

# TAX AUDIT

## U/S 44 AB

# AMENDMENTS

By CA S.V SHANBHAG



**S.V. SHANBHAG & CO.**  
**CHARTERED ACCOUNTANTS**

# OBJECTIVE OF AMENDMENT IN FORM 3CD

- ❑ Align Amendments in Law with reporting.
- ❑ Enhanced Disclosure for better compliance with newly introduced provisions.
- ❑ Omit certain irrelevant existing clauses.

## AMENDMENTS IN FORM 3CD

- INCOME TAX (EIGHTH AMENDMENT) RULES 2025
- CBDT NOTIFICATION NO.23/2025 DATED 28<sup>TH</sup> MARCH 2025
- APPLICABLE TAX AUDIT REPORT FOR AY 2025-26 ONWARDS

Clause	Details of Change	Change type
12	Presumptive taxation for Cruise Ships	Amended
19	Amounts Inadmissible- Reporting on 4 Sections dropped	Amended
21	Expenses incurred to settle proceeding under certain Notified Laws	Amended
22	MSME Reporting	Amended
26	43B reporting- Deductible / Not deductible	Amended
28	Sec. 56(2)(vii)- Shares received for inadequate consideration	Omitted
29	Angel Tax [Sec 56(2)(viib)]	Omitted
31	Reporting of Loans, Advances, Specified Amounts Received/ Repaid	Amended
36	Buy Back of Shares- Deemed dividend 2(22)(f)	Added

## Presumptive taxation for Cruise Ships

### EXISTING

*Whether the profit or loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant section (44AD, 44ADA, 44AE, 44AF (non-operative with AY 2011-12), 44B, 44BB, 44BBA, 44BBB, Chapter XII-G, First Schedule or any other relevant section)*

### CHANGE

**Section 44BBC has been added in the list w.e.f . FY:2024-2025**

### IMPACT

**44 BBC is a Presumptive Taxation Scheme for Non Residents operating “cruise ships” business , Tax rate @ 20%**

#### 44BBC

- Turnover= Aggregate amount received/ receivable by assessee on account of carriage of passenger on cruise.
- Tax Rate= 20% (Presumptive)

#### Issue:

Whether amounts collected on other services are also under presumptive taxation?

Amount admissible under various sections

EXISTING

*Amounts  
admissible under  
Section  
32AC,32AD,33AB,3  
3ABA,35AC,35CCB  
etc.(Total 23  
sections)*

CHANGE

Omission of  
Section  
32AC,32AD,35AC  
and 35CCB from  
the said clause  
w.e.f FY: 2024-  
2025  
(4 Sections)

IMPACT

Since said  
sections are  
no longer  
applicable  
for fresh  
claims,  
deleted in  
Form 3CD.

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## Clause 21(a) – Please Furnish details of amounts debited to P&L A/C in respect of following expenditure

Sl. No.	Particulars to be reported under Clause 21(a)
1	Capital expenditure
2	Personal expenditure
3	Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party
4	Expenditure incurred at clubs being entrance fees and subscriptions
5	Expenditure incurred at clubs being cost for club services and facilities used
6	Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India)]
7	Expenditure by way of any other penalty or fine not covered above
8	Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India
9	Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person
<b>10 (New)</b>	<b>Expenditure incurred to settle proceedings initiated in relation to contravention under such law as notified by the Central Government in the Official Gazette in this behalf</b>

Amount debited to P&L A/C and admissible as per law

EXISTING

*Details of  
disallowances  
u/s 37 of Income  
Tax Act (Total 9  
sub-heads of  
disallowances)*

CHANGE

**(10th Sub- head added)**  
“Expenditure incurred to  
settle proceedings  
initiated in relation to  
contravention under  
such law as notified by  
the Central Government  
in the Official Gazette in  
this behalf.”

Object of Insertion

Finance Act (2) 2024  
Explanation 3(iv) to Sec  
37(1):  
“Expenditure incurred to  
settle proceedings for  
contravention of law  
notified by central  
government shall be  
disallowed.”



