



PUNE TAX CONFERENCE
ORGANISED BY PUNE BRANCH OF WIRC OF ICAI
JOINTLY WITH PUNE CITY, PUNE CENTRAL AND
SARASBAUG CPE STUDY CIRCLES

Recent Developments in Real Estate Laws & Taxation

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13 July 2019

Agenda

- 1 **Joint Development Arrangements**

- 2 **Redevelopment Projects and Slum Redevelopment Projects**

- 3 **Valuation of Immovable Property**

- 4 **Income from House Property Vs. Profits and Gains from Business and Profession**

- 5 **Taxation of Notional Income**

- 6 **Section 45(2) & Section 28(via)**

- 7 **POCM Vs. PCM**

- 8 **Budget 2019 Proposals**

- 9 **Tax Impact of RERA**

- 10 **Section 14A**

Joint Development Arrangements

Joint Development Mechanism

Upfront consideration



Enters into development agreement

% share in revenue

% share in revenue

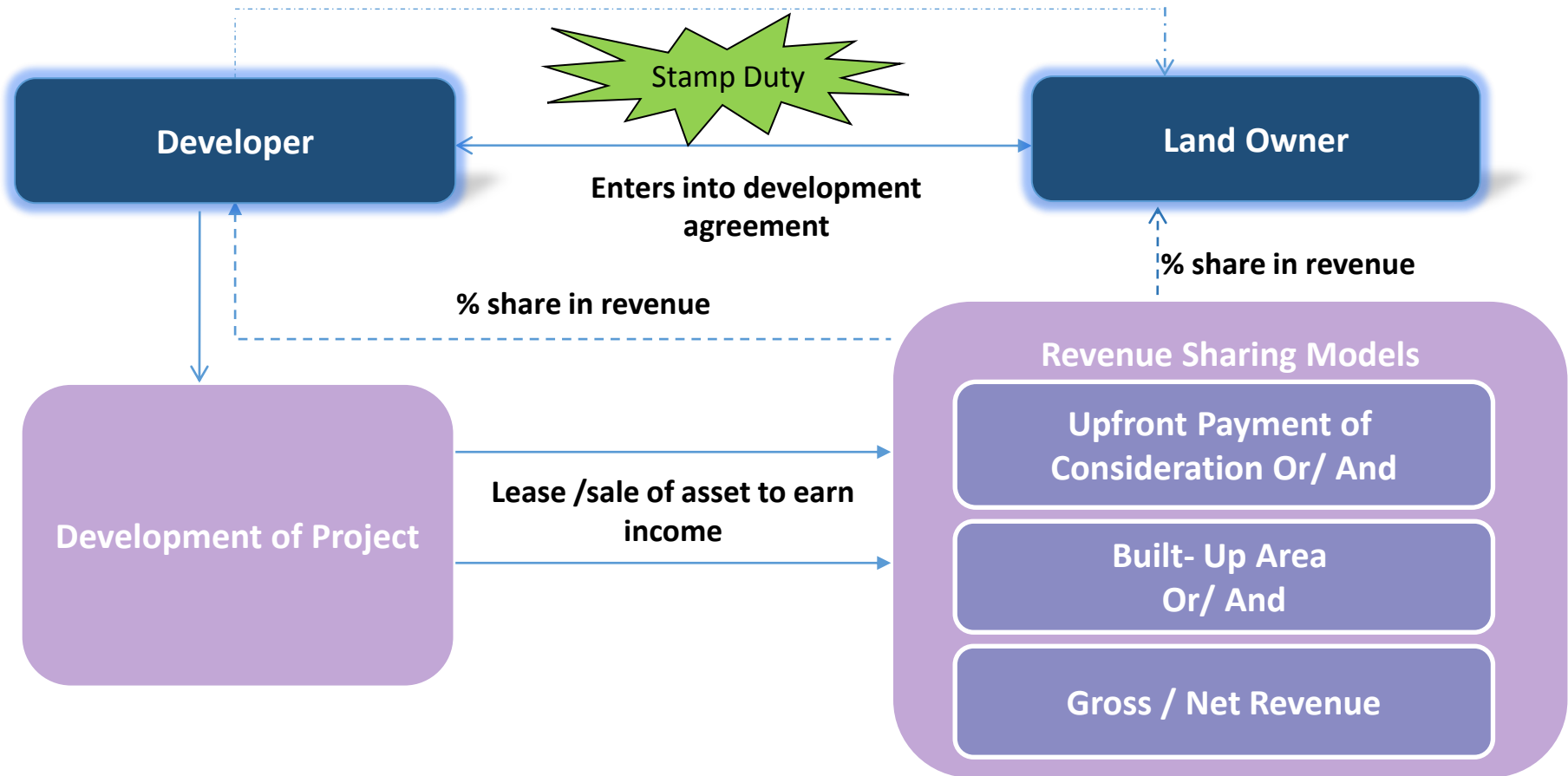
Lease /sale of asset to earn income

Revenue Sharing Models

Upfront Payment of Consideration Or/ And

Built- Up Area Or/ And

Gross / Net Revenue

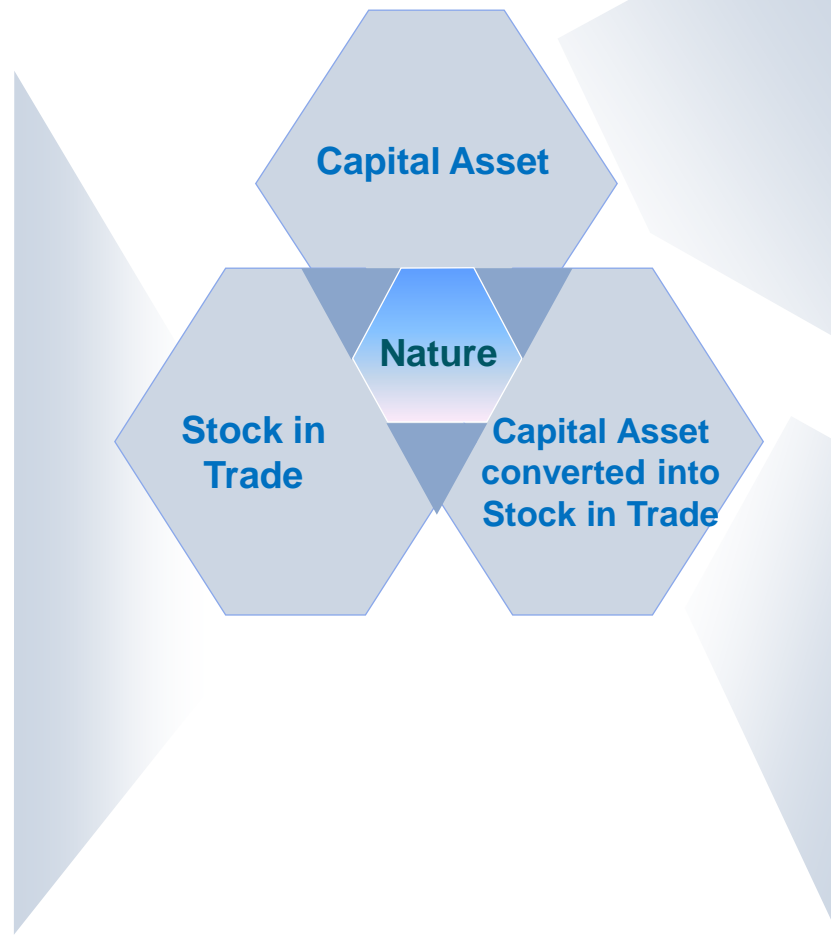


Nature of Asset

Taxability on entering into JDA will depend upon the nature of asset held by the land owner ...

