Recommendation for proper implementation of the Income Computation & Disclosure Standards ('ICDS')

December 2015

American Chamber of Commerce in India

PHD House, 4th Floor, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi-110016

Tel: 91-11-26525201 Fax: 91-11-26525203 Email: amcham@amchamindia.com

www.amchamindia.com

1. Recommendations of a fundamental nature

1.1. ICDS may expressly clarify that the ICDS are subordinate also to the law represented by judicial rulings

It is amply clarified and reiterated in every ICDS that they are subordinate to the statutory provisions of the Income-tax Act, 1961 ('Act') and shall yield to the Act in case of any conflict. Over the years, the statutory provisions have been interpreted by the Courts. These rulings constitute part of operative law. Considering this, with a view to avoid uncertainty and litigation, it needs to be clarified as part of every ICDS that they are subordinate also to the judicial rulings to the extent ICDS appears to be in conflict with the rulings.

1.2. ICDS may expressly clarify that the ICDS are subordinate also to the Income-tax Rules

In case ICDS is in conflict with the provisions of the Act, it has been specifically mentioned that the provisions of the Act would prevail. However, situation of conflict between ICDS and the Income-tax Rules has not been dealt with (barring exception like Rule 115).

It is recommended that the Central Board of Direct Taxes ('CBDT') should clarify that in case of conflict between ICDS and the Income-tax Rules, the provisions of the Income-tax Rules shall prevail.

1.3. Clarify the manner in which disclosures forming part of ICDS are to be made

While every ICDS prescribes disclosure requirements for items dealt in respective ICDS, there is no clarity on place where such disclosure is required to be made. The CBDT Committee had recommended modification of tax audit report/return forms to ensure compliance. We believe, disclosure as part of return form may not be a possibility in case of e-returns. Changes to the tax audit report may advisedly be implemented in joint consultation with the Institute of Chartered Accountants of India ('ICAI').

Further, we recommend that the tax return forms and tax audit report formats should be released well in advance so that the tax payers have sufficient time to understand the requirements and collate the information required so that they are able to file the tax return within the prescribed timelines.

1.4. CBDT may evolve practical examples and illustrations which explain those areas which have potential of dispute or subjectivity.

Unlike accounting standards set by ICAI ('ICAI AS'), ICDS does not provide any guidance on application with practical illustrations. Provision of illustrations which highlight the impact of deviation/carve out from ICAI AS makes it easier for taxpayers to understand the changes and reduces scope for litigation.

1.5. Clarify that minimum alternate tax ('MAT') liability will be governed by accounting standards, subject to permitted statutory adjustments.

ICDS provides that it shall apply only to computation of total income and does not require maintenance of separate books of account. It is necessary to clarify that MAT shall continue to be levied on 'book profit' computed on the basis of financial statements prepared as per currently applicable ICAI AS or IFRS converged Indian Accounting Standards ('IND AS').

1.6. ICDS should be in harmony with ICAI AS to avoid dual set of record keeping

ICDS provides treatment divergent from the ICAI AS which will necessitate assessees to keep separate records for tax purposes and for accounting purposes.

For instance:

ICDS IV on Revenue recognition mandates recognition of service revenue on Percentage of completions method ('POCM') whereas ICAI AS-9 gives option to follow either POCM or completed service method ('CSM'). Thus, the assesse who are following CSM would be required to maintain parallel memorandum records.

ICDS VI on Foreign exchange fluctuations requires gain/ loss on non-hedging forward contract for trading, speculation, firm commitments, highly probable forecast to be recognized on actual settlement basis vis-à-vis marked to market ('MTM') basis allowed by ICAI AS-11. This divergent treatment will necessitate assessees to keep separate records for computation of foreign exchange fluctuation gain/ loss for tax purposes and for accounting purposes. This will be a tedious task for big corporates who have substantial foreign transactions resulting in substantial incremental administrative and IT costs.

Further, there is scope for litigation on adequacy and sufficiency of memorandum records maintained solely for compliance with ICDS.

<u>Recommendation</u>

It is recommended that ICDS should be in harmony with ICAI AS to avoid multiplicity of record keeping.

1.7. Applicability from Financial Year ('FY') 2016-17

CBDT may consider deferring the applicability of ICDS from FY 2016-17 onwards to enable taxpayers to ensure sufficient compliance in light of clarifications/ guidance and disclosure format as proposed to be rolled out by the Government.

Alternatively, where ICDS is continued to be made applicable to FY 2015-16, it should be clarified that no interest liability will be imposed for deferment/ short payment of advance tax for FY 2015-16 on the limited issue of shortfall arising out of proper applicability of ICDS.

2. ICDS on Disclosure of Accounting Policy

2.1. Devoid of concept of materiality gives rise to difficulty in tracking the petty items which are immaterial in nature

By discarding the concept of 'materiality', ICDS has potential to create doubts and uncertainties in the minds of the taxpayers whether the Tax Department will insist on strict application of ICDS without having regard to quantum of income/expenditure involved. For example, whether the taxpayer is expected to capitalize cost of petty items of stationery like punching machine, calculators, etc. merely because they do qualify as 'Tangible Fixed Assets' under ICDS.

ICDS should as far as possible be formulated on the basis of accounting standards as are recognised for Companies Act purposes; making deviations only in exceptional circumstances which may be identified in consultation with expert accounting bodies like ICAI and National Financial Reporting Authority. For regulated entities like banks, financial institutions, etc., consultation with the Reserve Bank of India ('RBI') may also be made.

Further, in case of service providers such as professional consultancy firms, courier agency, etc. where there are contracts of small values and the volume of the transactions is high; it becomes difficult for the tax payer to recognize income on POCM basis for each and every petty services being offered.

Recommendation

Materiality threshold is fundamental to administration of any law or practice. The Income-tax Act itself sets materiality threshold in several provisions (eg. Turnover threshold limits for tax audit obligation, transaction value of Rs. 20 Cr for specified domestic transactions (Domestic TP), threshold limits for TDS, hierarchy of approvals for levying penalty, etc.). Similarly, the Tax Department also adopts materiality thresholds in various administrative areas like selection of cases for scrutiny, expeditious release of refunds less than Rs. 50,000, threshold limits for filing further appeals before High Court or Supreme Court, reference of cases to TPO for transfer pricing scrutiny, etc.