## Amount debited to P&L A/C and admissible as per law

**Expenditure incurred to settle proceedings initiated in relation to contravention under certain notified laws**

### **Auditors to Note:**

- ☐ Consider only expenses debited to P&L A/C
- ☐ Ensure, law contravened is notified by Government
- ☐ Routine regulatory fees or compliance cost not disallowable unless linked to contravention.
- ☐ Verify settlement orders, penalty notices, payment proofs.

Notified Laws as per CBDT  
Notification No. 38/2025  
dated: 23.04.2025

- SEBI Act 1992
- Security Contract regulation Act 1956
- Depository Act 1956
- Competition Act 2002

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- **EXISTING DISCLOSURE REQUIREMENT**

Amount of Interest inadmissible u/s 23 of MSME Development Act, 2006 or any other amount not allowable under clause(h) of Section 43 of Income Tax Act, 1961

- **AMENDMENT**

- (i) Amount of **interest** inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act); or
- (ii) Total amount required to be paid to a micro or small enterprise, as referred to in section 15 of the MSMED Act, during the previous year;
- (iii) Of amount referred to in (ii) above, amount –
  - (a) paid up to time given under section 15 of the MSMED Act;*
  - (b) not paid up to time given under section 15 of the MSMED Act and inadmissible for the previous year.”;*

## Example :

Particulars	Amount (Rs)
(A) Total Purchases FY 24-25	50,00,000
<u>Less:</u>	
(B) Total Paid During the year (1st Apr'24 to 31st Mar'25)	
(a) In Time	35,00,000
(b) Delayed	5,00,000
(C ) Balance o/s as on 31.03.2025	10,00,000

# Clause 22

## MSME reporting : Auditors to Note

1. Reporting applies only to Micro and Small Enterprises and not to Medium Enterprises.
2. MSME Traders (Retail or wholesale) are outside the scope of reporting.
3. Disallowances applies only to payments outstanding as on 31<sup>st</sup> March not paid within 15/45 days from the due date.
4. The period of 15 Days/ 45 days be counted from the date of acceptance of goods or services or deemed acceptance (no objection by buyer) there of.
5. Obtain a list of outstanding on last date of FY containing details of Udyam Reg. No, Category of Enterprise(manufacturer/ service/trading) and date of Udyam registration.
6. The accuracy of data of Micro & Small Enterprises be verified from Udyam Aadhar website
7. Where the enterprise is both a *Manufacturer & Trader* or *Service provider & Trader* - ----How to report.
8. Provision of 43B(h) not applicable to supplier not registered under MSME Act.



## Reporting in respect of Sec.43B

*In respect of any sum referred to in section 43B, the liability for which:—*

*(A) pre-existed on the first day of the previous year but was not allowable in the assessment of any preceding previous year and was*

*(a) paid during the previous year;*

*(b) not paid during the previous year;*

*(B) was incurred in the previous year and (for clauses other than clause (h) of section 43B) was,*

*(a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1);*

*(b) not paid on or before the aforesaid date.*

### ➤ Earlier Words:

Any Sum referred to in Sec.43B cls. (a) to (g)

Amended: Any Sum referred to in Sec.43B [Cl. (a) to (g) omitted]

Effect : Applies to all Sub-Cl of Sec 43B i.e (a) to (h), including MSME Disallowances

### ➤ Words “Allowable” is substituted in the place of “Allowed”



Clause 28 –When a firm or an Unlisted Company receives Shares of another Private company (01.06.2010 to 31.03.2017) without consideration or for inadequate consideration [Sec. 56(2)(viia)].

Reasons for Omission:

Repeal of Section 56(2)(viia): Section 56(2)(viia), has been omitted by Finance Act, 2023 and is now covered in **Sec.56(2)(x)**, Clause 28, is now redundant and therefore omitted.