Business Income

- Accounting Policy - Revised Guidance Note 2012 vs. Ind AS 115
- Conveyance Theory vs. Possession Theory
- Impact of Section 2(47)(v) and section 43CA of the Act
- Legal Implications – TOPA
- Accounting Policy vs. Accrual Income Theory (as per tax laws)`



Capital Gains

- Section 45 – Chargeable in the year of transfer of capital asset
- Point of Taxability – Section 2(47)(v) of the Act read with section 53A of the TOPA
- Transfer of Possession and satisfaction of other conditions

Capital Gains and Business Income

- Section 45(2) - Taxable in the year of sale or transfer of the stock in trade
- Capital Gains – FMV (-) COA
- Business Income – Sale consideration (-) FMV

Tax Controversies- JDA

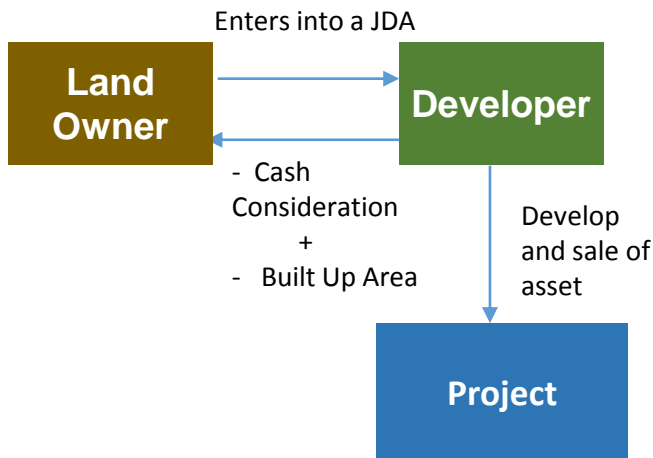
Taxability of Income in the case of JDA

- *Taxability in the hands of land owning company – asset held as capital asset of stock in trade*
- *Area Sharing vs Revenue Sharing arrangements*
- *Deductibility of various payment by the Developer to land owner*
- *AOP issues*
- *Stamp Duty and GST issues*

Taxability under JDA in the hands of Land Owner

Entering into JDA will trigger either business income or capital gain liability depending upon whether the immovable property has been held as stock-in-trade or capital asset.

Stock-in-Trade



Joint Development Agreement – Point of Taxability

Facts of Case

- Land owner enters into a Joint Development Agreement with the developer to develop the property
- Land owner gives possession of land coupled with general power of attorney
- General Power of Attorney in favour of developer granting rights to obtain license from government authorities, carry the construction work, carry out the advertising activities, collection of advance from the proposed buyers, etc.

Issue: When the business income accrues or arises?

- At the time of entering into development agreement and execution of General Power of Attorney; or
- At the time of execution of conveyance deed in favour of ultimate buyer; or
- At the time of receipt of Built up area from Developer; or
- At the time of sale of Built up area in favour of third party purchaser?

Capital Gains Taxability in the hands of Land Owner- Individuals and HUF

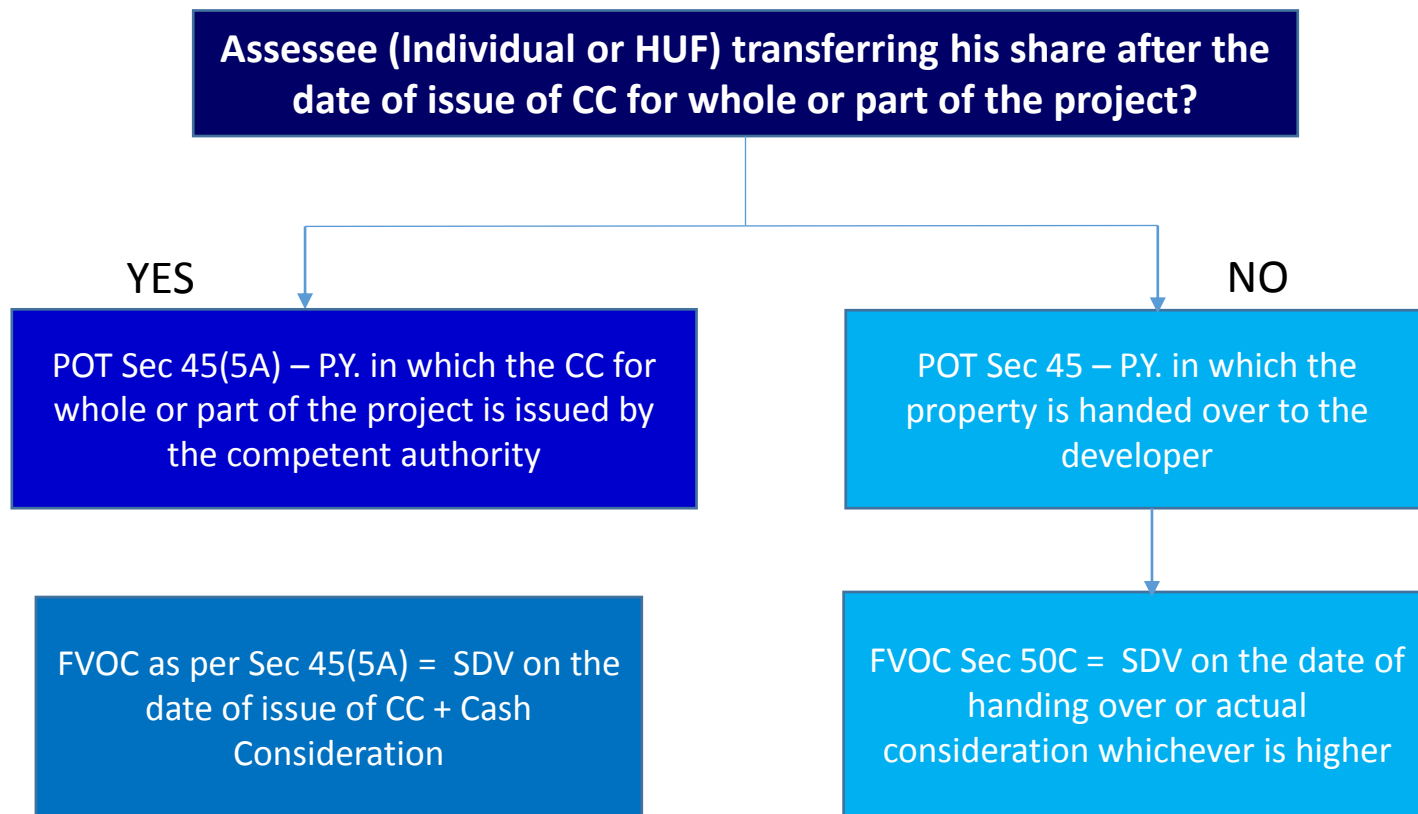
Amendment by Finance Act, 2017- Relief granted to Individuals and HUFs

Section 45(5A)

- ***Capital Gain arising to an individual or a Hindu undivided family, from the transfer of a capital asset, being land or building or both, under a specified agreement***
- ***Capital Gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority;***
- ***Stamp Duty Value, on the date of issue of the said certificate, as increased by the consideration received in cash, if any, shall be deemed to be the Full Value of Consideration received or accruing as a result of the transfer of the capital***

- *Section 45(5A) shall not apply where the assessee transfers his share in the project on or before the date of issue of the certificate of completion*
- *Capital Gains shall be deemed to be the income of the previous year in which such transfer takes place*
- *Normal Provisions shall apply for the purpose of determination of full value of consideration*

Capital Gains Taxability in the hands of Land Owner- Individuals and HUF



If any developer pays any amount to the land owner in addition to the share in the project, then such developer shall deduct TDS @10% under section 194-IC, overriding the provision of section 194-IA.