Considering that application of ICDS merely leads to timing difference of recognition of income/loss for tax purposes and there is no loss of revenue to the Government, the Assessing Officers should be directed not to making any adjustments on account of ICDS if the quantum of addition involved is less than Rs. 1 Crore. This will provide certainty to taxpayers that no addition on petty items will be made on account of ICDS.

Further, it is recommended in order to reduce hardship of service provider having small values, high volume transactions ICDS may provide a threshold limit wherein only those services that exceed the threshold limit in terms of its value would be required to recognize income on POCM basis.

2.2. ICDS may expressly clarify that as MTM loss is not to be recognized, MTM gains should also not be recognized unless warranted by any other ICDS

Para 4(ii) of ICDS provides that MTM loss or an expected loss shall not be recognized unless the recognition is in accordance with the provisions of any other ICDS.

Further, ICDS VI on foreign exchange fluctuations does not cover forex derivatives such as cross currency swaps, futures, interest rate swaps, etc. The committee had recommended that a separate ICDS would be formulated for the same but however no draft ICDS is issued till date. Thus, there is ambiguity whether the said forex derivatives would be governed by ICDS I, i.e. MTM loss on such forex derivatives is not to be recognized.

Recommendation

It is recommended that in order to maintain consistency and to avoid any confusion, ICDS should also provide that MTM profits or expected incomes shall also not be recognised unless warranted by any other ICDS.

Further, since the Committee had itself recognised the need for a separate ICDS dealing with forex derivatives, it is recommended to maintain a status quo till new ICDS is evolved instead of disturbing the current practice by disallowing MTM losses. More particularly, banks and financial institutions are mandated by RBI Guidelines to recognise gains/losses on forex derivatives as per accounting guidance prescribed by ICAI. There is no reason why such accounting practice should not be acceptable for tax purposes when Supreme Court in the case of Woodward Governor (I) Pvt. Ltd (312 ITR 254) has endorsed it. Hence, it may be clarified that forex derivatives not covered by ICDS VI will not be governed by ICDS I.

3. ICDS on Valuation of Inventories

3.1. Inventory of service providers

ICDS requires service providers to value their inventory and states that the cost of service in case of a service provider shall consist of labour and other cost of personnel. Further, there is a change in revenue recognition in ICDS IV which requires service providers to recognize revenue on a POCM basis. Both these, if effected together, will result in double counting and double taxation and hence inventory already taxed as work in progress under ICDS IV should not be included as part of inventory.

Further, for revenue model which are success fee based or milestone based, the Net realisable value ('NRV') would be NIL.

For service industry, the notion of inventory may not be apt since services are ordinarily consumed as they are delivered (eg. advisory services, transport or courier services, banking, etc.). They are neither held for sale in the ordinary course of business nor in the process of production for such sale or in the form of materials or supplies to be consumed in the production process. The value attributable to incomplete service is very difficult and complex to determine. For instance investment banking industry, where income/ revenue is success fee based or milestone based, the requirement to recognise the inventory poses a lot of practical difficulties. A logistic/courier company will find it extremely difficult to value the inventory of incomplete service as at year end based on distance covered by each parcel of cargo/courier as on 31st March en route to its final destination. Similarly a bank will face practical challenges in valuing inventory of loan applications/credit card applications, etc. in process as at 31st March. A telecom company which raises bills on monthly basis (say, on 21st of each month) will find it difficult to value the service provided for 10 days from 22nd March to 31st March. A consulting service provider will find it difficult to value the services provided but not billed as at year end since no value may be realisable from customer until work is completed till billing milestones are reached. These are merely to illustrate difficulties to be faced by all service providers across the entire spectrum of diverse service industries. Identifying inventory on per contract basis would practically cast a huge administrative burden to change the MIS, etc. and in all cases, there can never be a full proof methodology to measure the accuracy. In such cases, there is scope for litigation if Revenue authorities choose to adopt a different approach.

Recommendation

It is thus, recommended that ICDS II should specifically exclude inventory of services of entire service industry from applicability of valuation of inventory which is in line with ICAI AS/ IND AS.

Alternatively, ICDS should clarify the interplay between service revenue recognition and service inventory valuation. It should lay down specific rules and guidance for cases/ instances where revenue recognition is mandatory and instances which could be subject to inventory valuation. Please also refer to our recommendations under ICDS IV for recognition of revenue of service providers on POCM basis at para 5.3.

3.2. Clarification with respect to 'attributable overheads' as included in the definition of the Cost of services

ICDS defines that the cost of services in case of service provider shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and ***attributable overheads***. By its very nature, the costs which can be attributed to incomplete services as at year end are merely the direct costs. It would be practically impossible to allocate indirect overheads like office rent, electricity, maintenance charges, etc. over different service contracts on any reasonable/scientific basis in absence of any specific accounting guidance. Insistence on such requirement will create complexities and onerous compliance burden for taxpayers. There will be divergent practices between different taxpayers wherein allocation will be made on ad-hoc/arbitrary basis for the sake of compliance with ICDS II and this will give rise to uncertainty and litigation.

Recommendation

It is recommended that the requirement to include attributable overheads in service inventory should be omitted.

Alternatively, attributable overheads should be defined and illustrative lists should be provided in order to avoid any ambiguity while calculating the cost of services. Also, industry should be given some time of 2 to 3 years to implement MIS to capture such costs. Also, small taxpayers should be spared from such administrative burden of valuing service inventory.

4. ICDS on Construction Contract

4.1. Retention money as part of contract revenue

ICDS stresses the accrual concept when it states that contract revenue shall be recognized only when there is reasonable certainty of its ultimate collection. However, at the same time it also mentions to include retention money as part of contract revenue.

Retention money in many cases is contingent on the satisfaction of certain performance parameters.

Recommendation

It is recommended to clarify that retention money should be included in Contract Revenue only after the relevant performance criteria are satisfied and there is a reasonable certainty of it being received.

Clarification required in respect of implementation of Transitional provisions

The Committee had recommended insertion of transitional provisions in ICDS to avoid a situation of either double taxation of same income or escapement of income from taxation in pre and post ICDS regime. Accordingly, para 22 provides that contracts commenced prior to 1 April 2015 and not completed before that date shall be recognized as per ICDS III but 'after taking into account' revenues and costs already recognized prior to 1 April 2015.