Clause 29 –Sec 56(2)(viib)

Where the assessee issued shares and received consideration exceeding the fair market value (FMV) of those shares ,commonly referred to as the Angel Tax provision.

- Angel Tax was introduced to:

- ☐ To curb money laundering through inflated share premiums in closely held companies.
  - ☐ To tax the excess premium received over the Fair Market Value (FMV) of shares issued to resident investors.
  - ☐ To prevent circulation of unaccounted money disguised as startup investments.
- However Angel Tax was abolished for all investor categories, effective FY 2024–25 (AY 2025–26)

- ❖ Reason for Omission of clause 29 from Form 3CD

With the abolition of Angel Tax, these clauses became redundant.

# Clause 31:Loans, Advances, Specified Sums reporting Summary

Sub-Clause	Description	Key Amendments
31(a)	Loans or deposits <b>accepted</b>	- Must report each loan/deposit exceeding ₹20,000- <b>Dropdown classification</b> introduced for nature of transaction (e.g., loan from director, deposit from customer)-Enhanced disclosure: PAN/Aadhaar, mode of acceptance, whether squared up
31(b)	Specified sums <b>accepted</b>	- “Specified sum” now clearly defined to avoid ambiguity (e.g., advance for immovable property)- Same reporting format and classification as 31(a)
31(c)	Loans or deposits <b>repaid</b>	- Same dropdown classification as 31(a)- Must specify mode of repayment (account payee cheque, draft, ECS)- Auditor must verify compliance with Section 269T
31(d)	Specified Advances <b>repaid</b>	- Must disclose repayment of specified sums exceeding ₹20,000-Mode of repayment and classification required-Auditor must ensure compliance with Section 269T
31(e)	<b>Violations</b> of Sections 269SS/269T	- Auditor must report any transaction violating Sec269S/269T/269ST - <b>coded categorization of violative transactions is introduced.</b>

**Note 1: The code for the nature of amount/receipt/repayment**

S. No.	Nature of Amount / Receipt / Repayment	Code
1	Cash Payment	A
2	Cash Receipt	B
3	Payment through non-account payee cheque	C
4	Receipt through non-account payee cheque	D
5	Transfer of asset	E
6	Transfer of liability	F
7	Conversion of assets	G
8	Conversion of liabilities	H
9	Journal entry [Debit]	I
10	Journal entry [Credit]	J
11	Any other mode [Debit]	K
12	Any other mode [Credit]	L

## Impact of Amendment

➤ Settling of Loans through Asset/Liability transfer & J.E transaction- Impact?

....otherwise then  
by Account payee  
cheque/ draft or  
ECS.

## Buyback of Shares

Disclosure of amounts received from **Buyback of Shares** that fall under **Section 2(22)(f)** – i.e., deemed dividend.

Text of Clause 36B:

*“Whether the assessee has received any amount in respect of buyback of shares referred to in clause (f) of section 2(22)? If yes, furnish the following details:*

- (i) Amount received;*
- (ii) Cost of acquisition of the shares bought back.”*

# Summary- Buyback of Shares

## Buy-Back Tax – Summary of Changes (Effective Oct 1, 2024)

### Old Law (Before Oct 1, 2024)

- **Section 115QA:** Company paid ~23.296% tax on buy-back amount
- Shareholders: Income was exempt under Section 10(34A).
- Tax burden was on the company, not the shareholder.

### New Law (From Oct 1, 2024)

- **Section 115QA** withdrawn for buy-backs post 01.10.2024.
- **Section 2(22)(f):** Amount Paid by Co. on Buy back of shares to the extent out of Accumulated Profits is Treated as **Deemed Dividend u/s 2(22)(f)**
- Taxable as “Income from Other Sources”.
- No deduction allowed for cost of acquisition.
- However, cost may be treated as capital loss and carried forward for 8 years.

### Key Impact:

- **Tax burden shifts** from company to shareholder
- **Shareholders now pay tax** on the entire buy-back amount
- Long term Investor loses **Indexation benefit**
- **Cost of Shares** is treated as long term **capital loss** and can be s/off against LTCG.
- The buyback amount received by the shareholder is subject to **TDS of 10%**.