Section 45(5A)- Issues

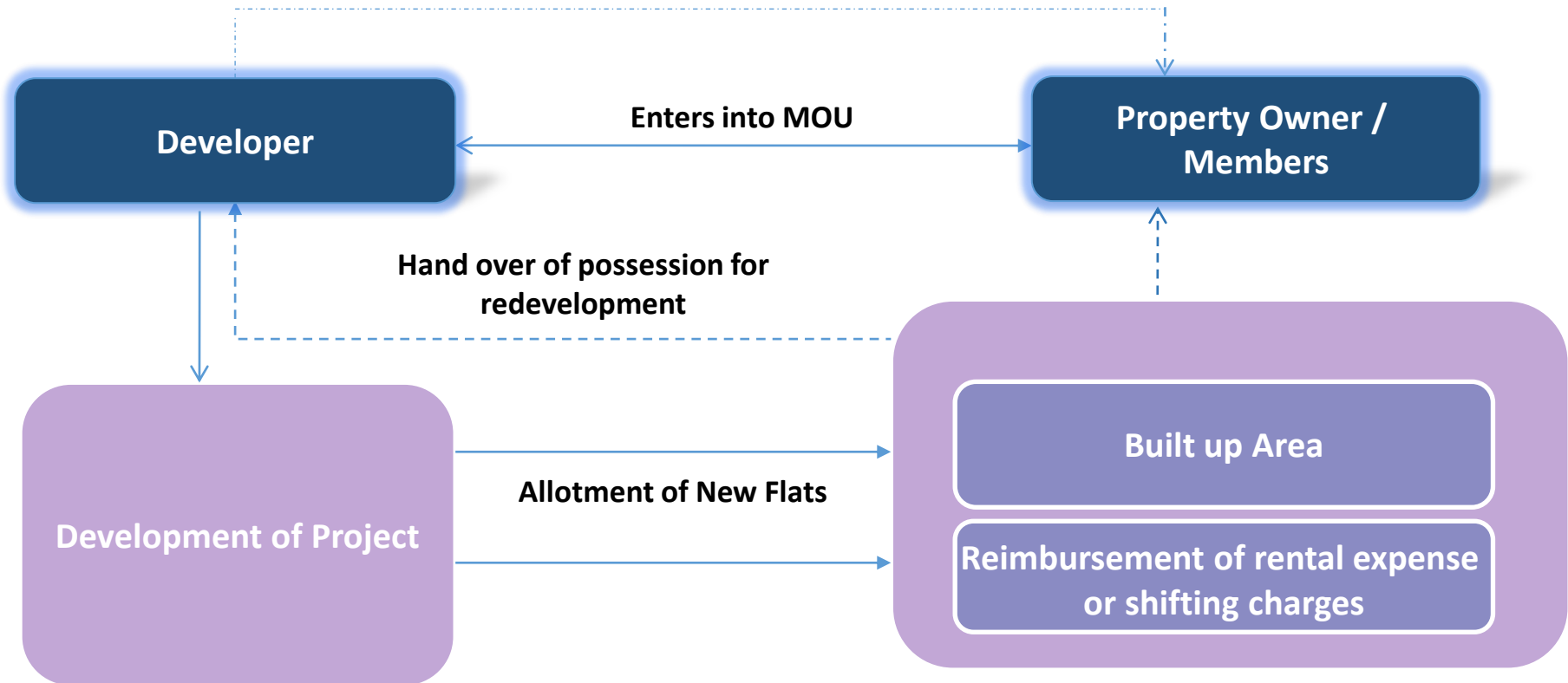
Issues pertaining to section 45(5A):

- There still remains the difference in timing between the POT and receipt of consideration under JDA.
- Why the benefit is restricted only to Individual and HUF?
- Whether the benefit of indexation on cost/improvement would be also available till the receipt of CC?
- The time limit for claiming the benefit under 54 & 54F should also be extended from the date of issue of CC and not from the date of transfer.
- Reference to Valuation officer should also be extended to the provision of section 45(5A)

Redevelopment Projects & Slum Redevelopment Projects

Redevelopment Projects- Mechanism

Hardship Compensation / Rent etc



Tax Treatment in Redevelopment / SRA Projects

Taxability in the hands of Property Owner (Individuals):

- Surrender of immovable property is transfer under Section 2(47) of the Act against right to possess a new flat in future.
 - Date of Transfer – Date of certificate of completion for redeveloped property
 - Sale Consideration- Stamp Duty Value on the date of transfer plus cash compensation
 - Claim exemption under Section 54 – In effect no capital gain payable
- Reimbursement of expense is not income. Hence, not taxable.
- Hardship Compensation is not taxable being capital receipt. [*Jethalal D Mehta v Dy CIT (2005) 2 SOT 422*]
- In case the owner transfers his rights under the agreement before completion of the project, then, the year in which he so transfers his rights shall be deemed to be the year of transfer of the rights in property and capital gains computations and holding period computations, shall be done accordingly.
- Whenever the new property is transferred in future, the stamp duty value taken as consideration, shall be treated as the actual cost to him for capital gains computations.

Tax Deducted at Source by developers:

The developer shall deduct TDS @10% of cash consideration with no threshold limit.

Tax Treatment in Redevelopment/ SRA Projects

Taxability for Builder/Developer:

- Compensation paid to tenants/lessee can be reduced from full value of consideration: *CIT v A. Venkataraman and Others (1982) 137 ITR 846 (Mad.)*
- Undertaking developing and building Housing Project – Eligible for 80-IBA even if developer not owner of land. [*Radhe Developers & Ors. vs. ITO & Ors. (2008) 23 SOT 420 (Ahd.)*]
- Where construction project has long gestation period and percentage completion method is adopted for income-tax purpose, losses only proportionate to work completed during year can be allowed and not entire anticipated loss :
 - *Shivshahi Punarvasan Prakalp Ltd. v. ITO-10(1)(4) (2011) 15 taxmann.com 352 (Mum Trib.)*
- Where assessee claimed deduction of slum development expenditure which was contingent upon authority giving vacant possession of plot, in view of fact that authority was unable to hand over vacant possession of land, impugned claim was to be disallowed :
 - *Grace Shelter v. ACIT [2019] 104 taxmann.com 133 (Mum)*
- Where assessee-builder entered into contract for development of SRA project (Slum rehabilitation), since assessee had to pay certain compensation to slum developers due to its failure to provide alternative accommodation during period of construction, said payment not being in nature of 'rent', did not require deduction of tax at source under section 194-I:
 - *Sahana Dwellers (P.) Ltd. v. ITO [2016] 67 taxmann.com 202 (Mum Trib.)*

Tax Treatment in Redevelopment Projects

Taxability for Tenants :

- Surrender of tenancy Rights – Transfer u/s. 2(47) – Cost of acquisition: *Balmukund P. Acharya vs. ITO (2011) 48 SOT 385 (Mum)*
- Capital gain – Sale proceeds of tenancy rights exemption u/s. 54EC : *ACIT vs. Vijay S. Shirodkar (2011) 48 SOT 8 (Mum)*

Tax Treatment in Slum Rehabilitation Projects

Slum Rehabilitation Project:

- Section 35AD provides for a deduction of the profits of an undertaking developing and building housing project.
- One of the condition is that the Slum Rehabilitation scheme has to be notified by the Board.
- These SRA projects has to be in strict compliance of various rules and Act, which is again guided by the Circulars and Notifications, therefore, the developer has no say in its implementation and execution.