Doubts arise in following illustrative situations:-

a. If a taxpayer following completed contract method had completed 60% of work prior to 1 April 2015 and completes additional 20% work during F.Y. 2015-16, is he required to recognize 80% of the profit/loss on the contract in F.Y. 2015-16 or only 20% (i.e profit/loss for work completed till 1 April 2015 to be recognized in year of completion)

b. If a taxpayer had already recognized foreseeable loss on entire contract prior to 1 April 2015 (as is permitted under ICAI AS-7), is he required to reverse such loss in F.Y. 2015-16 and recognize loss upto stage completed till 31 March 2016? For example, loss booked in prior years is Rs. 10 crores and contract reaches 60% completion till 31 March 2016, is loss of Rs. 4 Cr (representing loss on 40% unfinished work) required to be reversed in F.Y. 2015-16?

Recommendation

It is recommended that the contracts which have commenced prior to 1 April 2015 should be 'grandfathered'. ICDS III on Construction Contracts should be applied to new contracts commencing on or after 1 April 2015.

Alternatively, it should be clarified that recognition of profits in F,Y. 2015-16 should be based on work completed in F.Y. 2015-16 and foreseeable losses, if any, already recognised in past years are not required to be reversed in F.Y. 2015-16

5. ICDS on Revenue Recognition

5.1. Revenue recognition for interest and royalty revenue streams

While it is provided that revenue from sale of goods shall be recognized only if there is 'reasonable certainty of ultimate collection', similar condition is absent for interest and royalty revenue streams.

A conjoint reading of ICDS IV and newly inserted second proviso to section 36(1)(vii) creates an ambiguity whether a taxpayer is required to recognize interest income for tax purposes on time basis regardless of absence of reasonable certainty of ultimate collection and dehors well settled 'real income' theory.

Recommendation

It should be clarified that test of 'reasonable certainty of ultimate collection' applies not only to revenue from sale of goods but also to interest and royalty income to avoid any ambiguity. There should be no compulsion to recognize interest income which is doubtful of recovery.

One of the fundamental principle enunciated by various apex decisions is that of accrual of income or the 'real income theory" ie income accrues to a person when an irrevocable right to receive vests in the recipient. For example, if a loan given by the company is itself doubtful of recovery, the illusory interest thereon of which recovery is beyond hope cannot be brought to tax, year after year on ground of accrual. This is a well-settled concept in the commercial world and has been accepted at different times by RBI, CBDT, and concerned administrative authorities. Thus, it is recommended to clarify that ICDS will not override the existing jurisprudence and accordingly, interest income will be recognized on accrual basis.

5.2. Clarify scope of ICDS IV applicability to taxpayers having varied sources of income

It is clear that ICDS applies only to taxpayers following mercantile method of accounting and does not apply to taxpayers following cash method of accounting. Also, it is well settled that choice of method of accounting is qua each source of income. Further, method of accounting is not relevant to taxpayers (including non-residents) who are liable to tax on gross/presumptive basis either under the Act or under applicable treaty provisions. Also, it is possible that some taxpayers (including non-residents) having different sources of income may adopt mercantile method for certain sources and cash method for other sources and/or have incomes subject to tax on gross/presumptive basis. For example, a foreign company may have branch in India which maintains books on mercantile basis and it may also earn royalty/fees for technical service incomes which are unrelated to branch and liable to tax on gross basis under the Act/treaty. In such cases, ambiguity may arise on scope of applicability of ICDS IV to different streams of revenue.

Also, in case of non-resident service providers, because the charging provisions are synchronized with withholding provisions for payers, the whole of the income of non-resident taxpayers gets covered by TDS. We believe that ICDS is not meant to apply to such taxpayers and non-provision for exclusion in ICDS IV for such taxpayers is wholly unintended. Any erroneous application of POCM as per ICDS IV to service providers liable to tax on gross basis will create uncertainties for the taxpayers since it may be difficult to apply any of the three parameters (viz. cost, survey or physical completion) for determining the stage of completion of such services. There will also arise TDS mismatch between income as per POCM and income liable to withholding which will create more burden for both taxpayers and Tax Department.

Recommendation

It is recommended that it should be clarified that ICDS IV shall apply only to those sources of income which are computed on 'net' basis under the Act/treaty where taxpayer follows mercantile method of accounting. It should be clarified that ICDS IV shall not apply to sources of income which are liable to tax on gross/presumptive basis under the Act/treaty.

5.3. Revenue recognition for services revenues on POCM basis

- **Short duration services contract**

Blanket application of POCM to all service revenues irrespective of duration of service contracts has given rise to various difficulties and ambiguities on short duration services.

For example, for a courier company, issue arises whether 50% of courier charges should be recognized as revenue if courier has covered 50% distance as at midnight of 31st March. Similarly a bank will face practical challenges in unbilled revenue of loan applications/credit card applications, etc. in process as at 31st March. A consulting company will find it difficult to capture revenue of unbilled services as at 31st March where the fees are agreed on lump sum basis and are payable only on completion of the short duration assignment. It would be burdensome for the industry to track revenue of incomplete services as at 31 March every year.

In case of short duration services, most of the services get completed and recognized in the same year itself. Incomplete services as at year end also get completed soon thereafter. But this feature evens out across years since revenue recognized in early part of the year will include incomplete services as at beginning of the year.

We believe POCM is relevant for long duration contracts extending beyond a year where recognition as per Completed method vs. POCM can have significant impact on income. Strict insistence on application of POCM to short duration contracts is neither cost effective for taxpayers nor for Tax Department to verify the compliance.

Recommendation

POCM should be made mandatory only in cases of "qualified services" ie services which have a lead period of more than 12 months. Completed contract method should be permitted for short duration contracts.

This can be implemented by directing the Assessing Officers to examine compliance of POCM only for long duration contracts.

- **Challenges on applicability of POCM to various forms of long duration services contracts**

  There is lack of clarity on how POCM would have to be applied to various forms of long duration service contracts such as time and material, milestone based, success fee based, Annual maintenance contracts, retainership model etc. (consultancy, ad production, time sensitive deliveries).

  For example: In case of AMC contracts, the revenue is typically agreed with reference to a specified period (say 1 year). However, actual estimation of costs is difficult since the services rendered will largely depend on the number of visits/ calls by customers.

  Another example would be of a merchant banker who is entitled to receive service fees only on successful negotiation of deal. At the year end the fate of the deal is uncertain. The merchant banker record the expenses as and when incurred. However, revenue is booked only on successful completion of the deal. In such scenario there is lack of clarity whether the merchant banker is required to –

  - recognize revenue on POCM basis; or
  - postpone recognition of revenue till deal is concluded and recognize inventory of efforts made till year end; or
  - do not record anything as on 31 March as the NRV of the services is NIL.