# Buyback of Shares

Example of how Cost of Acquisition of shares in buy back is treated as capital loss and adjusted against short and long term capital gain (**New Law from 01.10.2024**)

## Facts Of Case:

Particulars	Amount (₹)
Shares held by Mr.A	1,000
Cost of acquisition	500/share = 5,00,000
Buyback price received	450/share = 4,50,000

### Taxability of Buyback Proceeds

#### ❖ Under Sec. 2(22)(f)

- Buyback proceeds = ₹4,50,000
- Treated as **Dividend**
- Taxable under **Income from Other Sources (IFOS)**
- **No deduction for cost of acquisition**
- **Taxable Income = ₹4,50,000** (slab rate, say 30% + cess)

### Treatment of Cost of Shares

- Cost of shares = ₹5,00,000
- Classified as **Capital Loss**
  - Holding >12 months → **LTCL**
- **Not allowed to set off in same year** (dividend ≠ CG)
- **Carry forward up to 8 years**
- Can be adjusted **only against LTCG** in same or subsequent years

# INTRICATE ISSUES IN TAX AUDIT

**Issue 1** : T/o from business Rs. 1.5 cr. Whether audit under sec 44AB is mandatory?

**Answer:** Yes, as per Sec. 44AB(a), audit is mandatory, if the cash transactions are not more than 5%.  
No, if cash transactions are less than 5% (limit is 10 Crores)

## **TOTAL SALES/TURNOVER/GROSS RECEIPTS**

- |     |  |
|-----|--|
| (a) | Business : Exceeds Rs. 1 crore / 10 crore  |
| (b) | Profession : Exceeds Rs.50 lakhs   |
| (c) | Business : u/s. 44AE, 44BB, 44BBB<br>Income is less than Deemed Profits / Gains  |
| (d) | Profession u/s. 44ADA,<br>Income is less than Deemed Profits / Gains<br><b>Total Income is less than Max Amt not chargeable to tax</b> |
| (e) | Business u/s. 44AD,<br>If provisions of Sec. 44AD(4) are applicable<br><b>Total Income is less than Max Amt not chargeable to tax.</b> |

## **Sec. 44AB:Tax Audit Provisions**

- ☐ An eligible Assessee, in eligible Business has an option of 44AD since his t/o is not exceeding Rs.2 Crs/3Crs.
- ☐ First proviso to sec 44AB: Section 44AB is not applicable to a person who declares profits for the PY in accordance with the provisions of sec 44AD.
- ☐ Sec 44AD overrides Sec.28 to 43C. But not 44AB.

## INTRICATE ISSUES IN TAX AUDIT

**Issue 2** :First Year T/O from business is Rs. 1.9 cr. Whether offering 8%/6% profit is mandatory?

**Answer:** No.

Assessee has option of maintaining Books of Account and file ITR 3 .

Sec 44AD(4) provides that where the A has declared profits as per 44AD(1) in any PY indicates optional

- he is expected to continue for 1+5 years,  
if he opts out,
- he need to maintain Books of Account and
- get his accounts audited in terms of Sec.44AB(e) and
- he is debarred from re-opting for 44AD for 1+5 years

# INTRICATE ISSUES IN TAX AUDIT

**Issue 3 :** A doctor's gross professional Receipts Rs. 40 lacs, wants to offers 25 lacs net profits under 44 ADA. He has a T/O of sale of medicine of 80 lacs. He wants to opt for 44AD for medicines sales. His Total T/O + Gross receipts is 120 lacs. Is he liable for tax audit u/s 44AB?