Valuation of Immovable Property (Section 50C and Section 43CA)

Section 50C (Applicable for Capital Assets)

- Introduced by Finance Act 2002
- It applies to transfer of immovable property being a Capital Asset.
- The stamp duty valuation shall be considered as full value of consideration for computing capital gains under section 48 if the sale consideration is lower than the stamp duty valuation.

Section 43CA (Applicable for Stock in Trade)

- Due to inapplicability of Section 50C on immovable property held as stock-in-trade, this section was introduced by Finance Act 2013
- It applies to transfer of immovable property held as stock-in-trade.
- The stamp duty valuation shall be considered as full value of consideration for computing profits and gains if the sale consideration is lower than the stamp duty valuation.

- Where a part or whole of the consideration is received before the date of the agreement for transfer, SDV as on 'date of agreement' rather than the 'date of the registration' may be taken.

- If an assessee claims that the stamp duty value exceeds the fair market value of the property as on the date on the transfer, the AO may refer the valuation of the capital asset to valuation officer.
- Such reference shall be made only if the stamp duty value has not been disputed in any appeal or revision before any authority or Court or the High Court. If any such reference is made, the provisions are Sec. 16A of the Wealth-tax Act shall apply with necessary modification.

- Relaxation granted by Finance Act, 2018 wherein if the stamp duty valuation is higher than 105% of sale consideration, the sale consideration shall be taken as full value of consideration.

Section 50C & 43CA - Issues

Applicability of sections to rights in land or building

- Section 50C and 43CA as the case may be applies to land or building or both.
- Land or building v. Rights in land or building
- Favourable decisions-
 - Atul Puranik vs. ITO [2011] 132 ITD 499 (Mumbai),
 - ITO vs. Yasin Moosa Godil 20 taxmann.com 424 Ahm
 - Dy. CIT vs. Tejinder Singh [2012] 50 SOT 391 KOL,
 - Smt Kishore Sharad Gaitonde 2010-TIOL-297-ITAT-MUM,
 - Irfan Abudl Khader 29 taxmann.com 424 (Mum. – Trib.)
 - Kancast Pvt Ltd Vs ITO 2015-TIOL-151-ITAT-PUNE

Section 50C & 43CA - Issues

Applicability of section 43CA when RE developer applies POCM method

- Section 43CA is a deeming fiction to substitute sales consideration with SDV for the purpose of computing profits and gains accruing as a result of 'transfer of asset'.
- But, when revenue is recognized on the basis of percentage of completion method, the date of "transfer" of asset is a future event. Also, stamp duty value which would be applicable on the future date of transfer of the asset is not determinable.
- Therefore, whether the deeming fiction of section 43CA can be applied on year to year basis while recognizing revenue based on percentage of completion method?

Applicability of section 43CA vs section 44AD

- Section 44AD overrides only upto section 43C.
- Sections do not mutually override each other.
- Section 44AD refers to 'total turnover' or 'gross receipts'
- Section 43CA provides that the SDV / guidance value shall be the full value consideration

Gift / Transfer of
Immovable
Property without
adequate
consideration
(Section 56(2)(x))

Section 56(2)(x)

56(2)(x)

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

Issue for consideration

Key features

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

Food for thought

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

Section 56(2)(x) - Issues

Issues:

1. Consideration

- The word 'consideration' is not defined in Sec. 56(2)(x).
- In the absence of the definition of consideration in Income Tax Act, it must carry the meaning assigned to it in the Indian Contract Act. [*CGT vs. Smt. C.K. Nirmala 215 ITR 156 (Ker – FB) & Chandrakant H.Shah vs. ITO 121 TTJ 145 (Mum)*].

2. Applicability to Slump Sale at Book Value or lower than FMV?

3. Subvention receipts by subsidiary from holding company

Prior to introduction of section 56(2)(x) the Hon'ble Supreme Court (SC) in the case of Siemens [(2016) 390 ITR 1] held that subvention receipts from parent company to recoup losses is not taxable as revenue receipts since they are voluntary receipts and are made to protect capital investment.

After introduction of section 56(2)(x)

- No consideration being discharged by subsidiary to the parent
- Gift taxation needs to be seen from the perspective of recipient
- Since there is absence of consideration, section 56(2)(x) shall apply

Income from
House Property
Vs

Profits and
Gains of
Business or
Profession

IFHP Vs. PGBP

In the light of various decisions of the SC, the general principles guiding the issue of determination of head under which rental income from property is assessable are laid down in *Universal Plast Ltd. v. CIT (1999) 103 taxman 493 (SC)*. They are:

1. No precise test can be laid down to ascertain whether income (referred to by whatever nomenclature, lease amount, rents, license fee) received by an assessee from leasing or letting out of assets would fall under the head 'Profits and gains of business or profession';
2. It is a mixed question of law and fact and has to be determined from the point of view of a businessman in that business on the facts and in the circumstances of each case, including true interpretation of the agreement under which the assets are let out;
3. Where all the assets of the business are let out, the period for which the assets are let out is a relevant factor to find out whether the intention of the assessee is to go out of business altogether or to come back and restart the same; and
4. If only or a few of the business assets are let out temporarily while the assessee is carrying out his

CBDT in its *circular no. 16/2017 dated 25th April 2017*, clarified that the income from letting out of premises/ developed space along with other facilities in an Industrial Park / SEZ is to be treated as business income.

IFHP Vs. PGBP

Factors that determine characterization of rental income derived from properties under IFHP or PGBP based on various rulings:

Object of assessee

- The object for which an assessee is formed is of prime importance in deciding as to which side of the line rental income falls.
- If the main object of the assessee is to let out house properties and earn rental income, the rental income is assessable as business income.
- This object, in case of companies, can be ascertained from the Memorandum of Association and Partnership Deed in case of partnership firms / LLPs.

Chennai Properties & Investments Ltd vs. CIT (2015) 56 taxman.com 456 (SC)

Karanpura Development Co. Ltd. v. CIT [1962] 44 ITR 362 (SC)

M/s. Rayala Corporation Pvt. Ltd. v. Asst. CIT (2016) 72 taxman.com 149(SC)

East India Housing And Land Development Trust v. CIT (1961) 42 ITR 49

IFHP Vs. PGBP

Intention of the Assessee

1. The period for which assets are let out is one of the indicators of the intention of the assessee. If the property is let out for temporary period and he intends to come back into the business after the end of lease period, the assets are said to be exploited commercially and the rent is taxable under PGBP.
2. However, if the intention is to earn income merely out of ownership of the asset and rental income is taxable as income from house property or income from other sources, if other assets are also let out and letting is inseparable.

ITO v. Skipper Properties (P.) Ltd. [2008] 113 ITD 56 (Delhi)

CIT v. Vikram Cotton Mills Ltd. [1988] 169 ITR 597(SC) (In this case period of lease was for 19-20 years);

Universal Plast Ltd. v. CIT [1999] 103 Taxman 493(SC);

Guntur Merchants Cotton Press Co. Ltd. v. CIT [1985] 21 TAXMAN 324 (AP) [Affirmed in Universal Plast Ltd. v. CIT [1999] 103 Taxman 493 (SC)];

New Savan Sugar & Gur Refining Co. Ltd. v. CIT (1969) 74 ITR 7 (SC)

Active use of the property

Whether the property is subject to active use or mere passive possession by the assessee. In the former case, the income is chargeable as business income and in latter, under house property.

