs. 10 Lakhs or more in a financial year	Banking Company, co-operative bank covered under Banking Regulation Act 1949
1(c)	Cash Deposits/ Withdrawal in **current account** aggregating to Rs. 50 Lakhs or more in a financial year	Banking Company, co-operative bank covered under Banking Regulation Act 1949
2	Cash Deposits **other than current account** aggregating to Rs. 10 Lakhs or more in a financial year	Banking Company, co-operative bank covered under Banking Regulation Act 1949, Post Master General
3	**Fresh Time Deposits** (other than renewal) aggregating to Rs. 10 Lakhs or more in a financial year	Banks, Co-operative Banks, Post Office, Nidhi Company, NBFC
4	**Credit card payment** aggregating to Rs. – 1 Lakhs or more in cash – 10 Lakhs or more by any other mode	Banks, Co-operative Banks, Any other institutions issuing such cards

Statement of Financial Transactions (SFT) (cont'd)

List of transactions and reporting requirements

5	**Bonds/ Debentures purchased** for an amount aggregating to Rs. 10 Lakhs or more in a financial year	Any company/institutions issuing such bonds or debentures
6	**Share purchase (including share application money)** for an amount aggregating to Rs. 10 Lakhs or more in a financial year	Any company/institutions issuing such shares
7	**Buy Back of shares (other than from open market)** for an amount aggregating to Rs. 10 Lakhs or more in a financial year	Any listed company buying back its securities u/s 68 of CA 2013
8	**Units purchase** (other than for transfer from one scheme to another) for an amount aggregating to Rs. 10 Lakhs or more in a financial year	Trustee/ Authorized personnel of Mutual Fund
9	**Sale of Foreign currency** by whatever mode to a person for an amount aggregating to Rs. 10 Lakhs or more in a financial year	Authorized person as per FEMA 1999
10	**Purchase/ Sale of immovable property** by any person for an amount of Rs. 30 Lakhs or more as valued by Stamp valuation authority	Inspector General/Registrar/Sub registrar

Statement of Financial Transactions (SFT) (cont'd)

List of transactions and reporting requirements

11	**Receipt of cash payment** by any person **for sale of goods or supply** of services of any nature	Any person who is liable for audit under section 44AB of the Act.
12	**Cash deposits during November 9, 2016 to December 30, 2016** aggregating to Rs. -12.5 Lakhs or more , in one or more current account of a person -2.5 Lakhs or more , in one or more account (other than current account) of a person	Banking Company, co-operative bank covered under Banking Regulation Act 1949, Post Master General
13	**Cash Deposits during April 9, 2016 till November 9, 2016** in respect of accounts reportable under clause 12(above)	Banking Company, co-operative bank covered under Banking Regulation Act 1949, Post Master General

E-processing to issue certificate for NIL / lower withholding tax

Draft Notification dated 17 August 2018

Background:

- Recipients of income in India have the option of filing an application under section 197 of the Act with the Jurisdictional AO, requesting for issuance of certificate for deduction of income tax at any lower rate or no deduction of tax as the case may be
- Similarly, section 206C of the Act contains provisions enabling the AO to issue certificate for collection at a lower rate if he is satisfied and upon application made by the assessee in this behalf
- The application needs to be filed in Form No. 13 along with requisite enclosures as prescribed from time to time
- CBDT proposed to rationalize the existing Form No. 13 and relevant Income-tax Rules to make the process electronic for issuance of certificate under section 197/206C for no deduction/collection of tax or deduction/collection of tax at lower rate
- Accordingly, certain amendments in Form no. 13 and the relevant rules have been proposed

Public comments / suggestions invited on the draft notification till 04 September 2018

Revised Due Dates - Belated Return, Revised Return & Assessment

Filing of Belated Return u/s 139(4)

The amendment inserted by the Finance Act, 2017 omitting the words 'the expiry of one year from' does not affect the due date for revising the return for AY 2017-18 which can be revised before the expiry of 1 year from the end of the relevant assessment year i.e. March 31, 2019 or before the completion of the assessment, whichever is earlier.