## Sec. 44ADA (Presumptive Taxation for Profession):

- **Resident** Individual/Partnership (HUF/LLP/Company - not allowed).
- Applicable to **professionals** referred u/s. 44AA(1)
- Gross Receipts do not exceed Rs. 50 lacs.
- Profits to be offered: 50% of the Gross Receipts or higher claimed.
- Deduction u/s 30 to 38 deemed to be allowed

If Profits are less than Deemed Profits & total Income is greater than the max amt. not chargeable to Tax,

- Tax Audit applicable u/s. 44AB(d).
- Maintain BOA u/s. 44AA.

- Accountancy
- Legal
- Medical
- Architect
- Interior Designer
- Technical Consultancy
- Authorised Representative
- Film Artist

**Answer:** NO,

Can opt for 44ADA for prof receipts  
Cannot opt for 44AD for medicine sale.

Reason:

Doctor is in Specified Profession u/s 44AA.

Assessee covered in Specified profession is not an 'eligible assessee' u/s 44AD.

Total t/o + Gross receipts is 120 lacs

Turnover limits be reckoned separately for Business and Profession. u/s 44AB.

# Sec. 44AD (Presumptive Taxation for Business)

## Essentials for applicability of Sec.44AD(6):

### Provisions not applicable to

- Person carrying on **profession** referred u/s. 44AA(1).
- Person earning **commission** or **brokerage** income.
- Person carrying on any **agency** business.

### Eligible Assessee

**Resident Individual / HUF / Partnership Firm.**

- Not claimed deduction u/s. 10A, 10AA, 10B, 10BA or
- Deduction under Part C of Chapter VIA.

### Eligible Business

- Total TO/GR does not exceed **Rs. 2 crores.**
- **Any business** other than business of plying, hiring or leasing goods carriages referred to in Sec. 44AE.

Deemed profit 8% / 6% or such higher amount claimed by assessee.

## INTRICATE ISSUES IN TAX AUDIT

**Issue 4:** Can A LLP of doctors having gross receipts of 70 lacs including cash Receipts of 3 lacs opt for 44ADA?

**Answer:** NO.

A LLP not eligible to opt for presumptive Taxation u/s 44ADA W.E.F.1.4.2021.

Only an Individual and Partnership firms (other than LLP) are eligible.  
Even HUF cannot opt for 44ADA.



## INTRICATE ISSUES IN TAX AUDIT

**Issue 5:** 44ADA : Can a partner of a firm who receives remuneration from firm of Rs, 45 lacs opt for presumptive tax u/s sec 44ADA?

**Answer:** NO.

(i) Partners remuneration, though a business Income, its does not represent Gross Professional Receipt envisaged u/s 44ADA.

(ii) Partner not carrying on business. It is the partnership firm who has professional Receipts for rendering prof services. Partner has received remuneration as per the agreement with firm.

(Perizad Zorabian Irani vs PCIT (central1 Mum) & Others Writ P 2021.  
Anand Kumar Vs. ACIT Madras HC .)

## INTRICATE ISSUES IN TAX AUDIT

**Issue 6:** Is partners remuneration and interest on capital deductible from presumptive profit u/s 44AD, ADA and AE?

### **Answer:**

Sr.no	Section	Whether Deductible	Reason
1.	44AD	Not Deductible	As per amdt made by Fin Act (No.2) 2016 proviso to Sec.44AD(2) permitting deduction of salary and interest to partner is omitted from AY 2017-18
2.	ADA	Not Deductible	There is no proviso for deduction of salary and interest to the partners u/s44ADA(2)
3.	44AE	Allowed	As per proviso to Sec.44AE(3) deduction of salary and interest to the partners is allowed

# INTRICATE ISSUES IN TAX AUDIT

**Issue 7: *Can an Assessee* opt for **Section 44AD** for **Futures & Options (F&O)** transactions? Whether Intra day transactions are eligible for 44AD?**

## Eligibility for Section 44AD

- ❑ **F&O trading is a business activity** not speculative if done on recognized exchanges [**Sec.43(5)**]
- ❑ Section 44AD allows presumptive taxation for eligible businesses with turnover up to ₹2 crore.
- ❑ **Turnover Calculation:**
  - For F&O, turnover includes:
    - **Total of favorable and unfavorable differences.**
    - **Premium received** on sale of options
    - Any differences from reverse trades.