  Similarly, there is practical difficulty in applying POCM in case of insurance agents who are entitled to commission on acceptance of proposal by insurance companies, advertising companies rendering comprehensive media planning and execution services entitled to revenue based on percentage of ad spend.

  Consulting service providers will also find it difficult to ascertain the revenue potential of unbilled work as at year end. The service provider can expect revenue only if the work is completed till billing milestone agreed with the client.

  In this regard, it may also be noted that almost all services are liable to service tax. Under service tax law, there is compulsion to raise invoice within a short period of time (30 days). This automatically ensures that such revenue is also offered to income tax. Application of separate POCM method and service inventory valuation for income tax will create duplicity of records and potential for litigation in both income tax & service tax.

  <u>**Recommendation**</u>

  It is recommended to clarify the applicability of POCM in such cases and the manner in which POCM method should be applied through proper illustrations. Alternatively, it should be clarified that the revenue recognized under service tax is acceptable under POCM for ICDS purposes and no further requirement for valuation of inventory should apply.

- **Application of method for determining stage of completion should be at taxpayer's option**

  ICAI AS-7 provides flexibility to adopt any method for determining stage of completion that measures reliably the work performed.

  In contrast, ICDS restricts the choice to following three methods for determining stage of completion:

  - proportion of contract costs incurred for work performed upto the reporting date bear to the estimated total contract costs; or
  - surveys of work performed; or
  - completion of a physical proportion of the contract work.

  The choice of method from the above referred three methods should be left to the taxpayer which in his judgement is more appropriate to his circumstances. Choice made by the taxpayer should be respected by the Tax Authority. Else, it will lead to uncertainty and litigation.

Recommendation

It should be clarified that taxpayer is free to choose the method of determining stage of completion from three alternatives provided in ICDS III and such choice will be binding on the Tax Authority.

- **Adoption of criteria other than cost for determining stage of completion.**

  ICDS prescribes following three modes for computation of the stage of completion:

  - proportion of contract costs incurred for work performed upto the reporting date bear to the estimated total contract costs; or
  - surveys of work performed; or
  - completion of a physical proportion of the contract work.

  However, the above mentioned basis for computation of the stage of completion might not be practical for certain industries which have multiple small value transactions and high volume eg. courier.

  Recommendation

  Thus, it is recommended that guidance is issued with respect to the basis that should be considered for computing stage of completion in case of "small value, high volume" transactions with proper illustrations.

  Further, with respect to service industry where cost is not a benchmark of stage of completion, it is recommended to clarify that other alternative benchmark can be used for computing stage of completion. For example – 'time' in case of AMC contracts which are typically entered into with reference to a period, 'milestone' basis in case of software development companies where revenue is linked to achievement of milestones.

  ICDS may accept such alternative basis of calculation of stage of completion where the 3 specified methods are not practically applicable.

- **Other practical challenges**

  As POCM is mandatorily required to be followed for recognition of service revenue, it may lead to accelerated recognition of income which is not yet billable and the payer may not have booked the corresponding expense and deposited taxes. Thus, it will lead to additional burden on the tax payer in reconciling revenues offered in the computation of income vis-à-vis that reflected in Form 26AS. Consequently, there will also be challenges in claiming credit of TDS which is not reflecting in Form 26AS of relevant assessment year.

  This is another reason why it should be clarified that compliance of POCM will be verified for long duration contracts only.

5.4. Non-applicability of ICDS on revenue recognition for Real estate developers, BOT projects and for lease income

Since there is no specific scope exclusion for Real estate development activity and BOT projects from ICDS IV on Revenue Recognition, there is ambiguity on how ICDS III and IV should be applied by real estate developers and BOT operators. Also, there is no specific exclusions for lease income in ICDS IV. In this regard, it is significant to note the ICDS Committee itself had recommended that separate ICDS should be notified for real estate development activity, BOT projects and Leases. A draft ICDS on Leases was also published for public comments but not finally notified.

Recommendation

Given that CBDT Committee had recommended formulation of separate ICDS for these revenue streams, it is recommended to clarify that these revenue stream are excluded from applicability of ICDS IV and they shall be governed by existing tax practice till specific ICDS is notified.

6. ICDS on Tangible Fixed Assets

6.1. Write off of expenditure incurred between trial run and commercial production

ICDS states that expenditure incurred on start-up and commissioning of the project, including the expenditure incurred on test runs and experimental production, shall be capitalized and also states that the expenditure incurred after the plant has begun commercial production, i.e., production intended for sale or captive consumption, shall be treated as revenue expenditure. However, ICDS is silent in case of expenses incurred between the period when trial run is commenced but commercial production has not begun.

ICAI AS-10 provides option to treat the same either as deferred revenue expenditure to be spread over 3 to 5 years or as revenue expenditure to be fully written off in the year of incurrence. The absence of similar provision in ICDS V gives rise to ambiguity on tax treatment of such expenses and potential for litigation.

Recommendation

Since the Act does not recognize the concept of Deferred Revenue Expenditure, it is recommended to clarify that the post-trial run expenditure should be written off in full in year of incurrence by inserting specific para in ICDS V.

7. ICDS on the Effects of Changes in Foreign Exchange Rates

7.1. Recognition of exchange fluctuation on firm commitment/ highly probable transactions on actual realization

As per the guidance issued by ICAI, marked to market losses on forward exchange contracts for firm commitments or highly probable forecast transactions is recognised in the statement of profit and loss whereas ICDS requires such losses to be deferred and allows a deduction only at the time of settlement.

The treatment proposed by ICDS conflicts with ratio of Supreme Court ruling in the case of CIT v. Woodward Governor India P. Ltd (312 ITR 254) which has upheld that where taxpayer follows mercantile method of accounting, exchange fluctuation difference on revenue account should be recognized for tax purposes on marked-to-market basis consistent with the generally accepted accounting standards.

Further, having an ICDS which will be widely divergent from the Accounting Standards will necessitate assessees to keep separate records for computation of foreign exchange fluctuation gain/ loss for tax purposes and for accounting purposes. This will be a tedious task for big corporate who have substantial foreign transactions resulting in substantial incremental administrative and IT costs. This will act as deterrence for corporate to do foreign transactions, which will reduce the global competitiveness and act as an impediment in the growth of our manufacturing and services sector

ICDS should permit recognition of exchange fluctuation on MTM basis in line with ratio of Supreme Court ruling

Recommendation

It is, therefore, recommended that, to avoid scope for litigation and compliance cost for maintaining dual records, the ICDS should align with judicially settled position under the Act and recognize such differences on MTM basis.