CIT v. Ansal Housing Finance & Leasing Co. Ltd. [2013] 29 taxmann.com 303 (Delhi);

Azimganj Estate (P.) Ltd. v. CIT [2012] 20 taxmann.com 203 (Cal.),

Taxation of Notional Rental Income [Section 23(5)]

Section 23(5) – Taxation of Notional Rental Income

Annual Value, in respect of building or land appurtenant thereto, shall be chargeable to tax under 'Income from House Property', which is not rented up to two years* from the end of the year in which Certificate of Completion is obtained shall be 'NIL' if:

- the building or land appurtenant thereto is held as stock-in-trade, or
- the building or land appurtenant thereto is not let out during the whole of any part of the year.

Issues :

- Effectively, if stock in trade is unsold for a period of more than 2 years, the same will be subject to notional income tax under the head IFHP
- Constitutional validity of subjecting such notional income to tax;
- Whether the intention of the builder to not let out the property but to only hold the property to sell the same holds any ground if the provision of the act envisages that the property should be in a position to be let out;
- The said section only provides a limited period relief beyond which taxability have to be ascertained as per regular provisions.
- If the annual value can be said to be nil, in a case where property is let out or meant to be let out but the same remains vacant, then there won't be tax liability even beyond one year period specified in the section.

* Period increased from 1 year to 2 years by Finance Act 2019

Section 23(5) – Taxation of Notional Rental Income

Issues :

- On combined reading of section 23(5) and 71(3A), both introduced by Finance Act, 2017, on one hand, it deems the annual value of house property held as stock-in trade as Nil, if the same is not let out; it appears that the interest deduction would be available under section 24 and consequently, the restriction contained in section 71(3A) would apply to the claim of set off of loss from house property (arising mainly on account of interest deduction) against income from any other head to Rs. 2 Lac.
- This would curtail the benefit of entire interest deduction so far available under section 36(1)(iii).

SC has granted SLP in the matter of Ansal Housing Finance and Leasing Co. Ltd. wherein the Delhi High Court had ruled ALV of flats lying unsold is assessable as income from house property.

Conversion of
Capital Asset
into Stock in
Trade and *vice
versa*- Section
45(2) &
Section 28(via)

Section 45(2) & 28(via)

Section 45(2)

As per section 45(2) if a capital asset is converted into stock-in-trade, the capital gain is taxable in the year such stock is sold, and the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of consideration received or accruing as a result of the transfer.

To bring parity and to discourage the practice of deferment of tax payment on conversion of inventory into capital asset, the Finance Act, 2018 was amended as below:

Section 28(via)/
2(24)(xiia)

As per section 28(via), the FMV of inventory as on the date of its conversion into, or treated as capital asset shall be chargeable to tax under the head PGBP.

Section 49(9)

Such FMV to be considered as cost of acquisition (COA) for computing capital gains on transfer of converted capital asset.

Section 2(42A)

Period of holding of converted capital asset to be reckoned from the date of conversion thereof.

Section 45(2) & 28(via)

	Section 45(2)	Section 28(via)
Introduced by F.A.	Finance Act 1984	Finance Act 2018
Head of Income	Capital Gain	PGBP
Point of Taxability	When stock is sold	Mercantile System – In the year of conversion Cash System – in the year consideration is received
Valuation	As on the date of conversion	As on the date of conversion
Valuation Rule	11UA	11UAB

Issues :

- Clause (via) does not refer to profits arising out of conversion but refers to the Fair Market Value.
- However, it may be pertinent to refer to the provisions of Section 45(2) which provides that the profits or gains arising from the transfer by way of conversion of Capital Asset into or its treatment as Stock-in-trade shall be chargeable to tax as the income of the previous year in which such Stock-in-trade is sold or otherwise transferred.

Section 45(2) & 28(via)

Issues :

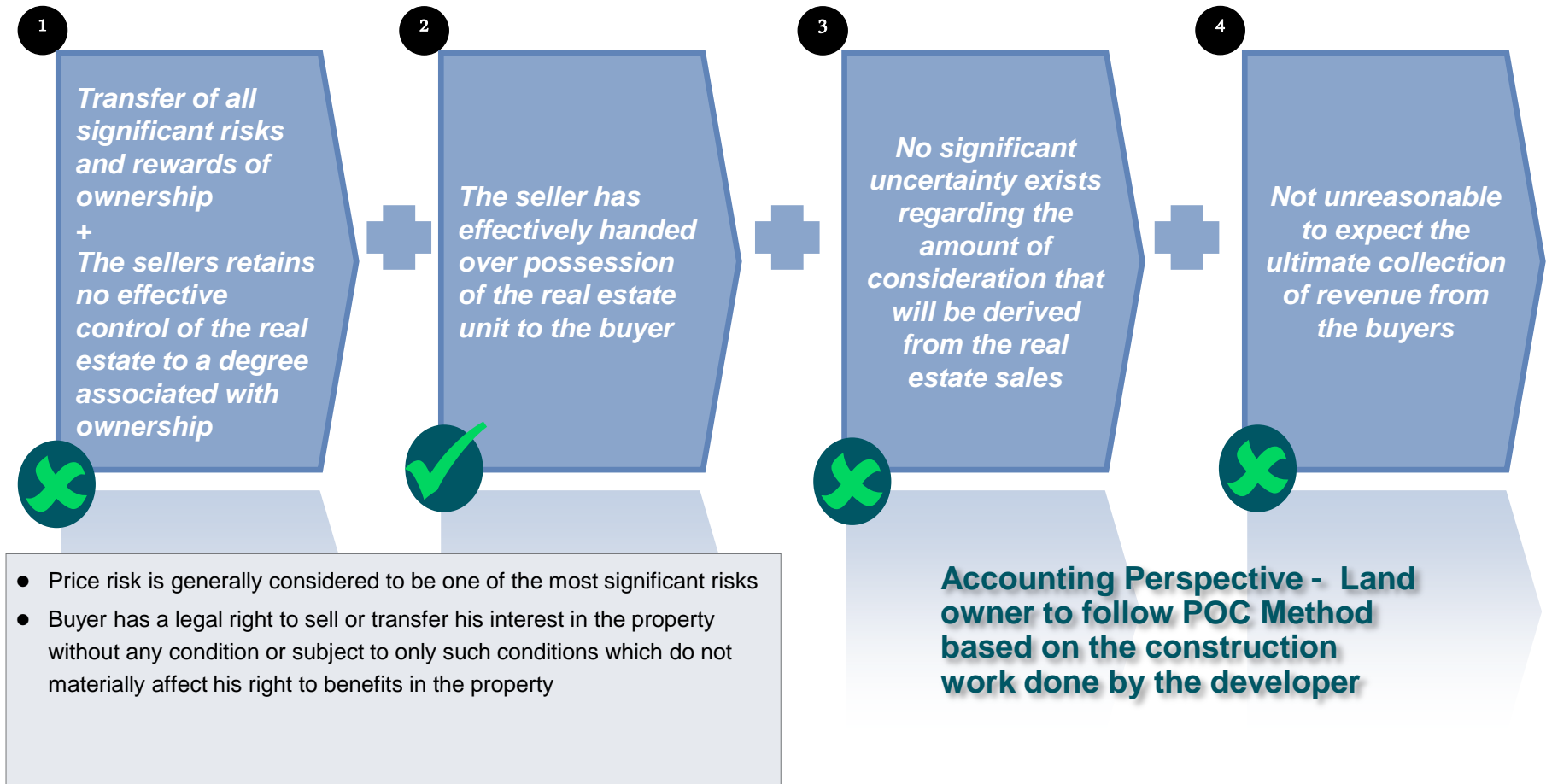
- Clause (via) does not refer to profits arising out of conversion but refers to the Fair Market Value. However, it may be pertinent to refer to the provisions of Section 45(2) which provides that the profits or gains arising from the transfer by way of conversion of Capital Asset into or its treatment as Stock-in-trade shall be chargeable to tax as the income of the previous year in which such Stock-in-trade is sold or otherwise transferred.
- The word inventory is not defined under I.T. Act but ICDS – II (Income Computation Disclosure Standards), prescribed u/s. 145 defines the word 'inventory' as 'assets held for sale in the ordinary course of business'. According to Section 28(via), unsold inventory would be treated as the capital asset from the tax point of view as the action of the developer to lease out the unsold premises might be viewed as conversion of inventory into a capital asset.
- In various judicial precedents dealing with matters of conversion of capital asset into stock in trade, it is held that the intention at the time of purchase or acquisition would not be of much relevance. What is of more relevance is to determine the intention at the subsequent point in time, through conduct and affirmative actions, that the capital asset so purchased initially has been converted or treated as stock-in-trade of the business carried on by the assessee.