**Answer: Technically the assessee may opt for 44AD.**  
**However, it could be controversial.**

## Example:

❑ Calculation of turnover:  
(Total of favorable and unfavorable differences)

2.50 Cr Profit

0.50 Cr Loss

3.00 Cr Turnover

❑ Net Profit:

Profit            2.50 Cr

Less : Loss (0.50 Cr)

Net profit    2.00 Cr

❑ 44AD:

6% of 3Cr = 18 Lakhs

Actual Profit = 2Crores

**Opting 44AD is possible but controversial**

❑ Controversy

- It is a *minimum* presumptive scheme — not a ceiling. The Net profit offered @6% could be much lower than the actual profit.

Accordingly there could be a controversy with department for non compliance of ..... *as sum higher than the aforesaid sum claimed to have been earned by eligible assessee.*

- **Similar is the case with Intraday transactions (Speculative).**

# INTRICATE ISSUES IN TAX AUDIT

**Issue 8:** Mr. A owns an office premises in a “Premises Co-operative Society”. He had a T/o of 1.5Cr in FY 2023-24 and has opted for presumptive taxation scheme u/s 44AD.

In FY 2024-25 he has paid Rs. 1,50,000 to the society as R&M charges. In FY 2024-25 T/o of Mr. A is 2Cr.

Whether Mr. A

(a) was liable to deduct TDS under sec-194C on Society's Bill?

(b) Whether he is liable for tax audit under sec 44AB(a)?

## **Answer:**

(a) Applicability of TDS u/s-194C on Society's Bill in FY24-25

Since Mr A's T/o in FY 23-24 has exceeded Rs 1Cr, he is a **Specified Person** as per Explanation to Sec.194C and therefore liable for deduction of TDS . However, the Payee in this case (society ) is not a '**Contractor**' as envisaged u/s 194C(1), and therefore there is no obligation to deduct TDS.

# INTRICATE ISSUES IN TAX AUDIT

**Issue 9:** ABC enterprises is engaged in the business of supplying food to a hospital having 10 departments. The ABC enterprises raises invoices of around ₹10,00,000 plus GST every month on xyz hospital Pvt. Ltd. However, for the food supplied during March 2025, the invoice could not be raised in the same month because the quantification of the food supplied was finalized only on 10th April 2025. Accordingly, on 10th April 2025, a sale invoice for ₹15,00,000 plus GST was issued. The gross profit margin in this line of business is 20%.

Whether food supplied in March for which invoice is raised in the month of April 2025 will become part of WIP?

What is the correct value of WIP ?

What are the consequences of not reporting the WIP?

## Answer:

- If terms of Contract Provides that 'A' can raise invoice only after quantification of Supply the reasonable certainty of receipt arises only on 10<sup>th</sup> April.
- If this method is consistently followed it supports 'A' contention.
- WIP may be shown.