Filing of Revised Return u/s 139(5)

The Income Tax Act also specifies that where the person is unable to file his tax returns within the specified due date, he shall file the same within the end of the relevant assessment year, but before the completion of assessment.

AY	Belated return timeline	Revised return timeline	Whether belated return can be revised
2015-16	31-Mar-16	31-Mar-17	No
2016-17	31-Mar-17	31-Mar-18	No
2017-18	31-Mar-18	31-Mar-19	No
2018-19	31-Mar-19	31-Mar-19	Yes
2019-20	31-Mar-20	31-Mar-20	Yes
2020-21	31-Mar-21	31-Mar-21	Yes

Key Recent Judicial Pronouncements

Maxopp Investments Ltd. [2018] 91 taxmann.com 154 (SC)

Facts

- Appellant was engaged in the business of finance and held shares in two portfolios-
  - as investment on "capital account"; and
  - as "trading assets" i.e. for the purpose of acquiring and retaining control over investee group
- The appellant claimed exemption in respect of dividend income earned from shares held as trading assets, it did not disallow apportioned interest expenses under section 14A, on the basis that the dominant purpose for purchasing the share was not to earn dividend income and the receipt of dividend was merely incidental

Issues

- Applicability of provisions of Section 14A of the Act in relation to dividend income earned in the following scenarios:
  - Where the main purpose of investing in shares was to gain control over investee company; and
  - Where the shares of investee company were held by assessee as stock-in-trade

Ruling

- In connection with the dominant purpose test, the Hon'ble Supreme Court relying on the decision rendered by itself in the case of CIT v. Walfort Share and Stock Brokers P Ltd held that the fact that the appellant had made investments to gain control over the investee company, is not a relevant factor to determine the applicability of Section 14A of the Act
- In connection with the applicability of Section 14A of the Act in respect of dividend income earned from shares held by assessee as stock-in-trade, the Hon'ble Supreme Court has held that when the shares are held as stock-in-trade, certain dividend income is earned, which is exempt under Section 10(34) of the Act. The same also triggers applicability of Section 14A of the Act

Mahindra and Mahindra Ltd. 93 taxmann.com 32 (SC)

Facts

- Mahindra and Mahindra Limited (taxpayer/ respondent) had entered into an agreement with USA-based Kaiser Jeep Corporation (KJC) for purchase of dies, wielding equipment and die models for an agreed sum
- KJC supplied such tools and equipment and also agreed to provide loan for such procurement to the taxpayer at an interest of 6% p.a.
- Subsequently, the taxpayer was informed that American Motor Corporation (AMC) had taken over KJC and had agreed to waive the principal amount of loan
- The taxpayer filed its return of income and showed the relevant sum waived by AMC as a “cessation of liability” and did not offer the same to tax.

Issues

- Whether waiver of loan would be taxable under section 28(iv) or 41(1) of the Act?

Ruling

- The Supreme Court analyzed the term loan; loan refers to borrowing something (especially a sum of cash) that needs to be repaid along with interest.
- Supreme Court was of the view that for section 28(iv) of the Act to be applicable, income must arise from business or profession and the benefit, which is received, has to be in some other form rather than in the shape of money. This very condition is not satisfied in the present case
- The Supreme Court also observed that an interest of 6% p.a. was paid by the tax payer. However, no deduction was claimed under section 36(1)(iii) of the Act.
- The Supreme Court further observed that, purchase of equipment were capital assets and the purchase amount had not been debited to the profit and loss account. In the instant case, waiver of loan amounted to cessation of liability other than trading liability. As such, there was no force in the Revenue’s argument and section 41(1) is not applicable in this case.