Recently Delhi ITAT in the case of *M/s. AJB Developers Pvt.* has held that where land was stock in trade in the books of account, but, there was a complete bar on assessee as per the Notification of the Ministry of Defence to raise any construction or to do any business activity therein, the land in question could not be treated as stock in trade but as a capital asset in nature determining holding period from the date of acquisition.

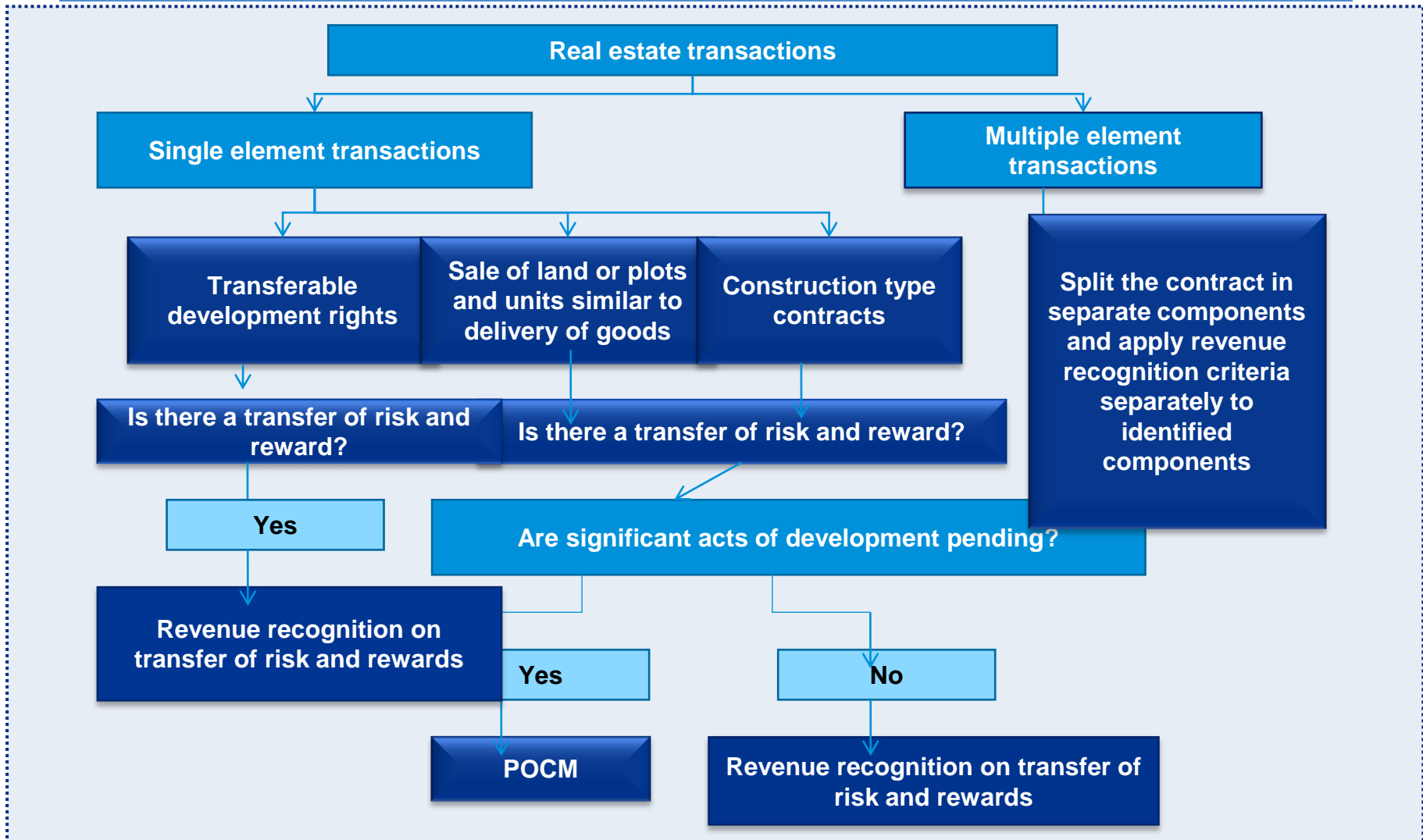
PCM vs PCOM

Guidance Note on Accounting for Real Estate Transactions 2012

Para 4 of Revised Guidance Note – Application of Principles of AS 9 in respect of sale of goods to a real estate project



Guidance Note on Accounting for Real Estate Transactions 2012



Revised Ind AS 115

Overall Approach

Revenue may be generated by the sale of goods, construction contracts, the rendering of services, use of entity's assets that generate fees. It is measured at the fair value of the consideration received or receivable

Ind AS 18 Steps

Step 1: Identify components

Step 2: Allocate consideration

Step 3: Recognise revenue

Ind AS 115 Steps

New

Identify the contract(s) with a customer

✓ □

Identify the performance obligations in the contract

New

Determine the transaction price

✓ □

Allocate the transaction price to the performance obligations in the contract

✓ □

Recognize revenue when (or as) the entity satisfies a performance obligation

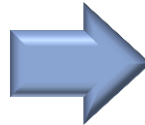
Revised Ind AS 115

Current guidance	New standard
Guidance contained in multiple standards and interpretations.	All guidance contained in a single standard
Risk and rewards based model.	Control based model. Risk and rewards is retained as indicator of control transfer for performance obligations satisfied at a point in time.
Revenue is recognised mainly considering the form of the contract.	Revenue is recognised considering the substance of the contract.
No specific guidance on identifying performance obligations in a contract.	Specific guidance on identifying performance obligations in a contract.
Revenue is recognised at the contractual value of the consideration.	Revenue is recognised at the amount of the consideration to which an entity expects to be entitled.

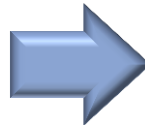
Revised Ind AS 115

Current guidance

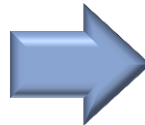
Does not provide guidance on combining contracts (except for construction contracts). Currently, revenue is mainly recognised based on the legal form of the contract and at prices stated therein.



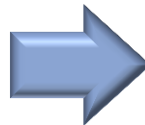
No explicit guidance for gross versus net reporting of revenue exists and practice in this area varies.