7.2. Non-recognition of MTM loss for banks and financial institutions

ICDS VI denies the allowability of MTM loss on certain specific derivative contracts which are executed for trading purposes. Typically, all derivative contracts entered into by banks as a service to their constituents are for trading purposes and thus, MTM loss cannot be claimed by them for contracts covered under ICDS VI.

Further, MTM loss on other derivative contracts which are not covered by ICDS VI and thus, may fall under ICDS I, can also not be claimed on account of modification in the concept of prudence under ICDS I (which denies deduction for MTM loss).

The above modification raises significant issues as discussed below:

Investments and writing derivative instruments such as Over-the-counter (OTC) derivatives is one of the core business activities for banks. Banks also offer various derivative products to its customers enabling them to hedge their risks. In such cases, Banks sells and purchases derivative products from customers (1st transaction) and make counter transaction in the inter-bank market (2nd transaction) to mitigate risk. Therefore, if Banks loses in first transaction of purchases/sale of derivative from customers the loss get cover in second transaction and vice versa. Net impact of all these transaction is thin margin and fees which Banks earns.

Accounting and revenue recognition in respect of most incomes stream of banks, particularly in case of MTM gains and losses is already governed by relevant guidelines of the Reserve Bank of India ('RBI'). Thus, the accounting practices followed by banks are already regulated, standardized and are already being consistently followed by Banking and Financial companies.

It may be mentioned that recognition on MTM vs. actual settlement is merely a timing difference and there is no loss of revenue to the Government.

Recommendation

For sake of consistency, it is recommended that banks and other financial institutions should be allowed to continue the same policy for tax purposes which they currently follow as per RBI guidelines (i.e. allow the claim for MTM losses and they would continue to offer MTM gains).

7.3. Transitional provision for MTM gain/loss recognized till 31 March 2015

Based on the reading of the transitional provisions of ICDS I and ICDS VI, it appears that the MTM gain/ loss already recognized till 31 March 2015, should be considered in the year in which a particular contract is settled (and till then all the MTM losses/ gains provided in the books post 1 April 2015 should be ignored).

Banks enter into long term derivative contracts for a period which may go up to 5 to 10 years also. Considering the volume of transactions, reconciliation of the MTM gain/loss recognized till 31 March 2015 with the realized gains/loss on settlement (up to 10 years) would practically cast a huge administrative burden on banks. This will of course not yield any additional revenue to Government, as it's merely a timing difference.

In addition, the aforesaid issue becomes more complex in case of contracts such as Interest Rate Swaps ('IRS')/ Cross Currency Interest Swaps ('CCIS'), where cash flows are exchanged in interval over the life of the contract as explained below:

In the context of IRS (or CCIRS), the MTM gain/ loss is recognized/ determined based on the present value of future cash flows considering the interest rate differential on the day on which MTM valuation is undertaken.

To illustrate, let us assume that a bank entered into an IRS on 28 March 2015 (say 3 years contract) for fixed vs floating interest rate liability of a customer. On 31 March 2015, based on interest rate differential as on that date, the bank provides for MTM gain on IRS, the present value of which say is Rs 3,000 and offer it to tax in Assessment Year 2015-2016.

Under IRS contract, after every 6 months, the bank/ customer has to exchange the interest rate differential for 6 months (say Rs 400 to be paid by the customer to the bank) depending on the interest rate differential on the expiry of 6 months (say starting from 30 September 2015). Subsequently, the MTM loss/ gain is again provided in the books by discounting the remaining coupons for the balance tenure of the contract in present value terms (based on the interest rate differential at the beginning of 7th month and so on.

Given that after every 6 months the interest rate differentials are exchanged, can such exchange be regarded as part settlement of IRS contract (though the whole contract expires at the end of 3 years)? If yes, considering the transitional provisions, questions also arise upto what extent the MTM gain recognized on 31 March 2015 would be required to be adjusted i.e. whether partly or fully.

<u>Recommendation</u>

It is recommended to clarify the treatment on MTM losses/ gains already recognized till 31 March 2015 while giving effect to the transitional provisions of ICDS I and VI.

7.4. Tax treatment of exchange fluctuation loss on borrowings for acquisition of local assets (from India)

The exchange difference relating to acquisition of a foreign asset is adjusted to the cost of asset at the time of payment as per Section 43A of the Act. ICDS permits exchange loss on monetary items to be recognized as an expense and exchange gain as income.

'Monetary items' are money held and assets to be received or liabilities to be paid in fixed or determinable amounts of money, e.g. receivables, payables. However, it has not specifically clarified that exchange fluctuation loss on borrowings for acquisition of local assets (from India) is allowable as revenue expenditure.

<u>Recommendation</u>

It is recommended to clarify that exchange fluctuation loss on borrowings for acquisition of local assets (from India) is allowable as revenue expenditure.

7.5. Upfront recognition of exchange fluctuation on non-integral foreign operations instead of accumulation in Foreign Currency Translation Reserve

The Indian head office/branches are required to settle foreign currency payables/receivable in INR which impacts immediate or future cash flow and hence ICAI AS-11 requires them to be recognized in P&L on MTM basis.

As against that, ICAI AS-11 provides that exchanges differences arising on translation of the financial statements of non-integral foreign operations (like foreign branches of banks etc.) should be accumulated in a foreign currency translation reserve in the balance sheet until the disposal of net investment. These exchange differences are not recognised as income or expenses for the period because, as explained at para 26 of ICAI AS-11, the changes in the exchange rates have little or no direct effect on the present and future cash flows from operations of either the non-integral foreign operation or the reporting enterprise. Since, all the transactions at the foreign branch are executed in foreign currency and there is ordinarily no occasion to convert the same into INR, the translation difference in terms of INR at year end merely represents a notional value. Nevertheless, the year eand profit at the branch which is available for remittance is certainly accounted on the basis of Rule 115 rate. Hence ICAI AS-11 requires the enterprise to park such difference in a reserve in the balance sheet known as Foreign Currency Translation Reserve (FCTR). The cumulative difference is brought into the P&L on disposal of the foreign branch at which point of time the exchange difference is actually realized.