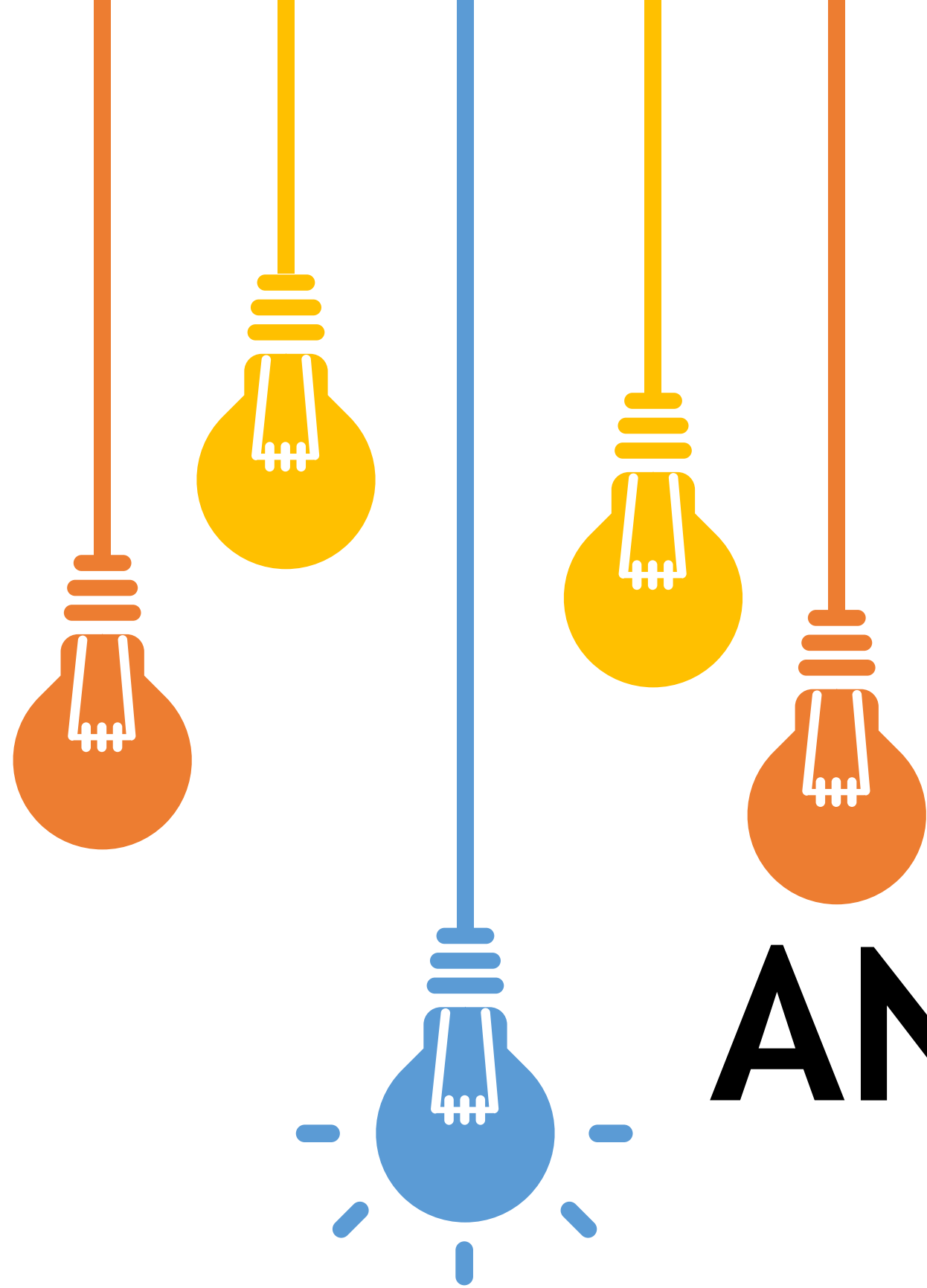
### Dept. View

- Supply is complete in March itself Right to receive has arisen in March
- Revenue to be recognized in March itself.

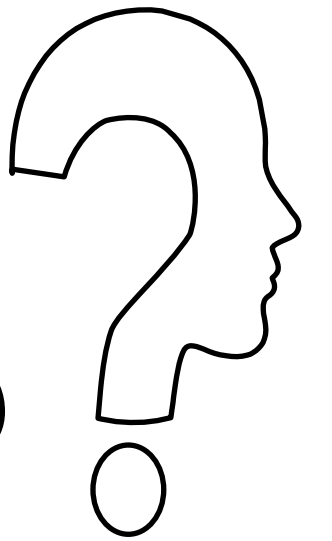


*Given the risk of an Audit,*  
***‘PAYING STRICT ATTENTION TO THE RULES’***  
*is the only smart decision you can make.*

*- Kathy Burlison*



**ANY QUESTIONS?**



# THANK YOU!



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