Milan Intermediates LLP (96 taxmann.com 338) (Ahmd ITAT)

Facts

- Milan Intermediates LLP (MIL/assessee), had accumulated brought forward losses including unabsorbed depreciation as per its books of account.
- MIL followed the FIFO method for setting off year-wise brought forward losses, due to which unabsorbed loss of the earliest year, was first set off against the current year's book profit under section 115JB, in-spite of the fact that unabsorbed depreciation was lower than unabsorbed losses

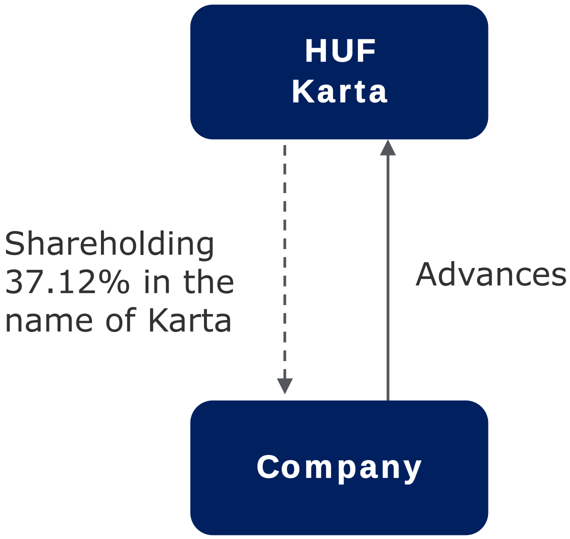
Issue

- Whether the methodology adopted by assessee towards adjustment/set-off of brought forward business loss and unabsorbed depreciation while calculating book profit u/s 115JB is correct?

Ruling

- The Tribunal interpreted Clause (iii) to Explanation 1 to Section 115JB which provides for deduction of lower of unabsorbed loss or unabsorbed depreciation out of book profits and noted that the benefit of Clause (iii) is not available in the event either unabsorbed loss or unabsorbed depreciation becoming NIL
- ITAT held that the spirit and object of the clause thus requires to be gauged from this restriction placed statutorily. If the methodology adopted by the assessee is accepted it may defeat a situation where one of the two i.e. unabsorbed loss and unabsorbed depreciation, become NIL. ITAT opined that to give effect to the object of Clause (iii), " like should be reduced from like and not differently'".
- Thus, if the lower of the two happens to be unabsorbed depreciation, reduction need to be done from depreciation and not out of unabsorbed depreciation

Gopal and Sons (HUF) v. CIT [2017] 77 taxmann.com 71 (SC)



Facts

- Assessee is HUF and had received certain advances from a company in which assessee holds 37.12% shares
- AO held that assessee was both registered shareholder as well as beneficial owner of shares and therefore amount received is treated as deemed dividend under Sec. 2(22)(e) and addition was made
- Assessee contended that shares were held in the name of karta and not HUF
- ITAT deleted the addition. However, HC sustained the addition made by AO

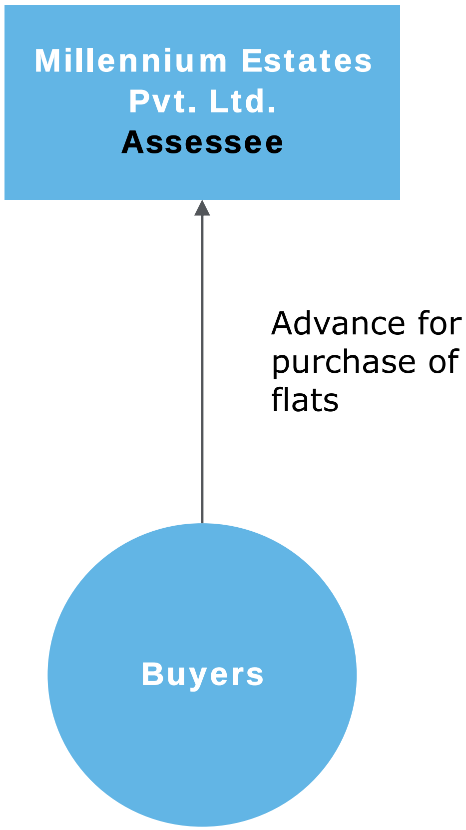
Issue

- Whether amount received is taxable as deemed dividend under Sec. 2(22)(e)