However, para 9(1)(c) of new ICDS mentions that such exchange differences should be recognized as income or as expense on year on year basis. It was explained The Committee has explained that this deviation to be justified for the reason that the Act does not recognize distinction between integral and non-integral foreign operations. It seems that the wisdom behind a provision in Global Accounting Standards has not been evaluated.

Application of ICDS to foreign branches of Indian Banks will cause taxing of notional income and recognizing such notional translation differences as income/expense shall additionally impact the tax outgo.

Further, considering the volume of transactions forex transactions, quantification of MTM would practically cast a huge administrative burden on banks.

Also, ambiguity arises on opening balance of FCTR balance as on 1 April 2015. As per one reading of transitional provisions of para 12(3) of ICDS VI the entirety of such balance will come up for taxation in F.Y. 2015-16 if not offered to tax earlier. This is likely to create a huge burden on all banks (including public sector banks) which will cripple the working capital of the banks. We believe this is wholly unintended. Since the transitional provision is meant to protect the interests of revenue and taxpayers from unintended consequences of escapement of income/double taxation of income, the opening balance should get taxed as and when it is realized and credited to P&L.

Recommendation

It is recommended that ICDS should be aligned with ICAI AS–11 and accumulation of the exchange differences arising on translation of the financial statements of non-integral foreign operations in a foreign currency translation reserve in the balance sheet should be allowed until the disposal of net investment in such foreign operations. The upfront recognition of exchange fluctuation differences on non-integral foreign operations should be done away.

Since upfront recognition of exchange fluctuation differences on non-integral foreign operations would cause significant hardships and compliance burden for banks, it is recommended that an exception should be carved out for scheduled commercial banks from this requirement.

Further, it should be clarified that the opening balance of FCTR as on 1 April 2015 will be taxed as and when it is realized and credited to P&L

8. ICDS on Government grants

8.1. Treatment of exemption from statutory levies and/or concession by way of interest free loans

Assistance from Government is received in diverse forms including by way of exemption from statutory levies like stamp duty for land, VAT on sales, etc and/or by way of interest-free loan.

The newly inserted clause (xviii) to 'income' definition u/s.2(24) appears to capture this as income. Also, ICDS VII requires recognition thereof over the periods necessary to match them with related costs.

However, there is no clarity on subsequent treatment of corresponding higher cost.

Following are couple of illustrations which highlight difficulties which taxpayers may face :-

An industrial promotion scheme of state Government may exempt stamp duty on purchase of land for constructing new factory. While stamp duty exemption on factory land may be treated as income u/s.2(24)(xviii), there is no provision to step up the land cost by the corresponding amount taxed as income. Capital gains provisions does not explicitly recognize stamp duty exemption as 'cost of acquisition' on lines of provisions like s.49(4), 49(2AA), etc. Also, ICDS is not applicable to capital gains computation. Hence, it is possible that the taxpayer may end up paying tax twice over viz. first, as business income u/s. 2(24)(xviii) read with ICDS VII and subsequently as capital gains on sale of land. Further, treatment of stamp duty exemption as income u/s. 2(24)(xviii), though being capital nature, is against the principle enshrined under capital gains taxation.

Similar challenge arises in case of waiver or concessional duty levy on expenses such power or water charges, etc. While s.2(24)(xviii) read with ICDS VII captures the waiver/concession as income leading to taxation of notional income, there is no corresponding provision to allow corresponding deduction for higher power or water charges attributable to notional income. For example, if power cost with duty exemption is Rs. 100 and notional duty exemption taxed u/s. 2(24)(xviii) is Rs. 10, there is no provision to allow deduction of power cost at Rs. 110. This leads to a situation of double taxation since Rs. 10 is taxed separately as income but power cost is not consequently stepped up. Incidentally, if the taxpayer were to pay full cost of Rs. 110 and then receive Rs.10 back from the Government, his effective cost is reduced to Rs. 100. But if he is granted exemption from payment of Rs. 10, his income is increased by Rs.10 without stepping up cost to Rs.110. This leads to anomaly between assistance by way of 'refund' v/s. assistance by way of 'exemption'.

Prior to ICDS, the lower land cost or power cost recognized in books would have subsumed the benefit of exemption/concession since the income would be higher to that extent.

The treatment of assistance from government by way of exemption/concession as is presently worded will be prone to litigation on account of potential of double taxation.

Recommendation

Thus, to avoid double taxation and potential for litigation, it should be clarified that government assistance in the form of exemption or concession is not required to be separately recognized as income if cost is already recognized net of such assistance. It may be clarified that grants which are actually received by the taxpayer in the form of cash or non-monetary assets alone are covered within the scope of ICDS VII.

8.2. Clarity required on transitional provisions relating to capital subsidies

Prior to insertion of s. 2(24)(xviii) and notification of ICDS, it was well settled that capital subsidies which are not related to assets but granted with a view to encourage industry to move to backward area and/or generate employment are not taxable. As per ICAI AS-12, capital subsidies related to non-depreciable assets or grants in the nature of promoters' contribution can be credited to capital reserve.

The insertion of s. 2(24)(xviii) and ICDS VII has dramatically changed the law and made all such subsidies taxable as income. ICDS VII requires such subsidy to be recognized as deferred income over the period required to match with related costs. ICDS VII also requires subsidies relating to non-depreciable assets (like land) to be treated as deferred income.

The transitional provisions require application of ICDS VII 'after taking into account' grants already recognized in earlier years. This raises ambiguity where taxpayer has partially availed capital subsidy prior to 31 March 2015 and expects to avail the balance post 31 March 2015. For example, if out of total capital subsidy entitlement of Rs. 10 Cr, Rs. 6 Cr is credited to capital reserve till 31 March 2015 and recognition of balance Rs. 4 Cr is deferred pending satisfaction of related conditions and achieving reasonable certainty of receipt, whether entire amount of Rs. 4 Cr will be taxed in F.Y. 2015-16 considering that being a capital subsidy there are no related revenue costs against which they can be matched.

What if full amount of Rs. 10 Cr was received in past against bank guarantee but part thereof (i.e Rs. 4 Cr) is yet to be recognized in books in capital reserve as per ICAI AS-12 as on 1 April 2015. Para 4(2) of ICDS VII states that recognition of grant shall not be postponed beyond the actual date of receipt. Whether such unrecognized amount of Rs. 4 Cr will be taxed fully in F.Y. 2015-16?