Limited/no guidance on specific areas like barter, loyalty programmes, costs to obtain a contract , licences etc



Limited disclosure requirements.



New standard

Explicit guidance on combining of contracts.

The requirement of gross versus net reporting is driven by an assessment of principle versus agent relationship.

Specific guidance on these areas to enable consistency in practice.

Several qualitative and quantitative disclosures required.

PCM Vs. PCOM

PCM

- Revenue is recognized only on completion of project
- No consistency on year on year basis
- Impacts the proposed listing as well as existing listings
- Income is recognized on actual basis and not on estimated basis
- Impacts ability to raise funds or avail credit facilities
- Taxation is postponed till completion
- Possibility of loss of brought forward losses
- Impact on deduction under Section 80-IB
- Impact on deduction u/s. 35AD
- Tax Authorities DO NOT appreciate this method and generally litigates

POCM

- Revenue is recognized on year on year basis based on progress of development
- Income is recognized on estimate basis
- Provides fiscal consistency in the financial statements
- Tax cost is apportioned over different years
- Matches with normal taxation
- Preponed taxation
- Revenue Authorities prefer this method
- Facilitates raising of funds
- Facilitates set off of brought forward losses
- Eligible to avail deduction under Section 80-IB
- Tax Authorities appreciate this method

Controversies on POCCM Vs. PCM

Disputed relating to accounting methods Pre 1 April 2003 – Accounting as per old AS 7

- **Assessee has an option to choose PCM Vs. POCCM**
 - Hyundai Heavy Industries Case – 210 CTR 178 (SC)
 - CIT v. Bihalrila Investments – 299 ITR 1 9SC)
- **PCM method approved by the Courts**
 - CIT v. Realest Builders & Services Ltd. – 307 ITR 202 (SC)
 - CIT v. V S Dempo & Co. Ltd. – 131 CTR 203 (SC)
 - Nandi Housing Pvt. Ltd. – 2 SOT 395 (Bang ITAT)
- **PCM Method rejected by the Courts**
 - Champion Construction Co case – 5 ITD 495 (Bom ITAT)
 - Greater Ashoka Land & Dev. Co. Ltd – 79 ITD 595 (Delhi ITAT)
 - ~~CIT v. N-M Associates – 256 ITR 141~~

Disputed relating to accounting methods Post 1 April 2003 – Accounting as per Revised AS 7 and AS 9

- **Assessee has an option to choose PCM Vs. POCCM**
 - Awadhesh Builder – 37 SOT 122 – Not a correct ruling
 - Krish Infrastructure Ltd – 35 TM 38 (Jaipur Bench) – Not a correct ruling given the revised AS 7 prescribing only POCCM
- **POCCM method approved by Courts**
 - CIT v. Manish Buildwell Ltd. – 204 TM 106 (Del)
 - CIT v. SAS Hotel and Enterprises Ltd. – 334 ITR 194 (Mad)
 - Haware Constructions v. ITO – (Mum ITAT)
- **PCM method rejected by Courts**
 - Prestige Estate Projects v. DCIT – 129 ITD 342 (Bang)

Controversies on POCM Vs. PCM

Income computed as per books of account to be considered in the absence of specific provisions in the IT Act

- ***Specific provisions of the IT Act prevails over the books of account***
- ***In the absence of specific provisions in the IT Act, books of account consistently maintained following AS should be accepted for tax purposes***
 - Challapalli Sugar Mills Ltd. – 98 ITR 167 (SC)
 - CIT v. U P State Development Corporation – 225 ITR 703 (SC)
 - CIT v. Woodward Governor India Pvt. Ltd. – 210 ITR 354 (SC)
 - CIT v. Aatur Holdings Ltd. – 302 ITR 92 (Mum)

Whether Developer can follow PCM method post GN of 2012?

- ***Developer has been consistently following PCM method following AS***
- ***No specific ICDS has been issued thus far by CBDT – Only draft ICDS for real estate developers issued by CBDT***
- ***Guidance Note is not mandatory to be followed by the Developer***
- ***POCM method is not in consonance with IFRS and international accounting practice***
- ***These arguments may not hold good merely on the basis of consistency as it is not in line with the accounting standards and guidelines issued by ICAI Could lead to huge litigations***

Controversies on POCM Vs. PCM

Sr no	State	POCM/PCM?	Case law	Citation
1	Karnataka	PCM	CIT v. Rema Country Holdings Ltd	[2012] 18 taxmann.com 184 (Kar.)
		PCM	Nandi Housing (P.) Ltd. v. DCIT	[2004] 2 SOT 395 (Bang. Trib.)
		PCM	Prestige Estate Projects (P.) Ltd. v. DCIT	[2010] 129 TTJ 680 (Bang. Trib.)
2	Delhi	PCM	Lunar Electricals v. ACIT	[2012] 22 taxmann.com 230 (Delhi HC)
		PCM	CIT v. Manish Build Well (P.) Ltd	[2011] 16 taxmann.com 27 (Delhi HC)
3	Bombay	POCM	Champion Construction Company v. ITO	[1983] 5 ITD 495 (Bom.)
		PCM	Awadhesh Builders v. ITO	[2010] 37 SOT 122 (Mum Trib.)
		PCM	Essar Oil Limited v. DCIT	[2007] 13 SOT 691 (MUM.)
		POCM	Happy Home Developers v. ACIT	[2001] 115 TAXMAN 309(MUM.)(MAG.)

Budget Proposals 2019-20

Key Announcements for the Real Estate Sector

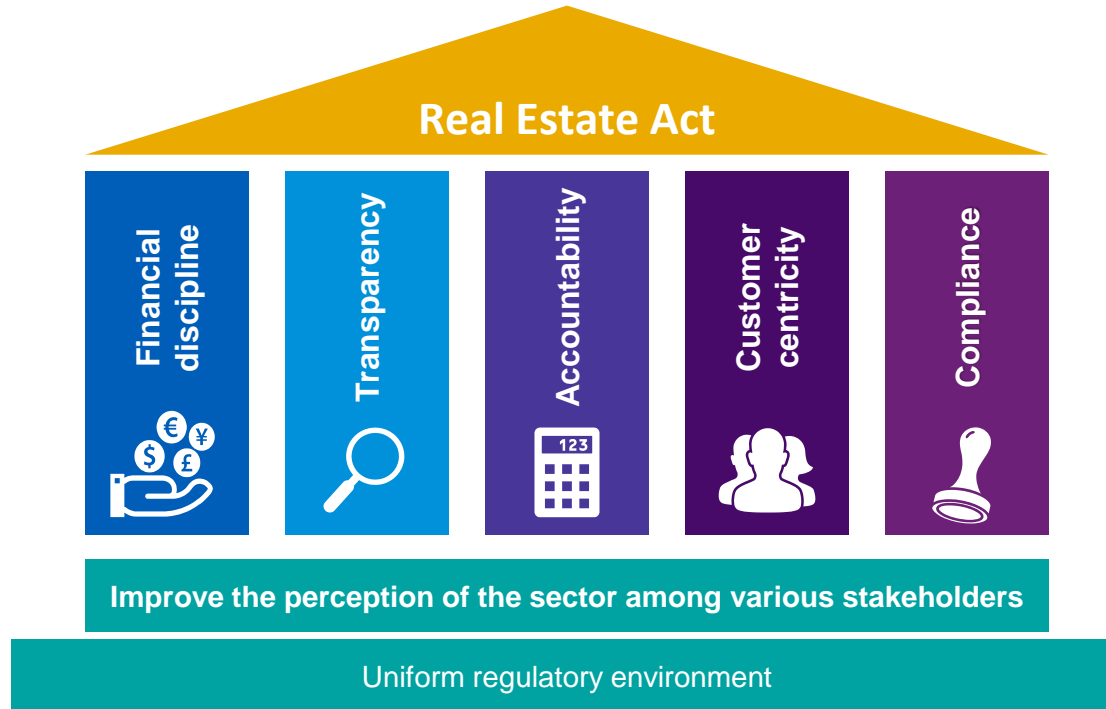
- Rental Housing Scheme to receive more govt. focus/ impetus, Model Tenancy Act to be finalized and shared with states for implementation.
- Additional tax deduction benefit of INR 1.5 lakhs for interest paid on loan for purchase of affordable houses having value up to INR 45 lakh for money borrowed until March 2020. This will be in addition to the 2.0 lakhs already in place and is expected to translate into benefits of 7 lakhs over a 15 year period.
- Government is likely to provide opportunities to private parties for developing affordable housing & large public infrastructure projects on land banks held by central ministries & CPSEs through innovative structures like joint development or concessionaire contract.
- Budget proposes to allow FPIs and NRIs to subscribe to listed debt papers of real estate investment trusts(REITs) and infrastructure investment trusts (InvITs).
- Definition of Affordable Housing as provided u/s 80IBA of the Income Tax Act is now aligned with GST Law.
- Definition of 'consideration for immovable property' for TDS purpose on transfer of immovable property has been widened to include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property whether under the same agreement or different agreement.

