

Tax Updates - The Taxation Laws (Amendment) Bill, 2019



LATEST TAX
AMENDMENTS

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Background

- The Taxation Laws (Amendment) Bill, 2019 was introduced in Lok Sabha by the Minister of Finance, Ms. Nirmala Sitharaman, on November 25, 2019. The Bill replaces the Ordinance promulgated on 20th September, 2019.
- It amends the Income Tax Act, 1961 (IT Act), and the Finance (No. 2) Act, 2019. The Bill provides domestic companies with lower tax rate options, if they do not claim certain deductions. It also amends certain provisions regarding levy of surcharge on capital gains.



Section 115BAA: Concessional rate of tax for existing domestic companies

• Ordinance:

An effective rate of 25.17% (Base rate – 22% + Surcharge – 10% + Cess – 4%) was introduced for certain domestic companies who can exercise the option to pay tax under this section at the time of or before filing ITR for the assessment year 2020-21, on satisfaction of certain specified conditions.

• Amendment/Clarifications Proposed in the Bill:

1. Certain domestic companies can exercise the option as mentioned in the ordinance while the option once exercised , cannot be withdrawn in the future years.
2. Also such option can be availed only when the below mentioned conditions are satisfied: *

(i) **The total Income of the company shall be computed without deductions under-**

Section 10AA; Section 32(1)(iia); Section 32AD; Section 33AB; Section 33ABA; Section 35AD; Section 35CCC; Section 35CCD; Chapter VI A other than under section 80JJAA

- (ii) No Setoff or carry forward of loss from previous assessment years will be allowed if such loss relates to clause (i) above.
- (iii) No setoff or carry forward of loss for any unabsorbed depreciation transferred on amalgamation, demerger, etc under sec 72A of the act, will be allowed if such loss relates to clause (i) above.
- (iv) Company exercising option under this section can claim deduction under section 32 excluding additional depreciation as per Section 32(1)(iia).

***Where a company fails to satisfy the conditions above, the option shall become invalid in respect of that year & all subsequent years and other provisions of the act shall be applicable as if the concession tax regime was not exercised.**

Section 115BAA: Concessional rate of tax for existing domestic companies

3. The company opting for this regime are not eligible to set off the unabsorbed depreciation attributable to unabsorbed depreciation.
 - Corresponding adjustment shall be made to WDV of the block of the assets in prescribed manner, if any unabsorbed depreciation, relating to additional depreciation, has not been given full effect.
4. It has been proposed that the companies having a unit in the International Finance Service Centre (IFSCs) can avail the deduction under Sec 80LA* even if such units opted for sec 115BAA.
5. The provisions of sec 115JAA shall also not be applicable to the companies opting for this regime.
 - Thus, the MAT credit available with the company shall lapse on opting new regimes.



***(80LA : Deduction of certain incomes of offshore banking units & IFSC)**

Section 115BAB : Concessional rate of tax for new manufacturing domestic companies

- Ordinance:

An effective rate of 17.16% (Base rate – 15% + Surcharge – 10% + Cess – 4%) was introduced for manufacturing companies set-up and registered on or after 1st October, 2019 and has commenced manufacturing or production of article/thing on or before 31st March, 2023 can exercise the option to pay tax under this section at the time of or before filing ITR for the assessment year 2020-21.

- Amendment/Clarifications Proposed in the Bill:

1. Newly Set-up domestic manufacturing companies can exercise the option as mentioned in the ordinance subject to fulfilment of certain conditions, while the option once exercised cannot be withdrawn.

2. Manufacture /Production of article or thing refers to:

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- i) Development of computer software in any form or in any media.
 - ii) Mining
 - iii) Conversion of marble blocks or similar items into slabs.
 - iv) Bottling of gas into cylinder.
 - v) Printing of books or production of cinematograph film or
 - vi) Any other business as may be notified by Central Government.

Section 115BAB : Concessional rate of tax for new manufacturing domestic companies

3. Conditions for opting to pay tax under this section :

(i) It is not formed by splitting up or the reconstruction of a business already in existence.

Exceptions: Any undertaking re-established, reconstructed or revived due to natural calamities, strikes etc

(ii) It does not use any plant or machinery previously used for any purpose

Exceptions: **A.** Any plant or machinery used outside India but not brought into India and no depreciation is claimed as per Income tax act, 1961.


B. Any machinery or plant used previously is put to use and the value of such plant or machinery does not exceed 20% of the total value of plant and machinery used by the company.

(iii) It does not use any building previously used as a hotel or convention centre. (in respect of which deduction under 80ID had been claimed or allowed)

(iv) All the conditions as applicable to **Section 115BAA**

4. Other Clarifications proposed in the bill:

i) This regime under sec 115BAB shall be invalid for the previous year and all subsequent years, if that domestic company fails to comply with any of the aforesaid conditions in any previous year.



However in such case, the opportunity to switch to tax regime of **sec 115BAA** is being proposed by the amendment bill.

Section 115BAB : Concessional rate of tax for new manufacturing domestic companies



ii) A newly incorporated company is unlikely to have unabsorbed depreciation or carry forward of losses except where it is an amalgamated company.

-Further the bill clarifies that **an amalgamated company can opt for the scheme under sec 115BAB,**



provided it continues to satisfy the conditions mentioned in the scheme.

Sec 115BAB : Concessional rate of tax for new manufacturing domestic companies

iii) To bring clarity on the ambiguity whether the reduced tax is applicable on the total income or only on the income derived from manufacturing activities, the bill proposes the following:

22%

- a) For such income which has neither been derived from nor is incidental to manufacturing or production of an article or thing.
- b) And in respect of which no specific rates are provided in chapter XII.

- Such tax shall be charged on the gross receipt without claiming any deductions or allowance in respect of any expenditure or allowance.

c) Short term capital gain from transfer of **non-depreciable** assets.



Section 115BAB : Concessional rate of tax for new manufacturing domestic companies

Ordinance: The transactions between the company and any other closely related person shall be subject to **transfer pricing**

Bill : Such excess profits computed by the AO shall be the deemed income which is taxable at the rate of

30%

Applicable Tax rates under Sec 115BAB:

Income	Tax rate
Manufacturing activities	15%
Non-manufacturing activities	22%
Short term capital gains from transfer of depreciable assets	15%
Short term capital gains from transfer of non-depreciable assets	22%
Excess profit arrived due to transfer pricing	30%

Other Changes proposed in the Bill

a) Sec 115JAA :

- The provision of the Sec 115 JAA (MAT credit) shall not apply to a person who has exercised Sec 115 BAA.

b) Sec 115JB :

- Decrease of MAT rate from 18.5% to 15% of book profit for all companies commencing on or after 1/4/2020.
- The provisions of this section shall not apply to companies exercising options Sec 115BAA & 115BAB.
- The provisions of this section shall also not apply to insurance business referred under sec 115B.

c) Sec 115QA:

(The company shall be liable to pay tax at 20% on buy back of shares)

- The provision of this section shall not apply to shares listed on a recognised stock exchange.

d) Sec 115DA:

(Tax on income of Foreign Institutional Investors from securities or capital gains arising from their transfer.)

- The Surcharge rate for Foreign Institutional Investors has been limited to 15% .
i.e, increased surcharge rate of 25% & 37% shall not be applicable to them

THANKYOU

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