Recommendation

It should be clarified there shall be no upfront taxation in F.Y. 2015-16 of capital subsidies which are partially recognized prior to 1 April 2015 and partially recognized post 1 April 2015. Further, there should be 'grandfathering' for grants which were claimed prior to 1 April 2015 but are received/ reasonably certain to be received post that date.

9. ICDS on Securities

9.1. Bucket approach by NBFCs and other financial institutions for valuation of securities held as stock in trade

Trading in securities is one of the important aspects of business for both banks and Non-Banking Financial Companies ('NBFCs') and the volumes involved are very large. This activity is heavily regulated by regulators such as RBI and SEBI. Further, valuation and recognition of revenue is also governed by specific guidelines in this regard. In view of this, revaluing securities as per this ICDS is not desirable. Valuation norms which are acceptable to RBI/SEBI and consistent with globally accepted practices should be acceptable for tax purposes also. Further, separate valuation for tax purposes would practically cast a huge administrative burden on banks and NBFCs. This will of course not yield any additional revenue to Government, as it's merely a timing difference. Banks, Mutual funds, Venture capital funds and Public Financial Institutions are already exempted from ICDS on securities vide para 2(c). However, NBFCs carrying similar business are not exempted under ICDS.

Recommendation

It is recommended that an exception should be carved out in the ICDS for RBI licensed NBFCs) from applicability of the said ICDS on securities.

10. ICDS on Borrowing Costs

10.1. Applicability to banks or financial institutions

Applying ICDS IX to a bank or financial institution (engaged in the business of lending) purely defeats the purpose as these institutions do not borrow funds for financing their assets but for their ordinary business of money lending. For these institutions, all monies are fungible and practically it is impossible to conclude which funds are utilised for which specific purpose (except where the borrowing agreement specifically provide for).

Recommendation

It is recommended to exclude banks and financial institution from scope of ICDS IX.

10.2. Issue – Definition of 'qualifying asset'

The current definition of "qualifying asset" given in Para 2(1)(b) of ICDS has a very broad scope. This definition is substantially different from relevant AS prescribed by ICAI. If this definition were to be applied, it would result in absurd result of borrowing costs relating to all assets in the fixed asset schedule being considered for capitalization, whereas ICAI AS-16/IND AS-23 prescribed treatment is to capitalise interest only on those assets which require a substantial period of time (i.e. twelve months) to make ready for intended use. . Hence, it is suggested that the definition of "qualifying asset" as given under ICDS should be aligned with the definition of "qualifying asset" given under Para 3.2 of ICAI AS-16 issued by ICAI. By ignoring the time duration for making asset ready for use, ICDS unnecessarily leads to deferment of recognition of period cost and compels the taxpayer to value the assets for tax purposes at higher than real commercial cost.

Recommendation

The definition of qualifying asset should be aligned with the definition of "qualifying asset" given under Para 3.2 of ICAI AS-16 and substituted as follows:

"a qualifying asset is an asset that necessarily takes a period of twelve months or more to get ready for its intended use or sale".

Alternatively, it should be explicitly clarified that interest expense incurred by a running business on acquisition of fixed asset which does not take more than 12 months to get ready for intended use, or, interest expense on acquisition of inventory is not required to be capitalized for the purpose of tax assessments. Capitalization under ICDS may be mandated merely with reference to interest cost incurred in relation to acquisition of fixed asset which necessarily take more than 12 months to get ready for intended use.

10.3. Mismatch of capitalization formula between ICAI AS-16 and ICDS

ICAI AS-16 requires borrowings costs of general purpose borrowings to be capitalised using a capitalisation rate. ICDS prescribes an allocation method for computing borrowing costs of general purpose borrowing which can be capitalised. This will result in difference in amount which can be capitalized for books and tax purposes leading to additional compliance burden for taxpayers.

There is significant ambiguity on how general borrowing cost should be capitalised as per requirements of para 6, 7 & 8 of ICDS IX. Para 6 provides an ad-hoc capitalisation formula which does not consider the time duration of installation of asset.

To illustrate, it is not clear whether quantum of capitalisation will differ for an asset which takes only one day for installation as compared to an asset which takes 10 months for installation. The ad-hoc formula in para 6 results in capitalisation of same amount of interest for both types of assets. For instance – Say the general borrowing cost for the financial year is Rs. 100, the average total qualifying asset construction of which took only 1 month amounts to Rs. 1000 and the average total assets as per Balance sheet is 10,000. In such a case, as per the prescribed formula, the interest amount to be capitalised would be Rs. 10. Thus, the issue that exists is that as per ICDS capitalisation of interest cost is triggered for the entire year irrespective of whether the asset remains under construction for 1 month or 10 months.

It is not clear whether ad-hoc formula provided in para 6 should be further modified to factor in the commencement and terminal dates of capitalisation provided in paras 7 & 8 and if yes, whether the capitalisation should be done on asset-by-asset basis or 'block of asset' basis.

Excessive capitalization of interest does not add any value to the asset and distorts the actual profit/loss earned by the taxpayer

Recommendation

Since there is material departure from methodology of capitalisation as per ICAI AS-16, CBDT should provide guidance with the help of illustrations on how general borrowing cost should be capitalised under ICDS IX

10.4. Nexus between borrowed funds utilized towards qualifying assets

To the extent the funds are borrowed generally and utilised for the purposes of acquisition, construction or production of a qualifying asset, the interest is to be capitalized as per the prescribed formula. Accordingly, one would be required to prove the nexus between the funds borrowed and utilised for the purposes of acquisition, construction or production of a qualifying asset. The same could lead to disputes similar to that in section 14A.

Recommendation

It should be clarified that where taxpayer can demonstrate that qualifying asset is not funded from any specific borrowed funds there shall be no capitalization of interest on such asset and that the taxpayer can rely on judicially recognized principles for this purpose.

10.5. Treatment of borrowing costs on specific borrowings which are pending utilization

Under ICAI AS-16, if borrowed funds are temporarily invested pending utilization for specific purpose, the income earned from temporary investment can be reduced from borrowing cost. This is not permitted under ICDS IX. Hence, ambiguity arises how the borrowing costs incurred during this period should be treated when no expenditure is incurred on related asset.