Implications for the Real Estate Sector

- The government clearly wants the industry to focus on affordable housing as a segment, to further the agenda of “Housing for all by 2022” Mission with targeted 1.95 crores houses to be provided to eligible beneficiaries .
- Announcements like additional tax benefit of 1.5 lakhs for home loan taken to buy affordable home and government’s wish to also develop affordable housing on land banks of CPSEs through structures like joint development, clearly demonstrate the focus on fulfilling housing demand in the county.
- Model Tenancy Law for rental housing is expected to improve the balance between the rights & responsibilities of the landlords & tenants with respect to aspects of tenancy like rent, security deposit, escalation, etc. This is a great initiative for the segment and would go a long way in securing tenancy rights.
- Opportunities for development of affordable housing projects on government land banks through capital light structures would help developers expand their portfolios at strategic locations, with minimal upfront capital investment.
- Real estate developers evaluating listing of REITs and InvITs will welcome the government’s move to allow NRIs & FPIs have access to debt securities of such entities as it would ensure availability of capital raising sources for these instruments
- Clarity on definition of ‘consideration for immovable property’ for TDS purpose on transfer of immovable property will chalk out the ambiguity as to what forms part of consideration for immovable property for the purpose of withholding of tax.

RERA and its Implications

Overview of RERA- Pivotal Pillars of the Act



COMMERCIAL and **RESIDENTIAL** projects including **PLOTTED DEVELOPMENT**

Land under development **MORE THAN 500 SQ MTS / NO. of UNITS** exceed 8

Projects which do not have **COMPLETION CERTIFICATE** before commencement of **ACT**

RENOVATION or **REPAIR** or **REDEVELOPMENT** projects not involving Marketing, Advertising, Selling & New Allotment **NEED NOT BE REGISTERED**

Tax Impact of RERA

- Possibility of AOP exposure in the case of JDAs considering that the land owner is also considered to be a promoter
- Reorganising of JDA arrangement, especially the revenue share arrangement
- Tax treatment / allowability of expenditure done by a promoter during defect liability period
- Tax treatment / allowability of fines, penalties and interest paid by the promoter
- Treatment of expensed incurred on a project which is then taken over by the Authority in the case of lapse in registration or revocation of registration

Section 14A

Taxability Issues : Section 14A Addition

As per Section 14A, the expenditure incurred by a taxpayer in relation to income that excludes total income as per the provisions of the Act should not be considered as deduction while computing the total income of the taxpayer. Key takeaways from the recent decisions are also given in the table:

Name of Decision & Issue under Consideration	Decision of the Judicial Authority
<p><u>PCIT v. Sintex Industries [2018] 93 taxmann.com 24 (SC)</u></p> <p>Issue: Disallowance of interest expenses under section 14A – Owned Funds v/s. Borrowed Funds</p>	<p>Where assessee had <u>surplus funds against which minor investment was made, no question of making any disallowance of expenditure under section 14A of the Act arose and therefore, there was no question of any estimation of expenditure under Rule 8D</u></p>
<p><u>Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154 (SC)</u> –</p> <p>Issue: Applicability of section 14A to shares held to gain controlling interest / in group companies / as stock-in-trade (SIT)</p>	<p><u>The dominant purpose or the intention while making the purchase of such investment is not relevant.</u> The Apex Court also held that <u>Section 14A is applicable to shares held as SIT</u> as well and the depending upon the facts of each case, expenses have to be apportioned between taxable and non-taxable income.</p>

Taxability Issues : Section 14A Addition

Name of Decision & Issue under Consideration	Decision of the Judicial Authority
<p>CIT v/s. Essar Teleholdings Ltd. [2018] 90 taxmann.com 2 (SC)</p> <p>Issue: Operation of Rule 8D – whether prospective or retrospective?</p>	<p>The Apex Court held that Rule 8D was intended to operate prospectively and cannot be applied for AYs prior to AY 2008-09.</p>
<p>Godrej & Boyce Manufacturing Company Ltd. v/s. DCIT [2017] 81 taxmann.com 111 (SC)</p> <p>Issue: Applicability of disallowance under section 14A in the case of dividend income on which tax is payable under section 115-O</p>	<p>The Supreme Court ruled in favour of Revenue and held that section 14A of the Act would apply to dividend income on which tax is payable under section 115-O since the liability to pay tax under section 115-O in respect of the dividend is on the dividend paying company and the shareholder / assessee has no connection with the same.</p>
<p>PCIT v/s. Adani Agro (P.) Ltd [2018] 91 taxmann.com 29 (Gujarat)</p> <p>Issue: Can the disallowance under section 14A r.w. Rule 8D be in excess of total administrative expenditure claimed</p>	<p>Gujarat High Court has held that under no circumstances an Assessing Officer can attribute expenses for earning tax free income in excess of total administrative expenditure incurred by assessee.</p>

Taxability Issues : Section 14A Addition

Name of Decision & Issue under Consideration	Decision of the Judicial Authority
<p>ACIT v/s. Vireet Investment (P.) Ltd. [2017] 82 taxmann.com 415 (Delhi – Trib.) (SB)</p> <p>Issue 1: Applicability of 14A only on investments capable of yielding taxable income</p> <p>Issue 2: Applicability of 14A while computing book profits under section 115JB</p>	<p>The Special Bench held that disallowance under Rule 8D2(iii) of the Rules shall be computed only on those investments which yielded tax free income during the year.</p> <p>The Special Bench has held that disallowance computed under section 14A read with Rule 8D could not be imported for purpose of computing book profits u/s 115JB.</p>
<p>CIT v. Chettinad Logistics (P.) Ltd [2018] 95 taxmann.com 250 (SC)</p> <p>Issue: Can section 14A be invoked where no exempt income was earned by assessee in relevant assessment year</p>	<p>SLP dismissed. HC held that section 14A can only be triggered, if, assessee seeks to square off expenditure against income which does not form part of total income under Act; rule 8D only provides for a methodology to determine disallowance and it cannot go beyond what is provided in section 14A. It further held that where no exempt income i.e., dividend, was earned in relevant assessment year by assessee, section 14A could not be invoked.</p>

Thank You