Ruling

- The payment of advance was made to HUF by the company in which shares were in name of Karta and he has substantial interest. The payment for the shareholding in the company was made by HUF. Though shares certificates were issued in name of the Karta
- In annual return of company, HUF was shown as registered and beneficial shareholder
- Even if HUF is not registered shareholder, once payment is received by HUF and shareholder is member of HUF with substantial interest, the advance paid to HUF is deemed dividend within meaning of Explanation 3 to Sec. 2(22)(e)

CIT v. Millennium Estates (P.) Ltd. [2018] 93 taxmann.com 41(Bombay HC)



Facts
- AY 2007-08
- Assessee was a contractor-developer
- Advance received from buyers on allotment shown as current liability in books of accounts
- Balance payment received next year

Assessee's contention
- Possession given in next AY, sale completed in next year, hence, advance received in current year is not taxable

Revenue's contention
- Sale of flats took place in current year hence, advance received taxable in current year

Ruling
- On facts, possession given in next AY. No dispute about genuineness of the letter of possession
- Hence, no substantial question of law to be dealt with
- The amount in question was offered to tax next year and there was no loss to revenue on account of change in year of taxability. Hence, year of taxability should not be disputed


Questions
and
Answers

Thank You

Annexures

Relevant illustrative extract of Balance Sheet of an Ind AS compliant company

PART I – BALANCE SHEET

Name of the Company ……………………

Balance Sheet as at ………………………

(Rupees in………..)

	Particulars	Note No.	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
	1	2	3	4
(1)	**ASSETS**			
	Non-current assets			
	(a) Property, Plant and Equipment			
	(b) Capital work-in-progress			
	(c) Investment Property			
	(d) Goodwill			
	(e) Other Intangible assets			
	(f) Intangible assets under development			
	(g) Biological Assets other than bearer plants			
	(h) Financial Assets			
	(i) Investments			
	(ii) Trade receivables			
	(iii) Loans			
	(iv) Others (to be specified)			
	(i) Deferred tax assets (net)			
	(j) Other non-current assets			
(2)	**Current assets**			
	(a) Inventories			
	(b) Financial Assets			
	(i) Investments			
	(ii) Trade receivables			
	(iii) Cash and cash equivalents			
	(iv) Bank balances other than (iii) above			
	(v) Loans			
	(vi) Others (to be specified)			
	(c) Current Tax Assets (Net)			
	(d) Other current assets			
	Total Assets			
	EQUITY AND LIABILITIES Equity			
	(a) Equity Share capital			
	(b) Other Equity			
	LIABILITIES			
(1)	**Non-current liabilities**			
	(a) Financial Liabilities			
	(i) Borrowings			
	(ii) Trade payables			
	(iii) Other financial liabilities (other than those specified in item (b), to be specified)			
	(b) Provisions			
	(c) Deferred tax liabilities (Net)			
	(d) Other non-current liabilities			
(2)	**Current liabilities**			
	(a) Financial Liabilities			
	(i) Borrowings			
	(ii) Trade payables			
	(iii) Other financial liabilities (other than those specified in item (c)			
	(b) Other current liabilities			
	(c) Provisions			
	(d) Current Tax Liabilities (Net)			
	Total Equity and Liabilities			

See accompanying notes to the financial statements

Relevant illustrative extract of profit and loss account of an Ind AS compliant company

PART II – STATEMENT OF PROFIT AND LOSS

Name of the Company……………………

Statement of Profit and Loss for the period ended ………………………

(Rupees in………..)