Recommendation

Since paras 7(a) and 8(a) of ICDS IX provide that capitalization should commence from date of borrowing and terminate with date of first use of the asset which period can spread across two or more financial years, it should be clarified that interest costs incurred on borrowed funds which are pending utilization shall be carried over to future year and capitalized on pro-rata basis to the assets for which they were borrowed. For example, if out of total borrowing of Rs. 100 Cr, Rs. 75 Cr is not utilized till end of year, the borrowing cost on Rs. 75 Cr can be carried forward and capitalized as and when it is actually utilized. In this regard, the return form / tax audit form should enable disclosure of such carried over borrowing costs like disclosure requirement which presently exists for carried forward losses.

10.6. Borrowing costs disallowed under specific provisions not to be considered for capitalization

There are specific provisions in the Act/Rules under which a portion of borrowing cost may get disallowed like s.14A, 43B, 40(a)(i), 40(a)(ia), 40A(2)(b), etc

It is not clear whether the borrowing costs to be capitalized under ICDS IX should be after excluding portion which gets disallowed under such specific provisions..

Recommendation

Since specific provisions of the Act override ICDS, it should be clarified that borrowing costs to be considered for capitalization under ICDS IX shall exclude costs which are disallowed under specific provisions of the Act.

11. ICDS on Provisions, Contingent Liabilities and Contingent Assets

11.1. Ambiguous test of 'reasonable certainty' for recognition of 'provision' and 'contingent asset'

ICDS provides that provisions and contingent assets should be recognized if they meet the criteria of 'reasonably certain' whereas ICAI AS-29 prescribes the criteria of 'probable' ((i.e. more likely than not) for provisions and 'virtually certain' for contingent assets. The Committee has justified this to bring parity between recognition of income and expense. However, the term 'reasonably certain' is not defined which creates ambiguity for taxpayers on distinction sought to be drawn as compared to ICAI AS-29. The lower threshold may have the ill of enterprises facing tax demands without wherewithal of cash inflow.

Recommendation

The undefined scope of 'reasonably certain' is likely to result subjective interpretation by the Tax Department in the interests of revenue collection leading litigation between taxpayers and Tax Department which will defeat the object of ICDS to provide certainty and reduce litigation. It is recommended to clarify on the scope of 'reasonable certainty' as compared to the current threshold of 'probable' for provisions and 'virtually certain' for contingent assets with the help of illustrative examples. Such examples should also illustrate how the transitional provisions will be applied for past contingent assets which were hitherto not recognised in books in view of 'virtual certainty' criteria but are liable to be recognised on ‘reasonably certain’ criteria which may have been met in past years itself. There should be appropriate ‘grandfathering’ for past contingent assets which may be continued to be recognised on ‘virtual certainty’ basis. The new test of ‘reasonably certain’ should be applied to new contingent assets arising on or after 1 April 2015.

11.2. Exclusion of post-retirement employee benefits like pension and medical benefits from ICDS X

The ICDS Committee had acknowledged that most post-retirement benefits like provident fund, gratuity, etc. are covered by specific provisions. The Committee has also recommended amendment in the Act to deal with deduction for pension liability. There are other post-retirement benefits offered by companies like medical benefits. Such benefits are covered by ICAI AS-15 for which no parallel ICDS has been notified.

In absence of specific exclusion of such items from scope of ICDS X, ambiguity arises whether ICDS X can apply to such benefits and whether provision for such liabilities (without discounting for present value) will be allowable under ICDS X.

Recommendation

To avoid any unintended confusion/litigation, it should be clarified that provisioning for post retirement benefits are outside the scope of ICDS X and shall continue to be governed by current tax practice.

11.3. No taxation of statutory interest ahead of grant of refund

It is possible that taxpayers are entitled to refunds from statutory authorities like income tax refunds, excise duty/service tax or customs refund but the refunds are yet to be released to the taxpayers by the respective Department. In Income tax, it is common grievance of taxpayers that refunds are not released expeditiously and even when they are released there are other issues such as:

- refund is received without interest;

- there is delay in receipt of interest on refund received; or

- the amount of interest received is less than the actual amount receivable on account of non-computation of interest upto the date of actual grant of refund, etc.

Hitherto, ICAI AS-29 permitted recognition of interest income on such refunds when they are actually received based on ‘virtually certain’ criteria since the refunds could be regarded as virtually certain only when they are actually granted. With lowering of threshold of recognition of contingent assets as per ICDS X to ‘reasonably certain’, ambiguity may arise whether taxpayers will be required to recognize interest on such refunds ahead of their actual receipt. Any such view will cause double jeopardy to taxpayers. They will be required to pay tax even though the refunds are inordinately delayed by the statutory authority. It would be ironical for the Assessing Officer not to release income tax refund but seek to tax the assessee on the interest income thereon.

Recommendation

It should be clarified that interest income on statutory refunds needs to be recognized as per ICDS X on actual receipt from statutory authority.

12. Other Practical Challenges

Deviations/carve outs made by ICDS to ICAI AS result in two distinct impact for the taxpayers viz. (a) incomes are recognized ahead of recognition in books or (b) losses are not allowed in the year of recognition in books but in subsequent years.

Instances of first category where incomes are recognized ahead of book recognition are taxation of government grants on receipt basis (even though they may not have ‘accrued’ as per ICAI AS-12), taxation of service income on POCM basis even though they are recognized as per Completed service method in books, taxation of gains recognized in FCTR in balance sheet, taxation of contingent assets on ‘reasonable certainty’ basis (as compared to ‘virtual certainty’ in books), etc. The insertion of second proviso to s.36(1)(iii) with a view to allow bad debt loss without write off in books is a statutory acknowledgement of possibility of taxation as per normal provision preceding MAT taxation based on book profit. It is quite possible that a taxpayer may normal tax in Year 1 and MAT in Year 2 on same income. This would clearly lead to ‘double taxation’ of same income.

Instances of second category where losses are deferred for tax purposes are disallowance of MTM losses, non-recognition of foreseeable losses on construction contracts, capitalization of borrowing costs debited to P&L in books, etc. In this case, loss will be recognized in books in Year 1 resulting in normal taxation but allowed for normal tax purposes in Year 2 resulting in MAT taxation as per book profit.

MAT credit is permitted to be set off against future normal tax liability but normal tax paid is not permitted to be set off against future MAT liability. This results in significant hardship for taxpayers.

Recommendation

Since it is well settled that there can be no ‘double taxation’ of same income, it should be clarified that income taxed as per ICDS will not taxed in subsequent years under MAT. Also the Committee should make suitable recommendation to Government to evolve a mechanism to enable set off normal tax paid under ICDS against future MAT liability.