	Particulars	*Note No.*		*Figures for the current reporting period*		*Figures for the previous reporting period*
I	Revenue From Operations					
II	Other Income					
III	Total Income (I+II)					
IV	**EXPENSES** Cost of materials consumed					
	Purchases of Stock-in-Trade					
	Changes in inventories of finished goods, Stock-in -Trade and work-in-progress					
	Employee benefits expense					
	Finance costs					
	Depreciation and amortization expense					
	Other expenses					
	Total expenses (IV)					
V	Profit/(loss) before exceptional items and tax (I- IV)					
VI	Exceptional Items					
VII	Profit/(loss) before tax (V-VI)					
VIII	Tax expense: (1) Current tax (2) Deferred tax					
IX	Profit (Loss) for the period from continuing operations (VII-VIII)					
X	Profit/(loss) from discontinued operations					
XI	Tax expense of discontinued operations					
XII	Profit/(loss) from Discontinued operations (after tax) (X-XI)					
XIII	Profit/(loss) for the period (IX+XII)					
XIV	Other Comprehensive Income A (i) Items that will not be reclassified to profit or loss (ii) Income tax relating to items that will not be reclassified to profit or loss B (i) Items that will be reclassified to profit or loss (ii) Income tax relating to items that will be reclassified to profit or loss					
XV	Total Comprehensive Income for the period (XIII+XIV) (Comprising Profit (Loss) and Other Comprehensive Income for the period)					
XVI	Earnings per equity share (for continuing operation): (1) Basic (2) Diluted					
XVII	Earnings per equity share (for discontinued operation): (1) Basic (2) Diluted					
XVIII	Earnings per equity share(for discontinued & continuing operations) (1) Basic (2) Diluted					

See accompanying notes to the financial statements

Relevant illustrative extract of Change in Equity Statement of an Ind AS compliant company

STATEMENT OF CHANGES IN EQUITY

Name of the Company……………………..

Statement of Changes in Equity for the period ended ……………………..

(Rupees in………………)

A. Equity Share Capital

Balance at the beginning of the reporting period	Changes in equity share capital during the year	Balance at the end of the reporting period

B. Other Equity

	Share application money pending allotment	Equity component of compound financial instruments	Reserves and Surplus				Debt instruments through Other Comprehensive Income	Equity Instruments through Other Comprehensive Income	Effective portion of Cash Flow Hedges	Revaluation Surplus	Exchange differences on translating the financial statements of a foreign operation	Other items of Other Comprehensive Income (specify nature)	Money received against share warrants	Total
			Capital Reserve	Securities Premium Reserve	Other Reserves (specify nature)	Retained Earnings								
Balance at the beginning of the reporting period														
Changes in accounting policy or prior period errors														
Restated balance at the beginning of the reporting period														
Total Comprehensive Income for the year														
Dividends														
Transfer to retained earnings														
Any other change (to be specified)														
Balance at the end of the reporting period														

Relevant illustrative extract of Schedule ICDS in ITR-6

Schedule ICDS	**Effect of Income Computation Disclosure Standards on profit**	
Sl. No.	**ICDS**	**Amount (+) or (-)**
(i)	**(ii)**	**(iii)**
I	Accounting Policies	
II	Valuation of Inventories *(other than the effect of change in method of valuation u/s 145A, if the same is separately reported at col. 4d or 4e of Part A-OI)*	
III	Construction Contracts	
IV	Revenue Recognition	
V	Tangible Fixed Assets	
VI	Changes in Foreign Exchange Rates	
VII	Government Grants	
VIII	Securities *(other than the effect of change in method of valuation u/s 145A, if the same is separately reported at col. 4d or 4e of Part A-OI)*	
IX	Borrowing Costs	
X	Provisions, Contingent Liabilities and Contingent Assets	
11a.	**Total effect of ICDS adjustments on profit (I+II+III+IV+V+VI+VII+VIII+IX+X)** *(if positive)*	
11b.	**Total effect of ICDS adjustments on profit (I+II+III+IV+V+VI+VII+VIII+IX+X)** *(if negative)*	

Relevant illustrative extract of ICDS disclosure in Form 3CD

(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)

(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			

(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.